Canadian Electricity Association | Association canadienne de l'électricité

Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives

Hearing on H.R. 3301, "The North American Energy Infrastructure Act"

Testimony of Jim Burpee
President & CEO, Canadian Electricity Association

Tuesday, October 29, 2013

Introduction

Mr. Chairman, Ranking Member and members of the subcommittee, thank you very much for the privilege of being here today.

My name is Jim Burpee and I currently serve as President & CEO of the Canadian Electricity Association ("CEA").[1] CEA is the authoritative voice of the Canadian electricity industry, promoting electricity as a key social, economic and environmental enabler that is essential to North America's prosperity. CEA members generate, transmit, distribute and market electric energy to industrial, commercial and residential customers across Canada and into the United States every day. Our diverse membership includes provincially-owned and investor-owned utilities, many of which are vertically-integrated; independent power producers (several of which also own assets in the United States); municipally-owned local distribution companies; independent system operators; and wholesale power marketers.

With one limited exception, CEA members do not hold Presidential Permits issued by the U.S. Department of Energy ("DOE") for U.S. segments of international power lines ("IPLs"). Rather, they are the holders of applicable permits for the segments located in Canada. Nevertheless, they are impacted by considerations related to the issuance of a Presidential Permit for the U.S. side of any given IPL. Moreover, many of our wholesale marketer members do hold DOE authorizations to export electricity to Canada.

CEA views the introduction of H.R. 3301 as an opportunity for broader dialogue on how well the respective permitting processes in Canada and the U.S. for IPLs and electricity exports are working, and on where there can be better synergies in the approaches utilized on either side of the border with the aim of deriving maximum efficiency, while protecting consumers and the environment. In that spirit, my remarks today will focus on the following topics: (1) the strength and benefits of the existing electricity relationship between Canada and the United States; (2) the

[1] This testimony represents the position of CEA as an organization, but not necessarily the views of any particular CEA member with respect to any issue.

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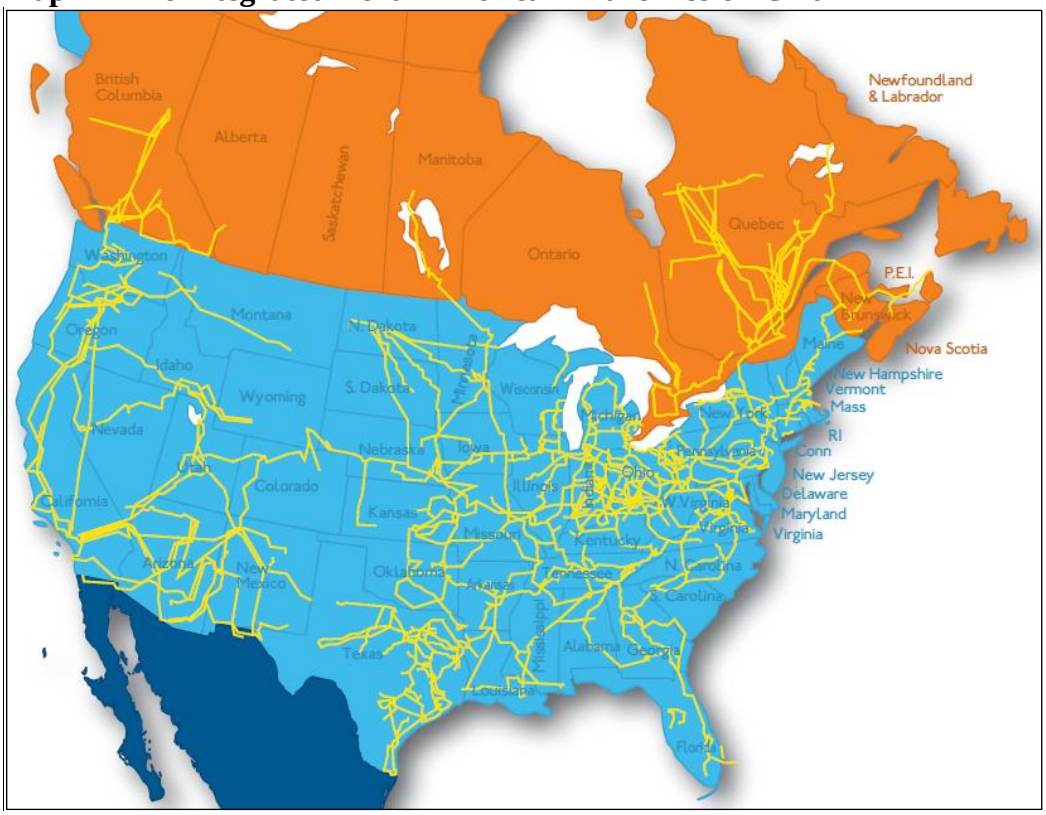
value of new IPLs in the current landscape of widespread need for electricity infrastructure investment; (3) recent modernization of Canadian legislation governing infrastructure development and the robustness of environmental reviews thereunder; and (4) alignment of Canadian and U.S. regulatory processes to enhance cross-border electricity infrastructure development and trade.

1. The Canada-U.S. Electricity Relationship

Electricity plays an integral role in the vibrant bilateral energy relationship, which itself is a pillar of the broader flow of two-way trade that is without compare anywhere in the world. There are more than 35 electric transmission interconnections between the Canadian and U.S. power systems, which together form a highly integrated North American grid (see Map 1 below).

These physical linkages offer numerous advantages to both countries: (1) higher level of reliable service for customers through enhanced system stability; (2) efficiencies in system operation; (3) efficiencies in fuel management; (4) opportunities to use power from nearby markets to address local contingencies; and (5) expanded access to low-carbon and competitively-priced resources.

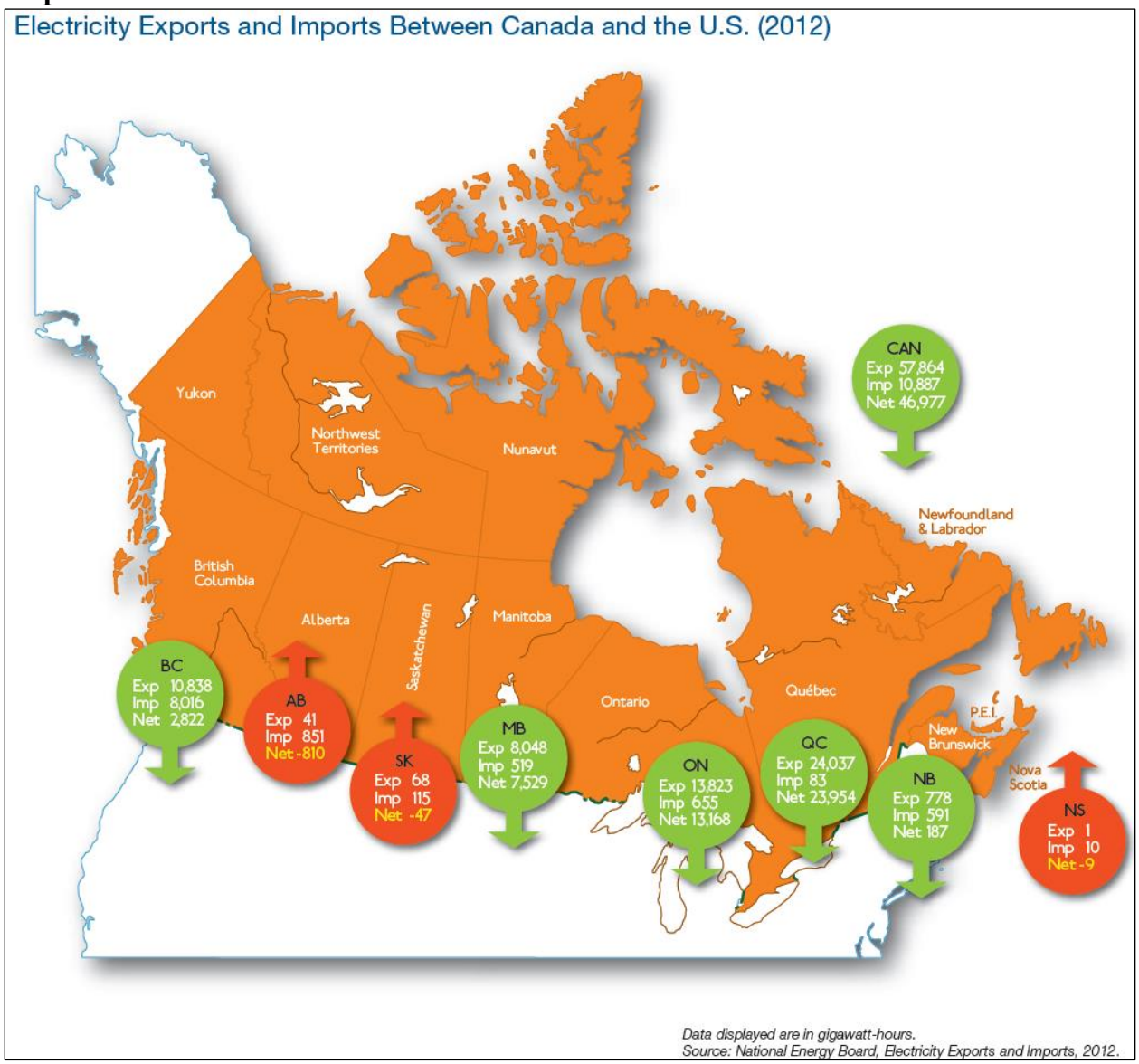
Map 1 – The Integrated North American Transmission Grid



Map copyright Canadian Electricity Association. Lines shown are 345 kilovolts ("kV") and above. There are numerous interconnections between Canada and the U.S. under 345 kV that do not appear on this map.

The linkages between the Canadian and U.S. grids have also enabled steady growth in a continent-wide electricity marketplace. Trade occurs at a range of points across and beyond the border, with supply fulfilling demand in an efficient, cost-effective manner (see Map 2 below).

Map 2



Map copyright Canadian Electricity Association.

<u>An Open, Inclusive Trading Regime</u>

Electricity trade between Canada and the U.S. usually goes unnoticed, reflecting how routine and reliable a transaction such exchanges have become. Likewise, the origin of the electrons being used is rarely considered. Crowds cheering on the Vancouver Canucks might never contemplate

that electricity generated in the U.S. could be illuminating the arena. And the manufacturer in Michigan may be unaware that electricity from Canada is powering its assembly line.

Historically, electricity exports to the U.S. have represented 5-10% of total electric generation in Canada. The majority of these exports involve the sale of surplus output from provinces with major hydropower resources, such as British Columbia, Manitoba and Québec. Export volumes from Ontario have also risen more recently, making the province the second largest exporter for several years. In 2012, nuclear and hydropower comprised just under 80% of Ontario's supply.[2]

The bulk of electrons delivered across the border from Canadian generators to U.S. customers are therefore derived from clean, non-emitting sources.

While a small share of overall U.S. power consumption is composed of imports from Canada, these sales are nevertheless critical to the U.S. supply mix in many areas along and beyond the border. For example, in 2010 exports from Canada represented the following percentages of total retail sales in these jurisdictions: Vermont, 38%; Maine, 18%; Minnesota and North Dakota (combined), 12%; New England (all states), 10%; New York, 6%; and Michigan, 6%.[3]

And while U.S. imports have varied over time, these purchases nevertheless play a key role in meeting the needs of Canadians and maintaining operational balance (for example, through such synergies as a summer-peaking system in New England and winter-peaking in eastern Canada).

Shared Rules for a Shared System

The physical and market linkages between our two countries are made possible by adherence to a common set of operational and commercial rules.

Foremost within this shared framework is the suite of mandatory electric reliability standards developed by the North American Electric Reliability Corporation ("NERC") for purposes of ensuring reliable operation of the integrated grid. Certified by the U.S. Federal Energy Regulatory Commission as the Electric Reliability Organization for the U.S., NERC has also been recognized as the appropriate body for standards development by applicable authorities in Canada. In 2002, the province of Ontario became the first jurisdiction in North America to make reliability standards mandatory and enforceable. Since then, all other provinces with a footprint in the larger North American bulk power system have crafted legislative, regulatory or other mechanisms to ensure standards are adopted and enforced within their borders.

Market coordination is also essential to ensuring a seamless, uninterrupted flow of electrons across our shared border. CEA members follow a common set of practices and protocols in order to transact with Independent System Operators, Regional Transmission Organizations and

[2] *See:* http://www.ieso.ca/imoweb/media/md_newsitem.asp?newsID=6323. [Retrieved October 22, 2013].
[3] *National Energy Board, Electricity Exports and Imports, 2010; Energy Information Administration, U.S. States, State Profiles and Energy Estimates, Exports and Imports, 2010*.

other market participants in the U.S.[4] Compliance with these terms ensures greater liquidity in wholesale and bilateral markets, and a greater diversity of supply options for customers throughout North America.

Diversity in the North American Supply Mix

And finally, as the data in Chart 1 below illustrate, Canada and the U.S. have very different generation mixes. These differences primarily reflect availability of resources, as different geographic regions have access to different fuel inputs. System integration and cross-border trade enables market participants to take advantage of the supply diversity between the Canadian and U.S. segments of the larger North American grid.

Chart 1

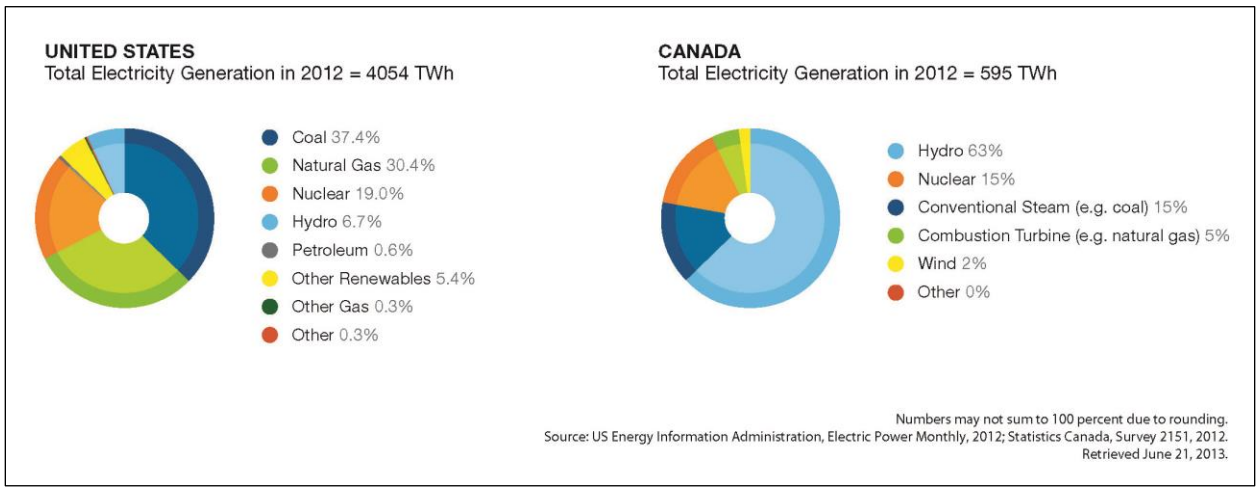


Chart copyright Canadian Electricity Association.

In sum, North Americans benefit from a shared system, serving as the backbone for the dynamic exchange of electrons which are generated and transmitted across vast distances to ensure a reliable, secure and affordable supply of electricity, 24 hours a day, seven days a week.

2. New Cross-Border Interconnections – A Valuable Component in the Portfolio of Necessary Electric Infrastructure Investments

As it has done in the past, ongoing and future expansion of the physical linkages between the Canadian and U.S. segments of the grid will yield significant benefits to consumers.

Facilitating the Transition to a Low-Carbon Economy

For starters, greater integration across the grid will help ensure that North America's clean energy potential is maximized, rather than left stranded. Table 1 below provides a summary of

[4] In fact, the province of Manitoba is located within the footprint of the U.S.-based Midcontinent Independent System Operator.

the multitude of IPL projects currently under various stages of development. All of the IPL proposals listed will support the development of clean, non-emitting energy resources, including resources located in the U.S. Completion of these projects will constitute a key effort in the ongoing transition towards a lower-carbon future, and will mark yet another important phase in the legacy of Canada and the U.S. playing to our integrated strengths to optimize the environmental performance of the international grid.

Table 1 – Current Canada-U.S. IPL Projects

Name	Sponsor	State-Province	Length (miles)	Voltage & Capacity	Purpose	In-service Date	Presidential Permit Status
Champlain Hudson Power Express	Transmission Developers Inc.	New York-Québec (QC)	333	1,000 MW, HVDC (submarine, underground, merchant)	Deliver hydro and wind energy from QC to New York City area	Fall 2017 (expected)	Application filed March 2010; issuance expected winter 2013/14
Great Northern Transmission Line	Minnesota Power (MP)	Minnesota-Manitoba (MB)	TBD	500 kV	Part of MP-MB Hydro PPA; supports building wind in ND	June 2020 (expected)	Application not yet filed
Lake Erie CleanPower Connector	Lake Erie Power Corp.	Pennsylvania-Ontario (ON)	TBD	1,000 MW, HVDC (submarine, merchant)	Deliver ON clean energy, boost reliability, reduce congestion	TBD	Application not yet filed
Montana-Alberta Tie Ltd.	Enbridge	Montana-Alberta	214	230 kV, 300 MW (merchant)	Connect wind farms in MT; bidirectional flow of wind energy	September 2013	Issued November 2008
Northern Pass	Northern Pass Transmission LLC	New Hampshire-Québec (QC)	187	1,200 MW, HVDC line with 345 kV AC spur	Deliver QC hydro into New England	Mid-2017 (expected)	Application filed October 2010; re-filed with new route July 2013
Soule River Hydroelectric Project	Soule Hydro, LLC	Alaska-British Columbia (BC)	10	138 kV, HVAC (submarine)	Support 77 MW hydro project in AK (sales to BC or Pacific NW)	TBD	Application filed March 2013

Source: http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2. [Retrieved: October 22, 2013].

Benefits for Reliability

An increase in the number of cross-border interconnections will also pay dividends in terms of system reliability. Reliability is essentially about two things – adequacy of supply and security of supply. IPLs assist in strengthening both, by offering customers on either side of the border more outlets to maintain sufficient resources for delivery and to withstand sudden disturbances or unanticipated losses in system equipment.

The enduring appeal of IPLs as advantageous options to pursue these benefits – as well as other benefits, specific to the economic needs and public policy interests of the local jurisdictions

involved – is borne out by the number of projects currently under consideration. And, in a broader context, the pursuit of these benefits is just one of the many factors underscoring a much larger need for significant investments in new electricity infrastructure. Other drivers include aging assets, population and demand growth, the proliferation of cyber and physical security threats, advances in technology, system congestion, and the evolving expectations of consumers – who rely more and more on electricity to power their means of livelihood and leisure.

Time to Invest

In Canada, studies have found that upwards of C$350 billion is needed to refurbish, renew and replace electricity infrastructure over the next 20 years.[5] This translates into an average annual investment requirement of C$15 billion – the highest in the country's history.

And this challenge is by no means unique to Canada. In the U.S., the sector is also confronting a daunting task to fund record levels of capital expenditures. Investor-owned utilities are projecting investment needs in the unprecedented range of US$85 billion alone through 2014.[6]

Opening the door to new infrastructure investments will not only augment the North American electricity sector's ability to continue delivering a reliable and affordable power supply, it will also generate significant economic growth and employment opportunities along the way. According to a 2012 study conducted by the Conference Board of Canada, for every C$100 million invested in power system assets, real GDP is boosted by C$85.6 million and approximately 1,200 jobs are created.[7]

There are therefore numerous reasons to seek to ensure that the requirements relating to new cross-border interconnections and trade serve to facilitate such interconnections and trade.

3. Modernizing Regulation Governing Infrastructure Development & Maintaining Robust Environmental Reviews: Recent Reform in Canada

Before offering a few thoughts on H.R. 3301, I wish to briefly highlight some developments and features around the legislative and regulatory regimes governing major infrastructure projects in Canada, which subcommittee members may find to be instructive.

21st Century Regulation for a 21st Century Grid

Similar to discussions in the U.S., there has been a growing recognition for some time on the part of Canadian policymakers of the need to modernize these regimes by tackling certain systemic challenges: a lack of timeliness, predictability, certainty and consistency in review processes;

[5] "Shedding Light on the Economic Impact of Investing in Electricity Infrastructure." The Conference Board of Canada. February 2012. http://www.conferenceboard.ca/e-library/abstract.aspx?did=4673. [Retrieved: October 22, 2013].

[6] "Electric Power Industry Outlook: 2013 Wall Street Briefing." Edison Electric Institute. February 6, 2013. http://www.eei.org/ourissues/finance/Documents/Wall_Street_Briefing_2013.pdf. [Retrieved: October 22, 2013].

[7] The Conference Board of Canada, *supra*.

oversight accountability diffused through multiple departments; duplication of requirements at the national and sub-national level; and an absence of effective enforcement.

The Government of Canada – through its *Responsible Resource Development* plan – has sought to update permitting and review processes for major infrastructure projects, with a focus on the following: (1) establishing clear timelines; (2) reducing duplication and regulatory burdens; (3) strengthening environmental protection; and (4) enhancing consultation with Aboriginal peoples.

This package of reforms has included amendments to the statutes governing the oversight exercised by the National Energy Board of Canada ("NEB"). With respect to electricity, the NEB's authority mirrors that of the DOE, insofar as the NEB reviews applications for the construction and operation of IPLs, and for the exportation of electricity.

The Government of Canada's regulatory modernization efforts have included such steps as consolidation of federal departments' responsibilities over environmental assessments ("EAs") and substitution or equivalency with provincial EAs, provided they fulfill federal requirements[8]; establishment of fixed beginning-to-end timelines for EAs, ranging from 12-24 months; establishment of legally-binding timelines for execution of permitting processes; and enhanced powers for federal authorities in order to conduct reviews in a timely and cost-effective manner.

<u>The Comprehensive Nature of Environmental Reviews in Canada</u>

A few essential points of emphasis and clarification are in order here. To begin, CEA does not view these reforms as having come at the expense of the quality of the rigorous environmental protection and stakeholder consultation requirements which have long been a hallmark of the federal regulatory regime in Canada. An important distinction must be made between abandoning or eliminating vitally-important regulatory obligations (including environmental reviews) and pursuing greater efficiencies and effectiveness in their execution.

The federal environmental review process in Canada is comprehensive and robust – and rightly so. Numerous factors are considered as part of these reviews, including impacts on the physical and meteorological environment; soil, soil productivity and vegetation; wetlands, water quality and quantity; fish, wildlife, and their habitat; species at risk or species of special status and related habitat; heritage resources; traditional land and resource use; and human health, aesthetics and noise.[9] Any EA will consider cumulative environmental effects of the proposed infrastructure project, mitigation measures, the significance of effects even after mitigation measures are implemented, and input received from the public.

In addition, it is important to emphasize that newly-established fixed timelines are for purposes of enabling responsible officials to review environmental studies and assessments which have

[8] This is commonly referred to as the "one project, one review" approach, under which a project would undergo a single environmental review by the agency in the best position to perform such review.

[9] *See:* http://www.neb-one.gc.ca/clf-nsi/rthnb/nws/fqs/nvrnmntlssssmntsfq-eng.html#s5. [Retrieved: October 22, 2013].

already been commissioned by the applicant. They therefore do not involve curtailment or constraints of EAs. Under the modernized regime, there will be continuity in the performance of the same, high-quality, thorough reviews as in the previous regime, but with more flexibility and efficiency built into the process, particularly through such means as strengthened coordination with governments at the sub-national level.

Finally, the streamlining of these processes has been accompanied by more stringent enforcement measures, with responsible agencies now bearing enhanced authority to verify compliance and to issue monetary penalties to punish violations.

In step with their commitment to excellence in environmental compliance and performance, CEA members approach with the utmost seriousness their obligations to engage in effective and transparent consultation with affected stakeholder groups, including Aboriginal communities. With respect to stakeholder engagement, there are many fantastic examples of CEA members' success in meeting the high thresholds of performance which are either prescribed under law or voluntarily pursued through best practices. These include official equity partnerships between CEA members and First Nations for the development and management of large hydropower projects, which bring significant economic benefits to the local communities.

While CEA has been pleased with the Government of Canada's modernization of federal review processes, the reform agenda in Canada is not yet complete – getting the accompanying regulations and policies in place is key. CEA is cautiously optimistic that our federal government is moving in the right direction, but ultimately, the proof will lie in implementation.

As subcommittee members consider H.R. 3301 or other possible solutions for modernizing U.S. regulatory processes governing infrastructure development, CEA would commend the recent reforms undertaken in Canada for your consideration. Furthermore, CEA would underscore that any movement to achieve greater efficiencies in review processes can and must be compatible with support for comprehensive environmental protection requirements.

4. Alignment of Canadian and U.S. Regulatory Processes to Enhance Cross-border Electricity Infrastructure Development and Trade

Turning to the draft bill which is the focus of today's hearing, the release of H.R. 3301 strikes CEA as a timely opportunity to discuss the current state of the processes in place in Canada and the U.S. for permitting IPLs and authorizing electricity exports, and to explore whether there are any mismatches in these processes that stand to benefit from closer alignment to the advantage of all parties involved (government authorities, project sponsors and impacted stakeholders).

As an example of CEA's existing views on these matters, earlier this year CEA released a policy paper – *The Integrated Electric Grid: Maximizing Benefits in an Evolving Energy Landscape* – offering recommendations for enhancing the already strong bilateral relationship around

electricity.[10] In this paper, CEA called for enhancements to the efficiency of administrative procedures governing authorizations for exportation of electricity and permits for IPLs. These recommendations were a response to the enduring presence in these rules – on both sides of the border – of out-dated requirements which should be adjusted to reflect evolutions in electric power markets and the new reliability standards requirements in place at NERC.

And just less than two weeks ago, CEA made a submission to the Canada-United States Regulatory Cooperation Council ("RCC") recommending that the NEB and DOE formally cooperate on modernizing their respective requirements for IPL and electricity export permits (see attached Appendix below). This submission responded to a solicitation issued by the RCC in August 2013 seeking additional public input on how to reinforce and expand efforts at regulatory cooperation between Canada and the U.S.[11] As stated in our comments, CEA strongly believes that institutionalizing NEB and DOE cooperation under the auspices of the RCC will help maximize effectiveness and efficiencies between the agencies' respective approaches.

Modernizing the Permit Process for IPLs

The aforementioned CEA policy paper and comments to the RCC have not gone so far as to call for overhaul of DOE's Presidential Permit process for IPLs. It is CEA's understanding that, on balance, the experience with DOE's Presidential Permit process has usually been satisfactory and has not encountered the kind of challenges more recently faced by other sectors in the energy industry.

Nonetheless, CEA respectfully suggests that there are benefits to be gained from modernizing the process – particularly when one bears in mind the commitments that DOE has made around how this process should function and under what timelines. The public information provided by DOE to Presidential Permit applicants and other stakeholders states that DOE requires approximately 6-18 months to issue a Presidential Permit.[12] However, a quick glance at the recent record in Presidential Permit proceedings reveals a trend of delays and much longer timelines.

For example, since 2000, four applications for construction and operation of new Canada-U.S. IPLs have successfully moved through the Presidential Permit process. The permitting times for these projects ranged from six months (for an IPL only one mile in length and thus exempt from DOE environmental review) to three and three-and-a-half years for two other projects. And as noted in Table 1 above, three applications are currently pending before DOE. Among these, the project that has been in the queue the longest has spent three-and-a-half years under review.

In addition, over the last 10 years, many Presidential Permit proceedings at DOE have featured either physical or operational changes to existing IPLs, or transfers of ownership of existing

[10] *See:* http://www.electricity.ca/media/pdfs/CanadaUS/CEA_US%20Policy%20Paper_EN.pdf. [Retrieved: October 22, 2013].
[11] *See:* http://gazette.gc.ca/rp-pr/p1/2013/2013-08-31/html/sup4-eng.html. [Retrieved: October 22, 2013].
[12] *See:* http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-6. [Retrieved: October 22, 2013].

IPLs. Processing times for these applications have also suffered significant inconsistencies. For example, in 2010, a CEA member filed a request to amend its DOE Presidential Permit for purposes of a straightforward transfer of ownership.[13] This took approximately two-and-a-half years to process. What's more, this application entailed a request to reverse a previous transfer of ownership executed by the company, which in the earlier instance took only six months to complete.

CEA respectfully suggests (and has done so in recent years as part of its engagement with DOE staff) that a take-away from the recent record of Presidential Permit proceedings is an inconsistency in the timelines for processing applications – whether the application is for construction and operation, physical or operational change, or transfer of ownership. While CEA is not aware of any specific circumstances in which inconsistencies have jeopardized the viability of a project, such inconsistencies inject uncertainty and risk into the project from a planning perspective, and can result in unnecessary escalation of administrative costs for proponents.

Modernizing the Presidential Permit process would therefore not only present benefits in terms of enabling DOE to better meet its own time commitments for reviewing an application, it would also offer the added benefit of aligning more closely with the recent establishment of fixed deadlines for completion of corresponding reviews by the NEB in Canada.

Modernizing the Authorization Process for Exports

CEA would offer similar observations with respect to DOE authorizations for electricity exports. Again, in certain respects, these authorizations have more of a direct impact for specific CEA members, many of which are holders of these authorizations. The general sense has been that the application and review process for export authorizations has rarely jeopardized the ability of a CEA member to market power. Nevertheless, there are several ways in which the process would be improved through modernized requirements (and would likewise allow DOE to consistently meet its commitments for reviewing applications in 3-6 months).

In particular, DOE export authorizations have yet to be updated to reflect and to avoid duplication of current market or regulatory measures (including mandatory NERC reliability standards, wholesale market rules and state integrated resource planning requirements, which – together or even separately – can address the intent of existing DOE authorization requirements). Indeed, CEA would respectfully raise the question of whether there is anything governed under current DOE export authorizations that is not addressed through a separate market or regulatory mechanism, or a combination thereof.

Signs of Movement towards Reform

To their credit, both the NEB in Canada and DOE in the U.S. have recognized for some time the need for reform and are beginning to take action to update their respective requirements. A few

[13] A 7.5-mile segment of this IPL loops through U.S. territorial waters, thus requiring possession of a Presidential Permit by the applicable CEA member company.

weeks ago, the NEB posted for stakeholder input a set of proposed regulatory amendments to streamline the application and reporting requirements for export permits, as well as to update the application process for IPLs.[14] Similarly, pursuant to President Obama's 2011 Executive Order on "Improving Regulation and Regulatory Review", DOE has identified its applicable procedures as candidate rules for review under its regulatory reform plans, and has previously signalled to stakeholders (including CEA) an interest in streamlining its review processes.[15]

Principles in H.R. 3301

Based on the above discussion, and in step with recent reform efforts in Canada and with its own policy platform, CEA wishes to acknowledge and applaud the specific principles underlying H.R. 3301 which propose the following: establishment of fixed timelines for permitting processes for cross-border energy projects; modernization of procedures to avoid duplication of existing market and regulatory measures; and efficiencies in project reviews, including for routine proceedings such as transfers of ownership.

Moreover, consistent with its members' commitment to robust environmental stewardship, CEA maintains that any effort to modernize permitting processes must at the same time retain a rigorous standard for performance of environmental reviews at some stage of the normal siting and permitting process.

Conclusion

H.R. 3301 offers the opportunity for industry, government and stakeholders on both sides of the border to further engage in a dialogue around how we can cooperatively best address the cross-border piece of the larger energy infrastructure and trade puzzle in North America, and ensure development of a 21st century grid is governed by a 21st century regulatory regime.

CEA supports steps being taken by federal governments in both Canada and the U.S. to enact meaningful reforms, and strongly encourages relevant authorities to sustain efforts to foster a strong regulatory framework – based on appropriate public consultation, protection of consumers and world-class environmental standards – that effectively strikes a balance between providing rigorous oversight and supporting infrastructure investments and open trade.

I would like to thank the subcommittee once again for the opportunity to be here today to engage in this stage of the dialogue and I look forward to continued engagement with you on this important topic. I would be happy to answer any questions that you may have.

[14] *See:* http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/xprtsndmprt/xprtmprtrgltryfrmwrk-eng.html. [Retrieved: October 22, 2013].
[15] *See:* http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofenergyregulatoryreformplanaugust2011.pdf. [Retrieved: October 22, 2013].

Appendix – CEA Comments to Canada-United States Regulatory Cooperation Council

(October 18, 2013)

Canadian Electricity Association | Association canadienne de l'électricité

October 18, 2013

VIA EMAIL: RCC-CCR@pco-bcp.gc.ca; International-OIRA@omb.eop.gov

Re: Canada-United States Regulatory Cooperation Council ("RCC") – Stakeholder Request for Comment, Summer 2013

Dear RCC Secretariat:

The Canadian Electricity Association ("CEA")[1] is pleased to submit the following comments in response to the RCC Secretariat's August 31, 2013 solicitation of additional public input on how to reinforce, institutionalize, and expand efforts at regulatory transparency and cooperation between Canada and the United States.[2]

I. Recommendation for NEB-DOE Cooperation

CEA believes that there is significant value to be gained from the National Energy Board of Canada ("NEB") and the U.S. Department of Energy ("DOE") formally cooperating under the auspices of the RCC on modernizing their respective requirements for international power line ("IPL") and electricity export permits as part of this next round of efforts to expand bilateral regulatory cooperation.

II. CEA's Relevant Interests

CEA members have a direct interest in the efficiency and effectiveness of NEB and DOE permitting processes. In Canada, CEA members are subject to NEB oversight, as specified under the *National Energy Board Act* ("NEB Act") and accompanying regulations.[3] Those members wishing to export electricity to the United States must obtain an NEB electricity export permit or licence, while those members wishing to construct and operate an IPL must obtain an NEB IPL permit or certificate.

With respect to analogous U.S. requirements, many of CEA's electricity marketing members do hold DOE authorizations to export electricity to Canada.[4] With one limited exception, CEA members do not hold Presidential Permits issued by DOE for the U.S. segments of IPLs. However, they are nevertheless impacted by considerations related to the issuance of a Presidential Permit for the U.S. side of any given IPL.

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[1] Founded in 1891, CEA is the authoritative voice of the Canadian electricity industry, promoting electricity as a key social, economic and environmental enabler that is essential to Canada's prosperity. CEA members generate, transmit, distribute and market electric energy to industrial, commercial and residential customers across Canada and into the United States every day. From vertically-integrated electric utilities, to power marketers, to the manufacturers and suppliers of materials, technology and services that keep the industry running smoothly – all are represented by this national industry association.

[2] *See:* http://gazette.gc.ca/rp-pr/p1/2013/2013-08-31/html/sup4-eng.html

[3] NEB oversight of construction and operation of IPLs is governed under Section 58.1, Part III.1 of the NEB Act. NEB oversight of electricity exports is governed under Section 119.02, Part VI, Division II of the NEB Act.

[4] DOE oversight of construction and operation of IPLs is governed under Executive Order 10485, as amended by Executive Order 12038. DOE oversight of electricity exports is governed under Section 202(e) of the *Federal Power Act*.

III. Purpose of CEA's Recommendation

The basis for CEA's recommendation that the NEB and DOE seek to cooperate more formally and directly within the context of the RCC's ongoing efforts is the following:

1. Canada and the United States share an integrated power grid, with cross-border linkages and trade set to continue expanding.

   Electricity is essential to North American prosperity. It serves as the backbone of the more expansive North American energy system and as an indispensable enabler or input for growth in every other economic sector. North Americans benefit from a system which can generate and transmit electrons across vast distances to ensure a reliable, secure and competitively-priced supply of electricity, 24 hours a day, seven days a week.

   The Canadian and U.S. electric transmission systems are physically interconnected at over 35 points. These physical linkages offer numerous advantages to both countries, including a higher level of reliable service through enhanced system stability and expanded access to non-emitting, competitively-priced resources. Such access is made possible through the open, inclusive electricity trading regime whose growth has been enabled by the strong level of grid integration. In 2012, the value of electricity traded across the border exceeded C$2.1 billion.[5]

   As it has done in the past, ongoing and future expansion of the physical linkages between the Canadian and U.S. segments of the grid will yield significant benefits to consumers. At present, there are no less than half a dozen IPL projects under various stages of development all along our shared border.[6] And as recent statistics reveal, bilateral trade in electricity continues to trend upwards.[7]

   Accordingly, in view of the ongoing expansion of Canada-U.S. electric integration, CEA believes that it is in the interests of both countries to ensure their respective regulatory approaches are aligned such that this expansion can be overseen and facilitated in the most effective and efficient way possible.[8]

2. Mismatches and inconsistencies persist between the respective permitting processes in place at the NEB and DOE for IPLs and electricity exports.

   CEA believes that greater synergies can be achieved in the approaches utilized on either

[5] NEB, Electricity Exports and Imports, December 2012.

[6] *See:* http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-2; http://www.enbridge.com/DeliveringEnergy/Power-Transmission/Montana-Alberta-Tie-Line.aspx; http://www.hydro.mb.ca/projects/mb_mn_transmission/description.shtml; http://www.cleanpowerconnector.com/.

[7] NEB, *supra*.

[8] For more information on Canada-U.S. electric integration, please consult the following policy paper released by CEA in April 2013: http://www.electricity.ca/media/pdfs/CanadaUS/CEA_US%20Policy%20Paper_EN.pdf.

side of the border. Such synergies will assist in maximizing efficiencies and providing maximum certainty to project sponsors and permit applicants.

(a) For example, there is a disparity in the length of time involved in the issuance of permits for the Canadian and U.S. segments of IPLs. Recent experience has signalled that the NEB is generally able to review and issue a determination on an IPL permit application within a one-year timeframe. DOE has publicly stated that it requires approximately 6-18 months to issue a Presidential Permit.[9] However, the recent record in Presidential Permit proceedings reveals a trend of much longer timelines. Among the applications currently pending before DOE, the project that has been in the queue the longest has spent three-and-a-half years under review.

In fairness, the NEB IPL permit review process involves analysis of an environmental assessment that has already been conducted, while environmental reviews at DOE are only triggered upon submittal of an IPL project application. Nevertheless, CEA maintains that there is still ample room for greater alignment between NEB and DOE timelines for IPL project review – particularly when one bears in mind the commitments that DOE has made around how its process should function and under what timeframes.

CEA is not aware of any specific circumstances in which the mismatches in the length of time involved in obtaining NEB and DOE permits for the same IPL have jeopardized the viability of a project. However, such inconsistencies inject uncertainty and risk into the project from a planning perspective, and can result in unnecessary escalation of administrative costs for proponents.

(b) There are several other examples of mismatches in the respective processes and their requirements. For instance, with respect to the length of time for which an export permit remains in effect, the NEB typically issues permits which are valid for 10-year terms or longer, whereas DOE export authorizations are often only valid for five years.

In addition, under recently-proposed amendments to its regulations, the NEB plans to eliminate its long-standing requirement for an export permit applicant to specify those IPLs over which it proposes to export electricity.[10] This requirement – also a mainstay of DOE's permitting framework – will nevertheless remain in place south of the border.

Finally, potential endures for mismatches in coordinating the review of border-crossing points for a given IPL. It is CEA's understanding that under the existing NEB and DOE permitting regimes, there is nothing in place to support such coordination in the event either agency is considering a separate route and corresponding border-crossing point as an alternative to that which is proposed by the applicant and agreed to jointly by the other IPL project sponsor.

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[9] *See:* http://energy.gov/oe/services/electricity-policy-coordination-and-implementation/international-electricity-regulatio-6.

[10] *See:* http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/lctrcty/prpsdchnglctrctyrgltn-eng.pdf, proposed Part III, Section 9.(*i*), page 10.

CEA respectfully suggests that these and other inconsistencies throughout the NEB and DOE's permitting regimes stand to benefit from greater alignment and synergies.

3. Both the NEB and DOE permitting processes for IPLs and electricity exports contain out-of-date requirements that should be modernized to reflect evolutions in the oversight of electric power system operations.

   A key example in this regard is the enduring requirement at both the NEB and DOE for an export permit applicant to demonstrate that the proposed exportation will not adversely impact the reliabile operation of the IPL or electric transmission system. These requirements have not been updated since the establishment of a mandatory electric reliability standards regime across North America. Standards developed by the North American Electric Reliability Corporation govern operational parameters for IPLs and interconnected power systems. Exportation of electricity can only occur if the exportation remains within the confines of these parameters. More importantly, operational determinations are beyond the responsibility or control of the exporter, and rest with the IPL owner and/or operator, and power system operator.

   In this respect, there are tangible ways in which both the NEB and DOE's regulatory approaches can be more aligned through a joint effort to modernize their requirements.

4. Both the NEB and DOE have already identified a need to update their permitting processes and are at various stages of actively proposing modifications.

   To their credit, both the NEB and DOE have recognized for some time the need for reform and are beginning to take action to update their respective requirements.

   For many years, as part of its ongoing informal dialogue with stakeholders (including CEA and its members), DOE has signalled an interest in streamlining its review processes. More recently, pursuant to President Obama's 2011 Executive Order on "Improving Regulation and Regulatory Review," DOE has identified its applicable procedures governing IPL and electricity export permits as candidate rules for review under its reform plans.[11]

   Likewise, informal CEA consultation with the NEB over the years has signalled strong interest on the part of the NEB to modernize relevant permitting requirements. And in fact, the NEB has recently taken advantage of the need to update its regulations to conform with the Government of Canada's *Jobs, Growth and Long-Term Prosperity Act* by proposing additional modifications to streamline its processes.[12]

[11] *See:* http://www.whitehouse.gov/sites/default/files/other/2011-regulatory-action-plans/departmentofenergyregulatoryreformplanaugust2011.pdf.
[12] *See:* http://www.neb-one.gc.ca/clf-nsi/rpblctn/ctsndrgltn/rrggnmgpnb/xprtsndmprt/xprtmprtrgltryfrmwrk-eng.html.

CEA is encouraged by and strongly supportive of the above efforts. Nevertheless, **CEA believes that maximum benefit will be derived from these activities if they are performed in conjunction and alignment with each other, rather than in isolation.**

Institutionalizing these initiatives under the umbrella of the RCC will help ensure that the NEB and DOE's reviews and reforms are coordinated, and will help maximize effectiveness and efficiencies between the agencies' approaches. Absent any reform, permit applicants will continue to face challenges as they seek to undertake projects which will further expand the already significant level of integration between the Canadian and U.S. segments of the larger North American grid.

IV. Conclusion

CEA appreciates this opportunity to offer recommendations as the RCC Secretariat proceeds with its next round of efforts to strengthen, mature and expand regulatory cooperation between Canada and the United States. CEA trusts that the information set forth herein provides an adequate basis for assessing the merits of and proceeding with NEB-DOE cooperation under the auspices of the RCC.

CEA looks forward to engaging the NEB, DOE and RCC further on this important initiative. Please do not hesitate to contact us for any additional information or if we can be of any further assistance.

Regards,

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