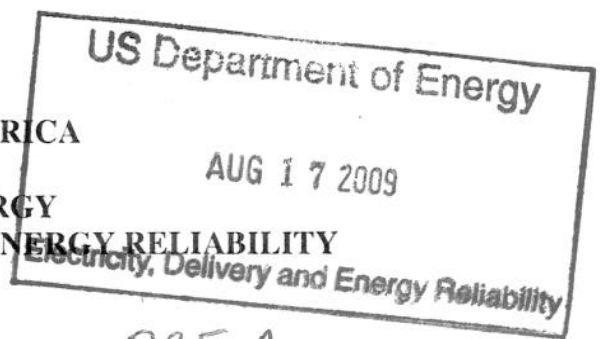


UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY & ENERGY RELIABILITY



Merrill Lynch Commodities, Inc.

) Docket No. EA- 295-A

**RENEWAL APPLICATION OF MERRILL LYNCH COMMODITIES INC. UNDER
ORDER NO. EA-295
FOR AN AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO CANADA**

Merrill Lynch Commodities, Inc. ("MLCI") or ("Applicant") currently holds an authorization to transmit electric energy to Canada under Order No. EA-295 issued on October 26, 2004. MLCI, pursuant to Federal Power Act ("FPA") Section 202(e)¹ and Part 205, Subpart W of the United States Department of Energy's Regulations,² hereby files its renewal application for blanket authority to transmit electric energy from the United States to Canada ("Application") for a term of five (5) years from expiration of its current authorization under Order No. EA-295 which will expire on October 26, 2009.

I.

Description of Applicant

The exact legal name of the Applicant is Merrill Lynch Commodities, Inc. MLCI is a Delaware corporation with its office and principal place of business in Houston, Texas. MLCI is an indirect wholly-owned subsidiary of Merrill Lynch & Co. Inc. ("ML&Co."), a Delaware corporation. As of January 1, 2009, a wholly-owned subsidiary of Bank of America Corporation ("BAC") merged with and into ML&Co. with ML&Co. as the surviving corporation and as a subsidiary of BAC. As a result of such merger, MLCI is now 100% owned by BAC. MLCI is a power marketer subject to the Federal Energy Regulatory Commission's ("FERC") jurisdiction

¹ 16 U.S.C. § 824a(e)(2003).

² 10 C.F.R. §§ 205.300-205.309 (2004).

under Section 201 of the FPA (16 U.S.C. § 824e).³ MLCI was granted authority to sell energy and capacity at wholesale at market-based rates and waiver and blanket authorizations in a letter order dated July 20, 2004, in Docket No. ER04-925-000. MLCI intends to operate as a wholesale power marketer, and will purchase and sell electricity and enter into financial derivative contracts for power, natural gas and other energy products for its own account, as well as on behalf of the accounts of U.S. suppliers and Canadian purchasers, in the wholesale markets throughout the United States and Canada.⁴ MLCI also anticipates engaging in other activities to facilitate efficient trade in the bulk power market, such as brokering the purchase and sale of wholesale energy without taking title to the electricity, and arranging services in related areas such as transmission and fuel supplies. All MLCI's power sales transactions will be at rates negotiated between the parties to the transaction.

MLCI does not own, operate or control any electric power transmission or distribution facilities nor is it affiliated with an entity that owns, operates or controls such facilities in the United States. MLCI does not own, operate or control any electric generation assets, nor is it affiliated with any entity that owns generation assets in the United States. Neither MLCI nor any of its affiliates holds a franchise or service territory for the transmission, distribution or sale of electric power.

³ See *Southern Company Services, Inc., et al.*, 87 F.E.R.C. ¶ 61,214, at 61,847 (1999).

⁴ As used herein, the term "marketer" or "power marketer" means an entity that buys and sells electric power for its own account.

II.

Correspondence

Correspondence concerning this Application should be directed to the following:

Merida de la Peña
MERRILL LYNCH COMMODITIES, INC.
Vice President, Commodities Counsel
20 E. Greenway Plaza, Suite 700
Houston, Texas 77046
Phone: (713) 544-5932
Facsimile: (713) 544-5551
merida_delapena@ml.com

III.

Other Government Agencies Having Jurisdiction

MLCI believes that the Department of Energy ("Department") is the only governmental agency that has authority over this application. The Federal Energy Regulatory Commission has jurisdiction over MLCI's wholesale electric power sales activities in the United States.

IV.

Description of Transmission Facilities

MLCI intends to export electric energy over existing transmission interconnections between Canada and the United States. MLCI requests authority to export electricity to Canada over any international transmission facility authorized by Presidential permit that is appropriate for open access transmission by third parties in accordance with the assessment made by the United States Department of Energy of the transmission limits for operation in the export mode.

V.

Technical Discussion of Proposal

In previous orders granting export authorization to electric power marketers, the Department has indicated its reluctance to follow a rigid application of the information filing requirements contained in its regulations.⁵ Instead, the Department has employed a flexible approach, taking into consideration the unique nature of power marketers in terms of the Department's assessment of any reliability analysis. The Department has concluded that the existing technical analyses supporting the present export authorizations *via* international border transmission facilities are sound, and will be applied to power marketers seeking to use these facilities.⁶ MLCI respectfully requests that the Department continue to apply this standard during its review of the instant application.

MLCI requests authority to transmit electric power to Canada as a power marketer. As noted above, MLCI does not own or control any power supply system on which its exports of power could have a reliability or stability impact. MLCI will purchase the power to be exported from electric utilities, federal power marketing agencies, qualifying cogeneration, small power production facilities and exempt wholesale generators as those terms are defined in the FPA. Any power purchased by MLCI for export would be surplus to the needs of those entities selling power to MLCI.⁷ Thus, as required by FPA Section 202(e), the exports proposed herein by

⁵ See, e.g., *NorAm Energy Services, Inc.*, No. EA-105-CN (DOE August 16, 1996); *MidCon Power Services Corp.*, No. EA-114 (DOE July 15, 1996); *USGen Power Services*, No. EA-112 (DOE June 27, 1996); *CNG Power Services Corp.*, No. EA-110 (DOE June 20, 1996); *Destec Power Services, Inc.*, No. EA-113 (DOE May 31, 1996); *North American Energy Conservation, Inc.*, EA-103 (DOE May 30, 1996); *NorAm Energy Services, Inc.*, No. EA-105-MX (DOE May 30, 1996); and *Enron Power Marketing, Inc.*, No. EA-102 (DOE February 6, 1996) ("Order No. EA-102").

⁶ *The Royal Bank of Canada*, No. EA-342, 2-4 (Sept. 4, 2008).

⁷ *Id.* at 2.

MLCI will not impair the sufficiency of power in the United States, nor will the transactions impede or tend to impede the coordinated use of U.S. transmission facilities.⁸

VI.

Compliance With Conditions and Procedures

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

MLCI proposes to abide by the general conditions consistent with the Department's previous grants of authorization to power marketers as set forth in its previous orders, as described herein. From time to time, MLCI will enter into agreements with third parties which involve the export of electric power from the United States to Canada. Exports made by MLCI over the subject transmission facilities will not exceed the export limits for the facilities, or otherwise cause a violation of the terms and conditions set forth in the export authorizations applicable to each. With regard to specific transactions, MLCI will provide written evidence to the Department that it has secured sufficient transmission service for the delivery of power to the border. When scheduling delivery of power, MLCI will comply with the applicable North American Reliability Council reliability criteria, standards, and guidelines. Within thirty (30) days following the end of each calendar quarter, MLCI will provide the Department with reports indicating the gross amount of electricity delivered to Canada, consideration received during each month, and the maximum hourly rate of transmission.

⁸

Id. at 2.

VII.

Exhibits and Attachments

The following Exhibits and Attachments are Included with this Application pursuant to 10 C.F.R. § 205.303:

<u>Exhibit A-</u>	Agreements – Not Applicable
<u>Exhibit B-</u>	Legal Opinion of MLCI's Counsel
<u>Exhibit C-</u>	Please See Section IV hereof ("Description of Transmission Facilities") in lieu of Exhibit C, per guidance received from the Department
<u>Exhibit D-</u>	Non-U.S. Applicant's Power of Attorney – Not Applicable
<u>Exhibit E-</u>	Statement of any Corporate Relationship or Existing Contract Which in Any Way Relates to the Control or Fixing of Electric Power – Not Applicable
<u>Exhibit F-</u>	Operating Procedures Regarding Available Capacity and Energy – Not Applicable
<u>Attachment 1-</u>	Copy of Federal Energy Regulatory Commission Letter Order, FERC Docket No. ER04-925-000

VIII.

Other

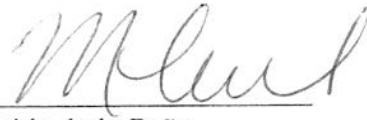
Pursuant to 10 C.F.R. Section 205.309 (2004), a copy of this Application has been served on the Secretary of FERC.

IX.

Conclusion

WHEREFORE, MLCI respectfully requests that the Department review and grant this Application for blanket authority to transmit electric energy to Canada for a term of five (5) years on substantially the same terms and conditions as applied to similarly-situated electric power marketers.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Merida', is written over a horizontal line.

Merida de la Peña
Merrill Lynch Commodities, Inc.
20 E. Greenway Plaza, Suite 700
Houston, Texas 77046
(713) 544-5932

Attorney for
Merrill Lynch Commodities, Inc.

Dated: August 14, 2009

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

Merrill Lynch Commodities, Inc.

) Docket No. EA-_____

VERIFICATION

State of Texas
City of Houston

)
)
)

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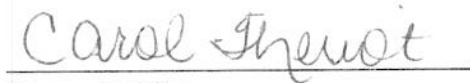
NOW BEFORE ME, the undersigned authority, personally came and appeared, Dennis Albrecht who, after first being duly sworn by me, did depose and say:

That he is Chief Operating Officer for Merrill Lynch Commodities, Inc., that he has the authority to verify the foregoing Application on behalf of Merrill Lynch Commodities, Inc., and that to the best of his knowledge, information, and belief, all of the statements contained in said Application are true and correct.



Dennis Albrecht

Subscribed and sworn to before me
this 14 day of August, 2009.



Notary Public

My commission expires 7-30-2011

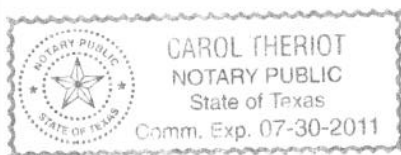


Exhibit A

Agreements

NOT APPLICABLE

Exhibit B

Legal Opinion of MLCT's Counsel

LEGAL OPINION

The following opinion is given in support of the Renewal Application of Merrill Lynch Commodities, Inc. dated August 14, 2009 under Order No. EA-295 for an Authorization to Transmit Electric Energy to Canada.

- (1) I am an attorney at law, authorized to practice law in the State of Texas.
- (2) I serve as counsel for Merrill Lynch Commodities, Inc., a duly organized and validly existing corporation, which is in good standing under the laws of the State of Delaware.
- (3) To the best of my knowledge and belief, Merrill Lynch Commodities, Inc., pursuant to a Federal Energy Regulatory Commission authorization granted in Docket No. ER04-925-000, has full power and authority to buy, sell or act as a marketer/broker in the sale and exportation of electric energy as requested in the Application.
- (4) To the best of my knowledge and belief, Merrill Lynch Commodities, Inc. has complied with Section 202(e) of the Federal Power Act and all pertinent Federal and state laws relevant to the Application.



Merida de la Peña

Counsel for Merrill Lynch Commodities, Inc.

Dated: August 14, 2009

Exhibit C

Transmission System Information

PLEASE SEE SECTION IV OF THE APPLICATION ("DESCRIPTION OF TRANSMISSION FACILITIES") IN LIEU OF EXHIBIT C, PER GUIDANCE RECEIVED FROM THE DEPARTMENT

Exhibit D

Non-U.S. Applicant's Power of Attorney

NOT APPLICABLE

Attachment 1

FERC Letter Order

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

In Reply Refer To:
Merrill Lynch Commodities, Inc
Docket No. ER04-925-000
July 20, 2004

Mr. Paul J. Pantano, Jr.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, DC 20005-3096

Reference: Market-Based Rate Authorization

Ladies and Gentlemen:

Pursuant to the authority delegated to the Director, Division of Tariffs and Market Development - South, under 18 C.F.R. § 375.307, the market-based rate application in the referenced docket, along with the proposed designation, is accepted for filing, effective the date of this order, as requested.¹

On June 14, 2004, you filed on behalf of Merrill Lynch Commodities, Inc. (MLCI), an application for market-based rate authority, with an accompanying tariff. The proposed market-based rate tariff provides for the sale of capacity, energy, and ancillary services at market-based rates, the reassignment of transmission capacity, and the resale of firm transmission rights.² MLCI requests waivers commonly given to similar market-based rate applicants.

¹ Rate Schedule FERC No. 1, Original Sheet Nos. 1-4.

² MLCI plans to sell certain ancillary services in the markets administered by PJM Interconnection, L.L.C. (PJM), New York Independent System Operator, Inc. (NYISO), ISO New England (ISO-NE), and California Independent System Operator, Inc. (CAISO). Because the ISO-New England has the responsibility of administering the regional market, including ancillary services, MLCI's tariff should refer to ISO-New England (ISO-NE), rather than NEPOOL. Thus, MLCI should make this revision (i.e., change "NEPOOL" to "ISO-NE") in a subsequent filing.

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MLCI is a Delaware corporation whose principal place of business is in New York, New York. MLCI intends to market electricity to wholesale customers as a power marketer. MLCI is owned by Merrill Lynch Capital Services, Inc. (MLCS), a subsidiary of Merrill Lynch & Co., Inc., a global insurance and financial products provider.

You state that MLCI does not currently own, operate or control any generating or transmission facilities and therefore cannot have market power. You further state that they are unable to erect barriers to entry because they do not own or control building sites for energy-related assets, interstate natural gas pipelines, engineering and construction firms, or gas distribution facilities. You also assert that MLCI is not affiliated with a public utility with a franchised electric service territory, so no affiliate abuse concerns exist.

Market-Based Rate Authorization

Your submittal satisfies the Commission's requirements for market-based rates regarding generation and transmission market power, other barriers to entry and affiliate abuse.

Your request for approval to reassign transmission capacity is consistent with the Commission's requirements.³

Your request for approval to buy and sell firm transmission rights is consistent with the Commission's requirements.⁴

You propose to sell any other ancillary services in additional geographic markets as the Commission may specify and authorize from time-to-time in orders that extend such authority to all sellers previously authorized to sell energy and/or capacity at market-based rates. We will grant your request in this regard; however, our grant does not relieve you of the requirement to have current and complete tariffs on file with the Commission, pursuant to 18 C.F.R. §35.1 (2001).⁵

³ See Southwestern Public Service Company, 80 FERC ¶ 61,245 (1997).

⁴ See California Independent System Operator, Inc., 89 FERC ¶ 61,153 (1999).

⁵ Calhoun Power Co., 96 FERC ¶ 61,056 (2001).

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Waivers

You request waiver of Part 41, Part 101, and Part 141 of the Commission's Regulations concerning accounting and reporting requirements. This waiver is granted with the exception of 18 CFR §§ 141.14 and 141.15.⁶

You request waiver of Part 34 of the Commission's Regulation regarding securities and assumption of liabilities. Since these requirements are statutory in nature they cannot be waived. However, a separate notice will be published in the Federal Register following this letter order establishing a period during which protests may be filed. Absent a request to be heard in opposition within the set comment period, you are authorized to issue securities and assume obligations or liabilities.⁷

Your request for waiver of Part 45 of the Commission's Regulations regarding interlocking directorates is granted with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving the applicant. Such personnel shall file a sworn application providing his or her full name and business address and all jurisdictional interlocks, identifying the affected companies and the positions held by that person.⁸ The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of issuances of securities or assumptions of liabilities or by the continued holding of any affected interlocks.

Reporting Requirements

You are required to file electronically with the Commission an Electric Quarterly Report⁹ containing a summary of the contractual terms and conditions, which are described in attachments B and C of Order No. 2001, in every effective service agreement and detailed transaction information for effective short-term (less than one year) and long-term (one year or greater) power sales during the most recent calendar

⁶ Citizens Energy Corp., 35 FERC ¶ 61,198 (1986); Citizens Power and Light Corp., 48 FERC ¶ 61,210 (1989) (*Citizens Power*); Enron Power Marketing, Inc., 65 FERC ¶ 61,305 (1993), *order on reh'g*, 66 FERC ¶ 61,244 (1994) (*Enron*).

⁷ *Citizens Power*, 48 FERC ¶ 61,210; *Enron*, 65 FERC ¶ 61,305.

⁸ *Enron*, 65 FERC ¶ 61,305.

⁹ The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/Electric/eqr/eqr.htm>.

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quarter. Each Electric Quarterly Report must be filed no later than the last day of the month following each calendar quarter.

If you fail to file an Electric Quarterly Report (without an appropriate request for extension), or fail to report an agreement in a report, you may forfeit your market-based rate authority requiring filing of a new application for market-based rate authority if you wish to resume making sales at market-based rates.

You are also required to file an updated market analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

You are further required to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing in a separate report filed under the docket in which you first received market-based rate authority. These include, but are not limited to: (a) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (b) affiliation with any entity not disclosed in the applicant's filing and that owns generation or transmission facilities or inputs to electric power production, or that has a franchised service area. You may elect to report such changes in conjunction with your updated market analysis.

Procedural Matters

Your filing was noticed on June 16, 2004 with comments, protests or interventions due on or before July 6, 2004. No protests or adverse comments were filed. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the applicant.

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This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 CFR § 385.713.

Sincerely,

Steve P. Rodgers, Director
Division of Tariffs and Market
Development – South