United States
Department of Energy

Office of Electricity Delivery and Energy Reliability

Cinergy Marketing & Trading, LP

OE Docket No. EA-316

Order Authorizing Electricity Exports to Canada

Order No. EA-316

July 28, 2006

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I. BACKGROUND

Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C.§824a(e)).

On June 6, 2006, Cinergy Marketing & Trading, LP (CMT) applied to the Office of Electricity Delivery and Energy Reliability (OE) of the Department of Energy (DOE) for authorization to transmit electric energy to Canada. CMT operates as a power marketer and does not own or control any electric power generation or transmission facilities and does not have a franchised electric power service area.

CMT proposes to purchase surplus electric energy from electric utilities and other suppliers within the United States and to export that energy to Canada. The energy to be exported would be delivered to Canada over the international electric transmission facilities presently owned by the following:

Basin Electric Power Cooperative
Bonneville Power Administration
Eastern Maine Electric Cooperative
International Transmission Company
Joint Owners of the Highgate Project
Long Sault, Inc.
Maine Electric Power Company
Maine Public Service Company
Minnesota Power, Inc.
Minnkota Power Cooperative
New York Power Authority
Niagara Mohawk Power Corp.
Northern States Power Company
Vermont Electric Power Company, Inc.
Vermont Electric Transmission Company

Notice of the CMT export application in Docket No. EA-316 was placed in the *Federal Register* on June 20, 2006, (71 FR 35418) requesting that comments, protests, and petitions to intervene be submitted to DOE by July 20, 2006. None were received.

II. DISCUSSION AND ANALYSIS

The authority requested of DOE by CMT is a necessary condition for exporting under section 202(e) of the FPA. Before an electricity export authorization is granted, DOE evaluates the impact of the export on the reliability of the U.S. electric system.

Specifically, under the first criterion of section 202(e), DOE shall approve an electricity export application "unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States…." DOE has interpreted this criterion to mean that sufficient generating resources must exist such that the exporter could sustain the export while still maintaining adequate generating resources to meet all native load obligations. Power marketers, like CMT, do not have franchised service areas and, consequently, have no

native load obligations like the traditional local distribution utility. Marketers build a power purchase portfolio from electric power purchased from various entities inside and outside the United States. The power purchased by a power marketer is, by definition, surplus to the needs of the selling entities. With no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export. Because a marketer has no native load obligations and because power purchased by a marketer would be surplus to the needs of the entities selling the power to the marketer, an export occurring under such circumstances would meet the first statutory criterion of section 202(e) of the FPA of not impairing the sufficiency of supply within the United States.

Under the second criterion of section 202(e), DOE shall approve an electricity export application "unless, after opportunity for hearing, it finds that the proposed transmission…would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission." DOE has interpreted this second criterion primarily as an issue of the operational reliability of the domestic electric transmission system.

Prior to the restructuring of the electric power industry, the only entities able to export were those electric utilities that were contiguous with the U.S. international border that owned international transmission facilities. The exported energy generally originated from within the exporter's system and standard transmission studies could be performed to determine the impact of the export on regional electric systems.

However, deregulation of wholesale power markets and the introduction of open-access transmission expanded the geographic scope of entities capable of exporting electric energy. Today, at the time it submits its application to DOE, the typical exporter cannot identify the source of the exported energy or the electric systems that might be called upon to provide transmission service to the border. Consequently, traditional transmission studies cannot be used to determine the impact of such exports on the operational reliability of the regional electric transmission systems.

In evaluating the operational reliability impacts of export proposals, DOE has always used a variety of methodologies and information, including established industry guidelines, operating procedures and/or infrastructure, as well as traditional technical studies where available and appropriate. When determining these impacts for exports by power marketers or other entities operating in a similar manner, it is convenient to separate the export transaction into two parts: (1) moving the export from the source to a border system that owns the international transmission connection; and, (2) moving the export through that border system and across the border.

In order to deliver the export from the source to a border system, CMT must make the necessary commercial arrangements and obtain sufficient transmission capacity to wheel the exported energy to the border system. In doing so, CMT generally would be expected to use domestic transmission facilities for which open-access tariffs have been approved by the Federal Energy Regulatory Commission (FERC). Cinergy Marketing & Trading, LP also must make reservations for transmission service in accordance with the FERC Open-Access Same–Time Information System (OASIS), and

must schedule delivery of the export with the appropriate Regional Transmission Organization(s) (RTO), Independent System Operator(s) (ISO), and/or control area operator(s). The posting of transmission capacity on OASIS indicates that transmission capacity is available. Furthermore, it is the responsibility of the RTO, ISO, and/or control area operator to schedule the delivery of the export consistent with established operational reliability criteria. During each step of the process of obtaining transmission service, the owners and/or operators of the transmission facilities will evaluate the impact on the system and schedule the movement of the export only if it would not violate established operating reliability standards. DOE has determined that the existing industry procedures for obtaining transmission capacity on the domestic transmission system provide adequate assurances that a particular export will not cause an operational reliability problem. Therefore, this export authorization has been conditioned to ensure that the export would not cause operating parameters on regional transmission systems to fall outside of established industry criteria or cause or exacerbate a transmission operating problem on the U.S. electric power supply system (paragraphs D, E, and J of this Order).

In determining the operational reliability impacts of moving the export through a border system and across the border, DOE relies on the traditional technical studies that were performed in support of electricity export authorizations issued to that border system. Allowing these technical studies to suffice in this docket is sound and, thus, DOE need not perform additional impact assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the authorized limit of the system (paragraph B of this Order).

However, this approach is applicable only for exports over international transmission facilities for which export authorizations have been issued and for which operational reliability studies have been performed. Several of the international transmission lines over which CMT seeks export authority are owned by the New York Power Authority (NYPA) and the Bonneville Power Administration (BPA).

As an instrumentally of the State of New York, NYPA is non-jurisdictional to section 202(e) of the FPA. Consequently, DOE never issued NYPA an export authorization or prepared an impact assessment which could have been used to determine the allowable instantaneous rate of transmission (power) for exports over NYPA's international transmission lines. Thus, in lieu of that, DOE is utilizing the information contained in the report entitled, "Load & Capacity Data, 2001 Report of the Member Electric Systems of the New York Power Pool."[1] This report is prepared and filed with the New York Public Service Commission pursuant to section 6-106 of the Energy Law of New York State. It will be made part of the record in this proceeding and included in the public docket. Section IX of this report lists the transmission transfer capabilities between New York State and surrounding electric systems, including Hydro-Quebec and Ontario Hydro. Since all of the major transmission interconnections between New York State and Ontario, Canada, are operated in parallel,

[1] This report increases the New York-Ontario transfer limit to 1650 MW from the 550-MW limit contained in the 1995 version of the report. On September 26, 2002, DOE authorized the New York ISO to export at this higher transfer limit in Order EA-227-A. New York Power Pool no longer exists and all of the operational responsibilities of the pool are now being performed by the New York ISO.

it is appropriate to consider a single export power limit for this "electrically logical" grouping of lines. Accordingly, the transfer capability between New York State and Ontario (as identified in Section IX of the above report) has been used to limit the instantaneous transmission rate for exports by CMT over all international transmission lines connecting New York State with Ontario (subparagraph B(13)(a) of this Order). A separate limit (subparagraph B(12) of this Order) has been assigned for exports over NYPA's 765-kV tie with Hydro-Quebec because of the asynchronous nature of that interconnection.

As a Federal agency, BPA also is non-jurisdictional to section 202(e) of the FPA. Consequently, BPA was never issued an export authorization which DOE could have used to set power limits for exports by CMT over BPA's international transmission ties with Canada. However, DOE has obtained information from BPA on the transmission limits assigned to the two 500-kV and the two 230-kV lines connecting the BPA system with British Columbia Hydro and West Kootenay Power for operation in the export mode. This information has been made a part of this Docket. It has been used by DOE in setting limits on the power to be exported by CMT over the BPA international transmission facilities (subparagraph B(14) of this Order).

CMT requested and is being authorized to export electricity over the transmission facilities of some border utilities whose export authorizations still contain limits on the total amount of energy that can be exported by these utilities. These energy limits no longer have any direct relevance to the way DOE addresses reliability. DOE expects to initiate a future proceeding regarding the removal of these limits.

However, DOE recognizes the potential inequity of retaining energy limits on certain exporters while currently authorizing marketers, or other entities operating in a similar manner, to export unlimited amounts of energy. Until the above referenced proceeding is completed, exports by power marketers, or other entities operating in a similar manner, will be constrained by the same energy limits, except exports by such entities will not reduce or be "charged against" those energy limits contained in the original export authorization.

Open Access

An export authorization issued under section 202(e) does not impose on transmitting utilities a requirement to provide service. However, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in FERC Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, FERC Statutes and Regulations ¶31,036 (1996)), as amended. The actual rates, terms and conditions of transmission service should be consistent with the non-discrimination principles of the FPA and the transmitting utility's Open-Access Transmission Tariff on file with FERC.

All recipients of export authorizations, including owners of border facilities for which Presidential permits have been issued, are required by their export authorization to

conduct operations in accordance with the principles of the FPA and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, which include the comparable open access provisions of FERC Order No. 888, as amended. Cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. (See Enron Power Marketing, Inc., 77 FERC ¶61,013 (1996)). Thus, DOE expects owners of border facilities to comply with the same principles of comparable open access and non-discrimination that apply to the domestic interstate transmission of electricity.

III. FINDING AND DECISION

DOE has assessed the impact that the proposed export would have on the reliability of the U.S. electric power supply system. Based on the above, DOE has determined that the export of electric energy to Canada by CMT, as ordered below, would not impair the sufficiency of electric power supply within the United States and would not impede or tend to impede the coordination in the public interest of facilities within the meaning of section 202(e) of the FPA.

DOE also has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment and, therefore, is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Regulations implementing the National Environmental Policy Act of 1969 (NEPA). Specifically, this categorical exclusion is provided for transmission of electric energy using existing transmission systems. Documentation of the use of this categorical exclusion has been placed in this Docket.

IV. ORDER

Based on the above, it is hereby ordered that CMT is authorized to export electric energy to Canada under the following terms and conditions:

(A) The electric energy exported by CMT pursuant to this Order may be delivered to Canada only over the following existing international transmission facilities for which assessments of the transmission limits for operation in the export mode have been made:

Present Owner	Location	Voltage	Presidential Permit No.[2]
Basin Electric Power Cooperative	Tioga, ND	230-kV	PP-64
Bonneville Power Administration	Blaine, WA	2-500-kV	PP-10
	Nelway, WA	230-kV	PP-36
	Nelway, WA	230-kV	PP-46

[2] These Presidential permit numbers refer to the generic DOE permit number and are intended to include any subsequent amendments to the permit authorizing the facility.

Eastern Maine Electric Cooperative	Calais, ME	69-kV	PP-32
International Transmission Company	Detroit, MI	230-kV	PP-230
	Marysville, MI	230-kV	PP-230
	St. Claire, MI	230-kV	PP-230
	St. Claire, MI	345-kV	PP-230
Joint Owners of the Highgate Project	Highgate, VT	120-kV	PP-82
Long Sault, Inc.	Massena, NY	2-115-kV	PP-24
Maine Electric Power Company	Houlton, ME	345-kV	PP-43
Maine Public Service Company	Limestone, ME	69-kV	PP-12
	Fort Fairfield, ME	69-kV	PP-12
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative	Roseau County, MN	230-kV	PP-61
New York Power Authority	Massena, NY	765-kV	PP-56
	Massena, NY	2-230-kV	PP-25
	Niagara Falls, NY	2-345-kV	PP-74
	Devils Hole, NY	230-kV	PP-30
Niagara Mohawk Power Corp.	Devils Hole, NY	230-kV	PP-190
Northern States Power Company	Red River, ND	230-kV	PP-45
	Roseau County, MN	500-kV	PP-63
Vermont Electric Power Co.	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	±450-kV DC	PP-76

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph (A) above. Specifically:

(1) Exports by CMT made pursuant to this Order shall not cause the total exports on facilities authorized by Presidential Permit PP-64 (issued to Basin Electric Power Coop.) to exceed an instantaneous transmission rate of 150 megawatts (MW). The gross amount of energy which CMT may export over the PP-64 facilities shall not exceed 900,000 megawatt-hours (MWH) during any consecutive 12-month period.

(2) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-66 (issued to Vermont Electric Power Co.) to exceed an instantaneous transmission rate of 50 MW. The gross amount of energy which CMT may export over the PP-66 facilities shall not exceed 50,000 MW annually.

(3) Exports by CMT made pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permit PP-230 (issued to International Transmission Company) to exceed a coincident, instantaneous transmission rate of 2.2 billion volt-amperes (2,200 MVA).

(4) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-32 (issued to Eastern Maine Electric Coop.) to exceed an instantaneous transmission rate of 15 MW. The gross amount of energy which CMT may export over the PP-32 facilities shall not exceed 7,500 MWH annually.

(5) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-82 (issued to the Joint Owners of the Highgate Project) to exceed an instantaneous transmission rate of 200 MW nor cause a violation of the following security constrained export limits:

Vermont Total Load (MW)	Security Constrained Maximum Export (MW)
1000	0
900	40
800	90
700	125
600	150
500	170

(6) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-43 (issued to Maine Electric Power Company) to exceed an instantaneous transmission rate of 500 MW.

(7) Exports by CMT made pursuant to this Order shall not cause the total exports on the combination of facilities authorized by Presidential Permits PP-12 and PP-29 (issued to Maine Public Service Company) to exceed a coincident, instantaneous transmission rate of 40.8 MW. The gross amount of energy which CMT may export over a combination of the PP-12 and PP-29 facilities shall not exceed 40,000 MWH annually.

(8) Exports by CMT made pursuant to this Order shall not cause total exports on the facilities authorized by Presidential Permit PP-78-1 (issued to Minnesota Power) to exceed an instantaneous transmission rate of 100 MW. Exports by CMT may cause total exports on the PP-78-1 facilities to exceed 100 MW only when total exports between the Mid-Continent Area Power Pool (MAPP) and Manitoba

Hydro are below maximum transfer limits and/or whenever operating conditions within the MAPP system permit exports on the PP-78-1 facilities above the 100-MW level without violating established MAPP reliability criteria. However, under no circumstances shall exports by CMT cause the total exports on the PP-78-1 facilities to exceed 150 MW.

(9) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-61 (issued to Minnkota Power Cooperative, Inc.) to exceed an instantaneous transmission rate of 350 MW. The gross amount of energy which CMT may export over the PP-61 facilities shall not exceed 3,000,000 MWH annually.

(10) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-63 (issued to Northern States Power) to exceed an instantaneous transmission rate of 500 MW.

(11) Exports by CMT made pursuant to this Order shall not cause a violation of the following conditions as they apply to exports over the ± 450-kV direct current transmission line authorized by Presidential Permit PP-76 (issued to the Vermont Electric Transmission Company), as amended by PP-76-A:

Exports Through	NEPOOL Load Condition	Export Limit
Comerford converter	Summer, Heavy	650 MW
Comerford converter	Winter, Heavy	660 MW
Comerford converter	Summer, Light	690 MW
Comerford converter	Winter, Light	690 MW
Comerford & Sandy Pond converters	All	2,000 MW

(12) Exports by CMT made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-56 (issued to NYPA) to exceed an instantaneous transmission rate of 1000 MW.

(13) Exports by CMT made pursuant to this Order shall not cause: (a) the total exports on the facilities authorized by Presidential Permits PP-25, PP-30, PP-74, and PP-190 (issued to NYPA and Niagara Mohawk) to exceed a combined instantaneous transmission rate of 1650 MW; and (b) the total exports on the 115-kV facilities authorized by Presidential Permit PP-24 (issued to Long Sault, Inc.) to exceed an instantaneous transmission rate of 100 MW. In addition, the gross amount of energy which CMT may export over the PP-24 facilities shall not exceed 300,000 MWH annually.

(14) Exports by CMT pursuant to this Order shall not cause total exports on the two 500-kV lines authorized by Presidential Permit PP-10, the 230-kV line authorized by Presidential Permit PP-36, and the 230 kV line authorized by Presidential Permit PP-46 (issued to BPA) to exceed the following limits:

Condition	PP-36 & PP-46 Limit	PP-10 Limit	Total Export Limit
All lines in service	400 MW	1500 MW	1900 MW
1-500 kV line out	400 MW	300 MW	700 MW
2-500 kV lines out	400 MW	0 MW	400 MW
1-230 kV line out	400 MW	1500 MW	1900 MW
2-230 kV line out	0 MW	1500 MW	1500 MW

(C) Changes by DOE to the export limits in other orders shall result in a concomitant change to the export limits contained in paragraph (B) of this Order. Changes to the export limits contained in subparagraphs B(12), B(13), and B(14) will be made by DOE after submission of appropriate information demonstrating a change in the transmission transfer capability between the electric systems in New York State and Ontario and New York State and Quebec, and between BPA and BC Hydro, or BPA and West Kootenay Power. Notice of these changes will be provided to CMT.

(D) The scheduling and delivery of electricity exports to Canada shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council, Regional Councils, Regional Transmission Organizations, Independent System Operators, and/or control area operator(s), as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(E) Exports made pursuant to this authorization shall be conducted in accordance with the provisions of the Federal Power Act and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888, as amended.

(F) The authorization herein granted may be modified from time to time or terminated by further order of the DOE. In no event shall such authorization to export over a particular transmission facility identified in paragraph (A) extend beyond the date of termination of the Presidential permit authorizing such facility.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission.

(H) CMT shall make and preserve full and complete records with respect to the electric energy exported to Canada. CMT shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, detailing for each month of the previous quarter: (1) the gross amount of electricity delivered, in kilowatt hours; (2) the consideration received for such energy; and (3) the maximum hourly rate of transmission, in kilowatts. Quarterly reports must be filed regardless of current activity and whether or not deliveries of electric energy have been made. If no transactions have been made, a one-sentence report indicating "no activity" for the previous quarter is sufficient.

Reports shall be submitted to the U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, OE-20, Forrestal Building, 1000 Independence Avenue,

SW, Washington, D.C. 20585-0305. Properly identified quarterly reports will also be accepted via facsimile at (202) 586-5860 to meet time requirements, but original copies should still be filed at the above address.

(I) In accordance with 10 C.F.R. §205.305, this authorization is not transferable or assignable, except in the event of the involuntary transfer of this authority by operation of law. Provided written notice of the involuntary transfer is given DOE within 30 days, this authorization shall continue in effect temporarily. This continuance also is contingent on the filing of an application for permanent authorization within 60 days of the involuntary transfer; the authorization shall then remain effective until a decision is made on the new application. In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application for a new export authorization, together with a statement of reasons for the transfer.

(J) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would cause or exacerbate a transmission operating problem.

(K) This authorization shall be in effect for a period of five (5) years from the date of this Order. Application for renewal of this authorization may be filed within six months prior to expiration of this authorization.

Issued in Washington, D.C., on July 28, 2006.

Anthony J. Como
Director, Permitting and Siting
Office of Electricity Delivery and
Energy Reliability