

144 FERC ¶ 61,003  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
Cheryl A. LaFleur, and Tony Clark.

Ontario Power Generation Inc.

Docket No. ER13-981-000

ORDER ON REFUND REPORT

(Issued July 2, 2013)

1. On February 25, 2013, Ontario Power Generation Inc. (Ontario Power) submitted a report (Refund Report) addressing what it states are potential refund obligations with respect to recent energy sales in the New York Independent System Operator, Inc. (NYISO) market. Ontario Power states that it owes no refunds. Ontario Power requests that the Commission accept for filing the Refund Report and waive any requirements for it to pay time-value refunds to its Ontario Power Generation Energy Trading, Inc. (Ontario Trading) subsidiary for any jurisdictional sales Ontario Power is deemed to have made in connection with these transactions. As discussed below, the Commission finds the request for waiver to be moot and accepts Ontario Power's Refund Report for filing.

**I. Background**

2. Ontario Power states that it filed the Refund Report out of an abundance of caution because the energy transactions were inadvertently entered on the NYISO trading system using the Ontario Power code, OPG, rather than the Ontario Trading subsidiary code, OPGET, as the purchaser in what was to have been a simultaneous purchase and resale by Ontario Trading.<sup>1</sup> Ontario Power states that it has neither market-based rate authority nor any other Commission authorization under section 205 of the Federal Power Act (FPA) to make jurisdictional, physically-delivered power sales in the U.S and that it made this filing because it is the legal entity that may be deemed to have made a jurisdictional sale without having a rate on file.

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<sup>1</sup> Ontario Trading was granted market-based rate authority by the Commission. See *Ontario Power Generation Energy Trading, Inc.*, Docket No. ER08-580-000 (March 27, 2008) (unpublished letter order).

3. Ontario Power is a generating company located in the Province of Ontario, Canada and wholly-held by the government of the Province. It maintains that it neither owns nor operates any generation or transmission facilities in the U.S. Likewise, Ontario Power maintains it does not have a franchised service area in either the U.S. or Canada. Ontario Power states that the output of its generation is sold into the market administered by the Ontario Independent Electricity System Operator (IESO), subject to regulation by the Ontario Energy Board.

4. Ontario Power contends that it schedules all of its power sales for delivery to U.S. purchasers at the IESO node on the Ontario side of the Canadian border (or other delivery points in Canada). Ontario Power explains that Ontario Trading was established as a separate legal entity for the purpose of engaging in competitive power sales in U.S. wholesale markets in accordance with Canadian and U.S. laws.<sup>2</sup> Ontario Power states that although Ontario Trading's predecessor entity was originally granted market-based rate authorization by the Commission in 2002, it was only in the past two years that Ontario Trading began trading material amounts of power in the Eastern ISO/RTO markets, including NYISO and ISO New England Inc. (ISO-NE).<sup>3</sup> Ontario Power explains that although both entities are registered as market participants in these markets, the market activity of Ontario Power is limited to purchasing power for delivery on the Canadian side of the border as it is not authorized to make sales for resale within the U.S.

5. Ontario Power states that, on December 30, 2012, a trader transacting on behalf of Ontario Trading executed a series of "paired trades" between the NYISO and ISO-NE markets. According to Ontario Power, under the intended trading strategy, Ontario Trading was to make five purchases of 100 MWh out of the NYISO hourly market and simultaneously sell 100 MWh into the ISO-NE hourly market.<sup>4</sup> Ontario Power contends, that for each of those five hourly paired trades, Ontario Trading was intended to be both the purchaser of 100 MWh from NYISO and simultaneously the seller of 100 MWh into ISO-NE. However, due to an incorrect User ID entry by an Ontario Trading trader when initially accessing the NYISO trading platform, Ontario Power asserts that the five hourly 100 MWh purchases from NYISO were recorded in its name, rather than Ontario Trading. Ontario Power argues that the second leg of the transactions involving the five

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<sup>2</sup> Refund Report at n.7.

<sup>3</sup> *Ontario Energy Trading International Corporation*, 99 FERC ¶ 61,039 (2002), *reh'g denied*, 100 FERC ¶ 61,345 (2002), *reh'g denied*, 103 FERC ¶ 61,044 (2003).

<sup>4</sup> Refund Report at 3.

hourly 100 MWh sales into ISO-NE was properly entered by the trader and showed Ontario Trading as the seller.<sup>5</sup>

6. For commercial settlement purposes, Ontario Power contends that the incorrect initial sign-in by the trader resulted in Ontario Power being designated by NYISO as the purchaser of 100 MWh in the first leg of the transactions while Ontario Trading is shown by NYISO as the seller of the corresponding 100 MWh to ISO-NE in the second leg of the transactions. Therefore, according to Ontario Power, it could be deemed to have effectively transferred title of the five 100 MWh purchases from the NYISO market to its Ontario Trading affiliate, which in turn completed the sale of the five 100 MWh purchases to ISO-NE.

7. Ontario Power states that Ontario Trading recognized its error in the designation of the buyer within several days of completing the transactions and submitted a request to NYISO on January 3, 2013, seeking to change the buyer's identification for commercial settlement of the transactions from Ontario Power to Ontario Trading. Ontario Power maintains that NYISO staff responded that it was precluded by its market rules from making any retroactive changes to transactional parameters.<sup>6</sup> Thus, for settlement and billing purposes, Ontario Power understands that NYISO will report the transactions in a form that presumes an intermediate transfer of title of the power from Ontario Power to Ontario Trading.

8. Ontario Power asserts that such a transfer of title, albeit inadvertent, implies that the transactions included an intermediate sale-for-resale component and raises a potential compliance issue under Commission regulations since, as previously noted, it does not have authorization under FPA section 205 to sell power in U.S. markets.<sup>7</sup> Ontario Power maintains that the trader who entered the second leg of the transactions involving the five hourly sales to ISO-NE did so in the belief that Ontario Trading was simultaneously

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<sup>5</sup> *Id.* Ontario Power contends that for each of the trades the e-tag used for scheduling the relevant transaction was properly submitted and indicated Ontario Trading as the purchaser from NYISO and the seller to ISO-NE and that Ontario Power does not appear on any of the e-tags.

<sup>6</sup> Refund Report at 3-4. Ontario Power stated that should the appropriate NYISO committee grant its request, meaning no transfer of title (i.e., sale-for-resale) of the purchased power from Ontario Power to Ontario Trading, it would seek to withdraw the instant filing as moot. Ontario Power has not notified the Commission that NYISO has granted its request.

<sup>7</sup> *Id.* at 4.

purchasing the same five 100 MWh from the NYISO market and thus held title to the power it was reselling.<sup>8</sup> Ontario Power asserts that, given that the transactions were paired-trades under market-based rate authority, there was no conceivable economic incentive for Ontario Trading to deliberately introduce an intermediate change in title prior to delivering the power to the ISO-NE market.<sup>9</sup>

9. Ontario Power argues that its trading programs and compliance procedures have evolved considerably since it began ramping up its trading activity in the Northeast U.S. markets two years ago. Ontario Power asserts that this inadvertent “sale” was an anomaly and should be viewed in the context of all the transactions Ontario Trading properly entered and executed during 2012. Ontario Power states that Ontario Trading has separately submitted a report to the Commission’s Office of Enforcement describing the potential compliance issues raised by the inadvertent sale it made and the additional remedial steps taken by the two entities to minimize the likelihood of similar problems in the future.<sup>10</sup>

## **II. Request for Waiver**

10. Ontario Power requests waiver of any requirement to pay time-value refunds pursuant to section 35.19a of the Commission’s regulations,<sup>11</sup> for the period that a wholesale rate was collected without Commission authorization under section 205 of the FPA.<sup>12</sup> Ontario Power contends that the transfer of power to its Ontario Trading subsidiary was limited to a total of five hourly periods and the transfer occurred “at cost” (i.e., the cost basis for Ontario Trading was the same as the Ontario Power purchase price

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<sup>8</sup> *Id.* at n. 6. Ontario Power provides a description of how the transactions were recorded in its internal software.

<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 4-5.

<sup>11</sup> 18 C.F.R. § 35.19a (2012).

<sup>12</sup> Refund Report at 6 (citing *Prior Notice*, 64 FERC ¶ 61,139, at 61,980 (1993)). Ontario Power states that Commission orders issued subsequent to the *Prior Notice* order clarify that this margin refund should be combined with the time value remedy (citing *WC Landfill Energy, LLC*, 127 FERC ¶ 61,114, at P 38 (2009); *S. Cal. Water Co.*, 100 FERC ¶ 61,373, at P 15 (2002)).

in the NYISO hourly market).<sup>13</sup> Ontario Power asserts that it did not realize any “margin” from the transactions. Ontario Power argues that because the purchaser for all of the relevant sales was its wholly-owned marketing subsidiary, any refund liability will be internalized and no public interest would be served in requiring it to go through the exercise of refunding the “time value” of the revenues that Ontario Power collected to Ontario Trading. Ontario Power asserts that, in this circumstance, a waiver of the refund policy is appropriate.<sup>14</sup>

11. Ontario Power states that the imposition of time value refunds is the Commission’s method of encouraging compliance by public utilities with the requirements of section 205 of the FPA, and compensating customers that have been deprived of the use of their monies for the period that the rates had not been filed.<sup>15</sup> Ontario Power states that the time value refund is paid, not to the Commission, but to the ratepayers who paid the rates that had not been filed.<sup>16</sup> Ontario Power argues in this instance, where the customer is essentially the same entity as the seller, the objective of requiring the time value of refunds is no longer relevant and waiver of the refund requirement is consistent with Commission precedent.<sup>17</sup>

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<sup>13</sup> *Id.* Ontario Power argues that the only jurisdictional sales within these transactions that might be deemed to have been made without prior authorization were the transfers of title to the energy acquired in the name of Ontario Power as the first leg of the five hourly paired-trades transacted on December 30, 2012. Ontario Power states that under the currently-operative NYISO designation of Ontario Power as the purchaser from NYISO and Ontario Trading as the reseller to ISO-NE over five hours (hours 08, 09, 10, 11, and 14) there was an imputed sale-for-resale during each of those hours. Ontario Power states that while the Commission has waived its sixty-day prior notice requirement and granted retroactive authorization for sales made in the absence of a filed rate upon showing of extraordinary circumstances, it is not seeking such waiver.

<sup>14</sup> Refund Report at 7.

<sup>15</sup> *Id.* at 7 (citing *El Paso Elec. Co.*, 105 FERC ¶ 61,131, at P 40 (2003)).

<sup>16</sup> *Id.* (citing *El Paso Elec. Co.*, 105 FERC ¶ 61,131, at P 21, n.26 (2003)).

<sup>17</sup> *Id.* (citing *TransCanada Power (Castleton) LLC*, 111 FERC ¶ 61,264, at P 28 (2005)).

### III. Notice

12. Notice of Ontario Power's filing was published in the *Federal Register*, 78 Fed. Reg. 15,362 (2013), with interventions, protests, or comments due on or before March 18, 2013. No comments, protests, or interventions were filed.

### IV. Discussion

13. Here, in five hourly trading periods, through an inadvertent mistake on the part of a trader transacting on behalf of Ontario Trading, Ontario Power (which does not have market-based rate authority and thus is not authorized to sell), rather than its wholly-owned subsidiary Ontario Trading (which does have market-based rate authority and thus is authorized to sell), purchased power in NYISO which Ontario Trading simultaneously sold into ISO-NE. As a result, because the five transactions involved one entity purchasing the power and the other simultaneously selling it, to effectuate the transactions Ontario Power explains that there must have been a further sale between the two, a sale of the power from Ontario Power to Ontario Trading, and thus a sale made by an entity without market-based rate authority. That sale, Ontario Power represents, was a sale "at cost;" that is, Ontario Power's sales price to Ontario Trading was the same as its purchase price. In this unique circumstance, we are persuaded to exercise our discretion and accept Ontario Power's refund report, and, as a result of this acceptance, we dismiss the waiver request as moot.

14. The Commission notes, however, that this is not the first instance of an inadvertent entry in a wholesale market transaction involving these parties.<sup>18</sup> Ontario Power previously reported to the Commission inadvertent sales between Ontario Power and Ontario Trading and provided the Commission similar assurances that remedial actions had been taken with respect to the parties' trading software and training programs.<sup>19</sup> In light of these facts, the Commission strongly cautions Ontario Trading to ensure that procedures are in place to prevent these types of errors from occurring in the future.

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<sup>18</sup> Ontario Power November 1, 2011 Refund Report, Docket No. ER12-329-000, at 2 (accepted by delegated letter order, issued December 14, 2011).

<sup>19</sup> *Id.* at 4.

The Commission orders:

Ontario Power's Refund Report is hereby accepted.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.