

EA-351

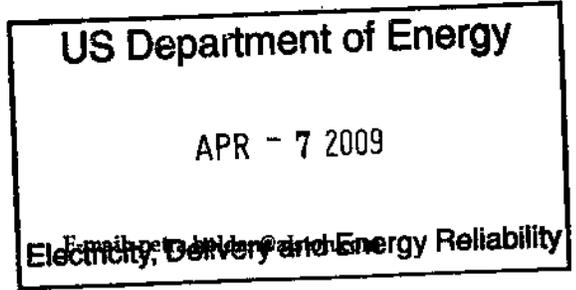
# ALSTON & BIRD LLP

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Petra A. Holden

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April 7, 2009

The Department of Energy  
Office of Electricity Delivery and Energy Reliability  
OE-20, Room 6H-034  
1000 Independence Avenue, S.W.  
Washington, D.C. 20585

Attention: Ms. Ellen Russell

Re: DC Energy Dakota, LLC

Dear Ms. Russell:

Enclosed for filing on behalf of DC Energy Dakota, LLC are:

1. an original and fifteen copies of the Application of DC Energy Dakota, LLC for Authority to Transmit Electric Energy to Canada; and
2. a check in the amount of \$500 payable to the Treasurer of the United States as required under 10 C.F.R. § 205.309 (2009).

Additionally, DC Energy Dakota, LLC requests expedited treatment of its application.

Respectfully submitted,

Petra A. Holden

Attorney for DC Energy Dakota, LLC

Enclosure

**UNITED STATES OF AMERICA BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY  
AND ENERGY RELIABILITY**

DC Energy Dakota, LLC

)

Docket No. EA-351

**APPLICATION OF DC ENERGY DAKOTA, LLC  
FOR AUTHORIZATION TO  
TRANSMIT ELECTRIC ENERGY TO CANADA**

DC Energy Dakota, LLC (“DCE Dakota”), pursuant to Section 202(e) of the Federal Power Act (“FPA”) (16 U.S.C. § 824a(e)) and 10 C.F.R. § 205.300, *et seq.* (2008), hereby requests blanket authorization to transmit electric energy from the United States to Canada for a period of five (5) years (or for such other period as the Department of Energy (“Department”) deems appropriate) effective from the date of the order granting this Application.

**I. DESCRIPTION OF APPLICANT**

DC Energy Dakota, LLC, a Delaware limited liability company, is a power marketer that expects to be active in the electricity and related financial markets administered by the US Regional Transmission Organizations (“RTO”)/Independent System Operators (“ISO”) (*e.g.*, ISO-New England, Midwest ISO, New York ISO and PJM). DCE Dakota will engage in wholesale electric power and related transactions as an electric power marketer. DCE Dakota has also applied to the Federal Energy Regulatory Commission (“FERC”) to receive market-based rate authority and intends to utilize this authority to schedule physical power transfers between control areas.<sup>1</sup>

DCE Dakota is a wholly owned, direct subsidiary of DC Energy Holdings, LLC. DC Energy Holdings, LLC also holds the following operating subsidiaries: DC Energy, LLC, DC Energy Midwest, LLC, DC Energy New York, LLC, DC Energy Mid-Atlantic, LLC, DC Energy New England, LLC, DC Energy California, LLC, DC Energy Southwest, LLC and DC Energy Texas, LLC. Each of these entities has been granted market based rate authority by the FERC.<sup>2</sup> None of these entities is affiliated with any entity engaged in or planning to engage in the transmission or distribution of electricity or natural gas, or is otherwise in control of such an entity. Consequently,

<sup>1</sup> DC Energy Dakota, LLC, Docket No. ER09-897-000.

<sup>2</sup> DC Energy, LLC (market-based rate authority was granted in Docket No. ER04-381-001); DC Energy Midwest, LLC (market-based rate authority was granted in Docket No. ER05-1467-000); DC Energy Mid-Atlantic, LLC (market-based rate authority was granted in Docket No. ER06-913-000); DC Energy New England, LLC (market-based rate authority was granted in Docket No. ER06-914-000); DC Energy Texas, LLC (market-based rate authority was granted in Docket No. ER08-632-000); DC Energy California, LLC (market-based rate authority was granted in Docket No. ER08-731-000); DC Energy Southwest, LLC (market-based rate authority was granted in Docket No. ER08-1117-000); and DC Energy New York, LLC (market-based rate authority was granted in Docket No. ER06-912-000).

neither DCE Dakota nor any of its affiliates owns or controls electric generation, electric transmission facilities or interstate natural gas supply facilities, construction/engineering firms which could engage in the construction of generation or transmission facilities, generation sites, or any other business, asset or activity that could be used to erect a barrier to entry into the energy sector. Neither DCE Dakota nor any of its affiliates has any franchised service area for the sale of electricity or natural gas to captive customers.

## II. COMMUNICATIONS

Please direct all communications regarding this application to the following individual:

Stephen C. Palmer  
Alston & Bird LLP  
The Atlantic Building  
950 F Street, NW  
Washington, DC 20004-1404  
Phone: 202-756-3300  
[stephen.palmer@alston.com](mailto:stephen.palmer@alston.com)

## III. ORGANIZATION OF APPLICANT, AUTHORITY TO DO BUSINESS

DCE Dakota is a Delaware limited liability company with its principal place of business in Vienna, Virginia.

## IV. JURISDICTION

Pursuant to section 202(e) of the FPA, DOE has jurisdiction over the actions to be taken pursuant to this Application. No other federal, state, or local government has jurisdiction over the actions to be taken in this Application.

## V. FACILITIES

DCE Dakota seeks to transmit electricity to Canada over existing transmission interconnections between the United States and Canada. **Exhibit C** to this Application provides the location and description of the transmission facilities through which the electric energy may be delivered into Canada, and includes the name of the facility owners as well as the Presidential Permit numbers.

## VI. TECHNICAL DISCUSSION OF PROPOSAL

As noted above, DCE Dakota has no "system" of its own on which exports of power could have a reliability or stability impact. The electric power DCE Dakota will export, on either a firm or interruptible basis, will be purchased from others voluntarily and will therefore be surplus to the needs of the selling entities. Moreover, because

DCE Dakota does not have an obligation to serve native load, the exports proposed by DCE Dakota will not impair its ability to meet current and prospective power supply obligations.

In previous orders granting export authorization to electric power marketers, the Department declined to rigidly apply the information filing requirements contained in its regulations and instead used a flexible approach which takes into consideration the unique nature of power marketers, the requirements of FERC Order No. 888 and previously authorized export limit of cross-border facilities.<sup>3</sup> These same considerations demonstrate that DCE Dakota's proposed exports will not impair or tend to impede the sufficiency of electric supplies in the United States or the regional coordination of electric utility planning or operations.

DCE Dakota's application is consistent with United States energy policy established in the Energy Policy Act of 1992, the North American Free Trade Agreement of 1993 and FERC Order No. 888, which fosters more efficient and competitive North American energy markets.

## VII. PROCEDURAL MATTERS

DCE Dakota is seeking authorization, as a power marketer, to transmit electricity to Canada through existing border facilities, although specific transactions have not yet been finalized. The Department has granted such authority to similarly-situated electric power marketers. If required by the Department, DCE Dakota is willing to accept general conditions consistent with the Department's previous power marketer export authorizations. In particular, if required by the Department, exports made by DCE Dakota will not exceed the export limits for the transmission facilities utilized by DCE Dakota, or otherwise cause a violation of the terms and conditions set forth in the export authorizations application to each.

DCE Dakota also commits to providing to the Department, if required, prior to commencing export, written evidence to the Department that it has secured sufficient transmission service for the delivery of power to the border. In addition, when scheduling the delivery of power DCE Dakota will comply with applicable North American Electric Reliability Corporation ("NERC") reliability criteria, standards, and guidelines. Finally, for each calendar quarter, DCE Dakota will provide the Department with reports indicating the gross amount of electricity delivered to Canada, consideration received during each month, and the maximum hourly rate of transmission.

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<sup>3</sup> See, e.g., *NorAm Energy Services, Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Services Corp.*, No. EA-114 (July 15, 1996); *USGen Power Services*, No. EA-112 (June 27, 1996); *CNG Power Services Corp.*, No. EA-110 (June 20, 1996); *Destec Power Services, Inc.*, No. EA-113 (May 31, 1996); and *Morgan Stanley Capital Group*, No. EA-185-A-CN (Aug. 14, 2000).

## VIII. EXHIBITS

The following exhibits are attached hereto as follows:

- Exhibit A - Agreements (Not Applicable)
- Exhibit B - Legal Opinion of Counsel
- Exhibit C - Transmission Facilities (submitted in lieu of maps)
- Exhibit D - Non U.S. Applicant's Power of Attorney (Not Applicable)
- Exhibit E - Statement of any corporate relationship or existing contract, which in any way relates to the control or fixing of electric power rates (Not Applicable)
- Exhibit F - Operating procedures regarding available capacity and energy (Not Applicable)
- Exhibit G - Verification

To the extent necessary, DCE Dakota requests a waiver of the requirement to provide the exhibits that are not applicable to its application, as noted.

## IX. CONCLUSION

Wherefore, DC Energy Dakota, LLC respectfully requests that the Department review and grant this application in an expeditious manner.

Respectfully submitted,



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April 7, 2009

**EXHIBIT A – Not Applicable**

**EXHIBIT B**

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April 7, 2009

The Department of Energy  
Office of Electricity Delivery and Energy Reliability  
OE-20, Room 6H-034  
1000 Independence Avenue, S.W.  
Washington, DC 20585

Re: DC Energy Dakota, LLC

Ladies and Gentlemen:

This opinion is furnished to you at the request of DC Energy Dakota, LLC (the "Company") in connection with the Company's application for Authorization to Transmit Electric Energy to Canada, as prescribed by 10 C.F.R. § 205.303(b) (2008). This letter is solely for your benefit in connection with the Company's aforementioned application, and no other person or entity shall be entitled to rely upon this letter.

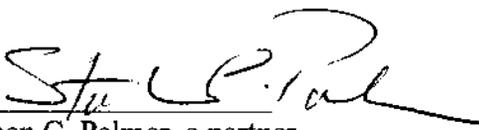
We have examined the Limited Liability Company Agreement of DC Energy Dakota, LLC, the relevant provisions of the Delaware Limited Liability Company Act, and such other documents as we have deemed necessary or appropriate to render this opinion. In such examination, we have assumed the genuineness of all signatures, the authenticity of all documents submitted to us as originals, the conformity to originals of documents submitted to us as copies, and the authenticity of such originals of documents.

Based on the foregoing, we are of the opinion that the Company has the corporate power and authority to export electricity from the United States to Canada and that the Company will comply with all Federal and State laws pertinent to that business activity.

Further, we are of the opinion that, once the Company receives approval of its export authorization from the Department of Energy, the Company will have received all necessary federal approvals to sell to Canada.

Sincerely,

ALSTON & BIRD LLP

By:   
Stephen C. Palmer, a partner

### EXHIBIT C

Owner	Location	Voltage	Presidential Permit No.
<b>Basin Electric Power Coop.</b>	<b>Tioga, ND</b>	<b>230-kV</b>	<b>PP-64</b>
<b>BPA</b>	<b>Blaine, WA</b>	<b>2-500-kV</b>	<b>PP-10</b>
	<b>Nelway, WA</b>	<b>2-230-kV</b>	<b>PP-36 &amp; PP-46</b>
<b>Eastern Main Elect. Coop.</b>	<b>Calais, ME</b>	<b>69-kV</b>	<b>PP-32</b>
<b>International Transmission Co.</b>	<b>Detroit, MI</b>	<b>230-kV</b>	<b>PP-230</b>
	<b>Marysville, MI</b>	<b>230-kV</b>	<b>PP-230</b>
	<b>St. Claire, MI</b>	<b>230-kV</b>	<b>PP-230</b>
	<b>St. Claire, MI</b>	<b>345-kV</b>	<b>PP-230</b>
<b>Joint Owners of Highgate Project</b>	<b>Highgate, VT</b>	<b>120-kV</b>	<b>PP-82</b>
<b>Long Sault, Inc.</b>	<b>Massena, NY</b>	<b>2-115-kV</b>	<b>PP-24</b>
<b>Maine Electric Power Co.</b>	<b>Houlton, ME</b>	<b>345-kV</b>	<b>PP-43</b>
<b>Maine Public Service Co.</b>	<b>Limestone, ME</b>	<b>69-kV</b>	<b>PP-12</b>
	<b>Fort Fairfield, ME</b>	<b>69-kV</b>	<b>PP-12</b>
	<b>Madawaska, ME</b>	<b>138-kV</b>	<b>PP-29</b>
	<b>Aroostook, ME</b>	<b>2-69-kV</b>	<b>PP-29</b>
<b>Minnesota Power, Inc.</b>	<b>International Falls, MN</b>	<b>115-kV</b>	<b>PP-78</b>
<b>Minnkota Power Coop.</b>	<b>Roseau County, MN</b>	<b>230-kV</b>	<b>PP-61</b>
<b>New York Power Authority</b>	<b>Massena, NY</b>	<b>765-kV</b>	<b>PP-56</b>
	<b>Massena, NY</b>	<b>2-230-kV</b>	<b>PP-25</b>
	<b>Niagara Falls, NY</b>	<b>2-345-kV</b>	<b>PP-74</b>
	<b>Devils Hole, NY</b>	<b>230-kV</b>	<b>PP-30</b>
<b>Niagara Mohawk Power Corp.</b>	<b>Devils Hole, NY</b>	<b>230-kV</b>	<b>PP-190</b>
<b>Northern States Power Co.</b>	<b>Red River, ND</b>	<b>230-kV</b>	<b>PP-45</b>
	<b>Roseau County, MN</b>	<b>500-kV</b>	<b>PP-63</b>
	<b>Rugby, ND</b>	<b>230-kV</b>	<b>PP-231</b>
<b>Vermont Electric Power Co.</b>	<b>Derby Line, VT</b>	<b>120-kV</b>	<b>PP-66</b>
<b>Vermont Electric Transmission Co.</b>	<b>Norton, VT</b>	<b>±450-kV DC</b>	<b>PP-76</b>
	<b>Millbury, MA</b>	<b>345-kV</b>	<b>PP-76 &amp; PP-76-1</b>
	<b>Medway, MA</b>	<b>345-kV</b>	<b>PP-76 &amp; PP-76-1</b>

**EXHIBIT D – Not Applicable**

**EXHIBIT E -- Not Applicable**

**EXHIBIT F – Not Applicable**

## **EXHIBIT G**

UNITED STATES OF AMERICA BEFORE THE  
DEPARTMENT OF ENERGY  
OFFICE OF ELECTRICITY DELIVERY  
AND ENERGY RELIABILITY

DC Energy Dakota, LLC

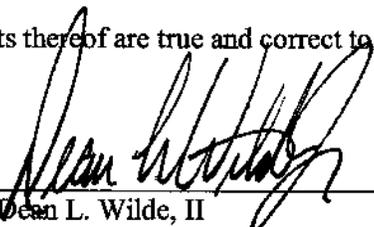
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Docket No. EA-\_\_\_

APPLICATION OF DC ENERGY DAKOTA, LLC  
FOR AUTHORIZATION TO  
TRANSMIT ELECTRIC ENERGY TO CANADA

AFFIDAVIT

I, Dean L. Wilde, II, having knowledge of the matters set forth in the above Application by DC Energy Dakota, LLC for Authorization to Transmit Electric Energy to Canada, hereby verify that the contents thereof are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Dean L. Wilde, II  
Managing Director & Chief Executive  
Officer, DC Energy Dakota, LLC

SUBSCRIBED AND SWORN before me this 2<sup>nd</sup> day of April, 2009.

  
\_\_\_\_\_  
Notary Public  
State of Virginia, County of Fairfax  
My Commission Expires 12/31/09

