

JAN 26 2018

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

Electricity Delivery and
Energy Reliability

ENGIE Energy Marketing NA, Inc.

Docket No. EA-386-B

**APPLICATION OF ENGIE ENERGY MARKETING NA, INC.
FOR RENEWAL OF AUTHORIZATION
TO TRANSMIT ELECTRIC ENERGY TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act ("FPA"), 16 U.S.C. § 824(e) (2018) and Part 205, Subpart W of the U.S. Department of Energy's ("DOE") regulations, 10 C.F.R. § 205.300, *et seq.* (2018), ENGIE Energy Marketing NA, Inc. ("EEMNA" or "Applicant") hereby requests renewal of its authorization to transmit electric energy from the United States to Mexico for a period of five years ("Renewal Application"). In support of this Renewal Application, EEMNA respectfully states as follows:

I. DESCRIPTION OF THE APPLICANT

The exact legal name of the Applicant is ENGIE Energy Marketing NA, Inc. EEMNA is a Delaware corporation, organized on October 19, 1993, with its principal office located at 1900 Post Oak Blvd., Suite 1900, Houston, TX 77056. EEMNA is certified as a Qualified Scheduling Entity with the Electric Reliability Council of Texas ("ERCOT") and EEMNA is registered with the Public Utilities Commission of Texas as a power marketer. EEMNA is also a power marketer engaged in the business of marketing and trading electric energy and other energy related products in the United States (outside of ERCOT). EEMNA is authorized to sell wholesale electric energy, capacity and ancillary services at market-based rates pursuant to authority granted by the Federal Energy Regulatory Commission ("FERC") pursuant to a wholesale power sales tariff currently on file with FERC in Docket No. ER17-1370-000. EEMNA does not own or control any generation, transmission or distribution facilities.

On March 27, 2013, DOE issued Order No. EA-386 authorizing IPR-GDF SUEZ Energy Marketing North America, Inc. ("GSEMNA") to transmit electric energy from the United States to Mexico as a

power marketer.¹ DOE authorized GSEMNA to export electric energy to Mexico for a five-year term, expiring on March 27, 2018. On April 6, 2017, EEMNA filed a notice with DOE notifying DOE that GSEMNA's name had changed to ENGIE Energy Marketing NA, Inc. and requesting authorization for EEMNA to export under its new name. On May 3, 2017, DOE issued Order No. EA-386-A² which found that EEMNA's request would have no effect on DOE's sufficiency of supply and electric reliability determinations contained in Docket No. EA-386.³ DOE also found that it had adequately satisfied its responsibility under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in Docket No. EA-386.⁴ As a result, DOE ordered that the authorization granted on March 27, 2013 and the terms and conditions thereof would remain unchanged.⁵

II. COMMUNICATIONS

Communications regarding this Renewal Application should be addressed to the following persons:

Adam Roth, Senior Attorney
ENGIE Energy Marketing NA, Inc.
1990 Post Oak Blvd., Suite 1900
Houston, TX 77056
Phone: (713) 636-1105
Fax: (713) 636-1800
Email: adam.roth@engie.com

Veronica Rojas, Compliance Advisor
ENGIE Energy Marketing NA, Inc.
1990 Post Oak Blvd., Suite 1900
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Catherine P. McCarthy, Partner
Bracewell LLP
2001 M Street NW, Suite 900
Washington, DC 20036- 3310
Phone: (202) 828-5839
Fax: (800) 404-3970
Email: cathy.mccarthy@bracewell.com

Serena A. Rwejuna, Associate
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2001 M Street NW, Suite 900
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¹ *IPR-GDF SUEZ Energy Marketing North America, Inc.*, Order No. EA-386 (March 27, 2013) (Order Authorizing Electricity Exports to Mexico).

² *ENGIE Energy Marketing NA, Inc.*, Order No. EA-386-A (May 3, 2017) (Amendment to Order Authorizing Electricity Exports to Mexico).

³ *Id.* at 2.

⁴ *Id.*

⁵ *Id.* at 3.

III. JURISDICTION

The authority requested of DOE by EEMNA is a necessary condition for exporting under section 202(e) of the FPA which provides that the United States Department of Energy, Office of Electricity Delivery and Energy Reliability is the sole agency with jurisdiction over the proposed export of electric energy to Mexico. No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this Renewal Application.

IV. RENEWAL AUTHORIZATION AND TECHNICAL DISCUSSION

By this Renewal Application, EEMNA seeks continued authorization to transmit electric energy, on either a firm or interruptible basis, to Mexico. EEMNA desires to renew its authority to export electrical energy acquired from U.S. generating sources to Mexico over international electric transmission facilities. The Presidential Permits under which the relevant border facilities were constructed and maintained, and details related thereto, are set forth in Exhibit C. As explained below, EEMNA owns no transmission facilities, and its affiliates' only transmission facilities are interconnection facilities necessary to interconnect individual generating facilities to the grid. Thus, the border facilities referenced in Exhibit C are not owned or controlled by EEMNA or any of its affiliates.

Pursuant to Section 202(e) of the FPA, before DOE grants authorization to export electricity, it first evaluates the impact of the export on the reliability of the U.S. electric system. DOE approves an application to export electricity unless it finds that "the proposed transmission would impair the sufficiency of electric supply within the United States," or that "the proposed transmission . . . would impede or tend to impede coordination in the public interest of facilities subject to the jurisdiction of the Commission." 16 U.S.C. § 824(e). In applying these two criteria to requests for export authorizations submitted by electric power marketers like EEMNA, DOE has declined to follow a rigid

application of the information filing requirements set forth in DOE's regulations; and, instead has used a flexible approach to account for the unique nature of power marketers.⁶

As a power marketer, EEMNA does not own any electric generation or transmission facilities and does not hold a franchise or service territory or native load obligation. Moreover, none of EEMNA's affiliates own any electric transmission facilities other than generating facility interconnection facilities necessary to connect individual generating facilities to the grid and EEMNA is not affiliated with an entity that holds a franchise or service territory. Thus, EEMNA has no "transmission system" of its own on which power exports could have a reliability or stability impact. EEMNA proposes to export electric energy to Mexico utilizing one or more of the existing transmission facilities at the U.S.-Mexico border which are authorized for third-party use, as identified in Exhibit C to this Renewal Application, which lists the owners, the locations, the voltage and the Presidential Permit numbers of those facilities.

Specifically, with respect to the first criterion used to analyze applications to export electricity, EEMNA is a power marketer that would export electricity purchased from electric utilities, federal power marketing agencies, qualifying cogeneration and small power production facilities, independent power producers, and other sellers. EEMNA neither owns, operates nor controls an electric power supply transmission and/or distribution system. As a result, its exports cannot have any adverse impact on the reliability, stability, or sufficiency of supply on a franchised electric supply system. As a power marketer, EEMNA's supply obligations are those for which it has contracted. The electric energy that may be exported pursuant to the authorization requested in this Renewal Application, whether on a firm or interruptive basis, would be purchased in bilateral, voluntary transactions from the surplus and available electric energy of the generator/seller. As a result, any proposed exports by EEMNA to Mexico will not

⁶ See, e.g., *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *NorAm Energy Servs., Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Servs. Corp.*, No. EA-114 (July 15, 1996); *USGen Power Servs.*, No. EA-112 (June 27, 1996); *CNG Power Servs. Corp.*, No. EA-110 (June 20, 1996); *Destec Power Servs., Inc.*, No. EA-113 (May 31, 1996).

impair the sufficiency of the electric power supply with ERCOT or the U.S. As DOE has recognized, the “power purchased by a power marketer is, by definition, surplus to the needs of the selling entities” and “[w]ith no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export.”⁷ Thus, an export of electricity “occurring under such circumstances” would not impair the sufficiency of electric supply within the U.S.⁸

DOE has interpreted the second criterion used to analyze applications to export electricity “primarily as an issue of the operational reliability of the domestic electric transmission system.”⁹ As noted above, EEMNA does not own, operate or control any electric power supply system in the United States. Additionally, in making the necessary commercial arrangements and obtaining transmission capacity from unaffiliated third parties necessary to export electricity under the authorization requested herein, EEMNA will comply with existing industry procedures for obtaining transmission capacity, including reserving transmission service in accordance with FERC’s Open Access Same-Time Information System and scheduling delivery of the export with the appropriate Regional Transmission Organization(s) (“RTOs”) or Independent System Operator(s) (“ISOs”) and/or Balancing Authority areas.

EEMNA will schedule its exports from the U.S. in compliance with all applicable reliability criteria, standards and guidelines as are set out by the North American Electric Reliability Corporation (“NERC”) (or any successor organization), the North American Energy Standards Board (or any successor organization) and regional reliability councils and as applied by U.S. transmission providers. EEMNA will also make all necessary commercial arrangements and will obtain any and all other regulatory approvals required to effectuate any power exports. EEMNA will comply with all the terms and conditions contained in the authorizations issued for the cross-border facilities identified in Exhibit C as well as any

⁷ See e.g., *TransAlta Energy Marketing (U.S.) Inc.*, Order No. EA-216-C at 2 (May 17, 2011) (Order Authorizing Electricity Exports to Canada).

⁸ *Id.* See also, *IPR-GDF SUEZ Energy Marketing North America, Inc.*, Order No. EA-386 at 5 (March 27, 2013) (Order Authorizing Electricity Exports to Mexico).

⁹ See e.g., *IPR-GDF SUEZ Energy Marketing North America, Inc.*, Order No. EA-386 at 2-3 (March 27, 2013) (Order Authorizing Electricity Exports to Mexico).

other export limitations that DOE may deem appropriate, consistent with DOE's orders authorizing exports of electric energy by power marketers.

V. CONSISTENCY WITH LAWS

Authorization of the exports proposed by EEMNA is consistent with the North American Free Trade Agreement and U.S. energy policy and will foster development of a more efficient and competitive North American energy market. EEMNA will conduct all operations pursuant to this authorization in accordance with the provisions of the FPA and pertinent rules, regulations and orders adopted or issued thereunder, and in conformity with the reliability criteria, standards and guidelines of NERC, regional reliability councils, and Balancing Authorities, including any applicable RTOs or ISOs. Compliance with these statutes, rules, regulations and orders will ensure that the proposed transmission will not impede or tend to impede the regional coordination of electric utility planning or operations.

EEMNA believes that DOE is not required to conduct an environmental assessment or an environmental impact statement in connection with this Renewal Application. DOE's approval of this Renewal Application is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE regulations implementing the National Environmental Policy Act of 1969.¹⁰

VI. PROCEDURAL ISSUES

If required by DOE, EEMNA agrees to abide by general conditions consistent with those set forth in EEMNA's existing DOE electricity export authorization, as applicable.¹¹ EEMNA respectfully submits that it satisfies the requirements of Section 202(e) of the FPA and Part 205, Subpart W of DOE's regulations applicable to applications for authorization to transmit electric energy from the United States to Mexico. EEMNA respectfully requests waiver of the requirement to file this application six

¹⁰ See e.g., *IPR-GDF SUEZ Energy Marketing North America, Inc.*, Order No. EA-386 at 8 (March 27, 2013) (Order Authorizing Electricity Exports to Mexico).

¹¹ *Id.* at 9-14.

months in advance of the authorization requested herein to allow issuance of an order renewing EEMNA's authorization to transmit electric energy to Mexico on or before March 27, 2018, when EEMNA's current authorization expires. EEMNA also requests any additional waivers deemed necessary for DOE to issue the order requested herein.

VII. EXHIBITS

The following exhibits identified in the DOE's regulations are attached hereto as follows:

- Exhibit A: Agreements (Not Applicable)
- Exhibit B: Legal Opinion of EEMNA's Counsel
- Exhibit C: Transmission System Information (submitted in lieu of maps)
- Exhibit D: Irrevocable Limited Power of Attorney (Not Applicable)
- Exhibit E: Statement of any Corporate Relationship or Existing Contract which in any way Relates to Control or Fixing of Rates for Purchase, Sale or Transmission of Electric Energy (Not Applicable)
- Exhibit F: Operating Procedures Regarding Available Capacity and Energy (Not Applicable)
- Exhibit G: Verification

To the extent necessary, EEMNA requests a waiver of the requirement to provide the exhibits that are not applicable to this Renewal Application, as noted above.

Pursuant to 10 C.F.R. § 205.309, a copy of this Renewal Application is being provided to:

Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Public Utilities Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

VIII. CONCLUSION

For the forgoing reasons, EEMNA respectfully requests that the DOE issue an order renewing EEMNA's authorization to transmit electric energy to Mexico for a period of five years, effective upon issuance of the order but no later than March 27, 2018.

Respectfully submitted,

/s/ Serena A. Rwejuna

Serena A. Rwejuna

Catherine P. McCarthy

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Washington, DC 20036

Phone: (202) 828-5800

Fax: (800) 404-3970

Serena.Rwejuna@bracewell.com

Cathy.McCarthy@bracewell.com

Dated: January 26, 2018

EXHIBIT B

Opinion of Legal Counsel

EXHIBIT B

LEGAL OPINION

I, Adam Roth, am Senior Attorney of ENGIE Energy Marketing NA, Inc., and in support of its Renewal Application to export electric energy to Mexico, hereby certify on behalf of ENGIE Energy Marketing NA, Inc. that:

1. ENGIE Energy Marketing NA, Inc. is duly incorporated and validly existing under the corporate laws of the state of Delaware;
2. ENGIE Energy Marketing NA, Inc. has the corporate capacity to act in the manner described in the Renewal Application; and
3. To the best of my knowledge, information and belief, ENGIE Energy Marketing NA, Inc. and its officers and directors have complied and will comply with all pertinent federal and state laws related to the actions to be undertaken pursuant to the Renewal Application.

Dated: January 25, 2018

By: 

Adam Roth
Senior Attorney
713-636-1105

NOTARIZATION:

Subscribed and sworn to before me on this 25th day of January, 2018.



Notary Public

My Commission Expires: 4-15-2021

EXHIBIT C

Transmission System Information

EXHIBIT C

TRANSMISSION SYSTEM INFORMATION

Transmission Lines at the U.S. – Mexico Border Authorized for Third-Party Use

Owner	Location	Voltage	Presidential Permit No.
AEP Texas Central Company	Laredo, TX	138 kV	PP-317
		230 kV	PP-317
	Brownsville, TX	138 kV	PP-94
		69 kV	PP-94
	Eagle Pass, TX	138 kV	PP-219
Baja California Power, Inc.	Imperial Valley, CA	230 kV	PP-234
Comision Federal de Electricidad	Falcon Dam, TX	138 kV	N/A
	Redford, TX	7.2 kV	PP-51
	Presidio, TX	13.8 kV	PP-03
El Paso Electric Company	Diablo, NM	115 kV	PP-92
	Ascarate, TX	115 kV	PP-48
Generadora del Desierto – WAPA	San Luis, AZ	230 kV	PP-304
San Diego Gas & Electric	Miguel, CA	230 kV	PP-68
	Imperial Valley, CA	230 kV	PP-79
Sharyland Utilities, Inc.	McAllen, TX	138 kV	PP-285

EXHIBIT G

Verification

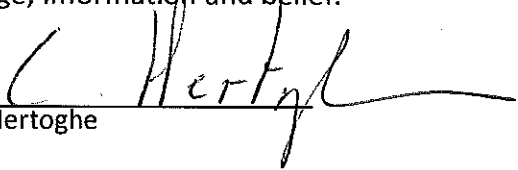
EXHIBIT G

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

In the Matter of)
)
ENGIE Energy Marketing NA, Inc.) Docket No. EA-386-B
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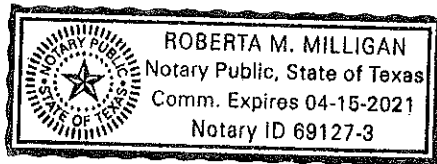
VERIFICATION

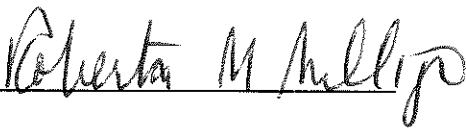
I, Charles Hertoghe, being first duly sworn, state that I am Chief Executive Officer of ENGIE Energy Marketing NA, Inc.; that I am authorized to execute this verification; that I have read the foregoing Renewal Application of ENGIE Energy Marketing NA, Inc. for authorization to transmit electric energy to Mexico and its exhibits and am familiar with the contents thereof; and that all of the statements contained therein are true and correct to the best of my knowledge, information and belief.


Charles Hertoghe

NOTARIZATION:

Subscribed and sworn to before me on this 25th day of January, 2018.




Notary Public
My Commission Expires: 4-15-2021