

99 FERC ¶ 61, 039  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

Ontario Energy Trading International  
Corporation

Docket No. ER02-1021-000

ORDER CONDITIONALLY GRANTING MARKET-BASED RATE  
AUTHORITY AND GRANTING WAIVERS

(Issued April 11, 2002)

In this order, the Commission grants Ontario Energy Trading International Corp. (Ontario Energy) authorization to sell capacity, energy, and ancillary services, and to resell transmission capacity, at market-based rates. This order also grants Ontario Energy's requests for certain blanket waivers and authorizations, consistent with Commission precedent. This order will benefit customers in the bulk power marketplace by expanding supply options while taking all necessary precautions against the abuse of generation and/or transmission market power.

Background

On February 14, 2002, Ontario Energy filed an application under section 205 of the Federal Power Act (FPA)<sup>1</sup> seeking authority to sell energy, capacity and ancillary services, and to resell transmission capacity, at market-based rates under the terms and conditions of its proposed FERC Electric Tariff, Original Volume No. 1. Ontario Energy requests an effective date of May 1, 2002, consistent with the start-up of open access competition in the Province of Ontario, Canada.

Ontario Energy states that under the Ontario Energy Competition Act of 1998 (Ontario Energy Act), Ontario Hydro, a government-owned utility providing generation, transmission, and distribution services in Ontario, transferred its generation and

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<sup>1</sup>16 U.S.C. § 824d (1994).

transmission assets to Ontario Power Generation Inc. (OPG) and Hydro One, Inc. (Hydro One), respectively.<sup>2</sup> Ontario Energy further states that Hydro One was required to transfer operational control over its transmission assets to the Ontario Independent Electricity Market Operator (IMO), an independently-governed transmission and market operator whose duties and functions would be similar to a regional transmission organization (RTO) in the United States. Ontario Energy states that it was established as an affiliate of OPG, that it owns no power generation or transmission assets, and that it will buy and sell electricity as a power marketer.

In support of its application, Ontario Energy submits that it satisfies each of the factors considered by the Commission in evaluating requests for market-based rate authority. Specifically, Ontario Energy states that it cannot exercise transmission or generation market power, erect barriers to entry, or engage in affiliate abuse or reciprocal dealing.

#### Notice of Filing and Responsive Pleadings

Notice of Ontario Energy's filing was published in the Federal Register,<sup>3</sup> with interventions and responsive pleadings due on or before March 7, 2002. Motions to intervene were timely filed by the IMO, Consumers Energy Company (Consumers), and the Ontario Clean Air Alliance (OCAA). Protests were filed by Consumers and OCAA.

Consumers asserts that it is unclear whether Ontario Energy's application satisfies the Commission's requirements regarding the exercise of transmission market power, because it is unclear whether an open access transmission tariff satisfying the requirements of Order No. 888<sup>4</sup> will be in place in Ontario by May 1, 2002. Consumers

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<sup>2</sup>Like OPG, all the shares of Hydro One are held in the name of the Provincial Government of Ontario, which appoints the directors of Hydro One. However, there is no overlap of Hydro One's directors with those of OPG, and the "directors, officers and employees [of OPG and Hydro One] are completely independent of each other." See Application at 1-2. Ontario Energy also states that it is not affiliated with Hydro One and that the Provincial Government of Ontario has announced its intention to privatize Hydro One through an Initial Public Offering by the end of 2002. Id. at 6.

<sup>3</sup>67 Fed. Reg. 9,262 (2002).

<sup>4</sup>Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public  
(continued...)

notes in particular that the IMO's credit requirements are more onerous than those of United States public utility transmission providers. OCAA requests that Ontario Energy's application be denied, given the failure of OPG (Ontario Energy's parent) to satisfy the requirements of the Ozone Annex to the 1991 Canada-United States Air Quality Agreement (Ozone Annex). OCAA notes that OPG operates five coal-fired power plants and that permitting Ontario Energy to sell the power produced by these plants would give these plants an unfair advantage over U.S. coal-fired facilities which are, or will be, in compliance with the Ozone Annex. On March 22, 2002, Ontario Energy filed an answer to Consumers' protest.

## Discussion

### A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>5</sup> the timely-filed motions to intervene submitted by the IMO, Consumers, and OCAA serve to make these entities parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>6</sup> prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to accept Ontario Energy's answer and therefore will reject it.

### B. Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. For an affiliate of a transmission-owning public utility to demonstrate the absence or mitigation of market power, the public utility must have on file with the Commission an open access transmission tariff

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<sup>4</sup>(...continued)

Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom., New York v. FERC, 70 U.S.L.W. 4166 (U.S. March 4, 2002).

<sup>5</sup>18 C.F.R. § 385.214 (2001).

<sup>6</sup>Id. at § 385.213(a)(2).

for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.<sup>7</sup> As we explain below, we find that Ontario Energy's proposed market-based rate tariff meets these standards. Accordingly, we will accept the proposed tariff for filing, without suspension or hearing, to become effective May 1, 2002, as requested.

The Commission's acceptance of Ontario Energy's market-based rate tariff, here, is subject to any tariff condition adopted by the Commission in Docket No. EL01-118-000.<sup>8</sup> Within 15 days of the date of issuance of an order adopting a tariff condition in Docket No. EL01-118-000, Ontario Energy is directed to make a compliance filing in the instant proceeding to amend its tariff accordingly.

### 1. Generation Market Power

Ontario Energy states that it owns no generation facilities and that the generation market power studies it has performed in this case have therefore focused on the generation facilities owned by the subsidiaries of Ontario Energy's parent, OPG. Ontario Energy states that the relevant first tier destination markets include the New York ISO, Michigan and Minnesota. In an order issued November 20, 2001, in AEP Power Marketing, Inc., et al.,<sup>9</sup> the Commission announced a new generation market power screen, the Supply Margin Assessment (SMA), to be applied to market-based rate applications on an interim basis pending a generic review of the new analytical methods for analyzing market power. Ontario Energy has submitted an SMA demonstrating that it cannot exercise generation market power in the destination markets it will serve. Accordingly, we find that Ontario Energy passes the SMA screen in these markets.

### 2. Transmission Market Power

Ontario Energy states that it owns no transmission facilities and has no affiliation with any transmission-owning entity. Ontario Energy further states that in the soon-to-be

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<sup>7</sup>E.g., Progress Power Marketing, Inc., 76 FERC ¶ 61,155 at 61,919 (1996), letter order approving settlement, 79 FERC ¶ 61,149 (1997); Northwest Power Marketing Company, L.L.C., 75 FERC ¶ 61,281 at 61,889 (1996); accord Heartland Energy Services, Inc., et al., 68 FERC ¶ 61,223 at 62,060-063 (1994).

<sup>8</sup>Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 (2001) (November 20 Order), reh'g pending.

<sup>9</sup>97 FERC ¶ 61,219 (2001), reh'g pending.

restructured Ontario energy market, the IMO will provide transmission service on an open access basis. Consumers challenges these assertions, claiming that it is unclear at this time whether the IMO will operate the transmission facilities formerly owned by Ontario Hydro on a non-discriminatory basis, consistent with the principles enunciated by the Commission in Order No. 888.

We will deny Consumers' protest. Ontario Energy does not own or operate transmission facilities, nor is Ontario Energy affiliated with any transmission-owning public utilities. The IMO, moreover, is a not-for-profit corporation that will be independent of any market participant, including OPG and Ontario Energy. Accordingly, we find that there are no transmission market power concerns at issue here.

### 3. Affiliate Abuse

Ontario Energy states that the Commission's requirements regarding the sale or purchase of power by and between a market-based rate applicant and a utility affiliate with a franchise service area does not apply here, where the sales of power to or from an affiliated Canadian entity are not subject to the Commission's jurisdiction. We agree.

### 4. Other Barriers to Entry, Reciprocal Dealing, and Other Issues

Based on our review of the application, we are satisfied that there are no barriers to entry or reciprocal dealing considerations here since Ontario Energy does not control significant energy resources in the United States.

OCAA asserts in its protest that Ontario Energy's application for market-based rate authority should be denied due to the asserted failure of OPG to satisfy the requirements of the Ozone Annex. We will deny OCAA's protest. The Commission's review of market-based rate applications is made pursuant to the guidelines discussed above, which do not encompass environmental impact or treaty obligations over which we have no jurisdiction.

### 5. Ancillary Services

Ontario Energy requests authority to engage in market-based sales of certain ancillary services (listed in its tariff) in markets administered by PJM Interconnection,

L.L.C., the New York Independent System Operator, Inc., and ISO New England Inc. Consistent with Commission precedent, we will grant Ontario Energy's request.<sup>10</sup>

In addition, Ontario Energy requests authority to engage in market-based sales of ancillary services consistent with the requirements regarding optional third-party ancillary services, as set forth in Avista Corporation.<sup>11</sup> Consistent with Avista, we will grant Ontario Energy's request.

Ontario Energy also seeks authority to sell ancillary services in additional markets as may be authorized by the Commission in the future and to those entities who may be authorized to make market-based sales in such markets. We will grant Ontario Energy's request, subject to the Commission's filing requirements.<sup>12</sup>

## 6. Reassignment of Transmission Capacity

Ontario Energy seeks Commission authorization for the reassignment of transmission capacity. This request is consistent with the Commission's requirements and will therefore be granted.<sup>13</sup>

### C. Waivers, Authorizations and Reporting Requirements

Ontario Energy is granted waivers and authorizations typically granted to other sellers of power at market-based rates. These waivers and authorizations are granted to the extent specified in Appendix A. In addition, Ontario Energy must comply with the reporting requirements and other requirements specified in Appendix A.

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<sup>10</sup>See, e.g., AES Redondo Beach, LLC, et al., 85 FERC ¶ 61,123 (1998), order on reh'g, 87 FERC ¶ 61,208, order on reh'g, 88 FERC ¶ 61,096 (1999), order on reh'g, 90 FERC ¶ 61,036 (2000); Conectiv Energy Supply, Inc., 91 FERC ¶ 61,076 (2000); Reliant Energy, Inc., et al., order on reh'g, 91 FERC ¶ 61,073 (2000).

<sup>11</sup>87 FERC ¶ 61,136 (Avista), order on reh'g, 89 FERC ¶ 61,136 (1999).

<sup>12</sup>18 C.F.R. § 35.1 (2001). See Calhoun Power Company, 96 FERC ¶ 61,056 (2001).

<sup>13</sup>See Enron Power Marketing, Inc., 81 FERC ¶ 61,277 (1997); and Select Energy, Inc., 85 FERC ¶ 61,290 (1998).

Ontario Energy is hereby informed of the rate schedule designations, as set forth in the ordering paragraphs below.

The Commission orders:

(A) Ontario Energy's filing is hereby accepted for filing, as discussed in the body of this order, to become effective May 1, 2002, as requested.

(B) Ontario Energy's request for waiver of Parts 41, 101 and 141 of the Commission's regulations is hereby granted, as discussed in the body of this order.

(C) Within 30 days of the date of issuance of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by Ontario Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Order Paragraph C above, Ontario Energy is hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of Ontario Energy, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(E) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving Ontario Energy. Any such person instead shall file a sworn application providing the following information:

- (1) full name and business address; and
- (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(F) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of Ontario Energy's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(G) Ontario Energy's request for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, is hereby granted, with the exception of sections 35.12(a), 35.13(b), 35.15 and 35.16.

(H) Ontario Energy may file umbrella service agreements for short-term power sales (one year or less) within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales (including risk management transactions if they result in actual delivery of electricity). For long-term transactions (longer than one year), Ontario Energy must submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service.

(I) Ontario Energy is hereby directed to file an updated market analysis within three years of the date of this order and every three years thereafter.

(J) Ontario Energy is hereby directed to inform the Commission of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing.

(K) Ontario Energy is hereby informed of the following rate schedule designation: FERC Electric Tariff, Original Volume No. 1, Original Sheet Nos. 1-3, effective May 1, 2002.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Deputy Secretary.

**Appendix A**

(1) If requested, waiver of Parts 41, 101, and 141 of the Commission's regulations, with the exception of 18 C.F.R. § 141.14, .15 (2001), is granted. Licensees remain obligated to file the Form No. 80 and the Annual Conveyance Report.

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by those applicants who have sought such approval should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (2001).

(3) Absent a request to be heard within the period set forth in Paragraph (2) above, if the applicants have requested such authorization, the applicants are hereby authorized to issue securities and assume obligations or liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(4) If requested, until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted below, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicants. Any such person instead shall file a sworn application providing the following information:

(a) full name and business address; and

(b) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(5) The Commission reserves the right to modify this order to require a further showing that neither the public nor private interests will be adversely affected by continued Commission approval of the applicant's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(6) If requested, waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of Sections 35.12(a), 35.13(b), 35.15 and 35.16, is granted for transactions under the rate schedules at issue here.

(7) (a) Applicants who own generating facilities may file umbrella service agreements for short-term power sales (one year or less) within 30 days of the date of commencement of short-term service, to be followed by quarterly transaction summaries of specific sales (including risk management transactions if they result in actual delivery of electricity). For long-term transactions (longer than one year), applicants must submit the actual individual service agreement for each transaction within 30 days of the date of commencement of service. To ensure the clear identification of filings, and in order to facilitate the orderly maintenance of the Commission's files and public access to documents, long-term transaction service agreements should not be filed together with short-term transaction summaries. For applicants who own, control or operate facilities used for the transmission of electric energy in interstate commerce, prices for generation, transmission and ancillary services must be stated separately in the quarterly reports and long-term service agreements.

(b) Applicants who do not own generating facilities must file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter (including risk management transactions if they result in actual delivery of electricity). Applicants who are power marketers should include in their quarterly reports only those risk management transactions that result in the actual delivery of electricity.

(8) The first quarterly report filed by an applicant in response to Paragraph (7) above will be due within 30 days of the end of the quarter in which the rate schedule is made effective.

(9) Each applicant must file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission reserves the right to require such an analysis at any time. The applicants must also inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (a) ownership of generation or transmission supplies; or (b) affiliation with any entity not disclosed in the applicant's filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Alternatively, the applicants may elect to report such changes in conjunction with the updated market analysis required above. Each applicant must notify the Commission of which option it elects in the first quarterly report filed pursuant to Paragraph (8) above.