

**103 FERC ¶ 61, 044**  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Ontario Energy Trading International  
Corp.

Docket No. ER02-1021-002

ORDER ON REHEARING

(Issued April 11, 2003)

1. On October 25, 2002, Consumers Energy Company (Consumers) sought rehearing of the Commission's order on rehearing issued in this proceeding on September 26, 2002.<sup>1</sup> For the reasons discussed below, we will deny rehearing.

**Background**

2. In an order issued by the Commission on April 11, 2002, the Commission granted an application filed, on February 14, 2002, by Ontario Energy Trading Company (Ontario Energy), seeking authority to sell energy, capacity and ancillary services, and to resell transmission capacity, at market-based rates.<sup>2</sup> In the April 11 Order, the Commission found, among other things, that Ontario Energy's application satisfied the Commission's requirements regarding the absence or mitigation of transmission market power, based, in part, on Ontario Energy's corporate structure.<sup>3</sup>

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<sup>1</sup>Ontario Energy Trading Corp., 100 FERC ¶ 61,345 (2002) (September 26 Order).

<sup>2</sup>Ontario Energy Trading Corp., 99 FERC ¶ 61,039 (2002) (April 11 Order).

<sup>3</sup>In prior market-based rate cases involving power marketer affiliates of Canadian utilities, the Commission has applied the same general standards that we use for reviewing requests for market-based rates by power marketers affiliated with United States utilities. See H.Q. Energy Services (U.S.) Inc., 79 FERC ¶ 61,152 at 61,652 (1997) (H.Q. Energy). In the April 11 Order, however, we found that Ontario Energy was not an "affiliated entity." We noted that Ontario Hydro, a government-owned utility  
(continued...)

3. On rehearing of the April 11 Order, Consumers argued that the Commission erred in granting Ontario Energy market-based rate authority, given its failure to consider the relevant facts relating to transmission market power. First, Consumers asserted that while Ontario has functionally unbundled the former Ontario Hydro, it has done so in a way that has permitted it to retain control of that formerly integrated entity's assets. Consumers argued, for example, that it is Ontario alone (the sole-shareholder of both Hydro One and Ontario Energy's parent, OPG) who appoints the IMO's Board. Second, Consumers argued that Ontario Energy has not demonstrated that the IMO will provide reciprocal, open access transmission service comparable to the standards established by the Commission in Order No. 888.<sup>4</sup>

4. In a procedural order issued by the Commission on July 1, 2002, we noted that Consumers' assertions on rehearing of the April 11 Order, regarding Ontario Energy's affiliated entity status would, if accepted, require the Commission to address the related issue not addressed by the April 11 Order and not sufficiently addressed in the record

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<sup>3</sup>(...continued)

formerly providing generation, transmission, and distribution services within the Province of Ontario on a bundled basis, had been structurally unbundled, *i.e.*, that it had transferred its generation assets to Ontario Power Generation Inc. (OPG), an affiliated entity of Ontario Energy, and had transferred its transmission assets to Hydro One, Inc., (Hydro One). We further noted that all shares of OPG and Hydro One are held in the name of the Provincial Government of Ontario (Ontario) and that while Ontario was responsible for appointing the directors of both Hydro One and OPG, the two boards were intended to function independent of each other and that Ontario intended to privatize Hydro One. We further noted that Hydro One had transferred the operational control over its transmission assets to the Ontario Independent Electricity Market Operator (IMO), a not-for-profit transmission and market operator whose duties and functions, beginning on May 1, 2002, would be similar to those of a regional transmission organization in the United States.

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

itself, *i.e.*, whether the IMO offers non-discriminatory access to Hydro One's transmission system on a through and out basis for purposes of reaching United States loads.<sup>5</sup> Accordingly, the July 1 Order established additional briefing procedures on this issue and the parties (including the IMO, Ontario Energy and Consumers) filed responsive pleadings.

5. In the September 26 Order, we found, based on the additional evidence presented by the parties, that Ontario Energy was affiliated with both Hydro One and the IMO, contrary to our initial finding on this issue in the April 11 Order. We noted, in particular, that Ontario owns all outstanding shares of Ontario Energy's parent company, OPG, all outstanding shares of Hydro One, and is responsible for appointing the IMO's Board. Despite this clarification, however, we denied Consumers' request for rehearing of the April 11 Order, given our finding regarding the second transmission market power issue presented by Consumers on rehearing. Specifically, we found that the IMO provides open access transmission service on a comparable, non-discriminatory basis for wheeling through and out of the Province of Ontario, sufficient to satisfy our concerns regarding transmission market power and consistent with our precedent.<sup>6</sup>

### **Consumers' Request for Rehearing**

6. On rehearing of the September 26 Order, Consumers asserts, again, that the IMO does not offer open access transmission service on a comparable basis for wheeling through and out of the Province of Ontario. Consumers argues that while non-discriminatory access to the IMO's system is statutorily guaranteed under Ontario's Electricity Act, and the IMO may very well provide the same service to every utility on a non-discriminatory basis (regardless of whether such utility is domestic or foreign), the IMO's bid-based market structure, nonetheless, is not "comparable" to public utilities in the United States. Consumers asserts that this is so because the IMO's authorized market design does not allow for a reservation of transmission capacity on its transmission system. Consumers asserts that consequently, the IMO's market structure does not provide a service that is provided by, and made available to Ontario Energy through, Occidental's transmission provider in the United States, *i.e.*, by the Midwest Independent Transmission System Operator (Midwest ISO).

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<sup>5</sup>Ontario Energy Trading Corp., 100 FERC ¶ 61,016 (2002) (July 1 Order).

<sup>6</sup>See September 26 Order, 100 FERC at P.13, citing H.Q. Energy, 79 FERC at 61,652-53; Energy Alliance Partnership, 73 FERC ¶ 61,019 at 61,030-31 (1995).

7. Consumers charges that absent this ability to reserve transmission capacity on the IMO's system, Consumers faces price uncertainty as a competitor in the Michigan market, at least for that portion of its energy supplies that it seeks to transport through the IMO/New York interconnection. Consumers asserts that this price uncertainty may be economically harmful to Consumers in those instances in which there is a generation capacity shortage on the Michigan side of the IMO's system and a surplus of supply on New York side. Consumers asserts that in this instance, the IMO's market model may produce locational price differences, *i.e.*, price increases by way of congestion charges, on the Michigan side of its system, which could deprive Consumers of the economic gains it might otherwise capture for selling its lower cost New York supplies in the Michigan market.

8. Consumers further asserts that it is inappropriate to compare the IMO's bid-based market model with the bid-based market design model utilized by the New York Independent System Operator, Inc. (New York ISO). Consumers alleges that these markets are fundamentally different because the New York market has at least 19 generator participants, none of which have a market share exceeding 35 percent. Consumers asserts that in the IMO market, by comparison, OPG has approximately 80 percent of the generation share, thus making the potential for price manipulation at the buy and sell points on the IMO's grid more feasible. For this same reason, Consumers also argues that it is inappropriate to compare the IMO's bid-based market design model with the market design model currently being considered by the Commission in its proposed Standard Market Design rulemaking proceeding, in Docket No. RM01-12-000 (SMD NOPR).<sup>7</sup> Consumers asserts that once the SMD NOPR is implemented, such a service would be provided in a market where no participant has market share the size of OPG's.<sup>8</sup>

## Discussion

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<sup>7</sup>See *Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design*, Notice of Proposed Rulemaking, 67 Fed. Reg. 55452 (Aug. 29, 2002), 100 FERC ¶ 61,138 (2002).

<sup>8</sup>On November 21, 2002, the IMO filed an answer to Consumers' request for rehearing. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2001), prohibits an answer to a request for rehearing unless otherwise permitted by the decisional authority. We are not persuaded to accept the IMO's answer and therefore reject it.

9. We will deny rehearing of the September 26 Order. As Consumers concedes in its rehearing request, there is no evidence in this case suggesting that the IMO operates its transmission system on a discriminatory basis and, in fact, it is prohibited from doing so under the IMO's governing statute.<sup>9</sup> Consumers' concern, then, is limited to the quality of the transmission service provided by the IMO under those circumstances when the IMO is experiencing constraints on its system. Specifically, Consumers alleges that the bid-based market operated by the IMO may require Consumers to incur higher (unspecified) costs to reach the Michigan market, in certain (unspecified) instances when the IMO's market rules require the IMO to address a market constraint on its system.

10. However, these facts and allegations, alone, do not support a finding that the design of the IMO's transmission system, per se, unduly impedes Consumers, or any of Ontario Energy's other competitors, from reaching United States loads. In fact, there is no evidence in this case that Consumers has or will be impeded from reaching the Michigan markets. To the contrary, as the IMO points out in its pleadings, there have been at least 12 U.S.-based wholesale marketing companies trading successfully in and out of the IMO-administered markets, to date (since the IMO began operating on May 1, 2002), by way of the Michigan-Ontario interties.<sup>10</sup>

11. Ontario Energy acknowledges that the IMO does not offer Order No. 888 point-to-point service, as set forth in the pro forma tariff, but correctly notes that, through its market rules, the IMO does allow customers to obtain a service that is comparable to Order No. 888 service. Ontario Energy notes, for example, that the IMO's bid-based real-time energy market establishes system-wide uniform clearing prices for all energy purchased and sold within Ontario. The IMO also establishes, at external interfaces, intertie zone prices which are set to clear the market for energy imports and exports.

12. When and if congestion occurs at these interties, the intertie zone price may differ from the IMO's system-wide price to reflect the cost of congestion, where it exists. However, as Ontario Energy also points out, the IMO's market rules allow customers to hedge these price differences. These hedging rights, which are sold through auctions for

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<sup>9</sup>See The Electricity Act, 1998 at §§ 1(b) and 5(1).

<sup>10</sup>Thus, we are not persuaded by the allegation of potential price manipulation at the buy and sell points on the IMO's grid, due (as Consumers claims) to OPG's 80 percent generation share in the IMO's market. This allegation is speculative, at best. Specifically, Consumers claims are not accompanied by any evidence (direct or even circumstantial) tying OPG's alleged market shares to either increased transmission prices or discriminatory conduct of any kind on the part of the IMO.

monthly and annual intervals, provide their holders with payments equal to the difference between the applicable intertie zone price and the system-wide price.<sup>11</sup> These hedging rights, moreover, are comparable to those utilized by the New York ISO and the PJM Interconnection Inc. (PJM), which we have previously accepted as consistent with or superior to the provisions of the pro forma tariff.

13. While a firm point-to-point service, under the pro forma tariff, provides the customer with assured delivery at a price that is known in advance, we find that the IMO's market rules, as described by Ontario Energy, also allow customers to obtain firm point-to-point service through and out of Ontario at a price that is known in advance (albeit through a process that involves both the advance purchase of transmission rights and bidding to buy and sell energy in the Ontario energy market). Thus, we are satisfied that the Ontario IMO provides open access transmission on a comparable, non-discriminatory basis for wheeling through and out of the Province of Ontario.

The Commission orders:

Consumers' request for rehearing of the September 26 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>11</sup>The IMO's market rules provide for an uplift charge for transactions within Ontario and an export fee for transactions to other regions. This fee recovers a share of internal congestion costs, administrative costs and fixed transmission costs. According to Ontario Energy, any congestion costs that the customer must pay would be offset (dollar for dollar) by the revenues that the customer receives from its transmission rights, and the revenues that the customer receives for its imports will exactly offset the costs that it must pay for its exports. Thus the net cost to the customer would be the export fee and the cost of acquiring the transmission rights, both of which the customer would know prior to an actual wheeling transaction.

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