

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

Rec'd. DOE
1999 SEP 27 P 2:38

_____)
Proposed Open Access Requirement)
for International Electric Transmission)
Facilities and Delegation to the Federal)
Energy Regulatory Commission)
_____)

FE Docket No. 99-1

**JOINT COMMENTS OF
CONSUMERS ENERGY COMPANY AND
THE DETROIT EDISON COMPANY
ON NOTICE OF PROPOSED AMENDMENT**

I.

Introduction and Summary of Comments

Pursuant to the Department of Energy's ("DOE") Notice of Proposed Amendment to Presidential Permits and Export Authorizations and Delegation and Assignment to the Federal Energy Regulatory Commission ("FERC"), announced in the Federal Register on July 27, 1999, Consumers Energy Company ("CECo") and The Detroit Edison Company ("DECo") (together, "Joint Commenters") hereby submit the following comments.

By its proposed amendment, the DOE intends to amend existing Presidential permits issued for the construction, operation, maintenance or connection of facilities at the international border for the transmission of electric energy between the United States and foreign countries. The proposed amendment would require permit holders to provide non-discriminatory open access transmission services across their international transmission facilities. By the proposed amendment, the open access requirement would also be attached to the permit holders authorization(s) to export electricity.

The electrical systems of CECo and DECo are interconnected with Ontario Hydro, the provincial electric utility for the Province of Ontario, at four points on the U.S.-Canada border. Each interconnection has been authorized by a Presidential permit (PP-21, PP-38 and PP-58) issued under Executive Order 10485. Additionally, electricity export authorization was issued to Joint Commenters by the Federal Power Commission for exports to Ontario Hydro (FE Docket EA-58). CECo and DECo believe the proposed amendment is appropriate and in the public interest, so long as the amendment respects the reciprocity condition of Order No. 888 and its progeny.^{1/}

II. Comments

CECo and DECo understand the intent of the proposed amendment to Presidential permits and export authorizations to be the generic application of the FERC's decision in Enron Power Marketing, Inc., 77 FERC ¶ 61,013 (1996). Therein, the FERC expressed the opinion that 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. As such, in response to a request by Enron Power Marketing, Inc. ("EPMI"), a power marketer, the Commission required El Paso Electric Company ("El Paso"), a jurisdictional public utility, to comply with its open-access tariff by agreeing to provide transmission service to EPMI from EPMI's designated points of receipt on El Paso's transmission system to El Paso's two substations near the United

1 Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, FERC Stats. & Regs. ¶ 31,036 (1996) ("Order No. 888"); Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, FERC Stats. & Regs. ¶ 31,048 (1997) ("Order No. 888-A").

States/Mexico border. EPMI requested this service so that it could export power to Commission Federal de Electricidad, the government-owned national electric utility of Mexico. Although the El Paso decision and the proposed amendment discuss only the open access provisions of Order No. 888, these are not the only provisions of Order No. 888 that are relevant to cross-border electric trade.

In Order No. 888, the FERC adopted a reciprocity condition, implemented through the open access transmission tariffs (“Tariff”), that affords public utilities the right to condition a transmission owner’s access to their transmission system on that owner’s commitment to provide comparable transmission service on its own transmission system in return.^{2/} The general reciprocity condition, set out in ¶ 6 of the Tariff, states:

A Transmission Customer receiving transmission service under this Tariff agrees to provide comparable transmission service that it is capable of providing to the Transmission Provider on similar terms and conditions over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer and over facilities used for the transmission of electric energy owned, controlled or operated by the Transmission Customer’s corporate affiliates.^{3/}

FERC required a reciprocity condition “so that public utilities offering transmission access to others would be able to receive service from transmitting utilities that are not public utilities.”^{4/} Further, in support of its determination to adopt this reciprocity condition, the FERC reasoned that:

2 Order No. 888 at 31,755-31,763.
3 Order No. 888-A at 31,513.
4 Order No. 888 at 31,755.

[I]t would not be in the public interest to allow a non-public utility to take non-discriminatory transmission service from a public utility at the same time it refuses to provide comparable service to the public utility. This would restrict the operation of robust competitive markets and would harm the very ratepayers that Congress has charged us to protect. Very simply, we refuse to take a head-in-the-sand approach and order a remedy for undue discrimination that will permit the beneficiaries of the remedy to engage in unduly discriminatory actions. ^{5/}

As is relevant here, FERC determined that foreign entities should be permitted to receive transmission service under the Tariffs, thereby ensuring that domestic customers have access to as many potential suppliers as possible. ^{6/} Analogizing foreign entities to domestic non-public utilities, FERC correctly decided that a public utility may refuse transmission service if the foreign entity that owns or controls transmission facilities does not offer comparable service in return. ^{7/} The same rationale applies with equal weight here. Nothing in the proposed amendment should alter a public utility's ability to deny comparable service in such a situation.

In short, CECo and DECo believe that it is appropriate to apply the open access requirements of Order No. 888 and its progeny to the transmission of electricity for export to foreign countries, as DOE has proposed. However, FERC clearly intended, and fairness requires, that the application of the principles of open access set out in Order No. 888 and its progeny be linked to reciprocity. As such, CECo and DECo believe the application of the open access provisions of Order No. 888 and its progeny to cross-border electric trade, whether such trade takes the form of exports to a foreign entity, imports from a foreign entity, or wheeling through a

5 Order No. 888-A at 30,285.

6 Order No. 888 at 31,689.

7 Id., Order No. 888-A at 30,290-30,292.

foreign entity's transmission system to another entity, either foreign or domestic, should be required only in conjunction with the associated reciprocity condition of those orders.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 27th day of September, 1999.

A handwritten signature in cursive script, appearing to read "Deborah A. Moss", is written over a horizontal line.

Deborah A. Moss