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The Commission of the
Canadian Energy Regulator
210, 517 Tenth Avenue SW
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November 9, 2023

Attn: Ramona Sladic
Secretary of the Commission

Re: Complaint by NorthPoint Energy Solutions Inc. (NorthPoint) against Manitoba Hydro-Electricity Board (Manitoba Hydro) arising from the failure of or refusal by Manitoba Hydro to allow NorthPoint Fair Market Access as required by Export Permit #EPE-404

1. BACKGROUND AND GENERAL STATEMENT OF COMPLAINT

- 1.1 NorthPoint is a wholly owned subsidiary of Saskatchewan Power Corporation (SaskPower), a Crown Corporation of the province of Saskatchewan.
- 1.2 Manitoba Hydro is a Crown Corporation of the province of Manitoba.
- 1.3 On days when it has surplus electric energy, Manitoba Hydro offers to export it to the US and sell it to the Mid-Continent Independent System Operator (MISO) Day Ahead (DA) energy market (each a MISO DA Energy Offer). In association with the MISO DA Energy Offers, Manitoba Hydro offers and sells load following service (also called regulation service or Automatic Generation Control or AGC).
- 1.4 Manitoba Hydro is able to make such offers by virtue of the Blanket Export Permit.
- 1.5 A copy of the Blanket Export Permit and a copy of the letter issued by the NEB therewith (NEB Letter) are attached as Exhibit "A". The Blanket Export Permit and the NEB Letter continue in full force and effect as of the date on which this Complaint was filed with the Commission.¹
- 1.6 Manitoba Hydro is required by the provisions of the *Canadian Energy Regulator Act* SC 2019, c 28, (*CER Act*) and the express terms and conditions of the Blanket Export Permit to provide Fair Market Access to domestic buyers who meet the applicable eligibility criteria.

¹ Regulations made under the *National Energy Board Act* RSC 1985, c N-7, remain in force under the *Canadian Energy Regulator Act* unless and until amended or replaced by regulations promulgated under the *Canadian Energy Regulator Act*. Every decision or order made by the National Energy Board is considered to have been made under the *Canadian Energy Regulator Act* and may be enforced as such. Every certificate, license or permit issued by the National Energy Board is considered to have been issued under the *Canadian Energy Regulator Act*. See <https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/index.html>

1.7 The CER Act provides that:

*Section 359(2)*²

[The Commission] must take into account:

(a) the effect of the exportation of the electricity on provinces other than that from which the electricity is to be exported;

(b) whether the applicant has

(i) informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale, and

(ii) given an opportunity to buy electricity on conditions as favourable as the conditions specified in the application to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada; and

(c) any factors that are specified in the regulation.

Section 355

A person must not export electricity except in accordance with a permit issued under section 356 or a licence issued under section 361.

Section 363

Every permit and licence is subject to the condition that the provisions of this Act and its regulations, as well as every order made under this Act, will be complied with.

Section 366(1)

The Commission may, by order, suspend or revoke a permit or licence issued in respect of the exportation of electricity if the holder applies for or consents to the revocation or suspension or the holder has contravened a condition of the permit or licence.

1.8 The requirements of s 359(2) of the CER Act are referred to as Fair Market Access or FMA. To help people understand the requirements of FMA, the NEB published Guidance Notes titled "Frequently Asked Questions About Fair Market Access", which the CER continues to publish. A copy of those Guidance Notes has been attached as Exhibit "B" to this Complaint (Guidance Notes).³

1.9 NorthPoint has taken all reasonable steps to resolve its dispute with Manitoba Hydro

² These provisions are essentially the same as paragraph 119.06 (2)(c) of the *National Energy Board Act*, now repealed, under which the Blanket Export Permit and the NEB Letter were issued.

³ See <https://www.cer-rec.gc.ca/en/about/acts-regulations/cer-act-regulations-guidance-notes-related-documents/electricity-export-applications/frequently-asked-questions-fags-about-fair-market-access.html>

and has concluded that, without the direction of the Commission, a resolution will not be found.

2. REGULATORY REQUIREMENTS

2.1 The CER receives two types of electricity export applications, and the assessment of FMA⁴ depends on the type of application submitted:

2.1.1 contract specific applications, in which an applicant is able to specify the terms and conditions of the proposed export, usually through providing the proposed export contract; and

2.1.2 blanket export applications, in which applicants request an export permit without having pre-negotiated export contracts in place.

2.2 Since FMA cannot be assessed when an application for a blanket electricity export permit is before the CER, the Commission may impose a condition that obligates the applicant exporter to provide FMA throughout the term of its blanket export permit.

2.3 The Blanket Export Permit contains such a condition⁵ in paragraph 5:

5. *For sales transfers, Manitoba Hydro shall not export energy hereunder, without first:*

(i) informing those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes available for sale; and

(ii) giving an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports, to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.

2.5 According to Section 5 of the Guidance Notes, a domestic purchaser is eligible to be provided FMA if it can demonstrate it wishes to purchase electricity for consumption in Canada, it has access to the requisite transmission capacity, and it has the legal ability to effect the purchase. Furthermore, it must communicate to the exporter its interest in purchasing energy from the exporter along with the particulars of its proposed transaction.

2.6 Exporters, in turn, must ensure that eligible domestic buyers are kept informed about the electricity available for sale to external markets, but they are not required to provide FMA in respect of other types of exports such as border accommodations, storage transfers, adjustments or carrier transfers.

⁴ Paragraph 9(r) of the *National Energy Board Electricity Regulations* SOR/97-130 requires the applicant to describe the manner in which it will provide FMA to persons who have demonstrated an interest in buying electricity for consumption in Canada.

⁵ Blanket export permits issued by the CER typically contain similar language.

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- 2.7 The Commission has not been prescriptive in determining the procedures for providing FMA. The onus is on both the exporter and the domestic buyer to keep each other informed about their respective intentions to sell and purchase electricity and to bargain with each other in good faith. Allowing adequate time for negotiation is an integral part of FMA.
- 2.8 Section 6 of the Guidance Notes makes clear that no eligible domestic buyer has a right of first refusal which would allow it to intercept the proposed exports. Rather it is the existence of an equal opportunity and an onus on both parties to negotiate in good faith that are the essential elements of FMA.
- 2.9 The Preamble of the Blanket Export Order states in part:

“AND WHEREAS the Board is satisfied that the parties interested in buying electricity for consumption in Canada will be given fair market access to any electricity proposed for export under this Permit, as conditioned;

“AND WHEREAS the Board is satisfied that the proposed exports will not cause any unacceptable effects on provinces other than those from which exports will occur;”

However, the reality that has emerged since the Blanket Export Permit was issued honours neither of these Preamble statements. Manitoba Hydro has not provided NorthPoint with fair market access, and as a result, the province of Saskatchewan has been unable to negotiate for the competitively priced, non-emitting hydropower being exported under the Blanket Export Permit.

3. EVIDENCE SUPPORTING THE COMPLAINT

- 3.1 This Complaint is supported by the evidence set forth in the Affidavit of Dean Jones (Jones Affidavit) and the Affidavit of Lain Lovelace (Lovelace Affidavit), including in each case, the Exhibits respectively attached thereto. The Jones Affidavit and the Lovelace Affidavit have been filed with the Commission in conjunction with this Complaint.
- 3.2 The terms and conditions of MISO DA Energy Offers are more favourable to MISO than the terms and conditions of the day ahead (DA) sales offers made available by Manitoba Hydro to NorthPoint.
- 3.3 The Jones Affidavit provides evidence of the price premium demanded of NorthPoint by Manitoba Hydro as well as the disadvantageous terms and conditions offered to NorthPoint compared to those of the MISO DA Energy Offers.
- 3.4 In paragraph 20 of the Jones Affidavit, Mr. Jones states that:

“20. As shown in Exhibit “C”, over the approximately 5 years for which data were collected, the premium demanded by Manitoba Hydro and paid by NorthPoint has been as high as \$161.00/MWh; the weighted average premium was \$27.97/MWh; and the total premium paid by NorthPoint equalled \$937,919.00.”

3.5 In paragraph 21 of the Jones Affidavit, Mr. Jones states that:

"21. As shown on Exhibit "D", over the approximately 2.5 years for which data were collected, the premium quoted by Manitoba Hydro has been as high as \$97.00/MWh; the weighted average premium quoted was \$24.66/MWh; and the total premium demanded by Manitoba Hydro equalled \$283.080.00."

3.6 In paragraph 12 of the Lovelace Affidavit, Mr. Lovelace states that:

"12. Due to the denial by Manitoba Hydro of FMA to NorthPoint, SaskPower incurs costs that are financial as well as strategic in nature. The Jones Affidavit gives the details pertaining to the financial costs incurred by SaskPower, which are substantial and include both out-of-pocket as well as opportunity costs. My focus in this Affidavit is on the costs borne by SaskPower that are more strategic in character, that flow from the failure by Manitoba Hydro to discharge its FMA obligations to NorthPoint."

3.7 In paragraphs 20 and 21 of the Lovelace Affidavit, Mr. Lovelace states that:

"20. SaskPower must overcome significant challenges to reach the emissions targets which lay before it. Doing so will require a substantial and costly overhaul of its fleet to replace coal-fired generation with non-emitting sources such as geothermal, wind, solar, hydro and nuclear; and low-emitting sources such as natural gas. SaskPower's strategy is multi-pronged: building replacement generation, entering into power purchase agreements with independent power producers, and purchasing renewable power from its neighbours, especially hydropower from Manitoba Hydro."

"21. SaskPower could accelerate its emissions reductions and provide more affordable power to its ratepayers if Manitoba Hydro would provide Fair Market Access to SaskPower. Instead, Manitoba Hydro is selling low-cost, low-emitting power to the United States to the exclusion of a Canadian jurisdiction, for no discernible benefit to Manitoba Hydro."

3.8 NorthPoint has requested and continues to request Manitoba Hydro sell energy to NorthPoint, provide load following service, or both on terms and conditions at least as favourable as Manitoba Hydro's MISO DA Energy Offers.

3.9 Manitoba Hydro has refused and continues to refuse Northpoint's requests and, in fact, demands significant premiums over the MISO DA Energy Offers. By so doing, Manitoba Hydro has failed to provide Fair Market Access to NorthPoint.

3.10 Manitoba Hydro justifies its position with the claim that the day ahead product it is selling to NorthPoint is superior to the MISO DA Energy Offers it provides to MISO. In NorthPoint's view, as evidenced by the Jones Affidavit and the Lovelace Affidavit, Manitoba Hydro's justification fails on close examination.

4. RELIEF REQUESTED

- 4.1 NorthPoint requests that the Commission
- 4.1.1 require Manitoba Hydro to file with the Commission and provide unredacted copies to NorthPoint of the contracts and information outlined in Paragraph 6 of the Blanket Export Permit; and
 - 4.1.2 exercise its authority under s 68 of the *CER Act* to investigate whether Manitoba Hydro has failed or refused to provide FMA to NorthPoint; thereby failing to comply with the *CER Act* and the terms and conditions of the Blanket Export Permit.
- 4.2 If the Commission finds that Manitoba Hydro has not complied with its FMA obligations owed pursuant to the *CER Act*, the Blanket Export Permit, or both, NorthPoint requests that the Commission exercise its authority pursuant to s 68, s 69 and s 366 of the *CER Act* to:
- 4.2.1 Direct Manitoba Hydro to provide Fair Market Access to NorthPoint and, more specifically, direct it to engage in good faith negotiations with NorthPoint and thereby allow NorthPoint to compete fairly for the purchase of one or both of the following:
 - (a) the energy from time to time offered pursuant to MISO DA Energy Offers on terms and conditions at least as favourable as those therein; and
 - (b) the load following service offered in conjunction with Manitoba Hydro's MISO DA Energy Offers on terms and conditions at least as favourable as those therein.
 - 4.2.2 Alternatively, suspend or revoke the Blanket Export Permit.
- 4.3 Such other or additional remedies as the Commission may order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 9 day of November 2023.

NorthPoint Energy Solutions Inc.
by its Representative
Philip H. Davies Professional Corporation

per: - original signed by -

Philip H. Davies LL.B, ICD.D, Q.Arb.
Principal

Please direct all communications to NorthPoint with respect to this Application as follows:

Philip H. Davies

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National Energy
Board



Office national
de l'énergie

File OF-EI-Elec-M180-2015-02 01
30 July 2015

Ms. Audrey Penner,
Market Access and Regulatory Affairs Officer
Manitoba Hydro-Electric Board
360 Portage Ave (16)
Winnipeg, MB R3C 0G8
Facsimile 204-360-6137

Ms. K. Jennifer Moroz
Legal Counsel
Manitoba Hydro-Electric Board
360 Portage Ave (22)
Winnipeg, MB R3C 0G8
Facsimile 204-360-6147

Dear Ms. Penner and Ms. Moroz:

Manitoba Hydro-Electric Board's application dated 29 May 2015 for authorization to export electricity pursuant to Section 119.03 of the *National Energy Board Act*

On 29 May 2015, the Manitoba Hydro-Electric Board (Manitoba Hydro) applied to the National Energy Board (Board) for authorization to export a combined maximum of 33 190 000 MW.h of firm and interruptible energy annually for a period of ten years.

The Board has decided, pursuant to section 119.03 of the *National Energy Board Act*, to issue an electricity export permit to Manitoba Hydro for firm and interruptible energy exports, subject to the conditions included in the attached Permit. The terms of the attached permit EPE-404 will commence on 1 November 2015 and end on 31 October 2025.

The Board reminds Manitoba Hydro that, pursuant to Section 8 of the *National Energy Board Export and Import Reporting Regulations*, within 15 days after the end of each month during the term of the permit, Manitoba Hydro shall file with the Board a report, in such form and detail as the Board may specify, setting forth for that month information pertaining to transactions under the permit.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Attachment



PERMIT EPE-404

IN THE MATTER OF section 119.03 of the *National Energy Board Act* (the Act) and the regulations made thereunder, and

IN THE MATTER OF an application by the Manitoba-Hydro-Electric Board for authorization to export electricity, filed with the National Energy Board (Board) under File OF-EI-Elec-M180-2015-02 01.

BEFORE the Board on 30 July 2015.

WHEREAS in an application dated 29 May 2015 the Manitoba Hydro-Electric Board (Manitoba Hydro) requested authorization to export firm and interruptible energy from Canada to the United States of America;

AND WHEREAS Manitoba Hydro published a notice of application and directions on procedure in both English and French in the *Canada Gazette*, Part I on 30 May 2015; in English in the *Winnipeg Free Press* on 30 May 2015; and in French in *La Liberté* on 3 June 2015;

AND WHEREAS on or about 29 May 2015, Manitoba Hydro served a copy of the notice of the application and directions on procedure together with a copy of its application on: the Saskatchewan Power Corporation, the (Ontario) Independent Electricity System Operator and Hydro One Networks Inc.;

AND WHEREAS no interventions or submissions were received from interested parties regarding the application;

AND WHEREAS the Board is satisfied that the parties interested in buying electricity for consumption in Canada will be given fair market access to any electricity proposed for export under this Permit, as conditioned;

AND WHEREAS the Board is satisfied that the proposed exports will not cause any unacceptable effects on provinces other than those from which exports will occur;

AND WHEREAS the Board has determined, after considering the information provided by Manitoba Hydro, that further public review of the application is not warranted;

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- 2 -

IT IS ORDERED THAT Manitoba Hydro be and is hereby authorized to export firm and interruptible energy between Canada and the United States of America, subject to the following terms and conditions:

1. The term of this Permit shall commence on 1 November 2015 and shall end on 31 October 2025.
2. The classes authorized hereunder shall be for sales, exchange, storage, carrier and adjustment transfers.
3. The energy to be exported hereunder may be transmitted over any of the international power lines located in Canada for which the Board has issued, or will issue, a Certificate of Public Convenience and Necessity, or a Permit.
4. The combined maximum of firm and interruptible energy that may be exported hereunder shall not exceed 33 190 000 MW.h in any consecutive 12 month period.
5. For sales transfers, Manitoba Hydro shall not export energy hereunder, without first:
 - i. informing those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes available for sale; and
 - ii. giving an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions which apply to the proposed exports, to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.
6. For sales transfers, Manitoba Hydro shall:
 - i. for exports of less than one month duration, subsequent to the commencement of an export, inform all accessible Canadian purchasers, upon request, of the terms and conditions under which a particular export was made, and, upon request, file the terms and conditions with the Board; and
 - ii. for exports of one month or more in duration, or a series of similar consecutive exports of less than one month in duration to the same customer that together exceed one month or more in duration, file with the Board, within 15 consecutive days of execution, a copy of any specific contractual arrangements associated with an export and, upon request, serve a copy thereof on requesting accessible Canadian purchasers.

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- 3 -

7. Manitoba Hydro is directed to maintain a file until 31 October 2026, for Board inspection, of all contracts entered into under this permit, for the period commencing 1 November 2015 and ending on 31 October 2025.

NATIONAL ENERGY BOARD

Original signed by

Sheri Young
Secretary of the Board



Canada Energy
Regulator

Régie de l'énergie
du Canada

Home > About Us > Acts and Regulations

CER Act – Regulations, Guidance Notes and Related Documents
> Frequently Asked Questions (FAQs) about Fair Market Access

Frequently Asked Questions (FAQs) about Fair Market Access

18 August 2009 Version 1

1. What is Fair Market Access?

Paragraph 119.06 (2)(c) of the *National Energy Board Act* (NEB Act) requires that the Board consider whether an applicant for an electricity export permit has:

- i. Informed those who have declared an interest in buying electricity for consumption in Canada of the quantities and classes of service available for sale; and
- ii. Given an opportunity to purchase electricity on terms and conditions as favourable as the terms and conditions specified in the application to those who, within a reasonable time after being so informed, demonstrate an intention to buy electricity for consumption in Canada.

These requirements are referred to as fair market access (FMA). FMA is considered, along with other criteria, in determining whether to recommend to the Minister of Natural Resources that an application be designated for a licensing procedure, which would involve a public hearing.

2. How does the NEB consider FMA requirements?

The Board receives two types of electricity export applications for which FMA is relevant. Contract specific applications are those applications in which an applicant is able to specify the terms and conditions of the proposed exportation of electricity, usually through providing the proposed export contract. Another type of application the Board receives is referred to as a "blanket" export application whereby applicants request an export permit without having pre-negotiated export contracts in place. The assessment of FMA varies based on the type of application submitted.

Paragraph 9(q) of the *National Energy Board Electricity Regulations* (SOR/97-130) (Electricity Regulations) requires that applicants provide a description detailing the manner in which FMA was provided to persons who have demonstrated an interest in buying electricity for consumption in Canada. When contract specific applications are received, the information filed in support of FMA is assessed during the application examination process.

Paragraph 9(r) of the Electricity Regulations requires that applicants describe the manner in which they will provide FMA to persons who have demonstrated an interest in buying electricity for consumption in Canada if the application does not specify the terms and conditions of the proposed exportation. Since FMA cannot be assessed at the time of application for a blanket electricity export permit, as no contracts are yet in place, the Board developed a standard condition that obligates exporters to provide FMA throughout the term of the permit.

3. Who is eligible to be provided FMA?

Domestic buyers refers to parties purchasing electricity for consumption in Canada. All domestic buyers are eligible to be provided FMA as long as such buyers have access to the transmission system within Canada and have the legal ability to effect a purchase^[1]. The granting of the legal ability to purchase electricity from the wholesale electricity markets for domestic consumption is a matter within provincial jurisdiction.

4. What types of exports require FMA?

Exporters are required to provide FMA to prospective domestic buyers for sales transfers only. The following are other types of export related activities that do not require FMA:

- Border accommodations are limited volume sales to parties in the United States who lack access to services from the U.S. power system, or to works that are located in part in Canada and in part in the United States;
- Equichange and storage transfers do not involve a net export to the United States; and

[1] To view a Board decision [Filing A21698] that includes discussion on FMA eligibility, see the decision regarding the 13 December 1995 application by British Columbia Power Exchange Corporation available on the Board's website.

- Adjustment and carrier transfers are limited to those parties that offer transmission services to exporters. These types of transfers are the result of physical and interconnected system operations and are not sales transfers.

5. What procedures should exporters use to provide FMA?

The Board has not been prescriptive in determining the procedures for providing FMA. FMA entails certain responsibilities for the domestic buyer and certain responsibilities for the exporter. Exporters must ensure that potential domestic buyers are kept informed about the electricity available for sale to external markets. The domestic buyer must demonstrate a serious intent to purchase by, for example, telling the exporter the class of

service it is interested in buying, the quantities it is interested in buying, and the period of the proposed purchase. The onus is on both the exporter and the domestic buyer to keep each other informed about intentions to sell and purchase electricity and to bargain in good faith.

FMA procedures would be expected to vary based on the circumstances surrounding the proposed sale such as: the dynamics of the electricity market and market participants; the sales contract term length; volumes available; and whether the electricity available is interruptible or firm. For example, the marketing approach taken to satisfy FMA requirements when offering interruptible one-day energy for sale would likely differ from the marketing approach taken when offering 20-year firm energy for sale. It is important to note that the provision of adequate time for negotiation^[2] is an integral part of FMA. In essence, during the energy marketing process, when a domestic buyer is interested in buying electricity and has demonstrated a willingness to negotiate the purchase of a class of service that is similar to that being considered by an exporter for sale to an export customer, then the exporter should ensure that the domestic buyer has an opportunity to negotiate terms and conditions (including price) no less favourable than those being offered to export customers.

6. Do domestic buyers have a right of first refusal?

The requirement to provide FMA does not oblige an applicant to carry out any specific procedure such as allowing interception of its proposed exports^[3]. Rather it is the

[2] To view a Board decision [Folder 94293] that discusses adequate time for negotiation, see the decision regarding the 14 March 1991 application by The Manitoba Hydro Electric Board available on the Board's website.

[3] See Board decision [Folder 94300] regarding 27 August 1991 application by The Manitoba Hydro Electric Board available on the Board's website.

existence of an equal opportunity and an onus on both parties to negotiate in good faith that are the essential elements of FMA.

7. How can a domestic buyer assess whether FMA was provided?

There are a number of mechanisms to gain knowledge of electricity sales within a province and in adjacent electricity markets.

There is a significant amount of information regarding electricity exports available to the public. The NEB publishes monthly export statistics on its website as well as offering a number of publications on Canadian electricity markets. Many provincial and American bodies publish detailed information on their respective local electricity markets. In addition, some electricity markets have standard power purchase agreements and electronic trading platforms available.

If a party is concerned that FMA was not provided in a particular case, it may request that the Board require the exporter to provide access to the specific export sales contract. Examining an export sales contract may provide a domestic buyer with the necessary information to make arguments with respect to their ability to purchase electricity in Canada on terms and conditions similar to those of proposed exports. Should a request be made to the Secretary of the Board to examine an electricity export contract, the contract will be treated in a manner consistent with the Board's legal obligations pursuant to the *Access to Information Act*^[4].

8. If a domestic buyer feels it was not provided FMA, what recourse is available?

They can notify the Secretary of the Board of their concerns in writing and an appropriate process will be determined to inquire into the matter. There are two points at which a complaint could be received:

1. If the complaint is received during an export application process for a contract specific export permit, the Board will consider the evidence and determine whether it should issue an export permit or recommend to the Minister that the application be designated for a licensing procedure in which case, a public hearing into the matter would be held.
2. If the complaint is received after a blanket export permit has been issued, the Board will investigate whether the permit holder is in non-compliance with the condition that requires it to provide FMA to domestic buyers. Section 119.093 of

[4] See question #9 for further information.

the NEB Act allows the Board to revoke or suspend an export permit when the permit holder has contravened or failed to comply with a term or condition.

9. Can export contracts be filed in confidence with the Board?

All applications are public and are filed on the NEB website unless accompanied by a request for an order of confidentiality under Section 16.1 of the NEB Act.

For contract specific permit applications, paragraph 9(g) of the Electricity Regulations requires applicants to file a copy of any electricity transfer agreement that covers the proposed exportation of electricity. If an exporter wishes to file an export contract in confidence, it should request confidentiality under Section 16.1 of the NEB Act and provide the reasons why the contract should be kept confidential. The Board may also set up a process asking for comments from others who may have a view on whether a Section 16.1 order should be granted. After considering all comments, the Board would make its decision on whether or not to issue such an order.

For blanket electricity export permits, electricity transfer agreements are not included in the application as they are not yet in place. As a consequence, a condition is placed on the export permit that requires certain sales contracts to be filed after they are executed. As a matter of practice, contracts are not

placed on the NEB website. Should there be a request from a third-party seeking access to examine the export contract(s), it will be treated in a manner consistent with the Board's legal obligations pursuant to the *Access to Information Act*. The exporter involved will be provided the opportunity to make submissions prior to disclosure of the contract(s). Such submissions could relate to the need to keep the contracts, or certain aspects of the contracts, confidential from third parties.

10. If I wanted to learn more about FMA, what past Board decisions could I review?

The Board has issued over 300 permits since the NEB Act was changed to incorporate the 1988 Canadian Electricity Policy including the concept of FMA. While the following list is not exhaustive, it represents a number of applications or decisions in which FMA matters were discussed at length:

Contract Specific Electricity Export Applications:

EPE-33 to EPE-35, Manitoba Hydro Electric Board, June 1992 [Filing A21362]
EPE-41 to EPE-44, BC Hydro and Power Authority and BC Powerex, December 1992
[Folder 94175]

EPE-45 and EPE-46, Manitoba Hydro Electric Board, March 1993 [Folder 94300]
EPE-52, Manitoba Hydro Electric Board, 10 December 1993
[Filing A21694]

EPE-92, BC Powerex, 13 September 1996 [Filing A21698]
EPE-224, Manitoba Hydro Electric Board, 23 January 2003 [Filing A20410]

Blanket Electricity Export Applications:

EPE-64 and EPE-65, Hydro Quebec, December 1994 [Folder 94260] EPE-116 to EPE-119, BC Powerex, 1 October 1998 [Filing A21725]

EPE-129 and EPE-130, Marketing D'Energie HQ Inc., 8 April 1999 [Filing A21781]

Date modified:

2020-09-29
