

MAY 26 2009

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY RELIABILITY

Electricity Delivery and Energy Reliability

Scotia Capital Energy Inc.)

Docket No. EA 355

APPLICATION OF SCOTIA CAPITAL ENERGY INC.
FOR AUTHORIZATION TO
TRANSMIT ELECTRICITY TO CANADA

Scotia Capital Energy Inc. ("Applicant") hereby files its application for blanket authority to transmit electricity from the United States to Canada ("Application") for a term of five (5) years.¹

I. DESCRIPTION OF APPLICANT

The exact legal name of Applicant is Scotia Capital Energy Inc. Applicant is incorporated under the Canadian Business Corporation Act and has its principal place of business in Toronto, Ontario, Canada.

Applicant is a wholly-owned subsidiary of Scotia Capital, Inc., which is a direct subsidiary of The Bank of Nova Scotia ("BNS"). Established in 1832, BNS is one of North America's premier financial institutions and Canada's most international bank. In Canada, BNS provides a full range of retail, commercial, corporate, investment, and wholesale banking services. BNS and its affiliates have branches and offices serving almost 12 million customers in some 50 countries. BNS is traded on the Toronto and New York Stock Exchanges.

¹ This license application is filed pursuant to section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824a(e), and the Department of Energy (DOE) regulations contained in 10 C.F.R. §§ 205.300-205.309 (2008).

Applicant is a power marketer subject to the Federal Energy Regulatory Commission's ("FERC") jurisdiction under Section 201 of the FPA (16 U.S.C. § 824e).² Applicant was granted authority to sell energy and capacity at wholesale at market-based rates and waiver and blanket authorizations in a letter order dated November 25, 2008 in Docket No. ER09-109-000. Applicant intends to operate as a wholesale power marketer, and will purchase and sell electricity and enter into financial derivative contracts for power, natural gas, and other energy products for its own account, as well as on behalf of the accounts of U.S. suppliers and Canadian purchasers, in the wholesale markets throughout the United States and Canada. All Applicant power transactions will be at rates negotiated between Applicant and its counterparties.

Neither Applicant nor any of its affiliates (collectively the "BNS Companies") currently controls, directly or through affiliates, any electric generation, transmission, or distribution facilities in the United States. The BNS Companies also do not own, operate or control any electric generation assets. As part of their trading and investment activities in various industry sectors, the BNS Companies periodically take passive or other non-controlling positions in, or are passive lenders to, unaffiliated companies that directly or indirectly own electric generation or transmission, have franchised service territories or provide inputs to generation in the United States. Neither Applicant nor any of its affiliates holds any position that would give it control over the day-to-day operations of such unaffiliated energy-related companies. When BNS Companies make investments with unaffiliated investment managers, the BNS Companies do not direct the investment

² See *Southern Company Services, Inc., et al.*, 87 F.E.R.C. ¶ 61,214, at 61,847 (1999). As used herein, the term "marketer" or "power marketer" means an entity that buys and sells electric power for its own account.

decisions of such investment managers. Neither the Applicant nor any of its affiliates holds a franchise or service territory for the transmission, distribution or sale of electric power at this time.

II. COMMUNICATIONS

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III. JURISDICTION

Applicant believes that the Department of Energy ("Department") is the only government agency that has authority over this Application. FERC has jurisdiction over Application's wholesale electric power sales activities in the United States.

IV. DESCRIPTION OF TRANSMISSION FACILITIES

Exhibit C to this Application provides the location and description of the existing transmission facilities through which the electric energy covered by this Application will be delivered into Canada and includes the name of the facility owners, as well as the Presidential Permit numbers.

V. TECHNICAL DISCUSSION

In previous orders granting export authorization to electric power marketers, the Department has indicated its reluctance to follow a rigid application of the information

filing requirements contained in its regulations.³ Instead, the Department has employed a flexible approach, taking into consideration the unique nature of power marketers in terms of the Department's assessment of any reliability analysis. The Department has concluded that the existing technical analyses supporting the present export authorizations *via* international border transmission facilities are sound, and will be applied to power marketers seeking to use these facilities.⁴ Applicant respectfully requests that the Department continue to apply this standard during its review of the Application.

Applicant requests authority to transmit electric power to Canada as a power marketer. As noted above, Applicant does not own or control any power supply system in the United States. Applicant will purchase the power to be exported from electric utilities, federal power marketing agencies, qualifying cogeneration, small power production facilities and exempt wholesale generators, as those terms are defined in the FPA, and other public utilities. Any power purchased by Applicant for export would be surplus to the needs of those entities selling power to Applicant.⁵ Thus, as required by FPA Section 202(e), Applicant's exports will not impair the sufficiency of power in the United States, nor will the transactions impede or tend to impede the coordinated use of U.S. transmission facilities.⁶ Furthermore, Applicant's power exports will not adversely impact the reliability or stability of any power supply system utilized for such exports.

³ See, e.g., *NorAm Energy Services, Inc.*, No. EA-105-CN (DOE August 16, 1996); *MidCon Power Services Corp.*, No. EA-114 (DOE July 15, 1996); *USGen Power Services*, No. EA-112 (DOE June 27, 1996); *CNG Power Services Corp.*, No. EA-110 (DOE June 20, 1996); *Destec Power Services, Inc.*, No. EA-113 (DOE May 31, 1996); *North American Energy Conservation, Inc.*, EA-103 (DOE May 30, 1996); *NorAm Energy Services, Inc.*, No. EA-105-MX (DOE May 30, 1996); and *Enron Power Marketing, Inc.*, No. EA-102 (DOE February 6, 1996) ("Order No. EA-102").

⁴ Order No. EA-102 at 4-6.

⁵ See, e.g., *MidCon Power Services Corp.*, No. EA-114 at p. 4.

⁶ See Order No. EA-102 at 4-6.

VII. PROCEDURES

Approval of this Application would foster a more efficient and competitive North American energy market. Thus, this Application is consistent with the North American Free Trade Agreement (1993) and United States energy policy.

Applicant proposes to abide by the general conditions consistent with the Department's previous grants of authorization to power marketers as set forth in its previous orders, as described herein. From time to time, Applicant will enter into agreements with third parties which involve the export of electric power from the United States to Canada. Applicant's exports over the subject transmission facilities will not exceed the export limits for the facilities, or otherwise cause a violation of the terms and conditions set forth in the export authorizations applicable to each. When scheduling delivery of power, Applicant will comply with the applicable North American Reliability Council reliability criteria, standards, and guidelines. Within thirty days following the end of each calendar quarter, Applicant will provide the Department with reports indicating the gross amount of electricity delivered to Canada, consideration received during each month, and the maximum hourly rate of transmission.

VIII. EXHIBITS AND ATTACHMENTS

The signed declaration of Matthew Giffen is attached to this Application.

In accordance with 10 C.F.R. § 205.303 (2008), the following exhibits are attached as described and made part of this Application:

- Exhibit A (Not Applicable)
- Exhibit B Legal Opinion
- Exhibit C Transmission System Information (submitted in lieu of maps)

Exhibit D Power of Attorney with Agent Residing within the United States

Exhibit E (Not Applicable)

Exhibit F (Not Applicable)

Pursuant to 10 C.F.R. § 205.309 (2008), a copy of this Application is being provided to:

Federal Energy Regulatory Commission
Office of the Secretary
888 First St., N.E.
Washington, D.C. 20426

IX. CONCLUSION

In consideration of the foregoing, Applicant requests approval of this Application for authorization to export electricity to Canada for a term of five years, effective from the date of the order granting this Application, on substantially the same terms and conditions as applied to similarly-situated electric power marketers.

Respectfully submitted,



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Attorneys for
Scotia Capital Energy Inc.

Dated: May 13, 2009

DECLARATION

I, Matthew Earle Giffen, Chief Executive Officer, declare under penalty of perjury that I am duly authorized by Scotia Capital Energy Inc. to verify the foregoing Application on behalf of Scotia Capital Energy Inc., and that to the best of my knowledge, information and belief, all of the statements contained in said Application are true and correct.



Matthew Earle Giffen
Chief Executive Officer
Scotia Capital Energy Inc.

Executed on May 13, 2009

EXHIBIT A

Transmission Agreements

(Not Applicable)

EXHIBIT B

Legal Opinion

Legal Opinion

The following is given in support of the Application of Scotia Capital Energy Inc. for Authorization to Transmit Electric Energy to Canada, dated May 18, 2008.

- (1) I am an attorney at law, authorized to practice law in the State of New York.
- (2) I am employed as Managing Director, Head of Legal & Compliance U.S. of The Bank of Nova Scotia, of which Scotia Capital Energy Inc. is a subsidiary. In this capacity, I provide legal counsel to Scotia Capital Energy Inc., which is in good standing under the laws of the Province of Ontario.
- (3) My legal opinion is given in reliance on the officer's certificate executed May 13, 2009, by Matthew Earle Giffen, Chief Executive Officer of Scotia Energy Capital Inc., regarding the Application, and certain corporate and factual matters.
- (4) To the best of my knowledge and belief, Scotia Capital Energy Inc., pursuant to a Federal Energy Regulatory Commission authorization granted in Docket No. ER09-109-000, has full power and authority to buy, sell or act as a marketer/broker in the sale and exportation of electric energy as requested in the Application.
- (5) To the best of my knowledge and belief, Scotia Capital Energy Inc. has complied or will comply with Section 202(e) of the Federal Power Act and all pertinent Federal and state laws relevant to the Application.



Hector Becil
Managing Director,
Head of Legal & Compliance U.S.

EXHIBIT C

Transmission System Information

TRANSMISSION SYSTEM INFORMATION
UNITED STATES INTERCONNECTIONS WITH CANADA

Owner	Location	Voltage	Presidential Permit
Basin Electric Power Cooperative	Tioga, ND	230 kV	PP-64
Bonneville Power Administration	Blaine, WA Nelway, WA Nelway, WA	2-500 kV 230 kV 230 kV	PP-10 PP-36 PP-46
Eastern Maine Electric Cooperative	Calais, ME	69 kV	PP-32
International Transmission Company	Detroit, MI Marysville, MI St. Clair, MI St. Clair, MI	230-kV 230-kV 230-kV 345-kV	PP-230 PP-230 PP-230 PP-230
Joint Owners of 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 Fort Fairfield, ME Arookstook Co., ME Madawaska, ME	69 kV 69 kV 138 kV 2-69 kV	PP-12 PP-12 PP-29 PP-29
Minnesota Power, Inc.	International Falls, MN	115 kV	PP-78
Minnkota Power Cooperative, Inc.	Roseau, MN	230 kV	PP-61
New York Power Authority	Massena, NY Massena, NY Niagara Falls, NY Devils Hole, NY	765 kV 2-230 kV 2-345 kV 230 kV	PP-56 PP-25 PP-74 PP-30
Niagara Mohawk Power Corp.	Devils Hole, NY	230 kV	PP-190

Owner	Location	Voltage	Presidential Permit
Northern States Power Company	Red River, ND Roseau County, MN	230 kV 500 kV	PP-45 PP-63
Vermont Electric Company	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	\pm 450 kV	PP-76

EXHIBIT D

**Power of Attorney with Agent
Residing Within the United States**

**IRREVOCABLE LIMITED
POWER OF ATTORNEY**

This irrevocable limited power of attorney is made May 13, 2009 by Scotia Capital Energy Inc. (the Principal), a corporation incorporated under the laws of Canada, with its executive offices located in Toronto, Ontario, Canada.

1. Appointment. The Principal hereby appoints the Head of Legal & Compliance U.S. of The Bank of Nova Scotia, whose principal place of business is at 1 Liberty Plaza, 165 Broadway, New York, NY 10006 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 the Principal's application before the Department of Energy to transmit electric energy to Canada and any authorization issued by the Department of Energy to conduct such transactions.
3. Irrevocability. This Power of Attorney is irrevocable by the Principal, subject only to the Principal's right to re-designate, or substitute the Attorney-in Fact upon thirty days prior written notice to the Department of Energy and the Attorney-in-Fact.

IN WITNESS WHEREOF, the Principal has caused this Power of Attorney to be duly executed on this 13th day of May 2009.

Scotia Capital Energy Inc.

By: 

Name: Matthew Earle Giffen

Title: Chief Executive Officer

This instrument was acknowledged before me on the 13th day of May 2009 by Howard Rusak at Toronto, Ontario, Canada.

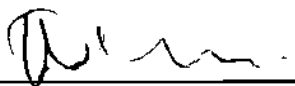


EXHIBIT E

**Statement of any Corporate Relationship or Existing Contract which in Any Way
Relates to the Control or Fixing of Electric Power**

(Not Applicable)

EXHIBIT F

Operating Procedures regarding Available Capacity and Energy

(Not Applicable)

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