

US Department of Energy

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

In the Matter of:

TransAlta Energy Marketing (U.S.) Inc.

OE Docket No. EA-216-C

**SIERRA CLUB'S NOTICE OF INTERVENTION
AND MOTION TO INTERVENE**

February, 22 2011

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Pursuant to Rule 214 of the U.S. Department of Energy's ("Department") Rules of Practice and Procedure and the Department's Notice of January 21, 2011, the Sierra Club hereby moves to intervene in the above captioned docket.¹ Sierra Club's principal place of business is 85 Second St., Second Floor, San Francisco, CA 94105. Service in this proceeding may be made upon counsel for Sierra Club designated below.

Sierra Club is a national, non-profit environmental and conservation organization with more than 600,000 members nationwide. Through its Beyond Coal campaign, Sierra Club members are working to reduce our reliance on coal and replace it with cleaner, less damaging alternatives. The Sierra Club's work includes intervening in efficiency and renewable energy dockets at public utility commissions nationwide, submitting comments in numerous state and federal agency energy-related proceedings and rulemakings, attending and speaking at public hearings, speaking to students and civic and other organizations, and holding seminars and

¹ 18 C.F.R. § 385.214.

symposia – all in support of policies to reduce the impact of fossil fuel impacts to human health, climate change and the environment by promoting clean energy alternatives and energy efficiency.

On December 22, 2010, TransAlta Energy Marketing (U.S.) Inc. (“TEMUS”) filed an application with the Department seeking to renew authorization to transmit electricity from the United States to Canada.² TEMUS has exported domestic energy to Canada since 1999, with subsequent DOE authorizations in 2001 and 2006.³ TEMUS now seeks an additional five year authorization to commence on May 17, 2011.⁴ In addition, TEMUS is seeking waivers of certain informational requirements and is asking for expedited approval as it failed to file its application six months prior to expiration of its current authorization.⁵

Sierra Club has a direct interest in this docket because the environmental, climate and human health effects of authorizing TEMUS to export electricity to Canada are potentially significant. Accordingly, an environmental impact statement must be prepared under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* (“NEPA”), and the Department’s NEPA regulations at 10 CFR Part 1021. TEMUS seeks authorization to export excess power generated by sources which include coal and other fossil fuel plants in North Dakota, Washington, Maine,

² TEMUS Application at p. 1.

³ 76 Fed. Reg. 3882.

⁴ TEMUS Application at p. 2.

⁵ *Id.* at p. 6.

Michigan, New York, Minnesota, and Vermont.⁶ The deleterious effects of coal-fired power are very well documented in the scientific literature.⁷

The Department has never evaluated the environmental impacts associated with the TEMUS export applications, always finding that the actions were categorically excluded from full analysis under the NEPA.⁸ Sierra Club asserts that extraordinary circumstances preclude the application of a categorical exclusion to this authorization. 10 C.F.R. § 1021.410. For example, the sale of power associated with this action will result in a very large quantity of harmful air emissions, including conventional (e.g. sulfur dioxide), toxic (e.g. mercury) and greenhouse gas (e.g. carbon dioxide) pollution. Because those emissions certainly create the probability, let alone possibility, of significant effects, an environmental impact statement ("EIS") must be prepared. 42 U.S.C. 4332(C); *Sierra Club v. Peterson*, 717 F.2d 1409, 1415 (D.C. Cir. 1983). Indeed, TEMUS' Centralia coal-fired power plant in Washington is the state's single largest polluter.⁹

Sierra Club also asserts that two additional, vital purposes will be served by the preparation of an EIS. First, the public (and the Department) deserve to be informed of and assess the data on harmful emissions associated with TEMUS' authorization to sell excess power to Canada. NEPA documentation "gives the public the assurance that the agency 'has indeed considered environmental concerns

⁶ Id. at Exhibit C. Sierra Club is actively working to end reliance on coal as an energy source in each of these states with the exception of Vermont, a state which has no coal-fired plants at all.

⁷ See, e.g. Clean Air Task Force, *The Toll from Coal* (http://www.catf.us/resources/publications/files/The_Toll_from_Coal.pdf) (September 2010); Paul R. Epstein; Jonathan J. Buonocore, et al. 2011. *Full cost accounting for the life cycle of coal* in "Ecological Economics Reviews," Robert Costanza, Karin Limburg & Ida Kubiszewski, Eds. Ann. N.Y. Acad. Sci. 1219: 73-98.

⁸ See, e.g., Order No. EA0216.

⁹ See <http://www.columbian.com/news/2011/feb/20/closing-transalta/>.

in its decisionmaking process,' *Baltimore Gas & Electric Co. v. Natural Resources Defense Council, Inc.*, 462 U.S. 87, 97 (1983). In this proceeding, no information has been disclosed regarding the types of generating facilities that will run at excess capacity to export electricity to another nation, nor the emissions associated with those facilities. An EIS can remedy this shortcoming.

Second, one possible alternative to the sale of excess power to Canada would be decreasing capacity at the most polluting facilities serving the TEMUS market, and making up any capacity shortfall with cleaner power that would otherwise be exported to Canada. The discussion of alternatives forms "the heart of the environmental impact statement." *Citizens Against Burlington, Inc. v. Busey*, 1938 F.2d 190, 194 (D.C. Cir. 1991). An EIS in this proceeding would address this core NEPA requirement.

For the reasons described above stated, the Sierra Club respectfully requests that the Department grant this motion to intervene. Sierra Club's participation will advance the public interest in full disclosure and assessment of environmental effects associated with the TEMUS application. Sierra Club respectfully requests that the Department grant relief by not applying a categorical exclusion, and instead preparing an EIS that discloses the power facilities implicated by the proposed authorization, evaluates the environmental and human health effects of the proposed sale of excess power, and considers less harmful alternatives including a decrease in capacity at the most polluting facilities.

Dated: February 22, 2011

Respectfully Submitted,



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PROOF OF SERVICE

I hereby declare that I am a citizen of the United States, am over 18 years of age, and am not a party to the entitled action. My business address is 555 11th St. NW., 6th Floor, Washington, DC 20004.

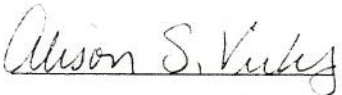
On February 22, 2011, I caused to be served Sierra Club's Notice of Intervention and Motion to Intervene on the parties listed below. I did this via email and by enclosing true copies of the document in sealed envelopes with postage fully prepaid thereon. I then mailed the envelopes via United States first class mail, addressed as follows:

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I, Alison Vicks, declare under penalty of perjury that the foregoing is true and correct.

Executed on February 22, 2011, in Washington, DC.


Alison Vicks