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June 12, 2007

Glenn J. Berger
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1440 New York Ave., N.W.
Washington, D.C. 20005

Re: Hydro Quebec Energy Services (U.S.) Inc.

Régie de l'énergie
DOSSIER: R-3644-2007
DÉPOSÉE EN AUDIENCE
Date: 7 DÉCEMBRE 2007
Pièces n°: C-6-10 FCEI

Dear Mr. Berger:

This agency has been asked by Hydro Quebec Energy Services (U.S.) Inc. (HQUS) to determine whether Renewable Energy Certificates (RECs) produced by two wind facilities located in Canada are eligible to be sold in the Massachusetts Renewable Portfolio Standard (RPS) REC market.

Background:

The Mount Copper Wind facility and Mt. Miller Wind facility are located in Murdochville, Quebec, Canada, and have an aggregate output of 108 MW. DOER qualified both facilities as MA RPS eligible in April 2007. No parties are disputing the issuance of Statements of Qualification to these facilities.

HQUS is a Delaware corporation engaged in the energy marketing business and conducts transactions in New England. HQUS seeks to sell the RECs from the Canadian wind facilities into the MA REC market. The NEPOOL Generation Information System (NEPOOL GIS), which mints the RECs, is also awaiting DOER's decision as to whether the documentation provided by HQUS satisfies the requirements of the RPS regulation.

Specifically at issue is whether the parties to the sale of electrical energy associated with these RECs complied with the applicable section of the RPS regulation dealing with imports from out of the ISO-NE region. That section of the regulations, 225 CMR 14.05 (5), provides that:

(a) An External Unit Contract shall be executed between the Generation Unit Owner or Operator and an electrical energy purchaser located in the ISO-NE Control Area for delivery of the Unit's electrical energy to the ISO-NE Control Area. The External Unit Contract shall include associated transmission rights for delivery of the Unit's electrical energy over the ties from an adjacent control area to the ISO-NE Control Area;

(b) The Generation Unit Owner or Operator shall provide documentation, satisfactory to the Division, that: 1. the electrical energy delivered pursuant to the External Unit Contract was settled in the ISO-NE Market Settlement System; 2. the Generation Unit produced, during the applicable month, the amount of MWhs claimed, as verified by the NEPOOL GIS administrator; 3. the electrical energy delivered under the External Unit Contract received a North American Electricity Reliability Council Tag confirming transmission from the originating Control Area to the ISO-NE Control Area; and 4. the New Renewable Generation Attributes have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

Application of "External Unit Contract" Provision to HOUS Transaction:

The term, "External Unit Contract" was specifically adopted in the RPS regulation to mirror the language of the New England Power Pool (NEPOOL) Market Rules and Procedures Section 12.2.1 (a) and corresponding NEPOOL GIS Operating Rule 2.7 (c) governing the importation of power from outside of the ISO-NE control area. This was done because the MA-RPS program relies on the NEPOOL GIS system to track compliance with the RPS regulation, and the RPS regulation is intended to work compatibly with that system. When the RPS regulation was promulgated in 2002, An "External Unit Contract" was defined in the RPS regulation (225 CMR 14.02) as "An External Transaction Unit Contract for Energy 1 or Energy 2 as defined in the New England Power Pool (NEPOOL) Market Rules and Procedures Section 12.2.1 (a)."

We note that the NEPOOL Market Rules and Procedures referenced above have been superseded by the ISO-NE Market Rule 1. In this process, section 12.2.1 (a) of the NEPOOL Market Rules and Procedures has been eliminated, and the term "Unit Contract" in reference to generation located outside of the ISO-NE control area is no longer applicable. A successor term, "External Transaction," has been adopted and is defined and used in ISO-NE Market Rule 1 (Standard Market Design), section III.1.10.5 (External Resources) and section III.1.10.7 (External Transaction). Because NEPOOL Rule 12.2.1 has been superseded, DOER applies the term "External Transaction" in place of "External Unit Contract" for purposes of interpreting its regulation, and we adopt this definition of "External Transaction" for use in 225 CMR 14.05(5).

An "External Transaction" is defined in the ISO Market Rule as "a purchase by a Market Participant of energy external to the New England Control Area or a sale by a Market Participant of energy external to the New England Control Area in the Day-Ahead Energy Market and/or Real-Time Energy Market or a through transaction scheduled by a Non-Participant in the Real-Time Energy Market."

This definition does not reference a "contract," although an underlying contract could be inferred from the nature of the transaction. However, the language gives no indication that there must be one individual contract document evidencing the transaction or that it be strictly a bilateral transaction between the source (the wind farm) and the sink (HQUS in ISO-NE region), and we do not make that inference for purposes of interpreting 225 CMR 14.05 (5).

Even if DOER were to apply the now-superseded term "External Unit Contract" to its assessment of the HQUS transaction, we would find that there is no reason to require that there be a single contract to memorialize the entire transaction from source to sink. Such an interpretation establishes a restriction that runs counter to the purpose and the reasonable interpretation of the 225 CMR 14.05 (5), which is to assure that there be documentation of an unbroken chain of title for delivery of the electrical energy from the generation unit to the ISO-NE control area.

We therefore turn to the documentation of the chain of title for power and attributes and associated transmission rights. Specifically, we have been presented with the following:

Power and RECs

- 1) Two contracts, one for each wind farm, between Hydro Quebec and 3Ci Inc., each dated Dec. 12, 2002. 3Ci is the original owner of the wind farms located at Mount Copper and Mount Miller. The contract is fully assignable. They provide for the sale of energy and attributes (including those which would be represented by MA-RECs) from 3Ci to HQ. The term of contract is 21 years. The delivery point is at the connection into the HQ transmission system in Canada.
- 2) A "Master Agreement" between HQ and HQUS, executed on June 17, 1998, with a termination date of April 29, 2001. The contract calls for the sale from time to time between HQ to HQUS of "energy products and services." The Master Agreement is implemented through a series of transactions, each memorialized in written form. Environmental attributes are not mentioned, and do not appear to be an anticipated commodity under this contract.
- 3) A First Amendment to the Transaction Agreement executed Feb 12, 2001, which extends the term of the Master Agreement by providing it "shall continue in full force and effect until terminated."

- 4) Assignment to HQUS of the Purchase Agreement (dated 12/12/02) between HQ and 3Ci for all "... existing or future rights" to the environmental attributes produced by the Mount Copper generation unit; contract is effective Oct 1, 2006. No Date of execution, but based on the document ID #, it appears to have been executed on or after January 31, 2007.
- 5) Assignment to HQUS of the Purchase Agreement (dated 12/12/02) between HQ and 3Ci for all "... existing or future rights" to the environmental attributes produced by the Mount Miller generation unit; contract is effective Oct 1, 2006. No Date of execution.
- 6) Assignment of the Purchase Agreement (dated 12/12/02) from 3Ci to Mt Copper, Inc., executed 3/17/03.
- 7) Assignment of the Purchase Agreement (dated 12/12/02) from 3Ci to Mt Miller Wind Power Energy, Inc., executed 1/10/03.
- 8) Assignment of the Purchase Agreement (dated 12/12/02) from Mt Miller Wind Power Energy, Inc. to Mt Miller Wind Energy L.P., executed 7/30/04.

Transmission and Scheduling

HQUS has provided the following description of the scheduling and transmission of power from the Canadian wind facilities to the ISO-NE border. This description is supported by additional documentation, including screen shots taken from the HQ Transmission and ISO-NE scheduling and tracking systems:

- 9) The points of delivery for the energy and "green attributes" purchased by Hydro-Québec from the Mount Miller and Mount Copper wind farms are defined in interconnection agreements entered into between the generators and the transmission owner HQ TransÉnergie (HQTE). They are as follows: For Mount Miller, the point of delivery is defined in the interconnection agreement as the high-side of the Mount Miller sub-station; For Mount Copper, the point of delivery is defined in the interconnection agreement as the low-side of the HQTE sub-station. HQUS informs us that there is a small section of transmission privately owned by a third-party, which runs between the Mount Copper sub-station and the associated HQTE sub-station. Mount Copper has acquired the rights to deliver energy on that private line and delivers its energy to HQ at the point where that private line meets the associated HQTE sub-station.
- 10) HQ purchases Point-to-Point transmission service on HQTE's OASIS system, and schedules the flow of energy from the "Hydro-Québec System" to the "Hydro-Québec/New England border."

- 11) Where the energy is to be delivered on the Phase I/II transmission system, HQUS purchases transmission service from one or more Interconnection Rights Holders (New England utilities who own the rights to the Phase I/II HVDC transmission line in New England).
- 12) HQUS uses the NERC electronic tagging system to generate NERC tags for each energy transaction that it will enter into the ISO-NE electronic energy scheduling system for delivery on the following day. The purpose of the tag is to identify where the energy is produced ("source"), where the energy will be sold/consumed ("sink"), the transmission path (and associated OASIS transmission reservation numbers) the energy will take from source to sink, and the hourly MW profile of the transaction. Each tag is identified by a unique alpha-numeric code.
- 13) HQUS uses the ISO-NE electronic energy scheduling system ("EES") to enter energy transactions for delivery into New England on the following day. The purpose of the system is to offer hourly energy quantities to the New England Independent System Operator (ISO-NE). Each energy transaction submitted into the system includes information such as the hourly MW profile of the transaction, the transmission path (and associated OASIS reservation numbers) the energy will take from source to sink, the associated NERC TAG number, and, where appropriate, a unique code that identifies that the energy is generated by a specific generator (GIS Code).
- 14) NEPOOL GIS is a web-based system that records the production details not only of power generated with renewable sources, but also of all types of electricity generation and imports in the NEPOOL control area. The NEPOOL GIS links the unique code associated with each generator with information about when, where, and who produced the power, the type of fuel source used, the amount and type of emissions released, and the generator's renewable portfolio standards eligibility for each state.
- 15) When HQUS uses the EES to schedule system energy into New England and includes the unique codes for Mount Miller or Mount Copper, the GIS recognizes that the MWHs contained in that schedule may be eligible for MA RPS RECS.
- 16) On a quarterly basis, HQUS provides hour-by-hour information to the GIS administrator. This information shows: 1) every hour-by-hour energy schedule linked to Mount Miller and Mount Copper for the previous quarter (which the GIS administrator already has); 2) the hour-by-hour actual MWh generation for both Mount Miller and Mount Copper; 3) an hour-by-hour comparison of the MWh schedules and MWh generation.
- 17) For each hour, the REC quantity that HQUS is awarded is the lesser of the hourly schedule or the hourly generation. This "hourly true-up," which occurs each

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quarter, prevents importers from generating a quantity of RECS, in any hour that exceeds the actual output of the generator for that hour. It also makes it unimportant if the MWh level of the energy schedule associated with Mount Miller or Mount Copper exceeds the MWh level of the Mount Miller and Mount Copper wind facilities' generation.

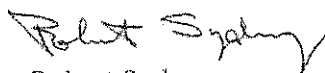
We note that the NERC tags referenced in paragraph #12 and #13 above may contain a MWh amount in excess of the wind capacity at Mount Copper and Mount Miller in any particular hour. However, 225 CMR 14.05 (5) (b) (3) does not require numerical parity between the generation produced by the RPS qualified facilities and the total MWhs referenced in the NERC tags. The hourly matching of generation from the wind farms and imports of energy are provided by HQUS to the NEPOOL GIS, and the NEPOOL GIS administrator verifies for DOER that the applicable generation units produced, during the applicable month, the amount of MWhs claimed through verification with the NEPOOL GIS system pursuant to 225 CMR 14.05 (5) (b) (3).

Conclusion:

Collectively, these documents demonstrate to DOER's satisfaction that HQUS holds contracts providing it with the right to purchase electrical energy generated by the two wind facilities. Further, HQUS holds contracts providing it with the right of ownership to all environmental attributes produced by those two wind facilities. The electrical energy purchased by HQUS is documented electronically or in writing, and transmission reservation within Canada to the ISO-NE interconnection is documented through HQTE's OASIS system and by ISO-NE's ESS with associated NERC tags. The energy purchased by HQUS originates at the wind facilities, is then blended with other HQ system power and transmitted in that fashion to the ISO-NE border. That portion of the system power attributable to Mount Miller and Mount Copper generation is determined and documented through the transmission and scheduling protocols discussed above.

DOER also finds that HQUS has demonstrated that it can provide the necessary documentation and assurances required by 225 CMR 14.05 (5) (b). Therefore, we hold that HQUS meets the requirements of 225 CMR 14.05 (5) with respect to the importation of power from the Mt. Copper and Mt. Miller Wind facilities under current contractual agreements and scheduling and transmission protocols.

Sincerely,



Robert Sydney
General Counsel

Cc: NEPOOL GIS Administrator