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Briefing Document

NB Power Open Access Reciprocity Requirements

Summary

- The issue of open access reciprocity has arisen and is worthy of clarification. In particular there are two questions regarding reciprocity requirements for NB Power:
 - Is it required for continued sales at the border to the US?
 - If so, is it required for Canadian neighbours?
- The answer to the first question is a definite yes. It was directly addressed by FERC in Order 888-B where it stated that then existing contracts could continue but any new contracts by New Brunswick would require reciprocity or a waiver from the US utility or FERC.
- The answer to the second question is most likely yes. Although there is no direct FERC ruling on it, the general position of FERC and the market activity of NB Power lead to an affirmative conclusion.
 - The general objective of FERC in 1996 through Order 888 was to require reciprocity “to ensure that open access transmission is as widely available as possible”. This objective has been reinforced through Order 890 in 2007 and continues today.
 - NB Power has availed itself of open access not just to and from NE but with all neighbouring Canadian utilities as well. It altered its original “Out and Through Tariff” to meet demands of Hydro Quebec to maintain access in Quebec and it initially provided a reciprocity waiver to NSPI and MECL when the FERC compatible Open Access Transmission Tariff (OATT) in NB went into effect in Oct 2003.
- A decision to wind back the clock to 1996 and start over with a position that full reciprocity to all participating parties is not required will be extremely difficult (if not impossible) to achieve.

Background

- Challenges have recently arisen regarding the need for New Brunswick to re-visit its deregulation of the electric industry and its provision of open transmission access.
- A TJ commentary¹ suggests that electricity deregulation in NB “might be based upon a wrong assumption” that being “for NB Power to continue exporting power to the United States, it must deregulate its electricity industry and offer open access on its transmission system - a reciprocity requirement ...”
- A follow up concern expressed by NB Power is related to the extent of reciprocity, that is, if reciprocity is required by the US FERC for exports to the US is it needed as well for Canadian utilities such as MECL, NSPI and HQ.

¹ Brian Steeves and Michael Wong, OP-ED piece in the Telegraph Journal, March 12, 2011

- Providing answers to these questions requires a more detailed review of the FERC orders regarding reciprocity, the history of NB Power actions relative to it and the current market behaviour of NB Power.

FERC Orders

- FERC Order 888 in May 1996 required public utilities² to provide open access transmission service for the sale of wholesale electricity in interstate commerce and required utilities taking advantage of the service to provide reciprocal service to the Transmission Provider. This reciprocity requirement applies to both public and non-public utilities.
- In Order 888-A the reciprocity requirement was expanded to apply to *"all parties to a transaction that involves the use of transmission service under the Tariff, including the power seller, buyer and any intermediary, such as a power marketer."*
- Ontario Hydro was concerned about this additional language and its inability to comply and requested a stay from FERC. In its May 16, 1997 clarification order FERC stated that Ontario Hydro and other Canadian utilities could continue to do transactions at the border with the adjoining border utility, more specifically FERC stated *"The reciprocity condition of the pro forma tariff does not impose the reciprocity condition in circumstances where a Canadian utility sells power to a U.S. utility at the United States/Canadian border, title to the electric power transfers to the U.S. border utility, and the power is then resold by the U.S. border utility to a U.S. customer that has no affiliation with, and no contractual or other tie to, the Canadian utility. The reciprocity provisions thus do not in any way affect historical Canadian-United States buy-sell arrangements ..."*
- It is important to note that there are conditions on this non reciprocity exemption, more specifically, it applies to a Canadian utility transacting at the border with the US border utility. It is not a carte blanche to *"allow Canadian utilities on the border to continue business as usual, i.e. without open access"* as stated by Steeves and Wong. It would enable NB Power to sell to MEPCO or MPS but not to power marketers who in turn would sell into the NEPOOL market at the time (or subsequently into the ISO-NE market) as noted in the next bullets.
- NEPOOL raised similar concerns to those of Ontario Hydro on behalf of NB Power and they were addressed in Order 888-B issued Nov 25, 1997. FERC re-iterated the May 16, 1997 clarification regarding existing contracts and utility to utility transactions at the border but added *"However, if New Brunswick seeks to sell power under new agreements or through new coordination transactions, such transactions are subject to Order Nos. 888 and 888-A and New Brunswick would have to agree to provide reciprocal open access transmission, unless waived by the U.S. public utility or this Commission"*. (Order 888-B page 19)

² Public utilities means US electric utilities that own or control transmission and are subject to the US Federal Power Act and hence regulated by FERC. They are also referred to as jurisdictional utilities. Non-public and non-jurisdictional utilities include electric co-ops and federal power agencies in the US and any transmission owning utilities in foreign countries (ie Canada and Mexico)

- In FERC Order 890, issued Feb 16, 2007 (and its rehearing orders A, B, C and D over the next two and a half years), the reciprocity requirements of Order 888 (and its rehearing orders A, B and C)) have been upheld and they continue to apply to all non-public utilities including Canadian utilities. Note the extracts below:

The Commission found that, while it did not have the authority to require non-public utilities to make their systems generally available, it did have the ability and the obligation to ensure that open access transmission is as widely available as possible and that Order No. 888 did not result in a competitive disadvantage to public utilities.” (Order 890 P162 underline added)

“If a public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. Under the pro forma OATT, a public utility may refuse to provide open access transmission service to a non-public utility if the non-public utility refuses to reciprocate.” (Order 890 P163 underline added)

“By maintaining the same reciprocity requirement for these foreign utilities as for domestic, non-public utilities, the Commission stated that it would ensure that foreign entities will continue to be treated no less favorably than domestic, non-public utilities.”(Order 890 P167 underline added)

“We also modify the reciprocity provision to provide that, if an ISO or RTO is the transmission provider, the reciprocity obligation is owed to all members of that ISO or RTO.” (Order 890 P191 underline added)

NB Power Reciprocity Obligation to NE

- It is apparent that provision of reciprocity by NB Power to all members of the ISO-NE market is an obligation that must be fulfilled and that it applies as much for border transactions through power marketers as for direct transmission delivery to an end use customer.
- To “*continue business as usual, i.e. without open access*” as suggested by Steeves and Wong requires that NB Power obtain a waiver from FERC or a waiver from all members of the ISO-NE market. This is an achievement that is highly unlikely, if not impossible, so providing reciprocity to ISO-NE and its members is the defacto requirement.
- While providing reciprocity to ISO-NE is required the second question regarding the provision to Canadian utilities is not as dependent on the FERC rulings as on the actual actions of NB Power.

Early NB Power Actions Regarding Open Access

- NB Power began its journey toward open access by participating in the early 1990’s in the inter-provincial trade discussions regarding energy. The desire of most provinces was for cross territory transmission access that would enable freer trade in electricity. Progress on

this file was slow until FERC introduced its NOPR for Order 888 in 1995. Canadian utilities with exports to the US took notice and began to implement open access tariffs.

- BC Hydro and Hydro Quebec implemented tariffs consistent with the FERC Order 888 Proforma tariff in 1996 and 1997, respectively. Alberta and Ontario continued with their then existing open access tariffs even though they were not consistent with the FERC Proforma.
- NB Power, because of its many transactions with NEPOOL and HQ, were concerned about being shut out of market access and implemented the “Out and Through Transmission Tariff” on Jan 1, 1998. It was strictly a point-to-point tariff for cross territory access and did not provide for wholesale or retail access to any loads in NB. While the terms and conditions were consistent with Point-to-Point access under the FERC Proforma its rates were not. Charges attempted to preserve the value for NB Power of its geographical location by unbundling interconnections from the main transmission system. Service through the system had to pay for use of two interconnections while rates for NB Power to get out of the system included only the use of one interconnection.
- Hydro Quebec immediately claimed that the NB tariff was discriminatory, claimed that it did not provide comparable service to the HQ tariff and refused to provide reciprocal service to NB Power in Quebec.
- The Maine PUC and utilities in Northern Maine challenged the tariff and threatened complaints to FERC to shut down NB Power developments aimed at the NE market.
- At the time, NB Power was negotiating with various entities that wanted access to the US market (Westcoast Power on the Bayside Project, Tractebel on a new gas plant at Belledune, and PP&L for development of a gas plant at Coleson Cove plus completion of the 2nd 345 kV interconnection to NE) and the Government of NB had initiated its review of electricity deregulation through a discussion paper (1998), the Hay Savoie report (1998) and the Select Committee of the Legislature (1998-1999).
- A decision of NB Power which was approved by government was taken to discount the “Through” charge in the NB tariff to be equal to the “Out” charge. This alleviated the concerns of HQ, Maine and prospective development partners. It was seen as providing reciprocal service and allowed NB Power to continue to develop new transactions with different US power marketer partners without risk.

Implementation of an Open Access Transmission Tariff (OATT) by NB Power

- NB Power took a number of actions toward implementation of full “open access” – presentation to Select Committee of the Legislature April 1999 recommending a stakeholder review; participation in government energy policy discussions and drafting of Energy Policy White Paper issued in 2000 recommending industrial and municipal open access and a stakeholder review regarding market rules; and participation in, and support of, the Market Design Committee Report issued April 2002 recommending a FERC Order 888 compatible tariff.

- NB Power made application in August 2002 to the Public Utilities Board (“PUB”) for approval and implementation of the *New Brunswick Open Access Transmission Tariff* (“OATT”) which was compatible with the FERC Order 888 *Pro Forma Tariff*.
- Consideration of a position by NB Power to refuse access to NS Power and MECL was an issue during the hearing. It was not the position suggested by Steeves and Wong that NB could block access to these external utilities but rather on the grounds that they did not provide sufficient reciprocity. A waiver of reciprocity obligation was negotiated until April 1, 2005 conditional on the external utilities operating under Standards of Conduct compatible with FERC. The OATT with the reciprocity waiver was approved in spring 2003 and went into service in October 2003.
- When the Electricity Act was proclaimed Oct 1, 2004 the responsibility for the design and administration of the OATT was transferred from NB Power to NBSO. While there have been some minor tweaks to the OATT since, they have mainly concerned ancillary services and a need for consistency between the Market Rules issued under the Electricity Act and the OATT. Other than these tweaks the OATT in effect today under the administration of NBSO is the same OATT originally proposed by NB Power.
- NS Power implemented its OATT in 2005 with NS regulatory approval and has it administered by NBSO. MECL initially applied the NB OATT for PEI to meet the 2005 waiver deadline and subsequently implemented its own OATT with approval of the PEI regulator. Both the NS Power and MECL OATTs are FERC Order 888 compatible.

NB Power Marketing Activities

- Over the last 10 years NB Power has taken advantage of open access transmission in most if not all bordering external systems.
- Transactions to and from ISO-NE have been done at the border and with different power marketers for delivery to specific customers.
- A few years ago, NB Power procured a Power Marketing Authorization (PMA) from FERC allowing it to sell directly to customers in the US at market prices. This has enabled them to bid directly for supplies to Northern Maine without the need for an intermediary power marketer. They have been successful in this endeavour and continue to supply portions of the standard service for the Northern Maine Market.
- Transactions at the Quebec interface have not only been with HQ Marketing. Energy has been delivered across Quebec to be purchased by NB Power from Brookfield and Nalcor. Also, it is understood that energy has been sold to Brookfield for delivery to Ontario or NY.
- When MECL opened its system (in 2004 or 2005) Summerside Electric gained open access to other suppliers, exited supply from MECL and negotiated supply contracts with NB Power and for a period of time with Emera. Supply to Summerside today continues from NB Power.
- The Suez wind project in PEI is a merchant project that uses the MECL OATT to exit PEI and sell its output to NB Power who in turn acts as the intermediary power marketer to sell the Suez wind power into different markets.

- The Nova Scotia wholesale market is limited to some small municipal utilities that amount in total to only 1-3% of the Nova Scotia load. It is not known if NB Power has done any transactions involving the NS OATT up to this point in time. However, on going discussions regarding the Lower Churchill project and new transmission upgrades to the NS-NB interconnection would likely involve NS transmission usage either directly or indirectly by NB Power.
- Emera is an active player in the ISO-NE market and has been used by NB Power in the past to purchase energy from that market. Emera also owns the Bayside project and contracts regularly with NB Power. With the new requirement under Order 890 to provide reciprocity to all ISO-NE members and likely extend it to affiliates NB, Power may have a continuing obligation to provide NSPI with reciprocal access.

Conclusion

- There is ample evidence to conclude that NB Power has the obligation to continue to provide reciprocal open access transmission to all neighbouring utilities and their affiliates.

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