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September 27, 1999

VIA HAND DELIVERY

Ellen Russell
Office of Coal & Power Im/Ex (FE–27)
Office of Fossil Energy, U.S. Department
of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585-0350

Re: Motion to Intervene & Comments in FE Docket No. 99-1

Dear Ms. Russell:

Enclosed for filing please find an original and fifteen (15) copies of a Motion to Intervene & Comments for Ontario Power Generation, Inc. ("Ontario Power").

Please acknowledge receipt of this motion by stamping the two additional copies included with this filing.

Thank you for your attention to this matter.

Sincerely,

Robert W. Warnerment

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

Proposed Open Access Requirement for International Electric Transmission Facilities and Delegation to the Federal Energy Regulatory Commission	))))	FE Docket No. 99-1

MOTION TO INTERVENE AND
COMMENTS OF ONTARIO POWER

Pursuant to Rules 211 and 214, 18 C.F.R.§ 385.211, 385.214 (1999), Ontario Power Generation, Inc. ("Ontario Power") hereby moves to intervene in, and comments on, the Department of Energy's ("DOE") Proposed Open Access Requirements for International Electric Transmission Facilities and Delegation to the Federal Energy Regulatory Commission, 64 Fed. Reg. 40,586 (July 27, 1999) (the "Delegation Notice"). In support, Ontario Power states as follows:

1. Ontario Power is a Canadian electric utility that owns electric generation facilities from which it generates electric power that it sells to wholesale customers, in Canada and the United States, and retail customers in the Province of Ontario, Canada. In addition, Ontario Power purchases wholesale power from electric utilities located in Canada and the United States.

Ontario Power's name and principal place of business is as follows:

Ontario Power Generation, Inc.
700 University Avenue
Toronto, Ontario M5G 1X6

2. All correspondence regarding this motion and comments should be directed to the following individuals:

John N. Estes III
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005

Shane Freitag
Ontario Power Generation, Inc.
700 University Avenue
Legal Affairs (H18-625)
Toronto, Ontario M5G 1X6

3. In the Delegation Notice, DOE proposes to condition existing and future presidential permits and export authorizations to require the holder of the permit or authorization to provide open-access transmission service in accordance with the requirements of Order No. 888. DOE also delegates authority to the Federal Energy Regulatory Commission to enforce this open access requirement.

4. Ontario Power takes service, or may in the future take service, over facilities covered by a number of the presidential permits and export authorizations listed in the Delegation Notice. In particular, and in accordance with the Delegation Notice (55 Fed. Reg. 40586, 40589), Ontario Power has an interest in *all* of the proceedings listed in the Delegation Notice (*id.* at 40586) regarding border-crossing facilities between the United States and Canada.

5. Ontario Power supports both DOE's policy goal of applying Order No. 888 to transmission facilities at the border, and the delegation of authority to the FERC. It plainly is in the public interest to ensure that border-crossing facilities are an integrated part of the interstate transmission grid, with open-access transmission principles applying on a uniform basis to all such facilities. It also is efficient and in the public interest for the FERC, which has responsibility for administering Order No. 888, to administer the open-access regime for border-crossing facilities.

In addition, by its terms, the Delegation Notice applies to "cross-border trade in electric energy." 64 F.R. at 40587. Ontario Power requests that DOE clarify that open-access policies will cover both exports *and* imports over border-crossing facilities. This plainly is the intent of the Delegation Notice and is well within the authority granted by Executive Order No. 10485, and Section 202(e) of the Federal Power Act, 16 U.S.C. § 824a(e).

Executive Order No. 10485 establishes a permitting scheme for the "construction, operation, maintenance, or connection" of "facilities for the transmission of electric energy between the United States and a foreign country." This language encompasses the use of border-crossing facilities for both imports and exports. The Executive Order also grants DOE the power to place conditions on the issuance of the permit and the exercise of rights by the permittee. This conditioning power is broad, encompassing "such conditions as the public interest may in [DOE's] judgment require." *Id.*

Section 202(e) is to the same effect. While this provision addresses exports, not imports, it similarly grants broad conditioning authority:

> The Commission may by its order grant such application in whole or in part, with such modification and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

16 U.S.C. § 824a(e). DOE should expressly find that it is necessary and appropriate to apply open-access policies, under Section 202(e), to both exports and imports.

Clarifying the scope of the Delegation Order, as set forth above, will ensure that operators of border-crossing authority cannot discriminate against cross-border transactions in

either direction, whether exports or imports. This approach is critical to the continued growth of competitive wholesale markets, and therefore is in the public interest.

6. In sum, Ontario Power's interest in this matter is unique and cannot be adequately represented by any other party. Therefore, granting intervention to Ontario Power is in the public interest and should be allowed.

Respectfully submitted,

John N. Estes III
Skadden, Arps, Slate,
Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 20005
(202) 371-7000

Counsel for Ontario Power Generation, Inc.

September 27, 1999