

BRACEWELL

August 23, 2023

VIA ELECTRONIC MAIL

Grid Deployment Office
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Attention: Mr. Steven Blazek

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

Dear Mr. Blazek:

Enclosed for filing on behalf of New Brunswick Energy Marketing Corporation is the Application for Renewal of Authorization to export electricity from the United States to Canada. An electronic payment in the amount of \$500.00 as the filing fee for this application has been made, with the associated payment confirmation attached hereto. New Brunswick Energy Marketing Corporation's current export authorization expires on **December 4, 2023**, and it respectfully requests timely action on this application to prevent a gap in export authority.

Please contact me with any questions regarding this application.

Bracewell LLP

/s/ Tyler S. Johnson

Tyler S. Johnson

Bracewell LLP

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Corporation*

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Office of Electricity Delivery and Energy Reliability
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Enclosure

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

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

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23 August 2023

**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-C
)	

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

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.*, New Brunswick Energy Marketing Corporation (“NBEMC”) hereby files its Application for Renewal of Authorization (“Renewal Application”) to export electricity from the United States (“US”) to Canada for a period of five years. In support of this Renewal 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. DOE subsequently renewed NBEMC's authorization to export electric energy from the US to Canada in Order No. EA-345-A, and again in Order No. EA-345-B.² In Order No. EA-345-B, DOE renewed NBEMC's export Authorization to Canada, which became effective December 5, 2018 ("Authorization Order"). NBEMC's current export authorization ends on December 4, 2023.

NBEMC requests herein that it be authorized to export electricity from the 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

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.

functions as a wholly owned subsidiary of NB Power that makes sales at wholesale in the U.S. at market-based rates.³ Although NB Power's generation 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. and Northern Maine Independent System Administrator, Inc. 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 has exclusive jurisdiction over NB Power's transmission system.

² *New Brunswick Energy Marketing Corp.*, Order No. EA-345-A (Dec. 6, 2013) (Order Authorizing Electricity Exports to Canada); *New Brunswick Energy Marketing Corp.*, Order No. EA-345-B (Dec. 7, 2018) (Order Authorizing Electricity Exports to Canada).

³ NBEMC's predecessor, New Brunswick Power Generation Corporation, was initially granted market-based rate authority by the Federal Energy Regulatory Commission ("FERC") on October 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 updated market power analysis and simultaneous transmission import limit values. See *New Brunswick Energy Marketing Corp.*, 161 FERC ¶ 61,096 (2017). FERC accepted NBEMC's 2019 triennial market power analysis. See Letter Order, Docket No. ER14-225-007 (Nov. 16, 2020). NBMEC submitted a triennial market power update in December 2022, which remains pending before FERC.

III.
COMMUNICATIONS

Communications regarding this Renewal Application should be addressed to the following:

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Senior Solicitor
New Brunswick Energy Marketing
Corporation
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IV.
JURISDICTION

Pursuant to section 202(e) of the FPA, the DOE's Office of Electricity, Grid Deployment Office 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 Renewal 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 US, 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.⁴

⁴ 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

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 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.⁵

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.

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.

⁵ 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).

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.”⁶ Thus, an export of electricity “occurring under such circumstances” would not impair the sufficiency of electric supply within the US.⁷

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.”⁸ 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.

⁶ Order No. EA-216-C at 2.

⁷ *Id.*

⁸ *Id.*

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.

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 Renewal Application and that DOE's approval of this Renewal 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 submits that it satisfies the requirements of Section 202(e) of the FPA and Part 205, Subpart W of DOE's regulations applicable to applications for authorization to transmit electric energy from the US to Canada. In accordance with paragraph (k) of the Authorization Order, this Renewal Application is being filed well in advance of sixty days before the current authorization is set to expire to provide ample time to process the Renewal Application and provide adequate opportunity for public comment. NBEMC also requests any waivers deemed necessary for DOE to issue the order requested herein.

VIII.
SERVICE AND FEE

Pursuant to 10 C.F.R. § 205.309, copies of this Renewal Application will be provided to the following:

Ms. Kimberly D. Bose
Secretary Federal Energy Regulatory Commission
888 First Street, N.W.
Washington, D.C. 20426

An electronic check payment in the amount of \$500.00 has been made in payment of the fee specified in 10 C.F.R. § 205.309.

IX.
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) |
| <u>Exhibit F:</u> | Operating Procedures Regarding Available Capacity and
Energy
(Not applicable) |
| <u>Exhibit G:</u> | Verification |

X.
CONCLUSION

WHEREFORE, for the foregoing reasons, NBEMC requests that DOE grant this Renewal 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**

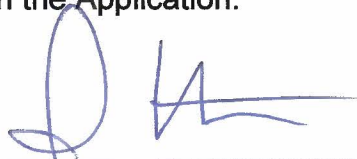
EXHIBIT B

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 August 16, 2023.

- 1) I am a barrister and solicitor at law, authorized to practice law in the Province of New Brunswick.
- 2) I am Chief Legal Counsel to New Brunswick Power Corporation, the parent corporation of New Brunswick Energy Marketing Corporation.
- 3) New Brunswick Energy Marketing Corporation is duly incorporated, validly existing under the laws of the *Electricity 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.



James Petrie

EXHIBIT C

Transmission System Information (submitted in lieu of maps)

Exhibit C – Transmission Lines at the U.S.-Canada Border Authorized for Third-Party Use

Present Owner	Location	Voltage	Presidential Permit No.
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 Blaine, WA Nelway, WA Nelway, WA	500 kV 230 kV 230 kV 230 kV	PP-10 PP-10 PP-36 PP-46
Eastern Maine Transmission Company	Calais, ME	69 kV	PP-32
International Transmission Company	Detroit, MI Marysville, MI St. Claire, MI St. Claire, MI	230 kV 230 kV 230 kV 345 kV	PP-230 PP-230 PP-230 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 Fort Fairfield, ME Madawaska, ME Aroostook, ME	69 kV 69 kV 2-69 kV 138 kV	PP-12 PP-12 PP-29 PP-29
Minnesota Power, Inc.	International Falls, MN	115 kV	PP-78
Minnkota Power Cooperative	Roseau County, MN	230 kV	PP-61
Montana Alberta Tie Ltd.	Cut Bank, MT	230 kV	PP-399
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
Northern States Power Company	Red River, ND Roseau County, MN Rugby, ND	230 kV 500 kV 230 kV	PP-45 PP-63 PP-231
Sea Breeze Olympic Converter LP	Port Angeles, WA	±450 kV DC	PP-299

Vermont Electric Power Co.	Derby Line, VT	120 kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	\pm 450 kV DC	PP-76
Champlain Hudson Power Express, Inc.	Champlain, NY	320 kV DC	PP-362
Northern Pass Transmission	Pittsburgh, NH	\pm 320 kV DC	PP-371
Minnesota Power, Inc.	Roseau County, MN	500 kV	PP-398
TDI – New England	Alburgh, VT	320 kV DC	PP-400
ITC Lake Erie Connector	Erie Bluff Park, PA	320 kV DC	PP-412
Edison Sault	Sault St. Marie, MI	230 kV	PP-228
NECEC Transmission LLC	Beattie Township, ME	\pm 320 kV	PP-438
CHPE LLC	Champlain, NY Champlain, NY Champlain, NY	1,000 MW HVDC 1,250 MW HVDC 1,250 MW HVDC	PP-481 PP-481-1 PP-481-2

EXHIBIT D

Irrevocable Limited Power of Attorney

IRREVOCABLE LIMITED POWER OF ATTORNEY

This IRREVOCABLE LIMITED POWER OF ATTORNEY is made 16 August 2023 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 5th Avenue, Suite 3400, Seattle, Washington 98104, 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 Transmit Electric Energy from the United States to Canada.
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 16th day of August, 2023.

New Brunswick Energy Marketing Corporation

By: 

Name: Kevin Wright

Title: Executive Director

By: 

Name: Janice McNeil

Title: Corporate Secretary

This instrument was acknowledged before me on the 16th day of August, 2023 by Kevin Wright and Janice McNeil at Fredericton, New Brunswick.

By: 


Name: John S. Bird

EXHIBIT G

Verification

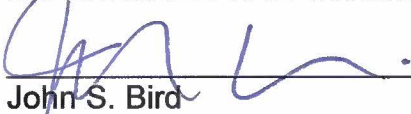
VERIFICATION OF APPLICATION

I, Janice McNeil, being first duly sworn, states that she is Corporate Secretary of New Brunswick Energy Marketing Corporation; 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 22 day of August, 2023.



John S. Bird
John S. Bird
Commissioner of Oaths
Being a Solicitor In The
Province of New Brunswick

My Commission does not expire.