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**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

**NEW BRUNSWICK ENERGY MARKETING) OE Docket No. EA-345-B
CORPORATION)**

**APPLICATION OF
NEW BRUNSWICK ENERGY MARKETING CORPORATION
FOR RENEWAL OF AUTHORIZATION
TO TRANSMIT ELECTRIC ENERGY TO CANADA**

US Department of Energy

OCT 16 2018

**Electricity Delivery and
Energy Reliability**

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16 October 2018

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY**

IN THE MATTER OF)	
)	
NEW BRUNSWICK ENERGY MARKETING CORPORATION)	OE Docket No. EA-345-B
)	

**APPLICATION OF
NEW BRUNSWICK ENERGY MARKETING CORPORATION
FOR RENEWAL OF AUTHORIZATION TO
TRANSMIT ELECTRIC ENERGY TO CANADA**

New Brunswick Energy Marketing Corporation ("NBEMC"), pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824a(e), and Subpart W of Part 205 of the regulations thereunder, 10 C.F.R. § 205.300, *et seq.*, hereby files its Application for Renewal of Authorization to export electricity from the United States to Canada for a period of five years. In support of this Application, NBEMC respectfully states as follows:

**I.
INTRODUCTION**

On December 5, 2008, the United States Department of Energy, Office of Fossil Energy ("DOE") issued Order No. EA-345 authorizing New Brunswick Power Generation Corporation to export electric energy to Canada as a power marketer for a five-year term that expired December 5, 2013. On October 1, 2013, the company's name changed from New Brunswick Power Generation Corporation to New Brunswick Energy Marketing Corporation by operation of law

enacted in the Province of New Brunswick, Canada.¹ As part of its October 5, 2013 Renewal Application, NBEMC (f/k/a New Brunswick Power Generation Corporation) stated that it remains the same corporate entity that applied for and holds the export authorization granted by Order No. EA-345, and requested that a renewal of the export authorization be granted under its new corporate name. On December 6, 2013, in Order Nos. EA-345-A, the DOE renewed NBEMC's authority to export electric energy for an additional five-year term. NBEMC's current export authorization ends on December 5, 2018.

NBEMC requests herein that it be authorized to export electricity from the United States ("US") to Canada for an additional five year period that would end five years after the effective date of such approved extension.

II. DESCRIPTION OF NBEMC

The exact legal name of NBEMC is New Brunswick Energy Marketing Corporation. NBEMC is a Canadian corporation and an agent of the Crown, the shares of which are wholly owned by New Brunswick Power Corporation ("NB Power"). The shares of NB Power are in turn owned by the Crown. NBEMC functions as a wholly owned subsidiary of NB Power that makes sales at wholesale in the U.S. at market-based rates.² Although NB Power's generation

¹ The *Electricity Act* was passed by the New Brunswick Legislative Assembly and became effective on October 1, 2013. See *Electricity Act* (S.N.B. 2013, c.7), available at <http://laws.gnb.ca/en/ShowTdm/cs/2013-c.7/>. This statute substantially restructured the electricity sector of New Brunswick by amalgamating several Provincial energy companies into a single, vertically integrated company, New Brunswick Power Corporation, with the exception of NBEMC. NB Energy Marketing was formerly known as New Brunswick Power Generation Corporation, but as a result of the *Electricity Act*, New Brunswick Power Generation Corporation was re-named New Brunswick Energy Marketing Corporation.

² NBEMC's predecessor, New Brunswick Power Generation Corporation, was initially granted market-based rate authority by the Federal Energy Regulatory Commission ("FERC") on October

facilities are located exclusively outside of the U.S., its transmission lines are directly interconnected with the transmission systems administered by ISO New England Inc. ("ISO-NE") and Northern Maine Independent System Administrator, Inc. ("Northern Maine Administrator"). The Province of New Brunswick is part of the New Brunswick balancing authority area, a portion of which is in northern Maine. The New Brunswick Energy and Utilities Board (New Brunswick Regulatory Board) has exclusive jurisdiction over NB Power's transmission system.

III. **COMMUNICATIONS**

Communications regarding this application should be addressed to the following:

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6, 2008. *New Brunswick Power Generation Corp.*, Docket No. ER08-1439-000 (Oct. 6, 2008) (delegated letter order). Subsequently, by order dated November 30, 2015, FERC accepted two notices of change in status and an updated market power analysis for NBEMC in which FERC concluded that "NB Energy Marketing continues to satisfy [FERC's] standards for market-based rate authority and that the New Brunswick Power Corporation's (NB Power) new Open Access Transmission Tariff (New OATT) provides for comparable, non-discriminatory access." See *New Brunswick Energy Marketing Corp.*, 153 FERC ¶ 61,254 (2015). On October 25, 2017, FERC accepted NBEMC's most recent updated market power analysis and simultaneous transmission import limit values, finding that "NB Energy Marketing has rebutted the presumption of market power in the New Brunswick balancing authority area and satisfies [FERC's] standards for market-based rate authority. See *New Brunswick Energy Marketing Corp.*, 161 FERC ¶ 61,096 (2017).

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IV. JURISDICTION

Pursuant to section 202(e) of the FPA, the Department of Energy's Office of Electricity Delivery and Energy Reliability is the sole agency with jurisdiction over the proposed export of electric energy to Canada.

NBEMC has obtained or will obtain all necessary Canadian federal and provincial authorizations to effect any proposed export that involves electricity sourced in Canada. No other known federal, state, or local government has jurisdiction over the actions to be taken under the authority sought in this Application.

V. RENEWAL AUTHORIZATION AND TECHNICAL DISCUSSION

NBEMC respectfully submits that granting its renewal Application to export electric power to Canada acquired from US generating sources on either a firm or interruptible basis over international electric transmission facilities continues to

meet the two-prong standard set out in section 202(e) of the FPA. Such sales would continue to be made in foreign commerce at the US – Canada border. Transmission to the point of delivery will be arranged by NBEMC over any of the international electric transmission facilities set out in Exhibit C.

NBEMC will purchase the power to be exported to Canada from electric utilities in the United States, federal power marketing agencies, qualifying cogeneration and small power production facilities, independent power producers, and other sellers. That purchased power will be transmitted over third-party facilities in the US for delivery over an international transmission facility at the US – Canada border. NBEMC will be obtaining transmission service for exports to Canada from US transmission providers that are subject to FERC's open access transmission policies as prescribed in Order Nos. 888 and 890, including FERC's requirement that transmission providers have reciprocal access to the transmission facilities owned and operated by NBEMC's parent, NB Power.³

Pursuant to section 202(e) of the FPA, before DOE grants authorization to export electricity, it first evaluates the impact of the export on the reliability of the US electric system. DOE approves an application to export electricity unless it finds that "the proposed transmission would impair the sufficiency of electric supply within the United States," or that "the proposed transmission ... would

³ NB Power operates, manages, plans, constructs and maintains its transmission system, and administers the NB Power transmission system's OASIS and its open access transmission tariff, which is based on FERC's Order No. 890 *pro forma* tariff. NB Power's tariff gives US transmission customers non-discriminatory access to NB Power's transmission facilities for transmission into, out of and across New Brunswick. The administration of NB Power's transmission system is subject to the exclusive regulatory authority of the New Brunswick Energy and Utilities Board.

impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission." 16 U.S.C. § 824(e). In applying these criteria to requests for export authorizations submitted by electric power marketers such as NBEMC, DOE has declined to follow a rigid application of the information filing requirements set forth in DOE's regulations and instead has used a flexible approach to account for the unique nature of power marketers.⁴

Specifically, with respect to the first criterion used to analyze applications to export electricity, NBEMC does not own any electric generation or transmission facilities and, as a power marketer, does not hold a franchise or service territory or native load obligation. Moreover, NBEMC is not affiliated with an entity that holds a franchise or service territory in the US. Thus, NBEMC has no transmission "system" of its own on which its exports of power could have a reliability or stability impact.

As DOE has recognized, the "power purchased by a power marketer is, by definition, surplus to the needs of the selling entities" and "[w]ith no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export."⁵ Thus, an export of electricity "occurring under such circumstances" would not impair the sufficiency of electric supply within the US.⁶

⁴ See, e.g., *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *NorAm Energy Servs., Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Servs. Corp.*, No. EA-114 (July 15, 1996); *USGen Power Servs.*, No. EA-112 (June 27, 1996); *CNG Power Servs. Corp.*, No. EA-110 (June 20, 1996); *Destec Power Servs., Inc.*, No. EA-113 (May 31, 1996).

⁵ Order No. EA-216-C at 2.

⁶ *Id.*

DOE has interpreted the second criterion used to analyze applications to export electricity "primarily as an issue of the operational reliability of the domestic electric transmission system."⁷ As noted above, NBEMC does not own any electric power supply system in the US. Additionally, in making the necessary commercial arrangements and obtaining transmission capacity necessary to export electricity under the authorization requested herein, NBEMC will comply with existing industry procedures for obtaining transmission capacity, including reserving transmission service in accordance with FERC's Open-Access Same-Time Information System ("OASIS") and scheduling delivery of the export with the appropriate Regional Transmission Organization(s) or Independent System Operator(s) and/or Balancing Authority Areas. Further, NBEMC will schedule its exports in compliance with all applicable reliability criteria, standards and guides as are set out by the North American Electricity Reliability Corporation ("NERC"), or any successor organization, and regional reliability councils, and as are applied by domestic transmission providers. Additionally, NBEMC will submit to DOE the reports the agency requires of marketers possessing export authorization.

In assessing this statutory requirement, the DOE has repeatedly concluded that the existing industry procedures for obtaining transmission capacity on the US's domestic transmission system provide adequate assurances that a particular export will not cause an operational reliability problem.

⁷ *Id.*

As noted above, NBEMC is a power marketer, and does not own or operate a transmission system. Accordingly, NBEMC does not have the ability to cause a violation of the terms and conditions contained in the existing authorizations associated with the international transmission facilities identified in Exhibit C. Specifically, NBEMC does not have the ability to cause total exports on Presidential Permit facilities to exceed the authorized instantaneous transmission rate.

VI. CONSISTENCY WITH LAWS

Authorization of the exports proposed by NBEMC is consistent with the existing NAFTA and US energy policy and will foster development of a more efficient and competitive North American energy market. NBEMC will conduct all operations pursuant to this Authorization in accordance with the provisions of the FPA and pertinent rules, regulations and orders adopted or issued thereunder, and in conformity with the reliability criteria, standards and guidelines of the NERC, regional reliability councils, and balancing authorities, including any applicable regional transmission organizations or independent system operators. Compliance with these statutes, rules, regulations, and orders will ensure that the proposed transmission will not impede or tend to impede the regional coordination of electric utility planning or operation.

NBEMC believes that DOE is not required to conduct an environmental assessment or an environmental impact statement in connection with this Application and that DOE's approval of this Application 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.

VII. PROCEDURAL ISSUES

NBEMC respectfully requests waiver of the requirement to file this application six months in advance of the renewal authorization requested herein to allow issuance of an order granting NBEMC's authorization to transmit electric energy to Canada no later than December 4, 2018.⁸ NBEMC also requests any additional waivers deemed necessary for DOE to issue the order requested herein.

VIII. EXHIBITS

The following Exhibits are attached hereto:

- | | |
|-------------------|---|
| <u>Exhibit A:</u> | Agreements
(Not applicable) |
| <u>Exhibit B:</u> | Legal Opinion of NBEMC's Counsel |
| <u>Exhibit C:</u> | Transmission System Information
(submitted in lieu of maps) |
| <u>Exhibit D:</u> | Irrevocable Limited Power of Attorney |
| <u>Exhibit E:</u> | Statement of any Corporate Relationship or Existing
Contract which in any way Relates to Control or Fixing of
Rates for the Purchase, Sale or Transmission of Electric
Energy.
(Not applicable) |

⁸ DOE previously has granted authorization to export electric energy from the United States on an expedited basis where the applicant was a power marketer that planned to purchase surplus energy from third parties. See, e.g., *Tenaska Energía de Mexico, S. de R.L. de C.V.*, Order No. EA-417 (June 15, 2016); *Global Pure Energy, LLC*, Order No. EA-390 (Mar. 4, 2014).

Exhibit F: Operating Procedures Regarding Available Capacity and Energy
(Not applicable)

Exhibit G: Verification

IX.
CONCLUSION

WHEREFORE, for the foregoing reasons, NBEMC requests that DOE grant this Application as requested herein. NBEMC is willing to provide any additional information DOE may require to expedite review and approval of this renewal Application.

Respectfully submitted,

/s/ Tyler S. Johnson

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**Attorney for New Brunswick Energy
Marketing Corporation**

#5778445.2

EXHIBIT A

Agreements

(Not applicable)

EXHIBIT B

Opinion of Counsel

LEGAL OPINION

The following opinion is given in support of the Application of New Brunswick Energy Marketing Corporation for Renewal of Authorization to Transmit Electric Energy to Canada, dated October 15, 2018.

- 1) I am a barrister and solicitor at law, authorized to practice law in Province of New Brunswick.
- 2) I am Chief Legal Counsel to New Brunswick Energy Marketing Corporation.
- 3) New Brunswick Energy Marketing Corporation is duly incorporated, validly existing under the laws of the *Business Corporations Act* of New Brunswick and I believe will take those actions required of it to do business as authorized in the States in which it will operate; and
- 3) New Brunswick Energy Marketing Corporation has full corporate power and authority to buy, sell, or act as a marketer in the sale and exportation of electric energy as requested in the Application.
- 4) To the best of my knowledge and belief, New Brunswick Energy Marketing Corporation has complied with or is in the process of complying with all U.S. Federal and State laws regarding the matters contemplated in the Application.

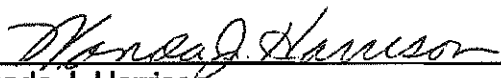

Wanda J. Harrison

EXHIBIT C

**Transmission System Information
(submitted in lieu of maps)**

**TRANSMISSION LINES AT THE U.S. BORDER WITH CANADA
APPROPRIATE FOR OPEN ACCESS TRANSMISSION BY THIRD PARTIES**

<u>Present Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No. ¹</u>
Bangor Hydro-Electric Company	Baileyville, ME	345-kV	PP-89
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
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
ITC Lake Erie Connector	Erie County, PA	320-kV	PP-412 ²
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
	Madawaska, ME	138-kV	PP-29
	Aroostook, ME	2-69-kV	PP-29
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnesota Power, Inc.	Roseau County, MN	500-kV	PP-398 ³
Minnkota Power Cooperative	Roseau County, MN	230-kV	PP-61
Montana Alberta Tie Ltd.	Cut Bank, MT	230-kV	PP-305

¹ 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.

² These transmission facilities have been authorized but not yet constructed or placed in operation.

³ These transmission facilities have been authorized but not yet constructed or placed in operation.

**TRANSMISSION LINES AT THE U.S. BORDER WITH CANADA
APPROPRIATE FOR OPEN ACCESS TRANSMISSION BY THIRD PARTIES**

<u>Present Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u> ¹
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, ND	500-kV	PP-63
	Rugby, ND	230-kV	PP-231
Sea Breeze Olympic Converter LP	Port Angeles, WA	±450-kV DC	PP-299 ⁴
Vermont Electric Power Co.	Derby Lane, VT	120-kV	PP-66
Vermont Electric Transmission Company	Norton, VT	±450-kV DC	PP-76

⁴ These transmission facilities have been authorized but not yet constructed or placed in operation.

EXHIBIT D

Irrevocable Limited Power of Attorney

IRREVOCABLE LIMITED POWER OF ATTORNEY

This IRREVOCABLE LIMITED POWER OF ATTORNEY is made October 15, 2018 by New Brunswick Energy Marketing Corporation (the "Principal"), a body corporate duly incorporated under the New Brunswick *Business Corporations Act*, SNB 1981 c. B-9.1, having its head office at 515 King Street, Fredericton, New Brunswick, E3B 5G4.

1. Appointment. The Principal does hereby appoint Mr. Tyler Johnson, whose principal place of business is at Bracewell LLP, 701 Fifth Ave., Suite 6200, Seattle, WA 98104-7018, as the Principal's true and lawful agent and attorney-in-fact ("Attorney-in-fact") for the limited purpose hereinafter set out.
2. Scope of Authority. The Attorney-in-fact shall have the limited power and authority to receive service of process for any and all matters relating to Principal's reporting requirements to the Department of Energy pursuant to Principal's Authority to Export Electricity.
3. Irrevocability. This Power of Attorney is irrevocable by the Principal.

IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be duly executed on this 15th day of October, 2018.

NEW BRUNSWICK ENERGY MARKETING CORPORATION

By: [Signature]
Name: Kevin Wright
Title: Executive Director

By: [Signature]
Name: Janice McNeil
Title: Corporate Secretary

This instrument was acknowledged before me on the 15th day of October, 2018 by each of Kevin Wright and Janice McNeil at Fredericton, New Brunswick.

By: [Signature]

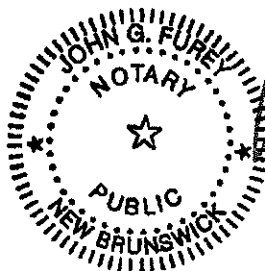


EXHIBIT E

**Statement of any Corporate Relationship or Existing
Contract which in any way Relates to Control or Fixing of Rates
for the Purchase, Sale or Transmission of Electric Energy.**

(Not applicable)

EXHIBIT F

Operating Procedures Regarding Available Capacity and Energy

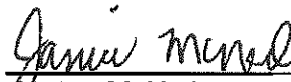
(Not applicable)

EXHIBIT G

Verification

VERIFICATION OF APPLICATION

I, Janice McNeil, being first duly sworn, states that she is Corporate Secretary of New Brunswick Energy Marketing Corporate; that she is authorized to execute this verification; that she has read the above and foregoing Application and is familiar with the contents thereof; and that all of the statements and facts contained therein, are true and correct to the best of her knowledge, information and belief.



Janice McNeil
Corporate Secretary


SUBSCRIBED AND SWORN to before me on this 15th day of October, 2018.

John Furey

My Commission does not expire.



ORIGINAL

BRACEWELL

October 16, 2018

VIA HAND-DELIVERY

Office of Electricity Delivery and Energy
Reliability
OE-20, Room 8G-024
1000 Independence Avenue, S.W.
Washington, D.C.
20585

Attention: Mr. Christopher Lawrence

Re: Application for Renewal of Authorization to Transmit Electric Energy to Canada,
OE Docket No. EA-345-B

Dear Mr. Lawrence:

Enclosed for filing on behalf of New Brunswick Energy Marketing Corporation is an original and five copies of an Application for Renewal of Authorization to export electricity from the United States to Canada. Also enclosed is a check in the amount of \$500.00 as the filing fee for this application.

Please do not hesitate to contact me with any questions regarding this application.

Very truly yours,

Bracewell LLP

/s/ Tyler S. Johnson

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BRACEWELL

Office of Electricity Delivery and Energy Reliability
October 16, 2018
Page 2

*Attorney for New Brunswick Energy Marketing
Corporation*

Enclosure

cc: Janice McNeil (w/encl.)
Corporate Secretary
New Brunswick Energy Marketing Corporation

#5799590