
United States
Department of Energy

Office of Electricity Delivery and Energy Reliability

NaturEner Tie Line, LLC

Docket No. EA-352



Order Authorizing Electricity Exports to Canada

Order No. EA-352

July 7, 2009

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I. BACKGROUND

Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C.824a(e))¹.

On May 11, 2009, NaturEner Tie Line, LLC (NaturEner) applied to DOE for an authorization to transmit electric energy from the United States to Canada as a power marketer. The electric energy which NaturEner proposes to export to Canada would be generated at wind powered generating facilities (wind farms) located in the State of Montana and developed by an affiliate, NaturEner USA, LLC. The electricity would be delivered to Canada using the international transmission facilities currently owned by Montana Alberta Tie Ltd. (MATL) and authorized by DOE in Presidential Permit No. PP-305. NaturEner has requested an electricity export authorization with a 20-year term, the expected operating life of the wind farms from which it will acquire electric energy.

Notice of the NaturEner export application in Docket No. EA-352 was published in the *Federal Register* on May 22, 2009, (74 FR 24002) requesting that comments, protests, and petitions to intervene be submitted to DOE by June 22, 2009. One timely comment was received.

II. COMMENT

By e-mail, a commenter expressed the opinion that energy produced in the United States should stay in the United States, asserted that Canada "...can certainly develop their own energy," and requested that DOE deny the export application. The commenter also expressed displeasure with the corporate structure of the applicant.

¹ The authority to administer the International Electricity Regulatory Program through the regulation of electricity exports and the issuance of Presidential permits has been delegated to the Assistant Secretary for the Office of Electricity Delivery and Energy Reliability in Redelegation Order No. 00-002.10C issued on May 29, 2008.

III. DISCUSSION AND ANALYSIS

The authority requested of DOE by NaturEner 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.

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 has interpreted this criterion to mean that sufficient generating capacity must exist such that the exporter could sustain the export while still maintaining adequate generating reserves to meet all native load obligations. Power marketers like NaturEner 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. With no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export. 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.

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 has interpreted this second criterion primarily as an issue of the operational reliability of the domestic electric transmission system.

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, NaturEner must make the necessary commercial arrangements and obtain sufficient transmission capacity to wheel the exported energy to the border system. In doing so, NaturEner generally would be expected to use domestic transmission facilities for which open-access tariffs have been approved by the Federal Energy Regulatory Commission (FERC). NaturEner 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 (RTO), Independent System Operator (ISO), and/or balancing authority (formerly the control area operator). The posting of transmission capacity on OASIS indicates that transmission capacity is available. Furthermore, it is the responsibility of the RTO, ISO, and/or balancing authority 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. 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 an operational reliability problem. Therefore, this export authorization has been conditioned to ensure that the export would not cause operating parameters on regional transmission systems to fall outside of established industry criteria or cause or exacerbate a transmission operating problem on the U.S. electric power supply system (paragraphs C, D, and I of this Order).

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 (subparagraph A(2) of this Order).

NaturEner is being authorized to export electricity to Canada over the MATL facilities which have been authorized by Presidential Permit No. PP-305 and determined to be appropriate for "open access" transmission by third parties, although not yet constructed and placed in operation. Obviously, they can not be utilized for export until they are placed into commercial operation.

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.

IV. 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 NaturEner, 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. Accordingly, the request submitted by the commenter to deny NaturEner's request for export authority is not granted.

DOE also has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment and, therefore, is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Regulations implementing the National Environmental Policy Act of 1969 (NEPA). Specifically, this categorical exclusion is provided for transmission of electric energy using existing transmission systems. Documentation of the use of this categorical exclusion has been placed in this Docket.

Based on these findings, DOE has granted NaturEner's request for authorization to export electric energy to Canada for a 20-year term.

V. COMPLIANCE

DOE expects NaturEner to abide by the terms and conditions established for its authority to export electric energy to Canada, as set forth below. DOE intends to closely monitor NaturEner's compliance with these terms and conditions, especially the requirement in paragraph G of this Order that NaturEner create and preserve full and complete records and file quarterly reports with DOE. A violation of any of those terms and conditions, including the failure to submit timely and accurate quarterly reports, may result in the loss of authority to export electricity and subject NaturEner to sanctions and penalties under the FPA.

DOE notes that paragraph J of this Order allows NaturEner to file an application for renewal of this authorization up to six months prior to its expiration. This Order also puts NaturEner on notice that DOE requires at least sixty days to adequately process any renewal application. Accordingly, DOE expects NaturEner to implement appropriate internal procedures to monitor the status of its authorization so as to ensure timely application to DOE for renewal of this authorization. Failure to provide DOE with sufficient time to process a renewal application may result in a gap in NaturEner's authority to export electricity and, therefore, may affect its ability to satisfy its contractual obligations.

As noted above, obtaining a valid Order from DOE authorizing the export of electricity under section 202(e) of the FPA is a necessary condition before engaging in the export. Failure to obtain such an Order, or continuing to export after the expiration of such an Order, may result in a denial of authorization to export in the future and subject the exporter to sanctions and penalties under the FPA. DOE expects transmitting utilities owning border facilities and entities charged with the operational control of those border facilities, such as ISO's or RTO's, to verify that companies seeking to schedule an electricity export have the requisite authority from DOE to export such power.

VI. ORDER

Based on the above and pursuant to section 202(e) of the FPA and the Rules and Regulations issued thereunder (Title 10, Code of Federal Regulations, sections 205.300-309), it is hereby ordered that NaturEner is authorized to export electric energy to Canada under the following terms and conditions:

(A) The electric energy exported by NaturEner pursuant to this Order may be delivered to Canada only over the international transmission facilities presently owned by

Montana Alberta Tie Ltd. and authorized by Presidential Permit No. PP-305.² Exports authorized herein shall not cause the total exports over the subject facilities to exceed an instantaneous transmission rate of 300 megawatts. Changes by DOE to the transmission limits contained in the MATL docket shall result in a concomitant change to the export limits contained in this Order.

(B) The scheduling and delivery of electricity exports to Canada shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Corporation, Regional reliability entities, Regional Transmission Organizations, Independent System Operators, and/or balancing authorities, as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(C) 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.

(D) 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 extend beyond the date of termination of the Presidential permit issued to MATL.

(E) 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.

(F) NaturEner shall create and preserve full and complete records with respect to the electric energy exported to Canada. NaturEner 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. Each report shall indicate the DOE order number under which it is being filed and the expiration date of such order.

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) 586-8008 to meet time requirements, but original copies should still be filed at the above address.

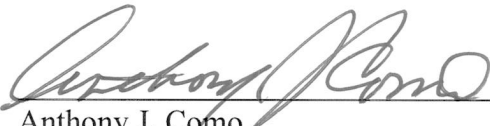
² These transmission facilities have been authorized but not yet constructed and placed in operation.

(G) 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.

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

(I) This authorization shall be effective upon issuance and remain in effect for a period of twenty (20) years from that date. Application for renewal of this authorization may be filed within six months prior to its expiration. Failure to provide DOE with at least sixty (60) days to process a renewal application and provide adequate opportunity for public comment may result in a gap in NaturEner's authority to export electricity.

Issued in Washington, D.C., on July 7, 2009.



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