



P.O. Box 815 • Winnipeg Manitoba Canada • R3C 2P4
Street Location for DELIVERY: 3rd floor - 820 Taylor Avenue
Telephone / N^o de téléphone : (204) 360-4539 • Fax / N^o de télécopieur : (204) 474-4947
kjmoroz@hydro.mb.ca

September 30, 2009

Ms. Maureen Long
North American Electric Reliability Corp.
116 - 390 Village Blvd.
PRINCETON, New Jersey
U.S.A. 08542

Dear Ms. Long:

**RE: APPEAL OF REVISED INTERPRETATION OF EOP-002-2
CAPACITY EMERGENCIES; REQUIREMENTS 6.3, 7.1**

Pursuant to Appendix 3A of the NERC Rules of Procedure, the “NERC Reliability Standards Development Procedure”, Manitoba Hydro hereby seeks a Level 1 Appeal of the revised interpretation of EOP-002-2, R6.3, R7.1 that was approved by the NERC ballot pool on August 31, 2009. Manitoba Hydro is a Canadian Crown Corporation, incorporated and governed by *The Manitoba Hydro Act* (the “Act”),¹ that owns and operates generation and transmission facilities in Canada. Pursuant to Section 16.3(1) of the Act, Order in Council 206/2004, and Manitoba Hydro’s memberships in the Midwest Reliability Organization and NERC, Manitoba Hydro is obligated to comply with NERC reliability standards to the extent consistent with Canadian law. Accordingly, Manitoba Hydro is directly and materially affected by the NERC interpretation of Reliability Standard EOP-002-2.

I. BACKGROUND

On January 31, 2008, Brookfield Power requested interpretation of NERC Standard EOP-002-2 Requirements 6.3 and 7.1, regarding the interruption of “exports” and the shedding of firm load by a Balancing Authority when the Balancing Authority is unable to comply with the Control Performance and Disturbance Control Standards. A revised interpretation of Standard EOP-002-2, R6.3, R7.1 was developed by the Executive Committee of the NERC Operating Reliability Subcommittee on April 21, 2008 and was approved by ballot on August 31, 2009. This interpretation includes the following:

When considering actions to be taken to comply with EOP-002-2 Requirement R6.3, all exports originating within the boundaries of the Balancing Authority experiencing the deficiency, firm and non-firm, are available for curtailment with the exception of those exports designated as network resources for an external Balancing Authority. If a capacity or energy emergency still exists after all

¹ R.S.M. 1987, c.H190

exports have been curtailed with the exception of those related to a network resource designated to an external Balancing Authority then EOP-002-2 Requirement R7.1 would take effect and firm load would be shed while the designated network resource transaction would continue to flow.

II. GROUNDS FOR APPEAL

Manitoba Hydro appeals the revised interpretation of EOP-002-2 on the following grounds:

- a) The interpretation relies upon the term “network resource”, which is defined by U.S. energy policy rather than being a term that is commonly and consistently employed throughout the North American electricity industry.
- b) In North American jurisdictions where the term “network resource” is employed, application of the interpretation may be considered inconsistent with the policies of the U.S. Federal Energy Regulatory Commission (“FERC”), unless the interpretation is clarified.
- c) To the extent that the interpretation disallows Manitoba Hydro from curtailing exports under circumstances where, pursuant to the terms of a power purchase agreement (“PPA”), Manitoba Hydro is entitled to curtail to reliably serve native load customers, the interpretation is inconsistent with provincial law.

III. USE OF THE TERM NETWORK RESOURCE

NERC is an international organization that is authorized by various types of legislation and legal agreements to develop reliability standards for implementation in both Canada and the United States. In order to ensure that NERC reliability standards can be consistently applied across North American jurisdictions, such standards (and their interpretation) must be independent of any particular electricity market model. The term “network resource” arises specifically from FERC policy and is not a term that is consistently used across North American jurisdictions. This term is defined in FERC’s pro forma OATT and also has a substantial body of FERC interpretation associated with it. In Canada, electricity markets are largely regulated at the provincial level rather than the federal level. Accordingly, while some Canadian jurisdictions have adopted transmission tariffs that are comparable to the FERC pro forma open access transmission tariff, others have not. Furthermore, even if Canadian tariffs include references to “network resources”, the interpretation of such a term would not be subject to FERC regulatory decisions. Manitoba Hydro submits that it is inappropriate for NERC to infuse U.S. regulatory policy into reliability standards terminology when developing continent-wide standards.

IV. LACK OF CONSISTENCY WITH FERC POLICY

Unless the interpretation is clarified, it can be viewed as inconsistent with FERC policy in jurisdictions that are either regulated by FERC or which have adopted comparable policies regarding network resources. As currently written, under the circumstances described in R6.3 of

the standard, a Balancing Authority is not permitted to interrupt exports designated as network resources for an external Balancing Authority. However, in the case of Wisconsin Public Power,² FERC determined that a PPA may be designated as a network resource by the purchaser if it is curtailable by the seller, for reliability reasons, to serve the seller's native load customers. In Order 890-A, FERC also confirmed that such a PPA may be designated as a network resource by both the purchaser and the seller.³ FERC stipulated that "...this exception is necessary to ensure that the seller is able to access these resources during curtailment conditions, when power is needed by the seller to meet its load."⁴ We note that, based on Manitoba Hydro's discussions with FERC staff, at the time that the energy under the PPA is curtailed by the seller, the PPA is not considered to be a network resource of the purchaser.

For these reasons, Manitoba Hydro submits that unless the interpretation is clarified to refer only to network resources that do not allow the seller to curtail for reliability reasons, it is inconsistent with FERC policy in applicable jurisdictions.

V. INCONSISTENCY WITH PROVINCIAL LAW

As stated previously, Manitoba Hydro is a Crown Corporation and therefore Manitoba Hydro's adherence to NERC reliability standards is subject to restrictions imposed by Canadian law. The statutory mandate of Manitoba Hydro is to provide for the continuance of a supply of power adequate for the needs of the province.⁵ For this reason, Manitoba Hydro's firm export contracts consistently give priority to Manitoba load. In accordance with Section 16.3(1) of *The Manitoba Hydro Act*, Manitoba Hydro is authorized to adopt NERC standards, subject to the approval of the Lieutenant Governor in Council. In 2004, the Lieutenant Governor in Council issued Order No. 206/2004, authorizing the adoption of NERC reliability standards, unless the standard is suspended or disallowed by the Lieutenant Governor in Council of Manitoba. Since the NERC interpretation of Standard EOP-002-2 would likely be seen as inconsistent with Manitoba Hydro's statutory mandate to provide an adequate supply of power to Manitobans, it is anticipated that the Lieutenant Governor in Council would likely suspend or disallow such a standard from being applied (as interpreted by NERC) in Manitoba.

Respectfully submitted,

MANITOBA HYDRO LAW DEPARTMENT

Per:

"K. Jennifer Moroz"

K. JENNIFER MOROZ

Barrister and Solicitor

KJM/sc

² *Wisconsin Public Power System Inc. v. Wisconsin Public Service Corporation*, 84 FERC ¶61,120 (1998)

³ See Order No. 890-A @ P.241

⁴ Order No. 890-A @ P.241

⁵ *The Manitoba Hydro Act*, R.S.M. 1987, c.H190, s.2