

Jesse Halpern
202 585 6962 direct
jhalpern@thompsoncoburn.com

July 2, 2020

United States Department of Energy
Office of Electricity
1000 Independence Avenue, SW
Washington, DC 20585-0350

Attention: Mr. Christopher Lawrence

**RE: *Manitoba Hydro,*
Docket No. EA-281
Application for Renewal of Authorization to Export Electricity**

Dear Mr. Lawrence:

Enclosed are an original and two copies of a renewal application for export authorization submitted by Manitoba Hydro. In accordance with your instructions, we have submitted payment in the amount of \$500.00 as the filing fee for this application by Electronic Credit Card Payment to the Department of Energy. In addition, in accordance with our discussions, we are providing a copy of the application and receipt of payment to you via email.

If you have any questions about the application, please do not hesitate to contact us.

Respectfully submitted,

THOMPSON COBURN LLP

/s/ Jesse Halpern

Jesse Halpern
Nicole S. Allen
Counsel for Manitoba Hydro

Enclosures

**UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY**

MANITOBA HYDRO

|

DOCKET No. EA-281-____

**RENEWAL APPLICATION OF MANITOBA HYDRO FOR
AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO CANADA**

Pursuant to Section 202(e) of the Federal Power Act (“FPA”), 16 U.S.C. § 824a(e) (2018), and regulations addressing applications for authorization to transmit electric energy to a foreign country, 10 C.F.R. § 205.300, *et seq.* (2019), Manitoba Hydro hereby submits this renewal application (“Application”) and requests that the United States of America (“United States”) Department of Energy (“DOE”) grant it blanket authorization to export electricity from the United States to Canada over all border facilities that are appropriate for third-party use. Manitoba Hydro further requests that the DOE authorize Manitoba Hydro to export electricity to Canada for a term of ten years commencing on November 17, 2020, the day after the expiration of Manitoba Hydro’s current authorization.

I. DESCRIPTION OF APPLICANT AND BACKGROUND

Manitoba Hydro is a Canadian Crown Corporation created pursuant to The Manitoba Hydro Act.¹ Manitoba Hydro engages in the generation, transmission and distribution of electricity, primarily serving customers in the province of Manitoba, Canada. Manitoba Hydro also sells a significant amount of power to wholesale customers in the United States. Manitoba Hydro does not own, control or operate any generation, transmission or other facilities in the United States and does not sell power at wholesale within the United States. Manitoba Hydro is

¹ See The Manitoba Hydro Act, R.S.M. 1987, c. H-190.

not a public utility subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”).

On September 2, 2003, Manitoba Hydro filed its “Application of Manitoba Hydro for Authorization to Transmit Electric Energy to Canada” in FE Docket No. EA-281. On November 17, 2003, DOE issued its “Order Authorizing Electricity Exports to Canada” (“EA-281 Order”) authorizing Manitoba Hydro to engage in export transactions pursuant to certain conditions through November 17, 2005.

On September 2, 2005, Manitoba Hydro filed to renew the electricity export authority contained in the EA-281 Order. On November 14, 2005, DOE issued Order No. EA-281-A (“EA-281-A Order”) renewing Manitoba Hydro’s authorization to export transactions for five years as requested. That five-year term expires on November 17, 2010.

On July 15, 2010, Manitoba Hydro filed an application with DOE for renewal of the export authority contained in the EA-281-A Order for a ten-year term. On November 17, 2010, DOE issued Order No. EA-218-B (“EA-281-B Order”) renewing Manitoba Hydro’s authorization to export transactions for ten years as requested. That ten-year term expires on November 16, 2020.

Through this Application, Manitoba Hydro seeks to renew its authorization to export power to Canada for a term of ten years commencing on November 17, 2020, the day after the expiration of Manitoba Hydro’s current authorization.

II. INFORMATION REQUIRED PURSUANT TO 10 C.F.R. § 205.302

The following information is supplied in accordance with the requirements set forth in 10 C.F.R. § 205.302 (2019):

A. The exact legal name of the applicant:

Manitoba Hydro.

B. The exact legal name of all partners:

None.

C. The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed:

Michael Douglas
Legal Counsel
Manitoba Hydro Legal Services
360 Portage Avenue
Winnipeg, Manitoba Canada R3C 0G8
Telephone: 204-360-4332
Facsimile: 204-360-6147
E-mail: midouglas@hydro.mb.ca

and

Jesse Halpern
Nicole S. Allen
Thompson Coburn LLP
1909 K Street, N.W.
Suite 600
Washington, DC 20006
Telephone: 202-585-6900
Facsimile: 202-585-6969
E-mail: jhalpern@thompsoncoburn.com
nallen@thompsoncoburn.com

D. The state or territory under the laws of which the applicant is organized or incorporated, or authorized to operate. If the applicant is authorized to operate in more than one state, all pertinent facts shall be included:

Manitoba Hydro is a Canadian Crown Corporation created pursuant to The Manitoba Hydro Act and existing under the laws of Manitoba and Canada.² Its principal offices are located in Winnipeg, Manitoba.

² See The Manitoba Hydro Act, R.S.M. 1987, c. H-190.

Manitoba Hydro may engage in transactions in which it: (1) purchases electric energy in Canada, wheels such electric energy through facilities located in the United States, and exports such electric energy to itself or third parties in Canada; and (2) purchases electric energy in the United States, wheels such electric energy through facilities located in the United States, and exports such electric energy to itself or third parties in Canada. Manitoba Hydro requests export authorization to complete these transactions to the extent necessary under the FPA and applicable regulations.

Manitoba Hydro also is authorized to export from Canada to the United States power and energy in accordance with several permits received from the Canada Energy Regulator.

E. The name and address of any known Federal, State or local government agency which may have any jurisdiction over the action to be taken in this application and a brief description of that authority:

Manitoba Hydro does not know of any other Federal, State or local government that has jurisdiction over the actions to be taken under the authority sought in this Application.

F. A description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities:

Manitoba Hydro seeks blanket authorization to export electric energy over all facilities at the United States border with Canada that are appropriate for third-party use.

G. A technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation:

Manitoba Hydro seeks authority to transmit electric power to Canada. As previously noted, Manitoba Hydro does not own, control or operate any generation, transmission or other facilities in the United States. Hence Manitoba Hydro has no "system" of its own in the United

States on which its exports of power could have a reliability, fuel use or stability impact.

Manitoba Hydro will purchase the power to be exported from electric utilities and federal power marketing agencies as those terms are defined in Sections 3(22)³ and 3(19)⁴ of the FPA. By definition, such power is surplus to the system of the generator and thus will not impair the sufficiency of the electric power system within the United States.

Manitoba Hydro will make all necessary commercial arrangements and will obtain all other regulatory approvals required in order to effect any power exports. This will include: (1) scheduling each transaction with the appropriate control area in compliance with all reliability criteria, standards, and guidelines of the North American Electric Reliability Corporation and member regional entities in effect at the time of export; and (2) obtaining all necessary transmission access over all facilities at the United States border with Canada that are appropriate for third-party use.

These existing industry procedures for obtaining transmission capacity on domestic transmission systems provide adequate assurance that the delivery of energy to the border systems will not impair the reliability of the United States electric power supply system. Furthermore, the services taken by Manitoba Hydro to effectuate delivery of the electric energy to the border systems will usually be arranged via an Open Access Same-Time Information System and provided pursuant to an open access transmission tariff, each overseen and approved by FERC.

Nor will moving the energy through the border systems and across the border to Canada impair the United States electric power supply system or impede coordinated use of regional

³ 16 U.S.C. § 796(22) (2018).

⁴ 16 U.S.C. § 796(19) (2018).

facilities. Manitoba Hydro will need to make commercial arrangements and obtain sufficient transmission capacity to deliver the energy over the border systems and into Canada. With the exception of facilities related to the New York Power Authority (“NYPA”) and Bonneville Power Authority (“BPA”), which are not subject to DOE's jurisdiction under Section 202(e) of the FPA,⁵ traditional technical studies have been performed, submitted and reviewed by DOE in connection with the export authorizations issued to the facilities over which Manitoba Hydro will export energy. As for NYPA and BPA, DOE has previously relied on reports and other information provided by those border facilities. Consistent with its previous decisions regarding applications for export authorization, including the EA-281-A Order and the EA-281-B Order, DOE should in this instance again rely on those studies, reports and other information and determine that the United States system will not be impaired by exports over such border systems. To the extent Manitoba Hydro exports energy over border facilities that are appropriate for third-party use, it will abide by the export limits contained in the relevant export authorizations for such facilities.

H. Signature and verification under oath by officer of the applicant having knowledge of the matters set forth therein:

This Application has been verified under oath by an officer of Manitoba Hydro who has knowledge of the matters set forth herein. The verification is appended to this Application as Attachment 1.

⁵ 16 U.S.C. § 824a(e) (2018).

III. PROCEDURES

Manitoba Hydro will make and preserve complete records with respect to the electric energy it exports to Canada and will provide DOE with reports within 30 days of each calendar quarter. These reports will show the gross amount of kilowatt-hours of electric energy delivered and the consideration received therefor during each month of the previous quarter and also the maximum hourly rate of transmission.

IV. EXHIBITS REQUIRED PURSUANT TO 10 C.F.R. § 205.303

In accordance with 10 C.F.R. § 205.303 (2019), the following exhibits are attached to this Application:

- A. Exhibit A. A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.**

Not Applicable. Manitoba Hydro has not executed any firm agreements under which it has committed to export energy from the United States into Canada.

- B. Exhibit B. A showing, including a signed opinion of counsel, that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and Canadian Provincial laws.**

Included in Exhibit B of this Application are the required letters from counsel.

- C. Exhibit C. A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.**

Not Applicable. Because Manitoba Hydro does not own or operate any facilities in the United States, the requirement to provide a map of the applicant's overall electric system is not

applicable. To the extent necessary, Manitoba Hydro requests waiver of the requirement to provide a map identifying the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number. Manitoba Hydro requests authorization to export electricity from the United States to Canada over all border facilities that are appropriate for third-party use. To the extent the owners of such facilities have provided maps of their systems in conjunction with the acquisition of Presidential Permits and export authorizations, Manitoba Hydro requests that such maps be deemed to satisfy the requirement to produce such maps in this docket.

D. Exhibit D. If an applicant resides or has its principal office outside the United States, such applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.

Because its principal offices are located in Winnipeg, Manitoba, Manitoba Hydro designated, by irrevocable limited power of attorney, CT Corporation Systems as its agent. A verified copy of the irrevocable limited power of attorney is included in Exhibit D.

E. Exhibit E. A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the purchase, sale or transmission of electric energy.

At this time, Manitoba Hydro has not entered into any agreement that involves the export of electric energy by Manitoba Hydro. However, Manitoba Hydro has entered into a “Coordination Agreement By and Between Midcontinent Independent System Operator, Inc. and Manitoba Hydro” (“Coordination Agreement”) with Midcontinent Independent System Operator, Inc. (“MISO”). The Coordination Agreement addresses the rates charged for transmission of electric energy over facilities operated by MISO and facilities owned and operated by Manitoba

Hydro. A copy of the Coordination Agreement has been filed with and approved by the FERC.⁶

Accordingly, it is not reproduced in this Application.

- F. Exhibit F. An explanation of the methodology (Operating Procedures) to inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before delivery of such capacity to the foreign purchaser. Approved firm export, diversity exchange and emergency exports are exempted from this requirement. Those materials required by this section which have been filed previously with the ERA may be incorporated by reference.**

Not Applicable. As explained previously, Manitoba Hydro does not own or operate any generation or transmission facilities in the United States. To the extent Manitoba Hydro will rely on the border facilities to effectuate exports of electric energy, Manitoba Hydro will necessarily rely on the operating procedures adopted by those border facilities to inform neighboring utilities of the available capacity and energy in excess of its requirements before delivery of such capacity to the foreign purchaser.

V. OTHER

Pursuant to 10 C.F.R. § 205.309, a copy of this Application has been served on the Secretary of FERC.

⁶ The Coordination Agreement was originally filed and accepted by the FERC in Docket Nos. ER02-325-000 and ER02-325-001. Revisions to the Coordination Agreement were most recently filed and accepted by FERC in Docket No. ER14-1748-000. *See Midwest Independent Transmission System Operator, Inc.*, Docket No. ER14-1748-000 (May 16, 2014).

VI. CONCLUSION

For the reasons stated above, Manitoba Hydro requests that the Department of Energy grant it blanket authorization to export electricity from the United States to Canada over all of the border facilities that are appropriate for third-party use.

Respectfully submitted,

THOMPSON COBURN LLP

/s/ Jesse Halpern

Jesse Halpern
Nicole S. Allen

1909 K Street, N.W.
Suite 600
Washington, DC 20006
Telephone: 202-585-6900
Facsimile: 202-585-6969
E-mail: jhalpern@thompsoncoburn.com
nallen@thompsoncoburn.com

Counsel for Manitoba Hydro

July 2, 2020

EXHIBIT A

AGREEMENTS

Not Applicable.

EXHIBIT B

OPINION OF COUNSEL LETTERS



1909 K Street, N.W.
Suite 600
Washington, D.C. 20006

202 585 6900 main
202 585 6969 fax
thompsoncoburn.com

Jesse Halpern
202 585 6962 direct
jhalpern@thompsoncoburn.com

July 2, 2020

United States Department of Energy
Office of Electricity
1000 Independence Avenue, SW
Washington, DC 20585-0350

RE: Export License for Manitoba Hydro

Dear Sir or Madam:

As counsel to Manitoba Hydro, I have been asked to provide an opinion pursuant to 10 C.F.R. § 205.303(b) with respect to Manitoba Hydro's renewal application for authorization to export electric energy to Canada ("Application"). I am one of Manitoba Hydro's outside counsel, and I represent Manitoba Hydro and other utilities before the Federal Energy Regulatory Commission.

I have read the foregoing Application and I am generally familiar with federal laws governing the export of electric energy by entities like Manitoba Hydro. Based on the foregoing, it is my opinion that:

1. There is no impediment under federal law to Manitoba Hydro's exporting electricity to Canada.
2. Following the issuance of the export license requested by Manitoba Hydro in the foregoing Application, Manitoba Hydro will have complied with the federal laws required to permit such export of electricity.

July 2, 2020

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This opinion is limited to the laws of the United States, as they exist at the date set forth above; I express no opinion as to the law of any other jurisdictions. This opinion is rendered solely to you in connection with the above-mentioned matter. This opinion may not be relied on by you for any other purpose or relied upon or furnished to any other person without my prior written consent.

Sincerely,

/s/ Jesse Halpern _____

Jesse Halpern

June 23, 2020

United States Department of Energy
Office of Electricity
1000 Independence Avenue, SW
Washington, DC 20585-0350

RE: Export License for Manitoba Hydro

Dear Sir or Madam:

As counsel to Manitoba Hydro, I have been asked to provide an opinion with respect to Manitoba Hydro's renewal application for authorization to export electric energy to Canada as described in the "Renewal Application of Manitoba Hydro for Authorization to Transmit Electric Energy to Canada."

Based upon my knowledge and understanding of Manitoba Hydro's proposal and my examination of such documents, corporate records, certificates of public officials and other instruments that I have deemed necessary or advisable to review for purposes of this opinion, I am of the opinion that:

1. Manitoba Hydro has the corporate authority to export electricity to Canada from the United States; and
2. Manitoba Hydro has complied with or will comply with all pertinent Federal and State laws in the United States.

This opinion is rendered solely to you for use exclusively in connection with the matter described above. This opinion may not be relied upon by you for any other purpose or relied upon or furnished to any other person without my prior written consent.

Yours truly,

MANITOBA HYDRO LEGAL SERVICES

Per:



MICHAEL DOUGLAS
Legal Counsel

EXHIBIT C

DESCRIPTION OF EXPORT FACILITIES

Not Applicable. Waiver Requested.

EXHIBIT D

DESIGNATION OF AGENT

**IRREVOCABLE LIMITED
POWER OF ATTORNEY**

This IRREVOCABLE LIMITED POWER OF ATTORNEY is made this August _____, 2003 by Manitoba Hydro (the "Principal"), a Canadian Crown Corporation organized and existing under *The Manitoba Hydro Act* in Manitoba, with its principal place of business located at 820 Taylor Avenue, Winnipeg, Manitoba, Canada, R3M 3T1.

1. Appointment: The Principal does hereby appoint CT CORPORATION SYSTEMS, located at 405 2nd Avenue South, Minneapolis, Minnesota, United States, 55401, 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 related to the Principal's application to the United States Department of Energy for authorization to transmit electric energy to Canada pursuant to Section 202(e) of the *Federal Power Act*, 16 U.S.C. § 824a(e) and 10 C.F.R. §§ 205.300 through 205.309.
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 30 days prior notice to the United States 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 6th day of August, 2003.

Sworn and subscribed before)
me this 6th day of August,)
2003.)
K. Jennifer Haroy)
Notary Public in and for the)
Province of Manitoba)


Manitoba Hydro
Per: 
Robert B. Brennan
President and Chief Executive Officer

EXHIBIT E

RELATIONSHIPS/CONTRACTS REGARDING RATES

Not Applicable.

EXHIBIT F

OPERATING PROCEDURES: INFORMING NEIGHBORING SYSTEMS OF AVAILABLE CAPACITY

Not Applicable.

ATTACHMENT 1

AFFIDAVIT OF OFFICER OF MANITOBA HYDRO

AFFIDAVIT


CANADA)
)
PROVINCE OF MANITOBA)
)
TO WIT)

I, David Cormie, being first duly sworn, depose and state:


1. My name is David Cormie. I am the Director of the Wholesale Power and Operations Division of Manitoba Hydro.

2. I have knowledge of the matters set forth in the "Renewal Application of Manitoba Hydro for Authorization to Transmit Electric Energy to Canada." I hereby verify that the factual assertions contained in that Application are true and correct to the best of my knowledge and belief.

SWORN and subscribed before me)
at the City of Winnipeg, in the)
Province of Manitoba, this 23 day)
of June, 2020)



Notary Public in and for the)
Province of Manitoba)



David Cormie
Director, Wholesale Power &
Operations Division
Manitoba Hydro