

2001 CarswellNat 561, 2001 FCA 62, 37 C.E.L.R. (N.S.) 147, [2001] 3 F.C. 412, 3 C.N.L.R. 29, 2001 CarswellNat 2428, 3 F.C. 412, [2001] F.C.J. No. 359, 33 Admin. L.R. (3d) 36, [2001] 3 C.N.L.R. 29



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Athabasca Chipewyan First Nation v. British Columbia Hydro & Power Authority

Athabasca Chipewyan First Nation, Appellant and British Columbia Hydro and Power Authority, Respondent and National Energy Board, Intervenor

British Columbia Wildlife Federation and The Steelhead Society of British Columbia, Appellants and British Columbia Hydro and Power Authority, Respondent and National Energy Board, Intervenor

Federal Court of Appeal

Rothstein, Sharlow, Malone J.J.A.

Heard: February 14-15, 2001
Judgment: March 14, 2001
Docket: Doc. A-331-99, A-328-99

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Chris W. Sanderson, Q.C., and *Jeff Christian*, for respondent British Columbia Hydro and Power Authority

Timothy J. Howard, for appellants British Columbia Wildlife Federation and the Steelhead Society of British Columbia

Judith Hanebury, Q.C., for intervenor National Energy Board

Subject: Public; Environmental

Environmental law --- Statutory protection of environment — Practice and procedure — Appeals — General

National Energy Board granted electricity export permits to respondent hydro company, stating that no adverse environmental effects would result from proposed exportation of electricity — Appellants unsuccessfully intervened, contending that issuance of permits would result in adverse environmental effects by altering natural flow pattern of rivers — Appellants also argued that permits would lead to exacerbation of already existing effects of hydro company's dams, which had dried out wetlands and caused wildlife populations to decline — Appellants appealed — Appeal allowed — Board had expertise to determine question of adverse environmental impact — Standard of review was reasonableness simpliciter — Information submitted by respondent stated that permits would require no construction of new facilities and outlined environmental benefits that would result from permits — Respondent did not

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answer whether permits might require change to operation of its existing generating facilities — Board's reasons stated that evidence regarding environmental impact of specific exports was insufficient — Board effectively placed burden on intervenors to demonstrate adverse environmental impact — By not addressing effect of operational changes, if any, board's conclusion that there would be no adverse environmental impact was not reasonable.

Cases considered by Rothstein J.A.:

Canada (Director of Investigation & Research) v. Southam Inc., [144 D.L.R. \(4th\) 1, 71 C.P.R. \(3d\) 417, \[1997\] 1 S.C.R. 748, 209 N.R. 20, 50 Admin. L.R. \(2d\) 199](#) (S.C.C.) — considered

Statutes considered:

National Energy Board Act, R.S.C. 1985, c. N-7

Generally — considered

s. 119.02 [en. 1990, c. 7, s. 34] — considered

s. 119.03 [en. 1990, c. 7, s. 34] — considered

s. 119.04 [en. 1990, c. 7, s. 34] — considered

s. 119.05 [en. 1990, c. 7, s. 34] — considered

s. 119.06 [en. 1990, c. 7, s. 34] — considered

s. 119.07 [en. 1990, c. 7, s. 34] — considered

s. 119.08 [en. 1990, c. 7, s. 34] — considered

s. 119.09 [en. 1990, c. 7, s. 34] — considered

s. 119.091 [en. 1990, c. 7, s. 34] — considered

s. 119.092 [en. 1990, c. 7, s. 34] — considered

s. 119.093 [en. 1990, c. 7, s. 34] — considered

s. 119.094 [en. 1990, c. 7, s. 34] — considered

National Energy Board Act and to repeal certain enactments in consequence thereof, Act to amend the, S.C. 1990, c. 7

Generally — considered

Regulations considered:

National Energy Board Act, R.S.C. 1985, c. N-7

2001 CarswellNat 561, 2001 FCA 62, 37 C.E.L.R. (N.S.) 147, [2001] 3 F.C. 412, 3 C.N.L.R. 29, 2001 CarswellNat 2428, 3 F.C. 412, [2001] F.C.J. No. 359, 33 Admin. L.R. (3d) 36, [2001] 3 C.N.L.R. 29

National Energy Board Electricity Regulations, SOR/97-130

Generally

s. 2 "environmental effect"

s. 2 "equichange transfer"

s. 2 "permit"

s. 2 "storage transfer"

s. 9(o)

s. 10(k)

APPEAL from decision of National Energy Board granting electricity export permits to respondent hydro company.

The judgment of the court was delivered by *Rothstein J.A.*:

1 By application to the National Energy Board dated July 6, 1998, British Columbia Hydro applied for electricity export permits for equichange transfer (an interchange of equal quantities of power or energy within a stated period) and storage transfer (a transfer of energy that is banked in the form of water in a reservoir of another power system in the expectation that equivalent energy will be returned at a later time), as these terms are defined in s. 2 of the *National Energy Board Electricity Regulations, SOR/97-130*.

2 Notice of the application was published, resulting in the appellants and others filing interventions with the Board. The focus of the appellants' interventions was on what they alleged to be adverse environmental effects resulting from the issuance of the permits to B.C. Hydro.

3 The British Columbia Wildlife Federation and the Steelhead Society of British Columbia submitted that the issuance of the permits would cause and contribute to the alteration of the natural flow pattern of the rivers on which B.C. Hydro operates its dams, causing significant adverse environmental effects.

4 The Athabasca Chipewyan First Nation (ACFN) concentrated their opposition on the effects of the permits on the operation of the W.A.C. Bennett Dam, located in the Peace River Basin in north-eastern British Columbia. The Bennett Dam and its associated generating station is British Columbia Hydro's largest hydro electric facility. It controls the Province's largest reservoir and accounts for roughly one-quarter of the utility's annual electricity production. Since its completion in 1967, the Dam has altered the natural flow of the Peace River. The AFCN submitted that this altered flow has resulted in significant changes to the ecosystem on its traditional and reserve lands, located approximately one thousand kilometres downstream in the Peace-Athabasca Delta region of northern Alberta. Delta wetlands have dried out, with grasslands being replaced by brush and shrubs. Wildlife populations, including fish, waterfowl and muskrat have declined. The AFCN says that the granting of the impugned permits exacerbates these already existing effects.

5 After consideration of the material submitted by B.C. Hydro and the submissions of the interveners, including the appellants, the National Energy Board issued export permits to B.C. Hydro on December 17, 1998, for terms of 10 years, from February 1, 1999, to January 31, 2009. By letter dated January 6, 1999, the Board gave its reasons for

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issuing the permits. With regard to environmental issues, the Board's view was "that there would be no significant adverse environmental effects resulting from the proposed exportation of electricity."

6 This is an appeal to this Court of the Board's issuance of permits, leave having been granted by order dated April 9, 1999.

7 The appellants' arguments cover much legal, historical and factual territory. However, the only issue that requires determination by the Court is whether the Board had before it, and considered, information that would justify its conclusion that there would be no significant adverse environmental effects resulting from the proposed exportation of electricity.

Scheme of the Legislation

8 The portion of the *National Energy Board Act* dealing with the export of electricity was enacted in 1990 (S.C. 1990, c. 7, s. 34). It is apparent from the procedures provided under the Act that Parliament's intention was to reduce the regulatory burden applicable to the export of electricity.

9 The relevant provisions of the *National Energy Board Act* and *Electricity Regulations* are contained in Appendix "A" to these reasons. The scheme of the legislation may be briefly described as follows. Electricity may not be exported without authorization from the National Energy Board in the form of a permit or a licence. The more usual and simple procedure for obtaining authorization involves the mandatory issuance of a permit upon application and without a public hearing by the Board. An application must be accompanied by information that the Regulations require be furnished to the Board.

10 Exceptionally, the Governor in Council may designate an application as one for which a licence must be issued, in which case the process before the Board is more elaborate, involving a public hearing. In such case, the Board has a discretion to issue or not issue the licence.

11 Public notice of an application is required for an export permit. Thereafter, the Board may require the applicant to furnish additional information as the Board considers necessary to determine whether to make a recommendation to the Minister of Natural Resources that he request that the Governor in Council designate the application as one requiring a licence proceeding. For the purpose of determining whether to make a recommendation, the Board is required to have regard for all considerations that appear to be relevant, including specifically, the impact of the exportation on the environment.

12 The Board may make the permits it issues subject to such terms and conditions respecting matters prescribed by the Regulations as the Board considers necessary or desirable in the public interest. Under para. 10(k) of the *Electricity Regulations*, the Board may impose terms and conditions respecting requirements relating to the protection and restoration of the environment.

13 The legislation seeks to streamline the application process and reduce duplication and regulatory burden where possible. For instance, in deciding whether to recommend that an application be designated for a licensing hearing, the Board is to seek to avoid duplication of measures taken in respect of the exportation by the applicant and the government of the province from which the electricity is exported.

14 At the same time, the Board is not relegated to the position of a filing agency only. It must decide whether to recommend that an application be designated for the more elaborate licensing process and whether to impose terms and conditions on the permits it issues. In making those decisions, the Board is to have regard, amongst other things, to the impact of the exportation on the environment and measures for the protection and restoration of the environment. In order to enable it to make those decisions, an applicant must provide the Board with information required by the

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Regulations. With regard to environmental issues, para. 9(o) of the Regulations requires the applicant to furnish information as to the adverse environmental effects resulting from the proposed exportation of electricity and the measures to be taken to mitigate any of those adverse environmental effects. It seems plain that, only if such information is provided, will the Board be in a position to make the decisions it is required to make in a logical and reasonable manner.

Standard of Review

15 The question of whether the information submitted by B.C. Hydro is sufficient to enable the Board to make its recommendation and conditions decisions is a matter within the expertise of the Board. It is the Board that has the expertise to determine the question of adverse environmental impacts and to determine what information it requires to assess such impacts. Whether to recommend that the Minister request that the Governor in Council designate the application as one requiring a public hearing and a licence, and whether to attach terms and conditions to permits, are matters within the discretion of the Board. However, there is no privative clause in the legislation. On the contrary, there is a statutory right of appeal upon leave being granted. Based on these considerations, I conclude that the standard of review in this case is reasonableness *simpliciter*.

Analysis

16 The issue before the Board, of relevance in this appeal, was whether the issuance of the permits would have any adverse environmental effects downstream of B.C. Hydro dams and in particular, the Bennett Dam, over and above the effects that would be experienced without such permits being issued.

17 In its application, B.C. Hydro submitted that:

1. Its existing facilities are subject to various regulations.
2. Environmental impacts were considered when its facilities were approved.
3. The use of the power produced by its facilities should not be a relevant factor.
4. No new facilities would be constructed for the sake of exports under the permits. Thus, no additional environmental assessments ought to be necessary.

18 B.C. Hydro's submissions are obscure. The central theme of the submissions is that no new facilities will be constructed. That information certainly addresses one aspect of potential adverse environmental effects, that is, that there will be no effects from the construction of new facilities. However, it leaves entirely unanswered the question of whether the permits may require a change to the operations of B.C. Hydro's existing generating facilities, such as, for example, altering the timing and amounts of the release of water at dams and, in particular, the Bennett Dam. B.C. Hydro's submissions seem to have ignored this aspect of the environmental question.

19 In its response to the interventions before the Board, B.C. Hydro's submission on para. 9(o) was supplemented with comments emphasizing that the permits would involve no net export of electricity and that the permits would ensure more efficient use of its power systems, would likely reduce thermal plant emissions and would postpone the need for new facilities. As worthy as these environmental benefits are, the Regulations require B.C. Hydro to tell the Board about adverse environmental effects. Environmental benefits may be relevant to weigh against adverse environmental effects. However, adverse environmental effects cannot be ignored. Even if there are no adverse environmental effects, some explanation as to why that will be the case would seem to be necessary.

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20 The Court spent considerable time going through B.C. Hydro's application and response, both during and following the oral hearing. The Court has attempted to understand what, if any, information as to changes to operations of facilities was disclosed to address potential adverse environmental effects from the issuance of the permits. No such information appears to have been disclosed.

21 Moreover, the National Energy Board has not explained in its reasons what changes, if any, the granting of the permits will have on the operation of B.C. Hydro's dams and, in particular, the Bennett Dam, and whether any such changes would have adverse environmental downstream effects. The Board's reasons, in respect of adverse environmental effects, are as follows:

The Board is of the view that the adequacy of environmental laws and regimes at the time that the W.A.C. Bennett Dam was constructed is not relevant to the analysis of the environmental effects under the N.E.B. Act for the purposes of this application. The evidence does not support the view that B.C. Hydro is not complying with relevant federal or provincial standards and guidelines for the operation of its facilities. There was insufficient evidence that the specific exports proposed to be made would have an impact on the environment. Upon consideration of the matter, the Board is of the view that there would be no significant adverse environmental effects resulting from the proposed exportation of electricity.

22 I have no difficulty accepting that environmental considerations related to the construction of the W.A.C. Bennett Dam are not relevant to the matter of the export permits that the Board issued. I also accept the Board's finding that B.C. Hydro was complying with the relevant federal or provincial standards and guidelines for the operation of its facilities. However, the finding that there was insufficient evidence that the specific exports proposed to be made would have an impact on the environment, is problematic.

23 One interpretation of this finding is that the Board placed the burden on the interveners to demonstrate adverse environmental impacts. If the Board purported to do so, it was wrong. The applicant for the permit must provide the Board with sufficient information to enable the Board to make its decisions. The relevant consideration in this case is what operational changes, if any, to existing facilities there will be, as a result of the issuance of the permits. That has simply not been addressed by the Board. Even if it did not place a burden on the interveners, it was not open to the Board to infer from B.C. Hydro's silence as to changes to its operations due to the granting of the permits, that there would be no changes or significant adverse environmental effects.

24 The question before the Court is whether the Board's decision that there are no significant adverse environmental effects is reasonable. At para. 62 of *Canada (Director of Investigation & Research) v. Southam Inc.*, [1997] 1 S.C.R. 748 (S.C.C.), at 779-780, Iacobucci J. stated:

In the final result, the standard of reasonableness simply instructs reviewing courts to accord considerable weight to the views of tribunals about matters with respect to which they have significant expertise. While a policy of deference to expertise may take the form of a particular standard of review, at bottom the issue is the weight that should be accorded to expert opinions. In other words, deference in terms of a "standard of reasonableness" and deference in terms of "weight" are two sides of the same coin. In this respect, I agree with Kerans, [*Standards of Review Employed by Appellate Courts*, (Edmonton: Juriliber, 1994)] at p. 17, who has described deference to expertise in the following way:

Experts, in our society, are called that precisely because they can arrive at well informed and rational conclusions. If that is so, they should be able to explain, to a fair-minded but less well-informed observer, the reasons for their conclusions. If they cannot, they are not very expert. If something is worth knowing and relying upon, it is worth telling. Expertise demands deference only when the expert is coherent. Expertise loses a right to deference when it is not defensible. That said, it seems obvious that [Appellate Courts] manifestly *must give great weight* to cogent views thus articulated. [Emphasis added.]

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25 If one takes the view that, on complex matters requiring the Board's expertise, it is not necessary for the Court to understand how, on the material before it, the Board could have come to the decision it has reached, it would be sufficient to accept the Board's conclusion without anything further. However, the duty of the Court is to determine if the Board's decision is reasonable.

26 I accept that no new facilities are required, that existing facilities are subject to regulation, that there is no net export of power, and that the Board was aware of these facts. However, there is no information about what changes, if any, to the operation of B.C. Hydro's dams will result from the issuance of the permits in question. Without such information, I do not see why the rational conclusion, from the information that was disclosed, is that the issuance of the permits will result in no significant adverse environmental effects. That may be the result. However, that is not apparent from B.C. Hydro's submission and counsel was unable to explain to us, by reference to the submissions, how B.C. Hydro addressed the issue of changes to the operation of its facilities, including the Bennett Dam, if any, and what adverse environmental effects might result from such changes to the operation of its facilities.

27 B.C. Hydro's submission to the Board does not assist in explaining in any coherent manner why the Board would have concluded that there would be no significant adverse environmental effects from the granting of the permits. I accept that the Court should defer to the Board on questions within its area of expertise. However, with nothing in its reasons to indicate that the Board recognized that potential changes to operations of facilities was an issue and with nothing to go on from the submissions of B.C. Hydro, I am unable to conclude that the Board reached an informed and rational conclusion. Where a reviewing Court has no basis at all to piece together, from the reasons of the Board and the information submitted to the Board, why it would have reached the conclusion it did, the Board's decision cannot stand.

Conclusion

28 I must conclude that the Board's decision is not reasonable. In the result, the appeal should be allowed with costs.

29 I would quash the permits. However, as B.C. Hydro has been operating under the permits for over two years, the issuance of judgment will be postponed in order to avoid undue disruption. Counsel for the appellants and counsel for the respondent, in consultation with counsel for the intervenor, shall prepare a form of judgment upon which they agree, failing which the appellants or respondent may apply to the Court to resolve the relief to be granted. Should an agreed upon form of judgment not be submitted or an application for relief not be made within sixty days of the date of these reasons, judgment shall thereupon issue, quashing the permits and remitting the matter to the Board for re-determination after the Board receives and considers relevant information from B.C. Hydro as to what changes, if any, to the operation of its facilities will be occasioned by the issuance of the permits sought and the adverse environmental effects, if any, that will result from such changes.

Appeal allowed.

Appendix "A"

National Energy Board Act, R.S.C. 1985, c. N-7, as am. by S.C. 1990, c. 7, s. 34.

Division II

Electricity

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Prohibition

119.02 Prohibition

119.02 No person shall export any electricity except under and in accordance with a permit issued under section 119.03 or a licence issued under section 119.08. 1990, c. 7, s. 34.

Issuance of Permits

119.03(1) Issuance

119.03(1) Except in the case of an application designated by order of the Governor in Council under section 119.07, the Board shall, on application to it and without holding a public hearing, issue a permit authorizing the exportation of electricity.

119.03(2) Information

(2) The application must be accompanied by the information that under the regulations is to be furnished in connection with the application. 1990, c. 7, s. 34.

119.04 Publication

119.04 The applicant shall publish a notice of the application in the *Canada Gazette* and such other publications as the Board considers appropriate. 1990, c. 7, s. 34.

119.05 Further information

119.05 The Board may, within a reasonable time after the publication of the notice, require the applicant to furnish such information, in addition to that required to accompany the application, as the Board considers necessary to determine whether to make a recommendation pursuant to section 119.06. 1990, c. 7, s. 34.

119.06(1) Delay of issuance

119.06(1) The Board may make a recommendation to the Minister, which it shall make public, that an application for exportation of electricity be designated by order of the Governor in Council under section 119.07, and may delay issuing a permit during such period as is necessary for the purpose of making such an order.

119.06(2) Criteria

(2) In determining whether to make a recommendation, the Board shall seek to avoid the duplication of measures taken in respect of the exportation by the applicant and the government of the province from which the electricity is exported, and shall have regard to all considerations that appear to it to be relevant, including

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

(b) the impact of the exportation on the environment;

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(c) 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 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; and

(d) such considerations as may be specified in the regulations. 1990, c. 7, s. 34.

Orders

119.07(1) Where licence required

119.07(1) The Governor in Council may make orders

(a) designating an application for exportation of electricity as an application in respect of which section 119.08 applies; and

(b) revoking any permit issued in respect of the exportation.

119.07(2) Exception

(2) No order may be made under subsection (1) more than forty-five days after the issuance of a permit in respect of the application.

119.07(3) Effect of order

(3) Where an order is made under subsection (1),

(a) no permit shall be issued in respect of the application; and

(b) any application in respect of the exportation shall be dealt with as an application for a licence. 1990, c. 7, s. 34.

Issuance of Licences

119.08(1) Issuance

119.08(1) The Board may, subject to section 24 and to the approval of the Governor in Council, issue a licence for the exportation of electricity in relation to which an order made under section 119.07 is in force.

119.08(2) Criteria

(2) In deciding whether to issue a licence, the Board shall have regard to all considerations that appear to it to be relevant.

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119.08(3) Revocation of permit

(3) Any permit issued in respect of an application for a permit for the exportation of electricity in relation to which an order made under section 119.07 is in force and that is not revoked by the order is revoked on the Board's deciding not to issue a licence for that exportation. 1990, c. 7, s. 34.

Conditions of Permits and Licences

119.09(1) Terms and conditions

119.09(1) The Board may, on the issuance of a permit, make the permit subject to such terms and conditions respecting the matters prescribed by the regulations as the Board considers necessary or desirable in the public interest.

119.09(2) Idem

(2) The Board may, on the issuance of a licence, make the licence subject to such terms and conditions as the Board may impose. 1990, c. 7, s. 34.

119.091 Compliance

119.091 Every permit and licence is subject to the condition that the provisions of this Act and the regulations in force on the date of the issuance of the permit or licence and as subsequently enacted, made or amended, as well as every order made under the authority of this Act, will be complied with. 1990, c. 7, s. 34.

119.092 Duration

119.092 The term of a permit or licence is thirty years or such lesser term as is specified in the permit or licence. 1990, c. 7, s. 34.

119.093(1) Revocation and suspension

119.093(1) The Board may revoke or suspend a permit or licence issued in respect of the exportation of electricity

(a) on the application or with the consent of the holder of the permit or licence; or

(b) where a holder of the permit or licence has contravened or failed to comply with a term or condition of the permit or licence.

119.093(2) Notice

(2) The Board shall not revoke or suspend a permit or licence under paragraph (1)(b) unless the Board has

(a) sent a notice to the holder of the permit or licence specifying the term or condition that is alleged to have been contravened or not complied with; and

(b) given the holder of the permit or licence a reasonable opportunity to be heard. 1990, c. 7, s. 34.

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Regulations

119.094 Regulations

119.094 The Governor in Council may make regulations for carrying into effect the purposes and provisions of this Division, including regulations

- (a) prescribing matters in respect of which terms and conditions of permits may be imposed;
- (b) respecting
 - (i) the information to be furnished in connection with applications for permits,
 - (ii) units of measurement and measuring instruments or devices to be used in connection with the exportation of electricity, and
 - (iii) the inspection of any instruments, devices, plant, equipment, books, records or accounts or any other thing used for or in connection with the exportation of electricity; and
- (c) specifying considerations to which the Board shall have regard in deciding whether to recommend to the Minister that an application for a permit for the exportation of electricity be designated by order of the Governor in Council under section 119.07. 1990, c. 7, s. 34.

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Section II

Électricité

Interdiction

119.02 Interdiction

119.02 Il est interdit d'exporter de l'électricité sans un permis ou une licence, respectivement délivré en application des articles 119.03 ou 119.08, ou en contravention avec l'un ou l'autre de ces titres. 1990, ch. 7, art. 34.

Permis

119.03(1) Délivrance

119.03(1) Sauf si un décret a été pris au titre de l'article 119.07, l'Office délivre, sur demande et sans audience publique, les permis autorisant l'exportation d'électricité.

119.03(2) Renseignements

(2) Sont annexés à la demande les renseignements prévus par règlement et liés à celle-ci. 1990, ch. 7, art. 34.

119.04 Publication

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119.04 Le demandeur fait publier un avis de la demande dans la *Gazette du Canada* et telles autres publications que l'Office estime indiquées. 1990, ch. 7, art. 34.

119.05 Complément d'information

119.05 Dans un délai raisonnable, qui court à compter de la publication, l'Office peut exiger du demandeur tout complément d'information qu'il estime nécessaire à sa décision d'effectuer une recommandation au titre de l'article 119.06. 1990, ch. 7, art. 34.

119.06(1) Sursis

119.06(1) L'Office peut suggérer, par recommandation qu'il doit rendre publique, au ministre la prise d'un décret au titre de l'article 119.07 visant une demande d'exportation d'électricité et surseoir à la délivrance de permis pour la durée nécessaire à la prise du décret.

119.06(2) Critères

(2) Pour déterminer s'il y a lieu de procéder à la recommandation, l'Office tente d'éviter le dédoublement des mesures prises au sujet de l'exportation d'électricité par le demandeur et le gouvernement de la province exportatrice et tient compte de tous les facteurs qu'il estime pertinents et notamment :

- a) des conséquences de l'exportation sur les provinces autres que la province exportatrice;
- b) des conséquences de l'exportation sur l'environnement;
- c) du fait que le demandeur :
 - (i) a informé quiconque s'est montré intéressé par l'achat d'électricité pour consommation au Canada des quantités et des catégories de services offerts,
 - (ii) a donné la possibilité d'acheter de l'électricité à des conditions aussi favorables que celles indiquées à la demande, à ceux qui ont, dans un délai raisonnable suivant la communication de ce fait, manifesté l'intention d'acheter de l'électricité pour consommation au Canada;
- d) de tout autre facteur qui peut être prévu par règlement. 1990, ch. 7, art. 34.

Décrets

119.07(1) Licence obligatoire

119.07(1) Le gouverneur en conseil peut, par décret :

- a) préciser que la demande d'exportation est assujettie à l'obtention de la licence visée à l'article 119.08;
- b) annuler tout permis relatif à cette exportation.

119.07(2) Précision

2001 CarswellNat 561, 2001 FCA 62, 37 C.E.L.R. (N.S.) 147, [2001] 3 F.C. 412, 3 C.N.L.R. 29, 2001 CarswellNat 2428, 3 F.C. 412, [2001] F.C.J. No. 359, 33 Admin. L.R. (3d) 36, [2001] 3 C.N.L.R. 29

(2) La prise du décret ne peut survenir plus de quarante-cinq jours après la délivrance du permis relatif à la demande.

119.07(3) Effet du décret

(3) Le décret emporte l'impossibilité de délivrer tout permis relatif à la demande et l'assimilation de toute demande la visant à une demande de licence. 1990, ch. 7, art. 34.

Licences

119.08(1) Délivrance

119.08(1) Sous réserve de l'agrément du gouverneur en conseil et de l'article 24, l'Office peut délivrer une licence pour l'exportation de l'électricité visée par le décret.

119.08(2) Facteurs à considérer

(2) L'Office tient compte de tous les facteurs qui lui semblent pertinents.

119.08(3) Annulation

(3) La décision de l'Office de ne pas délivrer de licence pour l'exportation de l'électricité visée par le décret emporte l'annulation de tout permis la visant et non annulé par le décret. 1990, ch. 7, art. 34.

Conditions - permis et licences

119.09(1) Conditions

119.09(1) L'Office peut assortir le permis des conditions, en ce qui touche les données prévues par règlement, qu'il juge souhaitables dans l'intérêt public.

119.09(2) Idem

(2) L'Office peut assujettir la licence aux conditions qu'il juge souhaitables. 1990, ch. 7, art. 34. 119.091

Observation

119.091 Constitue une condition du permis ou de la licence l'observation de la présente loi et de ses règlements en vigueur à la date de la délivrance et ultérieurement, ainsi que des ordonnances prises ou rendues sous le régime de la présente loi. 1990, ch. 7, art. 34.

119.092 Durée de validité

119.092 Les permis et licences deviennent périmés trente ans après leur délivrance ou à la date antérieure précisée dans le titre. 1990, ch. 7, art. 34.

Annulation et suspension

2001 CarswellNat 561, 2001 FCA 62, 37 C.E.L.R. (N.S.) 147, [2001] 3 F.C. 412, 3 C.N.L.R. 29, 2001 CarswellNat 2428, 3 F.C. 412, [2001] F.C.J. No. 359, 33 Admin. L.R. (3d) 36, [2001] 3 C.N.L.R. 29

119.093(1) L'Office peut annuler ou suspendre un permis ou une licence délivré pour l'exportation d'électricité soit à la demande ou avec le consentement du titulaire, soit en cas de contravention par celui-ci aux conditions de son titre.

119.093(2) Avis

(2) Toutefois, il doit auparavant aviser le titulaire de la contravention reprochée et lui donner la possibilité de se faire entendre. 1990, ch. 7, art. 34.

Règlements

119.094 Règlements

119.094 Le gouverneur en conseil peut prendre des règlements d'application de la présente section et notamment :

- a) arrêter les données objet des conditions pouvant régir les permis;
- b) prévoir les renseignements à fournir pour les demandes de permis d'exportation, les unités de mesure et les instruments ou appareils de mesure à utiliser dans le cadre de l'exportation d'électricité et l'inspection de tout ce qui sert ou se rattache à l'exportation d'électricité, notamment instruments, appareils, usines, matériel, livres, registres ou comptes;
- c) préciser les facteurs dont l'Office doit tenir compte pour déterminer s'il y a lieu de recommander au ministre la prise d'un décret, visant la demande de permis d'exportation, au titre de l'article 119.07. 1990, ch. 7, art. 34.

.....

National Energy Board Electricity Regulations, SOR/97-130

2. In these Regulations,

.....

"environmental effect" means, in respect of a project,

- (a) any change that the project may cause in the environment, including any effect of any such change on health and socio-economic conditions, on physical and cultural heritage, on the current use of lands and resources for traditional purposes by Aboriginal persons, or on any structure, site or thing that is of historical, archaeological, paleontological or architectural significance,
- (b) repercussions on the environment of malfunctions or accidents that may occur and any cumulative repercussions on the environment that are likely to result from the project in combination with other projects or activities that have been or will be carried out, and
- (c) any change to the project that may be caused by the environment; (*effets environnementaux*)

2001 CarswellNat 561, 2001 FCA 62, 37 C.E.L.R. (N.S.) 147, [2001] 3 F.C. 412, 3 C.N.L.R. 29, 2001 CarswellNat 2428, 3 F.C. 412, [2001] F.C.J. No. 359, 33 Admin. L.R. (3d) 36, [2001] 3 C.N.L.R. 29

"equichange transfer" means an interchange of equal quantities of power or energy within a stated period;
(*transfert d'équivalents*)

.....

"permit" means an authorization for

- (a) the construction and operation of an international power line issued under Part III.1 of the Act, or
- (b) the exportation of electricity issued under Part VI of the Act; (*permis*)

"storage transfer" means a transfer of energy that is banked for the time being in the form of water in a reservoir of another power system, in the expectation that equivalent energy will be returned at a later time.
(*transfert en vue du stockage*) SOR/99-338, s. 1(F).

.....

9. An application for a permit for the exportation of electricity, other than for a border accommodation transfer, shall contain the following information, unless the Board advises the applicant that the information is already in the possession of the Board or that the information is not relevant to the application:

.....

(o) the adverse environmental effects resulting from the proposed exportation of electricity, and the measures to be taken to mitigate any of those environmental effects;

.....

10. The following are matters in respect of which terms and conditions may be included in any permit for the exportation of electricity:

.....

(k) requirements relating to the protection and restoration of the environment;

.....

2. Les définitions qui suivent s'appliquent au présent règlement.

.....

« effets environnementaux » À l'égard du projet :

- a) les changements que la réalisation du projet risque de causer à l'environnement, y compris les répercussions de ceux-ci soit en matière sanitaire et socio-économique, soit sur le patrimoine physique et culturel, soit sur l'usage courant des terres et des ressources à des fins traditionnelles par les Autochtones, soit sur une construction, un emplacement ou une chose d'importance en matière historique, archéologique, paléontologique ou architecturale;

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b) les incidences environnementales des défaillances ou des accidents pouvant se produire, ainsi que les incidences cumulatives que la réalisation du projet, combinée à la réalisation d'autres projets ou activités, est susceptible de causer à l'environnement;

c) les changements susceptibles d'être apportés au projet du fait de l'environnement. (*environmental effect*)

.....

« transfert d'équivalents » Échange de quantités égales de puissance ou d'énergie au cours d'une période déterminée. (*equichange transfer*)

.....

.....

« permis » Autorisation permettant :

a) soit la construction et l'exploitation d'une ligne internationale en vertu de la partie III.1 de la Loi;

b) soit l'exportation d'électricité en vertu de la partie VI de la Loi. (*permit*)

.....

« transfert en vue du stockage » Transfert d'une quantité d'énergie accumulée, à l'époque considérée, sous forme de volume d'eau retenue dans le réservoir d'un autre réseau d'électricité, en prévision de la remise d'une quantité équivalente d'énergie à une date ultérieure. (*storage transfer*)

.....

9. Là demande d'un permis d'exportation d'électricité, autre qu'un permis relatif au transfert en vue d'un service frontalier, doit contenir les renseignements suivants, à moins que l'Office n'informe le demandeur que ceux-ci sont déjà en sa possession ou qu'ils ne sont pas pertinents à la demande :

.....

o) les effets environnementaux négatifs de l'exportation d'électricité proposée et les mesures qui seront prises pour les atténuer en tout ou en partie;

.....

10. Le permis d'exportation d'électricité peut être assorti de conditions concernant :

.....

k) les exigences relatives à la protection et à la remise en état de l'environnement; . . .

2001 CarswellNat 561, 2001 FCA 62, 37 C.E.L.R. (N.S.) 147, [2001] 3 F.C. 412, 3 C.N.L.R. 29, 2001 CarswellNat 2428, 3 F.C. 412, [2001] F.C.J. No. 359, 33 Admin. L.R. (3d) 36, [2001] 3 C.N.L.R. 29

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