
United States
Department of Energy

Office of Electricity Delivery and Energy Reliability

Powerex Corporation

OE Docket No. EA-171-B



Order Authorizing Electricity Exports to Canada

Order No. EA-171-B

November 18, 2005

Powerex Corp.

Order No. EA-171-B

I. BACKGROUND

Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. §824a(e)).

On February 25, 1998, the Office of Fossil Energy¹ of the Department of Energy (DOE) issued Order No. EA-171 authorizing British Columbia Power Exchange Corporation (BC Power)², now Powerex Corporation (Powerex), to transmit electric energy from the United States to Canada as a power marketer. That authority was renewed by DOE on February 23, 2000, in Order No. EA-171-A and was scheduled to expire on February 25, 2005.

On January 7, 2005, Powerex applied to renew the electricity export authority contained in Order No. EA-171-A and requested that the renewed authorization be issued for a five-year term. That application was docketed as EA-171-B. In a letter filed with DOE on February 2, 2005, Powerex requested that DOE temporarily extend the export authority contained in Order No. EA-171-A until DOE completes the processing of its request for renewal in the EA-171-B proceeding. DOE granted Powerex's request in a letter order dated February 16, 2005.

Powerex proposes to purchase surplus electric energy from electric utilities and other suppliers within the United States and export that energy to Canada. The energy to be exported would be delivered to Canada over the international electric transmission facilities presently owned by the following:

Basin Electric Power Cooperative
Bonneville Power Administration
Eastern Maine Electric Cooperative
International Transmission Company
Joint Owners of the Highgate Project
Long Sault, Inc.
Maine Electric Power Company
Maine Public Service Company

Minnesota Power, Inc.
Minnkota Power Cooperative
New York Power Authority
Niagara Mohawk Power Corp.
Northern States Power Company
Vermont Electric Power Company, Inc.
Vermont Electric Transmission Company

¹ On April 13, 2005, the Secretary of Energy transferred the authority to issue electricity export authorizations to the Office of Electricity and Energy Assurance. That office has subsequently been renamed the Office of Electricity Delivery and Energy Reliability.

² On October 4, 2000, DOE was notified that BC Power had officially changed its name to Powerex Corporation.

Notice of the Powerex export application in Docket No. EA-171-B was placed in the *Federal Register* on February 4, 2005, (70 FR 5979) requesting that comments, protests, and petitions to intervene be submitted to DOE by March 7, 2005. A timely Petition to Intervene and Protest was filed by the California Entities³ and a timely Notice of Intervention was filed by the California Public Utilities Commission (CPUC). Also, a letter to the Deputy Secretary regarding the application and protest was received from the Minister (Economic) and Deputy Chief of Mission at the Canadian Embassy on behalf of the Government of Canada (Canada).

On March 23, 2005, Powerex submitted a Response to the California Entities' Petition to Intervene and Protest. On April 7, 2005, the California Entities and the CPUC submitted a reply to Powerex's Response. Powerex also filed a Motion to Lodge FERC Report and Request for Expedited Action on October 4, 2005, which was responded to by the California Entities on October 19, 2005. These out-of-time filings have been accepted by DOE and made part of the record.

II. INTERVENTIONS, PROTEST, AND COMMENT

California Entities

In its Petition to Intervene and Protest, the California Entities allege that, during the California energy crisis of 2000-2001, including several occasions during times when the California Independent System Operator (Cal-ISO) had declared a system emergency, Powerex purchased electric power from the California market and exported it to Canada, thereby exacerbating the electricity shortage and driving up the price of electricity. They further allege that during this time period Powerex was engaged in market manipulations, which also increased the cost of available electricity. The California Entities allege that these actions of Powerex constituted a violation of the FPA and terms of Powerex's existing export authorization.

The California Entities did not oppose the renewal of Powerex's export authorization. However, they requested that DOE, after conducting a full evidentiary hearing, impose certain conditions on any export authorization issued to Powerex in this renewal proceeding in order to prevent Powerex from engaging in similar alleged misconduct in the future. They also requested that similar conditions be attached to other Powerex export authorizations that are not up for renewal or the subject of this proceeding.

In their reply to the Powerex Response, the California Entities reiterated that the filings in this proceeding demonstrated that there are disputes in material facts that warrant a full investigation by DOE through discovery and an evidentiary hearing.

Pursuant to 18 CFR 385.214, there being no objection to the California Entities' timely request to intervene, they became a party to this proceeding.

³ The California Entities are the California Electricity Oversight Board, Pacific Gas and Electric Company, and Southern California Edison Company.

California PUC

The CPUC in its Notice of Intervention did not submit any comments or express a position in this proceeding; however, it did join and sign the April 7, 2005 reply comments of the California Entities, which indicated that the CPUC fully supported and adopted the protest of the California Entities.

Pursuant to 18 CFR 385.214,⁴ the CPUC became a party to this proceeding upon the timely filing of its Notice of Intervention.

Government of Canada

Canada expressed the opinion that the actions by Powerex alleged by the California Entities to have occurred during the California energy crisis of 2000-2001 fall within the jurisdiction of the Federal Energy Regulatory Commission (FERC) and that the export conditions proposed by the California Entities would be contrary to the North American Free Trade Agreement (NAFTA) and/or fall within the auspices of the Western Electricity Coordinating Council. Canada also expressed an interest in an expeditious conclusion to the proceeding to eliminate market uncertainty. Canada's letter did not request intervention and Canada is not a party to this proceeding, although the letter has been made part of the record.

Powerex

In its Response, Powerex claims that, with one exception, the allegations of the California Entities have been adjudicated at the FERC and rejected. The one allegation not addressed at the FERC was that Powerex did not respond to the supply "directives" of the Cal-ISO. Powerex claims that such directives were no more than the Cal-ISO's request that Powerex sell more energy to the Cal-ISO, which Powerex was not contractually or legally obligated to do. Powerex also claims that it purchased power from southern California during off-peak hours to replenish reservoirs on the British Columbia Hydro (BC Hydro) system and sold power back into the California market during peak hours, thus helping to mitigate California's supply problem.

Powerex further claims that the export of electricity from the California market to Canada was made transparent to the Cal-ISO and other control area operators through the use of "tags" which showed the source of the power (California Power Exchange), the transmission path to the export point (U.S.-Canada border), and the recipient (BC Hydro). Powerex notes that at no time during the 2000-2001 California energy crisis did the Cal-ISO exercise its tariff authority by refusing to schedule electricity exports for Powerex or by curtailing exports from the Cal-ISO grid because of system reliability concerns.

⁴ DOE utilizes provisions of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure (18 CFR 385.211 and 385.214) for purposes of processing petitions to intervene, comments, and protests in electricity export proceedings.

Powerex claims that the conditions the California Entities propose for inclusion in a renewed export authorization are unwarranted, anti-competitive, and in violation of the principles of NAFTA.

III. DOE RESPONSE TO PROTEST AND COMMENTS

DOE is acutely aware of, and concerned about, the potential of electric supply disruptions and shortages throughout the nation due to increases in demand and transmission restraints. DOE has been in the forefront of working with other Federal agencies, States, foreign governments, industry, consumers, and other interested persons to alleviate the stress on the electricity grid. To that end, DOE not only has a general energy policy role, but possesses broad authority to act in the event of an emergency. For example, the authority of section 202(c) of the FPA (16 U.S.C. §824a (c)) was invoked by DOE during the California energy crisis when, on December 14, 2000, it issued the first of a series of orders to a group of the Cal-ISO's suppliers to "generate, deliver, interchange and transmit electric energy when, as, and in such amounts as may be requested by the [Cal-ISO]...."⁵ The orders, however, were not made applicable to Powerex or other Canadian suppliers. In 2002 and 2003, DOE issued FPA 202(c) orders to allow the Cross-Sound Cable Company, LLC, to operate its Long Island Sound electric cable to alleviate possible disruptions in electric service in New York and New England.⁶ In the wake of hurricanes Katrina and Rita, DOE issued FPA 202(c) orders to allow utilities in the Electric Reliability Council of Texas (ERCOT) to supply electricity to non-ERCOT utilities.⁷ DOE has other emergency authorities as well, including those under the Defense Production Act of 1950 (50 U.S.C. app. §2061 *et seq.*) and the Natural Gas Policy Act of 1978 (15 U.S.C. §3301 *et seq.*).

As the issuance of the FPA 202(c) orders indicate, DOE closely monitors the national electric supply and transmission situation and stands ready to respond to emergencies.

FERC Proceedings

The operation of the California wholesale electricity market during the 2000-2001 energy crisis and the conduct of the participants in that market generally falls under the jurisdiction of the FERC, which has conducted myriad proceedings and investigations into the matter. Powerex was included in FERC's two June 25, 2003 "Show Cause" orders emanating from the California energy crisis: "Order to Show

⁵ The December 14, 2000 order was extended and modified on December 20, 2000, extended again on December 27, 2000, and further extended and modified on January 5, 2001. The original December 14, 2000, emergency order and the December 20, 2000 amended order were published in the *Federal Register* on December 29, 2000 (65 FR 82989). The December 14, 2000 emergency order, as amended, expired at 3:00 a.m., EST, January 11, 2001. A new emergency order was issued on January 11, 2001, modified and extended on January 17, 2001, and further extended on January 23, 2001. That order expired on February 7, 2001.

⁶ See DOE Order No. 202-02-1 (August 16, 2002), expired October 1, 2002, and DOE Order No. 202-03-1 (August 14, 2003), extended August 28, 2003, expired May 7, 2004.

⁷ See DOE Order No. 202-05-01, issued September 28, 2005, and DOE Order No. 202-05-02, issued September 30, 2005.

Cause Concerning Gaming and/or Anomalous Market Behavior (Show Cause Order)⁸ and “Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements” (Partnership Order).⁹ The Show Cause Order indicated that Powerex may have engaged in various activities including False Import, Cutting Non-Firm, Circular Scheduling, Load Shift, Paper Trading, and Scheduling on Out-of-Service Lines in violation of Cal-ISO and California Power Exchange Tariffs and Protocols.¹⁰ The Partnership Order alleged that Powerex may have entered into an alliance with Enron for the purpose of facilitating joint gaming practices and that Powerex may have engaged in gaming practices through a parking arrangement with the Public Service Company of New Mexico (PSNM).¹¹

After reviewing extensive data, testimony, reports and affidavits from a number of sources, including material derived from the discovery proceedings in FERC Docket No. EL00-95-000, et al., FERC Trial Staff concluded as follows:

Trial Staff determined that there was no probative evidence of Powerex engaging in any of the Gaming Practices as described in the Commission’s Show Cause Order individually or in concert with others. In fact, Trial Staff concludes that the evidence indicates that Powerex was a valuable and reliable supplier of energy and ancillary services to the California organized markets throughout the relevant period. Additionally, Trial Staff indicates that there is no probative evidence that Powerex had a partnership, alliance or other relationship with Enron or PSNM that was used jointly to engage in Gaming Practices or any other improper concerted activity.¹²

As a result of their findings, FERC Trial Staff reached a Settlement Agreement with Powerex, which was certified to the Commission by the presiding Administrative Law Judge,¹³ and approved by the Commission.¹⁴

Thus, it appears that much of the alleged misconduct that the California Entities assert that Powerex engaged in during the 2000-2001 California energy crisis has already been litigated and resolved at FERC. We do not believe it would be useful or necessary to re-litigate those issues here at DOE through additional discovery or the conduct of an evidentiary hearing. Also, as discussed below, a resolution of these issues is not necessary in order for DOE to make a determination under section 202(e) of the FPA whether to grant Powerex the renewed authority to export electricity to Canada. Neither is a resolution of the issues relevant to DOE consideration of the question of whether actions of Powerex during the California energy crisis violated the FPA or its existing export authorization.

⁸ American Electric Power Service Corporation, et al., 103 FERC ¶ 61, 345 (2003).

⁹ Enron Power Marketing, Inc., and Enron Energy Services, Inc., et al., 103 FERC ¶ 61, 346 (2003).

¹⁰ Powerex Corporation, 106 FERC ¶ 63, 019 at p. 65,155 (P. 4) (February 24, 2004).

¹¹ *Id.* (P. 6).

¹² *Id.* at p. 65,157 (P. 23).

¹³ Powerex Corporation, 106 FERC ¶ 63, 019 (February 24, 2004).

¹⁴ Powerex Corporation, 106 FERC ¶ 61,304 (March 26, 2004).

Alleged Violations of FPA

The California Entities assert that the alleged activities of Powerex during the 2000-2001 California energy crisis, including the export of power from California into Canada during a declared system emergency by Cal-ISO, violated section 202(e) of the FPA.

Before an electricity export authorization is granted under 202(e) of the FPA, DOE evaluates the impact of the export on the reliability of the U.S. electric system. Specifically, under the first criterion of section 202(e), DOE shall approve an electricity export application “unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States....”

DOE interprets this criterion to mean that sufficient generating resources must exist such that the exporter could sustain the export while still maintaining adequate generating resources to meet all native load obligations. Power marketers, like Powerex, do not have franchised service areas and, consequently, have no native load obligations like the traditional local distribution utility. Marketers build a power purchase portfolio from electric power purchased from various entities inside and outside the United States. The power purchased by a power marketer is, by definition, surplus to the needs of the selling entities, at least in the judgment of the selling entity. With no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export, assuming the marketer has obtained the necessary advance authorizations. As DOE explained in the original power marketer order (Order No. EA-102, issued to Enron Power Marketing Inc. on February 6, 1996), because a marketer has no native load obligations and because power purchased by a marketer would be surplus to the needs of the entities selling the power to the marketer, an export occurring under such circumstances would meet the first statutory criterion of section 202(e) of the FPA of not impairing the sufficiency of supply within the United States. DOE sees no reason to reconsider that conclusion or that interpretation.

Under the second criterion of section 202(e), DOE shall approve an electricity export application “unless, after opportunity for hearing, it finds 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.” DOE interprets this second criterion primarily as an issue of the operational reliability of the domestic electric transmission system. Therefore, export authorizations issued by DOE have been conditioned to ensure that the export would not cause operating parameters on regional transmission systems to fall outside of established industry criteria.

The California Entities claim that the alleged actions of Powerex violate these conditions established by DOE. As discussed below, the alleged actions of Powerex would not violate these conditions.

Alleged Violations of Export Authorization

The California Entities assert that the alleged activities of Powerex demonstrated an abuse of its export privileges and a violation of the following specific conditions in its current export authorization issued February 23, 2000, in Order No. EA-171-A:

In scheduling the delivery of electricity exports to Canada, Powerex shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council, Regional Councils, or independent system operators, as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time (¶ IV (E)).

Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system (¶ IV (K)).

The first condition above refers solely to the reliability issues related to the scheduling and delivering of the export. Also, in Order No. EA-102 issued to Enron Power Marketing, Inc., DOE indicated that this first condition in export authorizations was to ensure that the delivery of exported energy would be scheduled through the appropriate transmission operator/system controller and would comply with all of the required standards and procedures for moving the exported power through the various transmission systems between the source of the power and the ultimate recipient. It is the responsibility of the transmission system operator to schedule all transactions, domestic and international, consistent with system conditions and established reliability criteria. It should be noted that Powerex, or any power marketer for that matter, does not have the ability to affect an export contrary to the operating procedures of the transmission system operator. As discussed more fully below, an entity exporting like a power marketer would have no ability to affect an export, except for scheduling it through an ISO or other transmission operator, and the transmission operator in an area would violate its own requirements or the requirements applicable to it if it were to schedule the delivery of an export that created or exacerbated a problem on the subject transmission system.

The requirements of this first condition in today's market are really outside the control of a power marketer. They relate to actions of the control system operators under the jurisdiction and regulation of FERC.

Similarly, the second condition was not intended to mean that an authorized exporter must suspend exports and offer the power that was to be exported first to the domestic market during times of system emergency or energy shortages. DOE's intent behind this condition was that the distribution of power flow caused by the "movement" or transmission of the exported energy to and over an international transmission line

should not create or exacerbate a transmission operating problem, such as inadvertent loop flow and voltage problems.

DOE has made minor editorial changes to these conditions in this and other recent orders in order to avoid any confusion as to what DOE intended by them. These changes reflect the above discussion and were made to ensure that the scheduling and delivery of the export must comply with all of the general and region-specific reliability standards and requirements applicable to the movement of electricity from the point of origin to final transmission destination.

IV. GENERAL DISCUSSION AND ANALYSIS

The authority requested of DOE by Powerex is a necessary condition for exporting under section 202(e) of the FPA. Before an electricity export authorization is granted, DOE evaluates the impact of the export on the reliability of the U.S. electric system by determining whether the export will impair the sufficiency of electric supply within the U.S. and whether it will cause or exacerbate any transmission operating problems.

Prior to the restructuring of the electric power industry, the only entities able to export were those electric utilities that were contiguous with the U.S. international border that owned international transmission facilities. The exported energy generally originated from within the exporter's system and standard transmission studies could be performed to determine the impact of the export on regional electric systems.

However, deregulation of wholesale power markets and the introduction of open-access transmission expanded the geographic scope of entities capable of exporting electric energy. Today, at the time it submits its application to DOE, the typical exporter cannot identify the source of the exported energy or the electric systems that might be called upon to provide transmission service to the border. Consequently, traditional transmission studies cannot be used to determine the impact of such exports on the operational reliability of the regional electric transmission systems.

In evaluating the operational reliability impacts of export proposals, DOE has always used a variety of methodologies and information, including established industry guidelines, operating procedures and/or infrastructure, as well as traditional technical studies where available and appropriate. When determining these impacts for exports by power marketers or other entities operating in a similar manner, it is convenient to separate the export transaction into two parts: (1) moving the export from the source to a border system that owns the international transmission connection; and, (2) moving the export through that border system and across the border.

In order to deliver the export from the source to a border system, Powerex must make the necessary commercial arrangements and obtain sufficient transmission capacity to wheel the exported energy to the border system. In doing so, Powerex generally would be expected to use domestic transmission facilities for which open-

access tariffs have been approved by the FERC. Powerex also must make reservations for transmission service in accordance with the FERC Open-Access Same-Time Information System (OASIS), and must schedule delivery of the export with the appropriate Regional Transmission Organization(s) (RTO), Independent System Operator(s) (ISO), and/or control area operator(s). The posting of transmission capacity on OASIS indicates that transmission capacity is available. Furthermore, it is the responsibility of the RTO, ISO, and/or control area operator to schedule the delivery of the export consistent with established operational reliability criteria. During each step of the process of obtaining transmission service, the owners and/or operators of the transmission facilities will evaluate the impact on the system and schedule the movement of the export only if it would not violate established operating reliability standards. Therefore, DOE has determined that the existing industry procedures for obtaining transmission capacity on the domestic transmission system provide adequate assurances that a particular export will not cause or exacerbate a transmission operating problem on the U.S. electric power supply system.

In determining the operational reliability impacts of moving the export through a border system and across the border, DOE relies on the traditional technical studies that were performed in support of electricity export authorizations issued to that border system. Allowing these technical studies to suffice in this docket is sound and, thus, DOE need not perform additional impact assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the authorized limit of the system.

However, this approach is applicable only for exports over international transmission facilities for which export authorizations have been issued and for which operational reliability studies have been performed. Several of the international transmission lines over which Powerex seeks export authority are owned by the New York Power Authority (NYPA) and the Bonneville Power Administration (BPA).

As an instrumentally of the State of New York, NYPA is non-jurisdictional to section 202(e) of the FPA. Consequently, DOE never issued NYPA an export authorization or prepared an impact assessment which could have been used to determine the allowable instantaneous rate of transmission (power) for exports over NYPA's international transmission lines. Thus, in lieu of that, DOE is utilizing the information contained in the report entitled, "Load & Capacity Data, 2001 Report of the Member Electric Systems of the New York Power Pool."¹⁵ This report is prepared and filed with the New York Public Service Commission pursuant to section 6-106 of the Energy Law of New York State. It will be made part of the record in this proceeding and included in the public docket. Section IX of this report lists the transmission transfer capabilities between New York State and surrounding electric systems, including Hydro-Quebec and Ontario Hydro. Since all of the major transmission

¹⁵ This report increases the New York-Ontario transfer limit to 1650 MW from the 550-MW limit contained in the 1995 version of the report. On September 26, 2002, DOE authorized the New York ISO to export at this higher transfer limit in Order EA-227-A. New York Power Pool no longer exists and all of the operational responsibilities of the pool are now being performed by the New York ISO.

interconnections between New York State and Ontario, Canada, are operated in parallel, it is appropriate to consider a single export power limit for this “electrically logical” grouping of lines. Accordingly, the transfer capability between New York State and Ontario (as identified in Section IX of the above report) has been used to limit the instantaneous transmission rate for exports by Powerex over all international transmission lines connecting New York State with Ontario (subparagraph B(13)(a) of this Order). A separate limit (subparagraph B(12) of this Order) has been assigned for exports over NYPA’s 765-kV tie with Hydro-Quebec because of the asynchronous nature of that interconnection.

As a Federal agency, BPA also is non-jurisdictional to section 202(e) of the FPA. Consequently, BPA was never issued an export authorization which DOE could have used to set power limits for exports by Powerex over BPA’s international transmission ties with Canada. However, DOE has obtained information from BPA on the transmission limits assigned to the two 500-kV and the two 230-kV lines connecting the BPA system with British Columbia Hydro and West Kootenay Power for operation in the export mode. This information has been made a part of this Docket. It has been used by DOE in setting limits on the power to be exported by Powerex over the BPA international transmission facilities (subparagraph B(14) of this Order).

Powerex requested and is being authorized to export electricity over the transmission facilities of some border utilities whose export authorizations still contain limits on the total amount of energy that can be exported by these utilities. These energy limits no longer have any direct relevance to the way DOE addresses reliability. DOE expects to initiate a future proceeding regarding the removal of these limits.

However, DOE recognizes the potential inequity of retaining energy limits on certain exporters while currently authorizing marketers, or other entities operating in a similar manner, to export unlimited amounts of energy. Until the above referenced proceeding is completed, exports by power marketers, or other entities operating in a similar manner, will be constrained by the same energy limits, except exports by such entities will not reduce or be “charged against” those energy limits contained in the original export authorization.

Open Access

An export authorization issued under section 202(e) does not impose on transmitting utilities a requirement to provide service. However, DOE expects transmitting utilities owning border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in FERC Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, FERC Statutes and Regulations ¶31,036 (1996)), as amended. The actual rates, terms and conditions of transmission service should be consistent with the non-discrimination principles of the FPA and the transmitting utility’s Open-Access Transmission Tariff on file with FERC.

All recipients of export authorizations, including owners of border facilities for which Presidential permits have been issued, are required by their export authorization to conduct operations in accordance with the principles of the FPA and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, which include the comparable open access provisions of FERC Order No. 888, as amended. Cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. (See *Enron Power Marketing, Inc.*, 77 FERC ¶61,013 (1996)). Thus, DOE expects owners of border facilities to comply with the same principles of comparable open access and non-discrimination that apply to the domestic interstate transmission of electricity.

V. FINDING AND DECISION

DOE has assessed the impact that the proposed export would have on the reliability of the U.S. electric power supply system. Based on the above, DOE has determined that the export of electric energy to Canada by Powerex, as ordered below, would not impair the sufficiency of electric power supply within the United States and would not impede or tend to impede the coordination in the public interest of facilities within the meaning of section 202(e) of the FPA.

The circumstances described in the Powerex application are virtually identical to those for which export authority had previously been granted in Order No. EA-171. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-171 proceeding.

Request For Evidentiary Hearing

The California Entities have requested that DOE provide for discovery and hold an evidentiary hearing to determine the conditions that must be imposed on Powerex in its renewal authorization.

DOE's procedural rules for processing applications for the export of electricity pursuant to section 202(e) of the FPA can be found at 10 C.F.R. Part 205, Subpart U (§205.260-270) and Subpart W (§205.300-309). These DOE rules do not address the process for becoming a party to or filing a comment or protest in a particular electricity export proceeding. Therefore, as noted above, DOE utilizes FERC's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) in electricity export proceedings, but only for purposes of processing petitions to intervene, comments, and protests. This is indicated in each notice of an application to export electricity published in the *Federal Register*.

The actual procedures to be used by DOE for processing export applications are also not delineated in the DOE Rules. Since the inception of the International Electricity

Export Program at DOE, applications for export authorization have been processed in an informal manner by developing a decisional record through written responses and comments filed in response to a notice of the application published in the *Federal Register*. Additional procedures for presenting evidence and obtaining information may be requested by a party, but would only be utilized as necessary and appropriate to achieve a complete understanding of the facts and issues in a particular case. No evidentiary hearing has ever been requested or held by DOE for the processing of an electricity export authorization. To obtain a formal adjudicatory-type evidentiary hearing, the requesting party would need to identify the factual issues that are genuinely in dispute and demonstrate that they are relevant and material to the decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. As discussed above, that is not the case here.

Again, as discussed above, much of the factual basis for the alleged misconduct that the California Entities assert that Powerex engaged in during the 2000-2001 California energy crisis relates to issues that fall within the jurisdiction of FERC. Also, such alleged misconduct has already been the subject of extensive discovery at FERC, where the issues have been litigated and resolved.

The California Entities assert that the issue raised by their protest of whether Powerex exported power to Canada during the energy crisis in violation of its export authorization and the FPA is primarily one of fact and that an evidentiary hearing is necessary to determine whether and when Powerex exported electricity to Canada and the affect of those exports on system reliability. As discussed above, even assuming these and other alleged actions with respect to Powerex's conduct to have occurred, such conduct would not constitute a violation of section 202(e) of the FPA or violate the intent of any of the specific reliability conditions in Powerex's export authorization. Therefore, DOE does not believe that additional discovery or the conduct of an evidentiary hearing would be either useful or necessary for DOE in making its determination under section 202(e) of the FPA. Nor does DOE believe it necessary or appropriate to add additional conditions to this export authorization in the manner requested by the California Entities.

Accordingly, DOE rejects the California Entities' request for an evidentiary hearing and for other additional procedures.

VI. ORDER

Based on the above, it is hereby ordered that Powerex is authorized to export electric energy to Canada under the following terms and conditions:

(A) The electric energy exported by Powerex pursuant to this Order may be delivered to Canada only over the following existing international transmission facilities for which assessments of the transmission limits for operation in the export mode have been made:

<u>Present Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u> ¹⁶
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
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
Minnesota Power, Inc.	International Falls, MN	115-kV	PP-78
Minnkota Power Cooperative	Roseau County, MN	230-kV	PP-61
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, MN	500-kV	PP-63
Vermont Electric Power Co.	Derby Line, VT	120-kV	PP-66
Vermont Electric Transmission Co.	Norton, VT	±450-kV DC	PP-76

¹⁶ 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.

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph (A) above. Specifically:

- (1) Exports by Powerex made pursuant to this Order shall not cause the total exports on facilities authorized by Presidential Permit PP-64 (issued to Basin Electric Power Coop.) to exceed an instantaneous transmission rate of 150 megawatts (MW). The gross amount of energy which Powerex may export over the PP-64 facilities shall not exceed 900,000 megawatt-hours (MWH) during any consecutive 12-month period.
- (2) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-66 (issued to Vermont Electric Power Co.) to exceed an instantaneous transmission rate of 50 MW. The gross amount of energy which Powerex may export over the PP-66 facilities shall not exceed 50,000 MW annually.
- (3) Exports by Powerex made pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permit PP-230 (issued to International Transmission Company) to exceed a coincident, instantaneous transmission rate of 2.2 billion volt-amperes (2,200 MVA).
- (4) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-32 (issued to Eastern Maine Electric Coop.) to exceed an instantaneous transmission rate of 15 MW. The gross amount of energy which Powerex may export over the PP-32 facilities shall not exceed 7,500 MWH annually.
- (5) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-82 (issued to the Joint Owners of the Highgate Project) to exceed an instantaneous transmission rate of 200 MW nor cause a violation of the following security constrained export limits:

<u>Vermont Total Load (MW)</u>	<u>Security Constrained Maximum Export (MW)</u>
1000	0
900	40
800	90
700	125
600	150
500	170

- (6) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-43 (issued to Maine

Electric Power Company) to exceed an instantaneous transmission rate of 500 MW.

- (7) Exports by Powerex made pursuant to this Order shall not cause the total exports on the combination of facilities authorized by Presidential Permits PP-12 and PP-29 (issued to Maine Public Service Company) to exceed a coincident, instantaneous transmission rate of 40.8 MW. The gross amount of energy which Powerex may export over a combination of the PP-12 and PP-29 facilities shall not exceed 40,000 MWH annually.
- (8) Exports by Powerex made pursuant to this Order shall not cause total exports on the facilities authorized by Presidential Permit PP-78-1 (issued to Minnesota Power) to exceed an instantaneous transmission rate of 100 MW. Exports by Powerex may cause total exports on the PP-78-1 facilities to exceed 100 MW only when total exports between the Mid-Continent Area Power Pool (MAPP) and Manitoba Hydro are below maximum transfer limits and/or whenever operating conditions within the MAPP system permit exports on the PP-78-1 facilities above the 100-MW level without violating established MAPP reliability criteria. However, under no circumstances shall exports by Powerex cause the total exports on the PP-78-1 facilities to exceed 150 MW.
- (9) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-61 (issued to Minnkota Power Cooperative, Inc.) to exceed an instantaneous transmission rate of 350 MW. The gross amount of energy which Powerex may export over the PP-61 facilities shall not exceed 3,000,000 MWH annually.
- (10) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-63 (issued to Northern States Power) to exceed an instantaneous transmission rate of 500 MW.
- (11) Exports by Powerex made pursuant to this Order shall not cause a violation of the following conditions as they apply to exports over the \pm 450-kV direct current transmission line authorized by Presidential Permit PP-76 (issued to the Vermont Electric Transmission Company), as amended by PP-76-A:

NEPOOL		
<u>Exports Through</u>	<u>Load Condition</u>	<u>Export Limit</u>
Comerford converter	Summer, Heavy	650 MW
Comerford converter	Winter, Heavy	660 MW
Comerford converter	Summer, Light	690 MW
Comerford converter	Winter, Light	690 MW
Comerford & Sandy Pond converters	All	2,000 MW

- (12) Exports by Powerex made pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit PP-56 (issued to NYPA) to exceed an instantaneous transmission rate of 1000 MW.
- (13) Exports by Powerex made pursuant to this Order shall not cause: (a) the total exports on the facilities authorized by Presidential Permits PP-25, PP-30, PP-74, and PP-190 (issued to NYPA and Niagara Mohawk) to exceed a combined instantaneous transmission rate of 1650 MW; and (b) the total exports on the 115-kV facilities authorized by Presidential Permit PP-24 (issued to Long Sault, Inc.) to exceed an instantaneous transmission rate of 100 MW. In addition, the gross amount of energy which Powerex may export over the PP-24 facilities shall not exceed 300,000 MWH annually.
- (14) Exports by Powerex pursuant to this Order shall not cause total exports on the two 500-kV lines authorized by Presidential Permit PP-10, the 230-kV line authorized by Presidential Permit PP-36, and the 230 kV line authorized by Presidential Permit PP-46 (issued to BPA) to exceed the following limits:

<u>Condition</u>	<u>PP-36 & PP-46 Limit</u>	<u>PP-10 Limit</u>	<u>Total Export Limit</u>
All lines in service	400 MW	1500 MW	1900 MW
1-500 kV line out	400 MW	300 MW	700 MW
2-500 kV lines out	400 MW	0 MW	400 MW
1-230 kV line out	400 MW	1500 MW	1900 MW
2-230 kV line out	0 MW	1500 MW	1500 MW

(C) Changes by DOE to the export limits in other orders shall result in a concomitant change to the export limits contained in paragraph (B) of this Order. Changes to the export limits contained in subparagraphs B(12), B(13), and B(14) will be made by DOE after submission of appropriate information demonstrating a change in the transmission transfer capability between the electric systems in New York State and Ontario and New York State and Quebec, and between BPA and BC Hydro, or BPA and West Kootenay Power. Notice of these changes will be provided to Powerex.

(D) The scheduling and delivery of electricity exports to Canada shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council, Regional Councils, Regional Transmission Organizations, Independent System Operators, and/or control area operator(s), as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(E) Exports made pursuant to this authorization shall be conducted in accordance with the provisions of the Federal Power Act and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888, as amended.

(F) The authorization herein granted may be modified from time to time or terminated by further order of the DOE. In no event shall such authorization to export over a particular transmission facility identified in paragraph (A) extend beyond the date of termination of the Presidential permit authorizing such facility.

(G) This authorization shall be without prejudice to the authority of any State or State regulatory commission for the exercise of any lawful authority vested in such State or State regulatory commission.

(H) Powerex shall make and preserve full and complete records with respect to the electric energy exported to Canada. Powerex shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, detailing for each month of the previous quarter: (1) the gross amount of electricity delivered, in kilowatt hours; (2) the consideration received for such energy; and (3) the maximum hourly rate of transmission, in kilowatts. Quarterly reports must be filed regardless of current activity and whether or not deliveries of electric energy have been made. If no transactions have been made, a one-sentence report indicating "no activity" for the previous quarter is sufficient.

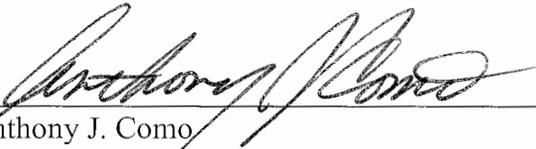
Reports shall be submitted to the U.S. Department of Energy, Office of Electricity Delivery and Energy Reliability, OE-20, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585-0305. Properly identified quarterly reports will also be accepted via facsimile at (202) 586-5860 to meet time requirements, but original copies should still be filed at the above address.

(I) In accordance with 10 C.F.R. §205.305, this authorization is not transferable or assignable, except in the event of the involuntary transfer of this authority by operation of law. Provided written notice of the involuntary transfer is given DOE within 30 days, this authorization shall continue in effect temporarily. This continuance also is contingent on the filing of an application for permanent authorization within 60 days of the involuntary transfer; the authorization shall then remain effective until a decision is made on the new application. In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application for a new export authorization, together with a statement of reasons for the transfer.

(J) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would cause or exacerbate a transmission operating problem.

(K) This authorization shall be effective for a period of five (5) years from the date of this Order. Application for renewal of this authorization may be filed within six months prior to expiration of this authorization.

Issued in Washington, D.C., on November 18, 2005.



Anthony J. Como
Director, Permitting and Siting
Office of Electricity Delivery and
Energy Reliability