UNITED STATES DEPARTMENT OF ENERGY
BEFORE THE DEPARTMENT OF ENERGY
OFFICE OF ELECTRIC DELIVERY AND ENERGY RELIABILITY

In the Matter of:	)	
AEP Energy Partners, Inc.	)	**OE Docket No. EA-318-B**

ANSWER OF AEP ENERGY PARTNERS, INC. TO SIERRA CLUB'S MOTION TO INTERVENE AND PROTEST

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Department of Energy ("DOE" or "Department"),[1] AEP Energy Partners, Inc. ("AEP Energy Partners") submits this answer to Sierra Club's Notice of Intervention and Motion to Intervene and Protest ("Sierra Protest"), filed February 9, 2012, in this docket.[2] For the reasons stated herein, AEP Energy Partners asks DOE to reject the Protest and promptly issue an order in this docket renewing the export authorization issued to AEP Energy Partners in 2007 in OE Docket No. EA-318-A.[3] As its Answer, AEP Energy Partners states as follows:

I. PROCEDURAL HISTORY OF OE DOCKET NO. EA-318-B

On December 19, 2011, AEP Energy Partners filed an Application for Renewal of Authorization to Export Electricity from the United States to Mexico ("Application") with DOE in Docket No. EA-318-B. DOE noticed the Application on January 10, 2012 and set the deadline for comments or protests as February 9, 2012. Sierra Club filed its Protest on February 9, 2012. On February 15, 2012, AEP Energy Partners filed an Emergency Request for a Continuance or Temporary Extension of Existing Export Authorization or for a Temporary Export Authorization ("Request"). On February 17, 2012, Sierra Club filed in opposition and

[1] 18 C.F.R. § 385.213 (2011).

[2] To the extent necessary, AEP Energy Partners seeks leave to answer the Protest to address issues important to this proceeding.

[3] *AEP Energy Partners, Inc.*, Order No. EA-318-A at Ordering Paragraph (K) (June 27, 2007) ("Order No. EA-318-A").

asked DOE to deny the Request. On February 21, 2012, AEP Energy Partners filed a letter with additional information that AEP Energy Partners asked DOE to take into consideration as the Department considered the Request. By order issued February 22, 2012, DOE granted temporary emergency authority to AEP Energy Partners. Emergency Temporary Export Authority, Order No. EA-318-B, *mimeo* at 2 (Feb. 22, 2012).

II. DESCRIPTION OF AEP ENERGY PARTNERS AND ITS OPERATIONS

AEP Energy Partners is a power marketer. AEP Energy Partners owns neither generation nor transmission facilities and purchases power and energy in the wholesale electricity market in order to transact in the domestic U.S. and Mexican markets. AEP Energy Partners has held its current authorization for exports to Mexico since February 22, 2007.[4]

AEP Energy Partners can export energy to Mexico only when it can purchase excess generation from willing sellers and secure transmission to and across the U.S./Mexico border. The Electric Reliability Council of Texas ("ERCOT") is the ISO for nearly all of the state of Texas and is critical to such export transactions in its various ISO roles. ERCOT ensures that the grid can accommodate scheduled energy transfers, ensures grid reliability and promotes efficiency in energy markets. ERCOT will not permit holders of an export authorization to export from Texas to Mexico if such export threatens either the reliability of the transmission grid or the sufficiency of generation in the state of Texas.

III. ANSWER

The statutory and regulatory framework with respect to exports of electricity from the U.S. is as follows:

> Exports of electricity from the United States to a foreign country are regulated by the Department of Energy . . . pursuant to sections 301(b) and 402(f) of the DOE Organization Act (42 U.S.C.

[4] *See supra* n.3.

> 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

Tenaska Power Services, Inc., Order No. EA-243-B at 1 (Jan. 19, 2012) ("*Tenaska*").

Section 202(e) of the FPA reads in pertinent part:

> The Commission *shall* issue such order [granting authorization to export] upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission."

16 U.S.C. § 824a(e) (emphasis added). The underlying statutory framework is straightforward: when presented with an export application, DOE must pursue two inquiries and, unless DOE concludes the export will either impair electric supply and/or impede coordination of jurisdictional facilities, the Congress has directed DOE to authorize the import.

Before issuing an export authorization, the Department must also determine whether the export authorization is among those classes of actions that would require preparation of an environmental assessment under DOE's regulations implementing the Natural Environmental Policy Act of 1969 ("NEPA").[5]

A. AEP Exports to Mexico Do Not and Cannot Impair the Sufficiency of Electric Supply Within the United States.

DOE has properly determined that power marketers, given their particular characteristics lack the ability to affect the sufficiency of electric supply. As DOE explained:

> Specifically, under the first criterion of section 202(e), DOE shall approve an electricity export application "unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States. . . ." DOE has interpreted this criterion to mean that sufficient generating capacity must exist such that the exporter could sustain the export while still maintaining adequate generating reserves to meet all native load obligations. Power marketers, like AEPEP Inc., do not have franchised service areas and, consequently, have

[5] 421 U.S.C. § 4321 *et seq.*, 10 C.F.R. Part 1021 (2011).

> no native load obligations like the traditional local distribution utility. Marketers build a power purchase portfolio from electric power purchased from various entities inside and outside the United States. The power purchased by a power marketer is, by definition, surplus to the needs of the selling entities. With no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export. *Because a marketer has no native load obligations and because power purchased by a marketer would be surplus to the needs of the entities selling the power to the marketer, an export occurring under such circumstances would meet the first statutory criterion of section 202(e) of the FPA of not impairing the sufficiency of supply within the United States.*

Order No. EA-318-A, *mimeo* at 2 (emphasis added). *See also Tenaska*, *mimeo* at 1-2; *TransAlta Energy Marketing (U.S.) Inc.*, Order No. EA-216-C, *mimeo* at 2 (May 17, 2011) *("TransAlta")*.

DOE's analysis is exactly on point, notwithstanding Sierra Club's attempts to challenge DOE's reasoning. Specifically, Sierra Club argues that DOE must assess the "quantity of power to be exported and where and how it would be produced," before DOE can conclude that there is no risk of impairment sufficiency of electric supply. Sierra Protest at 6. Sierra Club is wrong.

The quantity of electricity exported to Mexico by AEP Energy Partners and others exporters will vary greatly during the course of a year but the quantity and the source of the power are not pertinent to DOE's analysis because an authorization from DOE to export to Mexico is not a guarantee that a power marketer can export at will, that is, at any time and in any amount that the power marketer chooses. Rather, DOE authorization is simply permission to export at such times as that export, in the expert opinion of ERCOT, the ISO in the Texas market, will not threaten the reliability of the Texas grid. ERCOT's responsibility is to the grid, not to exporters in general or to AEP Energy Partners in particular.

ERCOT will decline to schedule an export if power is needed for the grid or if the transmission capacity needed to carry energy to the Mexican border is needed for other system uses. Accordingly, exports to Mexico by power marketers in general, and AEP Energy Partners

in particular, when allowed by ERCOT, present no risk to the sufficiency of supply. That was the situation in 2007 when AEP Energy Partners first secured its export authorization and that remains the situation today. DOE summarized the situation elsewhere as follows:

> It should be noted that Powerex, or any power marketer for that matter, does not have the ability to affect an export contrary to the operating procedures of the transmission system operator. As discussed more fully below, an entity exporting like a power marketer would have no ability to affect an export, except for scheduling it through an ISO or other transmission operator, and the transmission operator in an area would violate its own requirements or the requirements applicable to it if it were to schedule the delivery of an export that created or exacerbated a problem on the subject transmission system.

Powerex Corporation, Order No. EA-171-B, *mimeo* at 7 (Nov. 18, 2005).

None of the data points sought by Sierra Club -- quantity of power, location of the generator and type of generator -- go to the "sufficiency" of supply. These facts or data points are not material to DOE's determination because, as DOE has properly recognized, the intrinsic safeguards built into the system assure the sufficiency of the U.S. electric supply without regard to the size of the export transaction, the source of the energy or the fuel used to generate the energy. Nor did AEP Energy Partners fail to comply with DOE's regulations at 10 C.F.R § 205.302(g) (2011) by "omit[ting] any 'technical discussion' on how the proposed export will not 'impair the sufficiency of electric supply on its system . . . ." Sierra Protest at 10. AEP Energy Partners has no system. It operates in the market and on the transmission systems of others and must comply with the procedures and limitations discussed, *supra.*

Sierra Club also argues that the Department must consider the statements made in recent filings in an action before the United States Court of Appeals for the District of Columbia Circuit by ERCOT and the State of Texas in assessing the impact of the requested renewal authorization on reliability. Sierra Protest at 8-9. However, the referenced statements indicate only that during periods of peak demands in the domestic electricity markets as recently as last summer, resource

adequacy within ERCOT was a concern. During such periods, as already discussed, balancing authorities within ERCOT or other reliability regions will schedule all domestic deliveries required to maintain domestic system reliability prior to making any wholesale power available for export.

AEP Energy Partners' future opportunities to export power, like those of every other energy marketer, will be determined by the availability of power in excess of the amounts needed to satisfy the demands of the domestic markets, and will not impair the reliability of the domestic electricity grid. Sierra Club also points to concerns of the Northern American Electric Reliability Corporation ("NERC") about Texas reliability in 2013. Sierra Protest at 9. Should those concerns prove valid, ERCOT has the regulatory tools to retain resources in Texas to provide supply.

It bears repeating that, like AEP Energy Partners' earlier export authorization, any renewal authorization will be expressly conditioned upon compliance with the requirements of the FPA and its implementing regulations, and with the guidelines, standards and policies of the regional reliability authorities, specifically, ERCOT and NERC. The export authorization and the transactions authorized by it will not impair the sufficiency of electricity supply within the United States.

B. Cross-border Transactions Can Promote Grid Reliability.

Sierra Club ignores the fact that the international partners doing business under export authorizations like those issued to AEP Energy Partners generally have reciprocal arrangements under which electricity flows into the United States from foreign generation sources and contributes to a more reliable U.S. electricity grid. ERCOT protocols recognize that both imports and exports can promote reliability of the electric grids on both sides of the border. ERCOT Nodal Protocols, Section 6 (Feb. 1, 2012). The ERCOT determination that a robust

cross-border market can promote reliability is another reason that DOE should reject the Protest and promptly renew AEP Energy Partners' export authorization to allow AEP Energy Partners to continue to participate in the export market.

C. AEP Energy Partners' Exports to Mexico Do Not and Cannot Impede the Coordination of Jurisdictional Public Facilities.

The second part of the analysis required by the FPA is that any authorized export should not "impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission." DOE has consistently "interpreted this second criterion primarily as an issue of the operational reliability of the domestic electric transmission system." *Tenaska, mimeo* at 2.

DOE undertakes a two part analysis: "(1) moving the export from the source to a border system that owns the international transmission connection; and, (2) moving the export through that border system and across the border." *Id.* For the first part, transmission on the domestic system to reach the border, DOE notes that, under the open-access regime, a power marketer must reserve transportation pursuant to an open-access transmission tariff and schedule such movement consistent with "established operating reliability standards" as administered by the owner/operator of the domestic system. *Id., mimeo* at 3. For the second part of the analysis, transmission across the border, DOE relies on the operational limitations that DOE has itself imposed on the permitted facilities crossing the border, after the conduct of technical studies to identify the appropriate operational limitations. *Id.* At the same time, DOE has long recognized that cross-border electric trade is to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. *Id., mimeo* at 5.

Sierra Club does not appear to take issue with DOE's analysis with respect to the sufficiency of current transmission procedures and processes to assure the reliability the domestic transmission system. However, Sierra Club argues that the Department's focus in meeting its NEPA regulatory obligations is too narrow. For the reasons set out in the following

section, DOE's reliance on the categorical exclusion for transmission of electric energy using exiting transmission systems does not violate NEPA and DOE should reject Sierra Club's argument to the contrary.

D. AEP Energy Partners' Renewal Application Qualifies for the Categorical Exclusion from NEPA Review.

Sierra Club attacks DOE's determination, in numerous proceedings, that an environmental impact statement ("EIS") is not required as part of DOE's processing of export authorizations because an export authorization falls within DOE's codified NEPA categorical exclusion for transactions using existing transmission facilities.[6] Sierra Club argues that DOE must analyze the environmental impacts associated with AEP Energy Partners' application by preparation of an EIS assessing "the environmental impacts of burning coal." Sierra Protest at 11.[7] At base, Sierra Club is challenging DOE's adoption of a categorical exclusion from NEPA for *all* electricity export authorizations, after full opportunity for public comments, and makes no effort to identify any "extraordinary circumstances . . . that may affect the significance of the environmental effects of the proposal" as required under the Department's implementing regulations. 10 C.F.R. §1021.410(b)(2) (2011).

Sierra Club inaccurately states that DOE's categorical exclusions were last reviewed in 1996. Sierra Protest at 15, n.46. In fact, DOE just months ago completed a comprehensive review of its implementing regulations and categorical exclusions, taking into account the most recent guidance issued by the Council on Environmental Quality (CEQ). *See generally*, National

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[6] 10 C.F.R. Pt. 1021, Subpt. D, App. B, B4.3 (2011).

[7] The emissions and other environmental impacts associated with the Oklaunion facility, referenced by Sierra Club at several points in its Protest, are subject to permits issued by the state environmental agency that conform to the current requirements of state and federal environmental laws. Sierra Club complains generally about the "deleterious effects of coal-fired power" but provides no evidence that emissions from the Oklaunion facility can be directly connected with any of the cited ill effects. Sierra Protest at 12. To the extent that Sierra Club has specific complaints about the environmental performance of the Oklaunion facility, those complaints should be addressed through the permitting processes and other procedures administered by the state and federal agencies with the relevant expertise and statutory responsibility.

Environmental Policy Act Implementing Procedures, 76 Fed. Reg. 63764, (Oct. 13, 2011). The Department's review included its general implementing regulations, the addition of new categorical exclusions and review of its existing categorical exclusions, including the exclusions for electricity exports using existing transmission facilities.

DOE specifically invited comments on its existing categorical exclusions, along with the proposed changes recommended in the proposed rule. 76 Fed. Reg. 214, 216 (January 3, 2011). No comments were received on the existing categorical exclusion for using existing transmission facilities, and the exclusion was retained. Given the generalized and extremely broad nature of the alleged environmental impacts recited in Sierra Club's Protest, its concerns could, more appropriately, have been directly addressed in that recent review of DOE's NEPA regulations. Instead, Sierra Club attacks the long-standing categorical exclusion a year later, in a party-specific docket concerning a single application for renewal of an export authorization.

The categorical exclusion for electricity exports, like the other exclusions for power marketing activities in categorical exclusions B4.1 and B4.4,[8] are based on the recognition that these activities, most frequently, involve the delivery of electricity from existing generating resources over existing energy delivery facilities (transmission and/or distribution lines and existing interconnection facilities). The environmental impacts associated with transactions over existing facilities were taken into account when the facilities were first built and, importantly, are governed by existing permits and authorizations.

The same is true for the renewal authorization requested by AEP Energy Partners. The renewal depends on the same transmission facilities included in the 2007 export authorization and will be subject to the same limitations as to the amounts of electricity that can be delivered. The transactions which will be undertaken are based on surplus power from existing generation

[8] 10 C.F.R. Pt. 1021, Subpt. D, App. B, B4.1, B4.4 (2011).

resources, when available. Those existing resources must operate in accordance with their existing permits. There is nothing "extraordinary" about this particular renewal request that justifies more intensive individual environmental review.

E. AEP Energy Partners' Application Met DOE's Regulatory Requirements.

Sierra Club falsely alleges that AEP Energy Partners' "application did not satisfy the minimum regulatory requirements." Sierra Protest at 10. That is not the case.

1. Time Frame for Applications

Sierra Club notes that Section 205.301 of DOE requires companies to file "at least six months in advance of the initiation of the proposed electricity export." Sierra Club then asserts: "Here, AEP-EP filed late and then asked for expedited review of its application." *Id.* at 2. Sierra Club is correct that Section 205.301 of DOE's regulations states that applications for export authorization shall be made six months in advance of the proposed initiation date. However, in DOE's order in Docket No. EA-318-A granting AEP Energy Partners an export authorization for the period ending February 22, 2012, DOE stated with respect to any possible *renewal application*:

> (K) This authorization shall be effective as of February 22, 2007, and remain in effect for a period of five (5) years from that date. Application for renewal of this authorization may be filed within six months prior to its expiration. Failure to provide DOE with at least sixty (60) days to process a renewal application and provide adequate opportunity for public comment may result in a gap in AEPEP Inc.'s authority to export electricity.

Order No. EA-318-A, Ordering Paragraph (K). AEP Energy Partners timely filed its renewal application sixty days in advance of the termination date.

2. AEP Energy Partners' Reporting Obligations

Sierra Club complains of a lack of information as to AEP Energy Partners' exports to Mexico in the summer of 2011, "a time period when Texas claims it came perilously close to

forced outages." Sierra Protest at 6. Sierra Club thereby implies that AEP Energy Partners may have exported energy to Mexico at a time of uncertainty on the Texas grid. For the reasons stated above, ERCOT would not have scheduled exports at a time when the energy would be needed for the Texas grid.

Further, AEP Energy Partners notes that it is in full compliance with its reporting obligations. The Energy Information Agency ("EIA"), now charged with collecting export data, suspended the submission of reports effective June 11, 2011 and directed respondents to continue to collect monthly data for purposes of a future retroactive collection of such data. *Tenaska, mimeo* at 5.

3. Electric System Map

Sierra Club protests that AEP Energy Partners "did not provide maps that highlight the 'facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported'" as required by Section 205.303(c). Sierra Protest at 10. Section 205.303(c) reads in full:

> (c) *Exhibit C.* A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.

As AEP Energy Partners explained in its Application with respect to this requirement, AEP Energy Partners owns no electric system. Application at 9. Moreover, as a power marketer, it purchases in the wholesale market from generators of many types. While AEP Energy Partners disclosed in its Application that it also has access to energy and capacity through a small number of long-term power purchase agreements, these power purchase agreements do not provide significant or primary support for AEP Energy Partners' export transactions. As DOE

recognizes, AEP Energy Partners cannot pinpoint either the specific generation facilities or even the "type of facilities," that, over a period of years, would produce the power and energy to be exported or the transmission facilities used to carry such power and energy to the border.

In another proceeding, DOE summarized as follows: "Today, at the time it submits its application to DOE, the typical exporter cannot identify the source of the exported energy or the electric systems that might be called upon to provide transmission service to the border." *Tenaska, mimeo* at 2. When DOE's export authorization regulations were codified thirty odd years ago, the only exporting entities, with few exceptions, were fully integrated electric utilities whose service areas and system were along the U.S.-Mexico border and the utilities could comply with the Exhibit C regulations. Power marketers cannot comply for the reasons just stated. Moreover, DOE's current practice is not to require applicants for export authorization to identify the proposed border crossings it will use. AEP Energy Partners understands that DOE has its regulations for export authorizations under review for purposes of revision to reflect today's electricity market and wide range of participants.

4. Obligation to Advise Neighboring Utilities of Excess Capacity

Sierra Club alleges that "AEP-EP did not demonstrate how it will inform neighboring utilities of available capacity and energy before delivering these resources to another country," citing 10 C.F.R. § 205.303(f). Sierra Protest at 10. This requirement also reflects an earlier pre-open access, pre-competitive market era. AEP Energy Partners is not an electric utility that might have idle or underused generation that it could commit to the market and AEP Energy Partners has no "neighboring utilities." AEP Energy Partners addressed this point in its Application where it pointed out that entities in need of capacity and energy may find it in the same way as AEP Energy Partners and others, by participating in the competitive wholesale market. Application at 10.

5. Information on Applicant's Present and Prospective Power Supply System

Sierra Club alleges that "AEP-EP was required to inform the Department and the public on 'the applicant's present and prospective electric power supply system,' rather than rely on 2007 data," citing Section 205.303(c)[sic]. Sierra Protest at 10-11. Again, AEP Energy Partners has no electric supply system that can be characterized in more detail than by stating, as AEP Energy Partners has done, that it actively participates in the energy market to purchase power and energy at prices that it believes will allow it, in turn, to repackage and market such power and energy. That was the situation in 2007 and it is the situation in 2012.

AEP Energy Partners' renewal Application is fully compliant with existing regulations and requirements applicable to export authorizations.

F. DOE Should Resolve This Docket Without a Hearing.

Sierra Club asks DOE to set the Application for hearing. Sierra Protest at 15. However, Sierra Club has raised no issues of material fact that would warrant the expenditure of DOE's, AEP Energy Partners' or Sierra Club's time and resources to pursue discovery and a hearing. Rather, in the guise of protesting a single application, Sierra Club has launched a broadside attack on DOE's administration of the export authorization program and on DOE's interpretation of its codified responsibilities under the FPA and NEPA. These are policy matters applicable to all export authorization, not matters of fact peculiar to AEP Energy Partners' Application. DOE understands the current electricity export market and the current market participants. DOE is aware of the procedural and operational safeguards in place to assure the reliability of the U.S. electric supply and the appropriate coordination of jurisdictional facilities. DOE has just completed a public re-examination of its NEPA obligations and re-confirmed the categorical exemption for transactions that will use existing transmission facilities.

In numerous cases involving the Federal Energy Regulatory Commission ("FERC") and other regulatory agencies, the courts have consistently held that the agency need not hold a hearing where there are no materials facts in dispute that would inform the agency decision.

> FERC's choice whether to hold an evidentiary hearing "is generally discretionary." *Cerro Wire & Cable v. FERC*, 677 F.2d 124, 128 (D.C. Cir. 1982); *see Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993). It is well established in the context of FERC proceedings that "mere allegations of disputed facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support" their claim. *Cerro*, 677 F.2d at 129; *see Braintree Elec. Light Department v. FERC*, 550 F.3d 6, 13 (D.C. Cir. 2008); *Gen. Motors Corp. v. FERC*, 656 F.2d 791, 798 n. 20 (D.C. Cir. 1981).

Blumenthal v. FERC, 613 F.3d 1142, 1145 (D.C. Cir. 2010).

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> The Commission correctly recognized that case law and the Commission's own regulations require an evidentiary hearing only when a genuine issue of material fact exists. *Ohio Power Co. v. FERC*, 744 F.2d 162, 170 (D.C. Cir. 1984) (*citing Public Service Co. of New Hampshire v. FERC*, 600 F.2d 944, 955 (D.C. Cir.), *cert. denied*, 444 U.S. 990, 100 S.Ct., 520 62 L.Ed.2d 419 (1979) and *Citizens for Allegan County, Inc. v. FPC*, 414 F.2d 1125, 1128 (D.C. Cir. 1969)); 18 C.F.R. § 385.217(b) (1986).

Vermont Department of Public Service v. FERC, 817 F.2d 127, 140 (D.C. Cir. 1987); *see also The Louisiana Land and Exploration Company v. FERC*, 788 F.2d 1132, 1137-38 (5th Cir. 1986) ("Where there are no issues of material fact presented which would require an evidentiary hearing, such a hearing is simply not required" (citations omitted)); *see also Woolen Mills Associates v. FERC*, 917 F.2d 589, 592 (D.C. 1990) ("First, the decision whether to conduct a hearing is in the Commission's discretion. . . and it is not an abuse of the discretion to deny a motion for a hearing where there are no material facts in dispute." (citations omitted)).

DOE should deny the request for a hearing and promptly rule on the merits of the Application, based on the record before it in this Docket No. EA-318-B.

IV. CONCLUSION

AEP Energy Partners is an independent power marketer that markets wholesale power from a wide variety of generation resources. The Department has long recognized that due to the integrated nature of the electric power grid in the U.S., it is not possible to determine the source or type of power being bought and sold in the energy markets.[9] The same is true here.

Ultimately, Sierra Club's protest is against any electricity exports from the United States because such exports increase domestic generation, from whatever source. Such a generalized grievance contravenes the basic principles endorsed by Congress when it provided the Department with the authority to grant export authorizations, and directly challenges the regulatory framework developed by DOE to administer that authority, including its determination that transmission owners of border facilities should provide access across the border in accordance with the principles of comparable open access and non-discrimination applicable to domestic users under FERC Order No. 888.[10]

Such generalized grievances are not properly addressed in an individual renewal application, and are more appropriately addressed to Congress in the first instance. Moreover, the system established by Congress appropriately assures adequate domestic electricity supplies while allowing the free flow of power across international borders in circumstances that cause no harm to the domestic supply of electricity. AEP Energy Partners is unaware that DOE has ever subjected an applicant for an export authorization to the criteria that Sierra Club would have DOE impose, for the first time, in this AEP Energy Partners proceeding. Sierra Club does not suggest that the concerns identified in its Protest are peculiar to AEP Energy Partners alone

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[9] *TransAlta, mimeo* at 6.

[10] *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Cosst by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

among all current holders of authorization to export to Mexico, meaning Sierra Club is asking DOE to single out the Application of AEP Energy Partners for review under new and far ranging criteria as contrasted with the many power marketers to whom DOE has granted or renewed authority to export to Mexico.[11]

For good cause shown, AEP Energy Partners respectfully asks that DOE promptly reject the Sierra Protest and grant AEP Energy Partners' Application for Renewal of its Export Authorization.

Respectfully submitted,

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[11] Sierra Club did file comments earlier this year in another DOE docket, raising similar concerns about exporting energy generated by coal and other fossil fuels over existing transmission lines. *TransAlta Energy Marketing (U.S.) Inc.*, OE Docket No. EA-216-C, *mimeo* at 2-3. Subsequently, Sierra Club withdrew its comments without explanation.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document by electronic mail, hand delivery, or U.S. Mail on the following parties:

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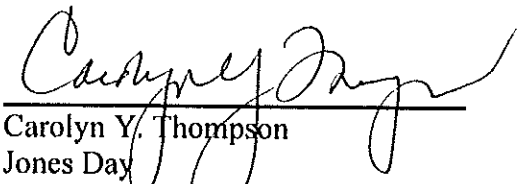

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