



UE21704

**IN THE MATTER of an Inquiry into
Current and Pending Electricity
Transmission Access Rules in Other
Jurisdictions.**

Report to Executive Council

November, 2003



**THE ISLAND REGULATORY AND
APPEALS COMMISSION**

UE21704

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Letter of Transmittal



November 14, 2003

Hon. Jamie Ballem
Minister of Environment & Energy
Government of Prince Edward Island
P.O. Box 2000
Charlottetown, PE C1A 7N8

Sir:

Re: Inquiry into Current and Pending Electricity Transmission Access Rules

Pursuant to Section 23 of the *Maritime Electric Company Limited Regulation Act*, R.S.P.E.I. 1988, Cap. M-1.2, and Order in Council EC2003-467, our Report to Executive Council in this matter is enclosed.

Yours very truly,

(Sgd.) Ginger Breedon

Ginger Breedon
Chair & Chief Executive Officer

1. Introduction

By Order in Council EC2003-467, the Lieutenant Governor in Council directed the Commission, pursuant to Section 23 of the *Maritime Electric Company Limited Regulation Act*, R.S.P.E.I. 1988, Cap. M-1.2, to inquire into, and report on, the following matters relating to electricity generation and transmission access:

- Current electricity generation and transmission access opportunities (direct or indirect) open to cities, towns or municipalities as well as large industrial customers within Nova Scotia, New Brunswick and the New England States;
- Pending and probable changes to current electrical generation and transmission access within these jurisdictions;
- Current or contemplated transmission access opportunities in other jurisdictions which do not now exist on P.E.I.; and
- Any other matter the Commission may consider relevant to the issue.

The Lieutenant Governor in Council further directed that the Commission's report be filed by November 14, 2003.

2. Process

As part of the Inquiry, the Commission retained the services of John Murphy, M.B.A., P.Eng., ("Murphy" or "Research Consultant") a consultant with extensive experience in the area of electric utility regulation, to provide research assistance to the Commission and to prepare a detailed report on transmission access rules and processes provided in other jurisdictions. More specifically, Murphy was directed to:

- (1) Provide a detailed (chronological) history of electricity generation and transmission access within the framework of initiatives by the United States Federal Energy Regulatory Commission (FERC), including the impact these FERC initiatives have had on Canadian Jurisdictions.
- (2) Provide any available information relating to the possible future direction of FERC on these matters, based on any known work-in-progress and in the planning stages. Include discussion relating to what may have been learned by past mistakes, and corrective action that may be taken by FERC.
- (3) Provide a discussion relating to changes that were required in state and provincial legislation as a result of initiatives by FERC.
- (4) Provide a general discussion regarding the role of Municipal Electric Utilities throughout North America, including their access to generation and transmission assets owned by other utilities.
- (5) Summarize the regulatory framework relating to generation and transmission access by municipal utilities and large industrial customers, and pending and/or probable changes relating to such access:
 - i. In general terms for jurisdictions in the US and Canada.
 - ii. In detailed terms for Nova Scotia, New Brunswick and the New England States.
- (6) Provide information regarding the methodology used to assign costs to utilities for use of generation and transmission facilities owned by other utilities:
 - i. In general terms for jurisdictions in the US and Canada. (Some Specific Examples)
 - ii. In detailed terms for Nova Scotia, New Brunswick and the New England States.
- (7) Summarize transmission access opportunities existing or being contemplated in other jurisdictions which do not currently exist on P.E.I.

(8) Report on any other related matters relevant to the investigation.

The Research Consultant's report to the Commission is included herein as Appendix 2.

3. Background

- What is Transmission Access?

Electricity provided to most consumers by a public utility is transmitted from the source or point where it is generated or purchased via a system of transmission and distribution lines. The transmission system is generally comprised of high voltage lines and equipment of a public utility that run between the sources or points of supply and the points at which electricity is transformed to lower voltages for further distribution to customers.

Most customers of a public utility obtain their electricity from lower voltage distribution lines. Certain large customers may connect directly to the higher voltage transmission system. Public utilities themselves interconnect at the transmission level and buy and sell electricity for resale.

Recent federal initiatives in the United States and the desire on the part of Canadian public utilities to sell into the US market have resulted in the adoption, in many jurisdictions in Canada, of a US requirement for open transmission access. Under the US requirement, public utilities and, in certain instances, large customers can access another utility's transmission system for the purpose of buying and selling electricity from someone other than the utility that owns the system.

In simple terms, open transmission access means that a utility must provide transmission services over its transmission system to another utility or large customer where that other utility or large customer wants to purchase or sell electricity from or to someone else. This, in turn, means that, where adequate transmission facilities are already available, there is no need for other utilities or large customers to build additional transmission lines and equipment. Open transmission access also allows for access to generating facilities that might not otherwise be readily available.

Under open transmission access, transmission service is provided at a rate (i.e. a cost to the user) that fairly compensates the owner of the transmission system. Open transmission access is fundamental to the restructuring of the electricity supply industry which is currently underway in most areas of North America.

This report is limited to the issue of open transmission access. The broader and more complex issue of industry restructuring, with a move away from vertically integrated monopoly suppliers of generation, transmission and distribution services, is beyond the scope of this inquiry.

● Historical Development

Rules either now established or those currently under development or consideration in Canada for open transmission access generally follow the requirements of the US Federal Energy Regulatory Commission ("FERC")¹. FERC's involvement in transmission access began in 1996 when it issued Orders 888 and 889 directing utilities under its jurisdiction to file Open Access Transmission Tariffs (OATTs) allowing for non-discriminatory open access to transmission systems by third parties.

In Canada, utilities operating in the majority of Canadian provinces have either implemented, or will soon implement, FERC compliant OATTs. In essence, FERC requirements must be met by Canadian utilities wishing to access the US transmission network and, in effect, the US power market. It is generally believed that the application of uniform rules and standards in the area of transmission access—whether FERC mandated or not—should result in long-term benefits to utilities and, ultimately, consumers through easier and fairer access to generation resources available in other jurisdictions.

The basic requirements of a FERC compliant OATT are described by the Research Consultant this way:²

FERC follows generally accepted rate making principles similar to [that which] any jurisdiction would be expected to develop on its own initiative.

The objectives relating to Open Access Transmission are:

- (1) All customers must be given access on the same terms and conditions;*
- (2) Transmission Rights must be allocated fairly; and*
- (3) Rates must be consistent with FERC's Transmission Pricing Policy Statement.*

FERC's Transmission Pricing Policy Statement issued on October 26, 1994 specified five principles regarding the pricing of transmission services.

Transmission Pricing:

- (1) Must meet the traditional revenue requirement.*
- (2) Must reflect comparability.*
- (3) Should promote economic efficiency.*
- (4) Should Promote Fairness, and*
- (5) Should be practical.*

FERC defines 3 steps in the rate design process as:

- *Establishment of the revenue requirement*
- *Allocation of the revenue requirement to various services, and*
- *Recovery of costs from each customer class*

The final requirements for a FERC-compliant OATT continue to evolve. In addition to the establishment of an OATT, utilities are required to establish and maintain an open access same-time information system (OASIS) where it must post, for the use of its transmission service customers, information on the status of the transmission system as well as available capacity and pricing. FERC's recently announced Wholesale Power Market Platform requires, among other things, utility

¹ Detailed information on FERC's influence in the Canadian marketplace can be found in Appendix 2.

² Appendix 2, p.3

membership in an independent regional transmission organization (RTO) or independent system operator (ISO) who will be responsible for the overall operation of the transmission system and the administration of the transmission tariff.

In summarizing the evolution of open transmission access, the Research Consultant notes as follows:³

In a sequence of orders, FERC has attempted to progressively work towards a set of market rules for transmission access that will provide fair and non-discriminatory access to all.

The principles and pricing policies used by FERC in the approval process for the Open Access Transmission Tariff follow generally accepted rate making principles utilized by most regulatory agencies. Following FERC's approach for setting transmission tariffs in order to meet reciprocity requirements has not been found to be a burden for Canadian utilities. The entire North American Continent, including Canada and Mexico generally have or are in the process of implementing Open Access Transmission Tariff designs that are compliant with FERC principles.

Rules relating to the controversial subject of Transmission Rights are being reviewed with the objective of reaching common treatment and fairness to customers based on existing contract rights and historical usage.

There has not been a requirement, to date, to approve an Open Access Transmission Tariff for Prince Edward Island. However, it is important that the principles contained in the FERC process and being adopted throughout most of North America, including fairness to all customers, be taken into account during the determination of rates for bilateral contracts for transmission usage in Prince Edward Island.

It is clear from the Research Consultant's work that the concept of open transmission access is being adopted throughout North America.

4. Open Transmission Access Availability

• New England

With the exception of the State of Vermont, New England has open transmission access with FERC compliant OATTs and both wholesale and retail competition. Municipal utilities and all large industrial customers may contract with any generating or marketing company for their supply of electricity, with transmission services available over an existing transmission system under an OATT.

In Vermont, transmission access is available at the wholesale level and municipal utilities may purchase power and take delivery of power under an OATT.

³ Appendix 2, p.5

- **New Brunswick**

Effective September 30, 2003, New Brunswick's three municipal electric utilities and industrial customers served off of NB Power's transmission system at the 69 kV or higher voltage level have the option to purchase electricity from any supplier, through the existing transmission system, based on an OATT. Similarly, any power producer in New Brunswick located near the NB Power transmission system has access to the transmission system and can sell its electricity to any customer on the power grid. Electricity can be sold into the US market provided the exporter holds a power marketing authority license from FERC.

- **Nova Scotia**

In a report⁴ released on October 23, 2003, the Nova Scotia Electricity Marketplace Governance Committee (EMGC) issued a number of recommendations to the Government of Nova Scotia on issues relating to open transmission access, among others. At the present time, Nova Scotia's principal supplier of electricity, Nova Scotia Power Inc. (NSPI) does not have an OATT.

The EMGC has initially recommended that a non-FERC compliant OATT be established by NSPI and that it be limited to the Province's municipal utilities, which comprise only 1.6% of the Province's peak demand for electricity. The EMGC has also recommended that the Government of Nova Scotia undertake a detailed analysis of the costs and benefits associated with broader electricity competition in Nova Scotia.

It is important to note that Nova Scotia, through the EMGC and the Province's Energy Strategy⁵, has adopted a gradual and cautious approach to both industry restructuring and open transmission access.

- **Prince Edward Island**

Since 1993, Maritime Electric's rates have been governed by the *Maritime Electric Company Limited Regulation Act*. Rates for Summerside Electric, which is owned by the City of Summerside, have been governed by the *City of Summerside Electric Utility Exemption Regulations* issued pursuant to the *Electric Power and Telephone Act*.

To date, there is has been no legislative or other requirement for either utility to develop an OATT.

⁴ Final Report, Province of Nova Scotia Electricity Marketplace Design Committee, Oct, 2003
<http://www.gov.ns.ca/petro/energystrategy/emgc>

⁵ *Seizing the Opportunity*, Nova Scotia's Energy Strategy, 2001
(<http://www.gov.ns.ca/energy/inside.asp?cmPageID=140>)

5. Conclusions

The work of the Commission's Research Consultant reveals that the issues surrounding the establishment of a FERC compliant OATT are both complex and evolving but also inevitable. Based on this work, it is apparent to the Commission that:

1. it will be necessary to move towards open transmission access in Prince Edward Island with the eventual goal of establishing a FERC compliant OATT. As Prince Edward Island is interconnected with the North American power grid, and as both Maritime Electric and Summerside Electric currently rely heavily on electricity imports to satisfy the needs of their customers, open transmission access will be necessary to access future electricity markets; and
2. the extent to which an OATT should apply to either Maritime Electric or Summerside electric, or to both, and whether open transmission access should be made available to large commercial or industrial customers of either or both utilities are matters that will require careful planning, analyses and public input.

The Commission also notes that the submarine cable interconnection for electricity transmitted between the mainland and Prince Edward Island is owned by the Province of Prince Edward Island and leased to Maritime Electric pursuant to an Interconnection Lease Agreement. In the Commission's view, the submarine cable interconnection should be considered an extension of the Maritime Electric transmission system in any possible future development of a Maritime Electric OATT.