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United States  
Department of Energy

Office of Electricity Delivery and Energy Reliability

AEP Energy Partners, Inc.

OE Docket No. EA-318-C

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Order Authorizing Electricity Exports to Mexico

Order No. EA-318-C

January 28, 2013

## **AEP Energy Partners, Inc.**

### **Order No. EA-318-C Authorizing Electricity Exports to Mexico**

#### **I. BACKGROUND**

The Department of Energy (the Department or DOE) regulates electricity exports from the United States to foreign countries in accordance with the Federal Power Act (FPA) § 202(e) (16 U.S.C. § 824a(e)) and regulations thereunder (10 C.F.R. §§ 205.300 *et seq.*). This authority was transferred to DOE under §§ 301(b) and 402(f) of the DOE Organization Act (42 U.S.C. §§ 7151(b), 7172(f)).

An entity that seeks to export electricity must obtain an order from DOE authorizing it to do so. Under FPA § 202(e), DOE “shall issue such order 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 [DOE].” 16 U.S.C. § 824a(e). DOE has discretion to condition the order as necessary or appropriate; the Department “may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the [DOE] may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.” *Id.*

#### **A. AEP Energy Partners, Inc.’s Application to Renew Its Existing Export Authorization**

AEP Energy Partners, Inc. (AEP-EP or the applicant) is a power marketer seeking renewal of its existing export authorization to sell energy to Mexico, originally granted in OE Docket No. EA-318 in 2007. In its application for renewal filed on December 19, 2011 (Renewal Request or RR), AEP-EP requested a 10-year extension of its export authorization. RR at 2.

AEP-EP is a wholly-owned subsidiary of the American Electric Power Corporation. As a power marketer, AEP-EP owns no generation, transmission, or distribution facilities and has no native load customers that it has a regulatory obligation to serve. RR at 3, 6. It seeks only to buy and sell energy on the wholesale market pursuant to voluntary contracts with its suppliers and customers. RR at 2-3. For sales within the jurisdiction of the Federal Energy Regulatory Commission (FERC), AEP-EP conducts business under market-based rate authority granted by FERC and outlined in AEP-EP’s electric tariff, *AEP Energy Partners, Inc.*, FERC Docket No. ER11-46-000 (Jan. 21, 2011) (delegated letter order).

The electric energy that AEP-EP proposes to export to Mexico either will be purchased on the wholesale market or through existing purchase agreements AEP-EP has entered into with the owners of the coal-fired Oklaunion Unit No. 1 near Vernon, Texas and various wind farms in the state of Texas. RR at 2. The energy to be purchased by AEP-EP will be surplus to the needs of the selling entities. RR at 6.

Because AEP-EP does not own transmission facilities, the electric energy that it proposes to export will be wheeled over transmission facilities owned and operated by other parties. RR at 8. Under this model, AEP-EP recognizes that it must comply with any operating criteria established by transmission providers. *Id.* It also recognizes that it must comply with DOE-imposed terms and conditions for cross-border transmission facilities: "Applicant [AEP-EP] has complied, and will continue to comply, with the terms and conditions contained in the Presidential Permits<sup>1</sup> and export authorizations applicable to these cross-border facilities as well as any export limitations that the DOE has deemed or may deem appropriate for those facilities." RR at 4.

As discussed below, AEP-EP contends that its proposed exports will neither jeopardize the sufficiency of electric supply nor the reliability of the transmission grid; thus, AEP-EP asserts that it meets the criteria of FPA § 202(e).

## **B. Procedural History**

On February 22, 2007, DOE issued Order No. EA-318, which authorized CSW Power Marketing to transmit electric energy from the United States to Mexico for a five-year term using existing international transmission facilities. Shortly thereafter, CSW Power Marketing changed its name to AEP Energy Partners, Inc. Consequently, on June 27, 2007, DOE rescinded Order No. EA-318 and issued Order No. EA-318-A to AEP-EP under the same terms and conditions as the original authorization.

AEP-EP's original authorization was scheduled to expire on February 22, 2012. Accordingly, on December 19, 2011, AEP-EP filed an application with DOE seeking to renew its export authority. The requested authorization was substantially the same as AEP-EP's then-existing export authorization, except that AEP-EP sought a 10-year term upon renewal.

On January 20, 2012, DOE published notice of AEP-EP's renewal application in the *Federal Register*. 77 Fed. Reg. 1474 (Jan. 20, 2012). Sierra Club filed a timely motion to intervene and protest on February 9, 2012 (Sierra Club motion), and AEP-EP submitted an answer to Sierra Club's motion on February 24, 2012.

Concurrently, on February 16, 2012, AEP-EP filed an emergency request for a continuance or temporary extension of its existing export authorization, together with a request for expedited consideration. In that request, AEP-EP noted that, absent

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<sup>1</sup> DOE issues Presidential permits pursuant to Executive Order 10,485, as amended by Executive Order 12,038. See 10 C.F.R. §§ 205.320-205.329.

affirmative action by DOE to continue, extend, or renew AEP-EP's export authorization, AEP-EP would lack authority to export electricity to Mexico on and after February 23, 2012.

On February 17, 2012, Sierra Club filed an opposition to AEP-EP's emergency request. AEP-EP submitted a response to Sierra Club's opposition on February 21, 2012. On February 22, 2012, DOE issued a letter order to AEP-EP, allowing it to continue exporting electricity from the United States to Mexico for emergency purposes only. AEP-EP is currently operating under that temporary export authority, set forth in Order No. EA-318-B. Under the terms of that order, AEP-EP's emergency authorization remains in effect until DOE completes review of AEP-EP's renewal request and issues a final decision.

DOE hereby grants Sierra Club's motion to intervene in this proceeding, but denies its requests for an environmental impact statement (EIS) and for a formal hearing, as discussed below.

## II. DISCUSSION AND ANALYSIS

DOE is statutorily obligated under FPA § 202(e) to grant requests for export authorization unless the Department finds that the proposed export would negatively impact either: (i) the sufficiency of electric supply, or (ii) the coordination of the electric grid. Regarding the first exception criterion, 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 ...." 16 U.S.C. § 824a(e). DOE has interpreted this criterion to mean that sufficient generating capacity and electric energy must exist, such that the export could be made without compromising the energy needs of the exporting region, including serving all load obligations in the region while maintaining appropriate reserve levels. *E.g., BP Energy Co.*, OE Order No. EA-314, 1-2 (Feb. 22, 2007), *renewed*, OE Order No. EA-314-A, 2 (May 3, 2012).

Under the second exception criterion, DOE shall approve an electricity export application "unless, after opportunity for hearing, it finds that the proposed transmission would ... impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of [DOE]." 16 U.S.C. § 824a(e). DOE has interpreted this criterion primarily as an issue of the operational reliability of the domestic electric transmission system. Accordingly, the export must not compromise transmission system security and reliability. *E.g., BP Energy Co.*, OE Order No. EA-314, 2 (Feb. 22, 2007), *renewed*, OE Order No. EA-314-A, 2 (May 3, 2012).

**A. AEP-EP's Requested Authorization Will Not Impair the Sufficiency of Electric Supply in the U.S.**

Sufficiency of supply, the first exception criterion, addresses whether regional electricity needs are met in the current market. DOE has analyzed this issue from both an economic and a reliability perspective. The economic perspective concerns the supply available to wholesale market participants. The reliability perspective focuses on preventing problems that could result from inadequate supplies. Taken together, DOE examines whether existing electric supply is freely available via market mechanisms, and whether potential reliability issues linked to supply problems are mitigated by reliability enforcement mechanisms.

From an economic perspective, DOE finds that the wholesale energy markets are sufficiently robust to make supplies available to exporters and other market participants serving United States regions along the Canadian and Mexican borders. Following enactment of the Energy Policy Act of 1992, Pub. L. No. 102-486, which encouraged FERC to foster competition in the wholesale energy markets through open access to transmission facilities, markets developed across the United States to provide opportunities for a more efficient availability of supply. Subsequently, the Energy Policy Act of 2005, Pub. L. No. 109-58, reaffirmed the Government's commitment to competition in wholesale power markets as national policy. FERC has continued to encourage the expansion of wholesale markets through its orders to remove barriers<sup>2</sup> and to ensure markets are functioning properly.<sup>3</sup> As a result, market participants have access to traditional bilateral contracts, as well as organized electricity markets run by regional transmission organizations or independent system operators (RTOs/ISOs). FERC oversees these interstate wholesale electricity markets across most of the lower 48 states. The Electric Reliability Council of Texas (ERCOT) manages the Texas Interconnection. Absent an indication in the record that the geographic markets relevant to this export authorization analysis are flawed and result in uneconomic exports that jeopardize regional supply, DOE finds that the proposed transmission for export does not impair the sufficiency of electric supply within the United States.

From a reliability perspective,<sup>4</sup> DOE focuses on the prevention of cascading outages and other problems that could result from inadequate resources.<sup>5</sup> Reliability issues are addressed by the authority granted to FERC through the Energy Policy Act of 2005. That Act added § 215 to the Federal Power Act. It also directed FERC to certify

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<sup>2</sup> E.g., *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 72 Fed. Reg. 12,266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

<sup>3</sup> E.g., *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *as amended*, 126 FERC ¶ 61,261, *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, *reh'g denied*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

<sup>4</sup> A related reliability analysis follows in the next section of this order.

<sup>5</sup> This focus should not be confused with resource adequacy planning and capacity requirements that have traditionally been the domain of state regulatory commissions.

an electric reliability organization and develop procedures for establishing, approving, and enforcing mandatory electric reliability standards. 16 U.S.C. § 824o. FERC certified the North American Electric Reliability Corporation (NERC) in 2006 to establish and enforce reliability standards for the bulk power system (BPS) in the United States. The reliability standards address issues such as resource and demand balancing, emergency preparedness and operations, interchange scheduling and coordination, and interconnection reliability operations and coordination.

Through enforcement by FERC, NERC, and eight Regional Entities overseen by NERC,<sup>6</sup> all bulk power system owners, operators, and users are held responsible for complying with reliability standards. The applicant here is one such bulk power system user. AEP-EP is registered as a Purchasing-Selling Entity,<sup>7</sup> meaning its proposed export actions would be subject to applicable reliability standards. Moreover, the standards are structured so that many entities have overlapping responsibility for the electric grid, thereby resulting in several layers of reliability monitoring. Entities such as reliability coordinators and balancing authorities coordinate power generation and transmission among multiple utilities to serve demand within an integrated regional wholesale market. One of the principal functions of these entities is to schedule adequate generating and reserve capacity. This allows them to serve demand at the regional level and to ensure that there are sufficient power supplies to maintain system reliability. Reliability oversight is designed to benefit the overall region; the reliability standards explicitly place the interests of the interconnection before the interests of any particular entity such as an exporter. *See* Reliability Standard IRO-001-1.1 R9. DOE finds that FERC's comprehensive enforcement mechanism ensures that entities have a strong incentive both to maintain system resources and to prevent reliability problems that could result from movement of electric supplies through export. As a result of this reliability oversight, DOE further finds that the sufficiency of supply is not impaired by AEP-EP's proposed export authorization.

DOE's sufficiency of supply findings are magnified when considering the situation of power marketers. Before the current role of power marketers emerged in the industry, the FPA § 202(e) inquiry into sufficiency of supply had a narrower focus and was designed for an applicant that was a vertically integrated utility<sup>8</sup> with an obligation to serve native load. Under that traditional scenario, the inquiry regarding sufficiency of supply logically sought to confirm that exports would be surplus to the needs of a vertically integrated utility's native load obligations and reserve margins. As explained in DOE's notice of the first application by a power marketer for export authorization, the sufficiency of supply inquiry becomes unnecessary when applied to power marketers:

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<sup>6</sup> The eight entities are the Florida Reliability Coordinating Council, Midwest Reliability Organization, Northeast Power Coordinating Council, ReliabilityFirst Corporation, SERC Reliability Corporation, Southwest Power Pool Regional Entity, Texas Reliability Entity, and the Western Electricity Coordinating Council.

<sup>7</sup> NERC Compliance Registry List (Nov. 30, 2012), *available at* <http://www.nerc.com/page.php?cid=3|25>.

<sup>8</sup> A "vertically integrated utility" is a "single regulated utility" which provides "electricity generation, transmission, and distribution for a particular geographic area." *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 246 (D.C. Cir. 2007).

The applicant also is required to demonstrate that it would have sufficient generating capacity to sustain the proposed export under the terms and conditions of its export agreement, while still complying with any established reserve criteria. Since marketers generally could not be seen as having any "native load" requirements, the latter criterion of maintaining sufficient reserve margins appears inappropriate and unnecessary in this instance.

59 Fed. Reg. 54,900 (Nov. 2, 1994). Power marketers like AEP-EP do not have franchised service areas and, consequently, do not have native load obligations like a traditional local distribution utility that could be impaired by exports.

In sum, market mechanisms and reliability oversight protect against AEP-EP exports that would jeopardize domestic sufficiency of supply. Therefore, an export by AEP-EP would not trigger the first exception criterion of FPA § 202(e) regarding the sufficiency of electric supply within the United States.

**B. AEP-EP's Requested Authorization Will Not Adversely Affect Either the Reliability or the Security of the U.S. Electric Transmission System**

Reliability, the second exception criterion under FPA § 202(e), addresses operational reliability and security of the domestic electric transmission system. In evaluating the operational reliability impacts of export proposals, DOE has used a variety of methodologies and information, including established industry guidelines, operating procedures, and technical studies where available and appropriate. When determining these impacts, it is convenient to separate the export transaction into two parts: (i) moving the export from the source to a border system that owns the international transmission connection, and (ii) moving the export through that border system and across the border.

Moving an export to a border system necessarily involves the use of the bulk power system. As noted in the preceding section, bulk power system reliability concerns are addressed under the FPA by FERC and NERC and involve the enforcement of mandatory reliability standards. These standards ensure that all owners, operators, and users of the BPS have an obligation to maintain system security and reliability. The standards are structured so that there are always entities with broader responsibilities than the applicant, such as reliability coordinators and balancing authorities, to keep a constant watch over the domestic transmission system.

To deliver the export from the source to a border system, the applicant must make the necessary commercial arrangements and obtain sufficient transmission capacity to wheel the exported energy to the border system. Outside of the ERCOT region in Texas, the applicant would be expected to follow FERC orders regarding open transmission access and to schedule delivery of the export with the appropriate RTO,

ISO, and/or balancing authority (formerly the control area operator). Within the ERCOT region, the electric power would be transmitted to the border system in accordance with the Public Utility Commission of Texas (PUCT) regulations and ERCOT Protocols.

It is the responsibility of the RTO, ISO, and/or balancing authority to schedule the delivery of the export consistent with established and mandatory operational reliability criteria. ERCOT has that responsibility within the ERCOT region in Texas. During each step of the process of obtaining transmission service, the owners and/or operators of the transmission facilities will evaluate the impact on the system and schedule the movement of the export *only* if it would not violate established operating reliability standards. As a failsafe, the reliability coordinator in each region has the authority and responsibility to curtail, cancel, or deny scheduled flows to avoid shortages or to restore necessary energy and capacity reserves. *See Reliability Standard EOP-002-3.1 R1* ("Each Balancing Authority and Reliability Coordinator shall have the responsibility and clear decision-making authority to take whatever actions are needed to ensure the reliability of its respective area and shall exercise specific authority to alleviate capacity and energy emergencies.").

Specifically, the reliability coordinator has the authority to suspend exports if the electric energy would be needed to support the regional power grid. *See Reliability Standard IRO-001-1.1 R4* ("The Reliability Coordinator shall have clear decision-making authority to act and to direct actions...to preserve the integrity and reliability of the Bulk Electric System. These actions shall be taken without delay, but no longer than 30 minutes.") & *R8* ("Transmission Operators, Balancing Authorities, Generator Operators, Transmission Service Providers, Load-Serving Entities, and Purchasing-Selling Entities shall comply with Reliability Coordinator directives unless such actions would violate safety, equipment, or regulatory or statutory requirements.").

DOE has determined that the existing industry procedures for obtaining transmission capacity on the domestic transmission system provide adequate assurance that a particular export will not cause an operational reliability problem. Therefore, AEP-EP's export authorization has been conditioned to ensure that the export will not cause operating parameters on regional transmission systems to fall outside of established industry reliability criteria, or cause or exacerbate a transmission operating problem on the U.S. electric power supply system (*see* Order below, paragraphs C, D, and I).

DOE makes this finding with the understanding that mandatory reliability standards and market restructuring have obviated the need for standard transmission studies. Before the electric power industry was restructured, the only entities able to export were those electric utilities that were contiguous with the U.S. international border that owned international transmission facilities. The exported energy generally originated from within the exporter's system, and standard transmission studies could determine the impact of the export on regional electric systems. In recent years, however, deregulation of wholesale power markets and the introduction of open-access transmission expanded the scope of entities capable of exporting electric energy. 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. Consequently, traditional transmission studies cannot be used to determine the impact of such exports on the operational reliability of the regional electric transmission system.

The second part of this reliability inquiry, addressing the transmission of the export through a border system and across the border, is a question of whether the border system is reliable and secure. To a large extent, this question is addressed by the jurisdiction of NERC. NERC and Regional Entities—including the Midwest Reliability Organization (MRO), the Northeast Power Coordinating Council (NPCC), and the Western Electricity Coordinating Council (WECC)—oversee the United States-Canadian border system and a significant part of the United States-Mexican border system. Those border systems are generally subject to the same reliability standards as domestic systems. *See Reliability Standards – Enforcement Dates*, [http://www.nerc.com/filez/standards/Enforcement\\_Dates.html](http://www.nerc.com/filez/standards/Enforcement_Dates.html).

DOE also relies on the technical reliability studies submitted in conjunction with an application for a DOE-issued Presidential permit to construct a new international transmission line. As DOE has previously reviewed technical reliability studies submitted with Presidential permit applications,<sup>9</sup> DOE does not need to perform additional impact assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the authorized limit of the system (subparagraph (A)(3) of this Order). In its Renewal Request, AEP-EP committed to complying with all reliability limits on border facilities. RR at 4. The second part of the reliability inquiry is therefore satisfied by DOE regulatory oversight in addition to NERC's reliability enforcement.

In sum, AEP-EP is approved to export electricity to Mexico over any authorized international transmission facility that is appropriate for open access transmission by third parties. This includes the facilities of Generadora del Desierto S.A. de C.V. and the Western Area Power Administration, which have been authorized but not yet constructed and placed into operation. Although a Presidential permit has been issued for these facilities, these facilities cannot be utilized for export until they are placed into commercial operation.

### **III. FINDINGS AND DECISION**

#### **A. AEP-EP Meets the Statutory Requirements to Export Electric Energy to Mexico**

As explained above, DOE has assessed the impact that the proposed export would have on the reliability of the U.S. electric power supply system. DOE has determined that the export of electric energy to Mexico by AEP-EP, as ordered below,

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<sup>9</sup> E.g., *AEP Texas Central Co.*, OE Order No. PP-317, 2-3 (Jan. 22, 2007).

would not impair the sufficiency of electric power supply within the United States and would not impede or tend to impede the coordination in the public interest of facilities within the meaning FPA § 202(e).

Arguments raised by Sierra Club do not alter DOE's conclusions that AEP-EP meets the requirements under FPA § 202(e) to export electric energy to Mexico. In connection with AEP-EP's renewal request, Sierra Club submitted a protest and related filings challenging whether DOE can grant AEP-EP's renewal request in light of AEP-EP's allegedly inadequate application materials, as well as questions concerning capacity that Sierra Club has culled from various reports and court filings in other proceedings. As an initial matter, DOE notes that protesters bear the burden of persuasion in challenging an export authorization application because there is a statutory presumption in favor of authorization. *See* 16 U.S.C. § 824a(e) (DOE "shall issue such order upon application unless [exception criteria are met]"). *Cf.* Natural Gas Act § 3(a), 15 U.S.C. 717b(a) (instructing that "[DOE] shall issue . . . [an export or import authorization] order upon application, unless . . . it finds that the proposed exportation or importation will not be consistent with the public interest.")<sup>10</sup>; *Panhandle Producers & Royalty Owners Ass'n v. ERA*, 822 F.2d 1105, 1111 (D.C. Cir. 1987) (stating that NGA § 3 creates a presumption in favor of authorization).

Sierra Club asserts that DOE "cannot lawfully consider AEP-EP's application" until first gathering and considering additional information "on how much power [AEP-EP] will export, where such power is generated, and how [AEP-EP] will inform neighboring entities of available capacity before exporting it." Sierra Club Notice of Intervention and Mot. to Intervene and Protest (02/09/12) at 11 (hereafter Sierra Club Mot.). This is a misstatement of the law. FPA § 202(e) charges DOE with determining whether "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 [DOE]." 16 U.S.C. § 824a(e). Knowing the exact quantity and source of power at issue is only necessary if DOE requires the information to make its findings. As explained in section B above, reliability may be assessed in today's energy markets without the traditional transmission studies that historically formed the basis of reliability findings. The information demanded by Sierra Club may have been relevant to a prior analytical method, but it has no bearing on the current reliability landscape. Similarly, Sierra Club's call for an explanation of how AEP-EP will inform neighboring entities of available capacity is unnecessary due to market advances. As explained in section A, legislative and regulatory changes since 1992 have opened up wholesale markets, such that capacity for sale is now publicly available.

DOE recognizes that energy markets and reliability oversight have changed significantly since 1981, when DOE promulgated its export authorization regulations.

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<sup>10</sup> *Kentucky Utils. Co. v. FERC*, 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985) ("It is, of course, well settled that the comparable provisions of the Natural Gas Act and the Federal Power Act are to be construed in *pari materia*.").

DOE is currently revising its regulations to reflect intervening regulatory developments and changes in modern industry practice. Until new regulations go into effect, the differences between an applicant's business model and the assumptions behind the current regulations may result in applications that necessarily omit some of the materials listed under 10 C.F.R. §§ 205.302 and 205.303.

In the case of a power marketer such as AEP-EP with no generation or transmission assets, the applicant cannot meet the requirement of § 205.303(c) to provide a map of facilities it will use because it does not and cannot know this information in advance. This information will be available only at the time AEP-EP purchases electricity for export. *E.g., Tenaska Power Services, Inc.*, Order No. EA-243-B, 2 (Jan. 19, 2012). The same rationale applies to the requirement under § 205.302(g) for a technical discussion of reliability, fuel use, and system stability impacts "on the applicant's present and prospective electric power supply system" because AEP-EP owns no "system." Finally, the gap in reported data using Form OE-781R is due to the suspension of that form by DOE.<sup>11</sup>

In sum, DOE finds that AEP-EP complied with the current application requirements to the best of its ability as a power marketer. Answer at 10-13. In its review of AEP-EP's renewal request, DOE found that the docket contained sufficient information on which to base DOE's decision, and there are no inadequacies upon which to find otherwise. To the extent that DOE requires additional information, DOE will request it from AEP-EP before making further findings.

Sierra Club also contends that the ERCOT region suffers from resource inadequacy, such that exporting electricity could theoretically exacerbate that condition and cause sufficiency of supply and reliability problems. DOE's analysis addresses the risk of resource inadequacy by examining the protections provided by markets and reliability oversight rather than by passing judgment on the resource decisions of individual states. Sierra Club appears to misunderstand reliability oversight, in particular how reliability coordinators and other registered entities respond to potential shortages in capacity. To avoid reliability failures, it is a standard operating action to cut exports and recall capacity if the system is stressed. *E.g.*, ERCOT Protocol Section 6.5.9.4.6 ("During the [Energy Emergency Alert], ERCOT has the authority to obtain energy from non-ERCOT Control Areas using the DC Ties or by using Block Load Transfers (BLTs) to move load to non-ERCOT Control Areas. ERCOT maintains the authority to curtail energy schedules flowing into or out of the ERCOT System across the DC Ties in accordance with NERC scheduling guidelines.") In rare situations, there may be a need to shed firm load to balance with limited supply, but this is an acceptable response that is wholly separate from uncontrolled, cascading outages associated with a reliability failure. *See* ERCOT Comments at 5-6. While it is true that recent forecasts have noted the potential for resource inadequacy in ERCOT, this is distinguished from a reliability problem that cannot be mitigated with existing compliance and enforcement mechanisms.

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<sup>11</sup> See the section below on data collection and reporting requirements for a detailed explanation.

DOE has engaged in a fact-based inquiry to determine whether to renew AEP-EP's export authorization. Sierra Club has provided no evidence demonstrating either the inability of markets or NERC to address concerns that potentially could arise in light of AEP-EP's proposed exports. Taking into account the statutory presumption in favor of authorization and the unique market position of power marketers, DOE finds in support of authorization notwithstanding Sierra Club's protest.

## **B. A NEPA Categorical Exclusion Is Appropriate**

Sierra Club challenges DOE's decision-making under the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. §§ 4332(2) *et seq.*, in two related ways. First, Sierra Club asserts that AEP-EP's renewal request does not qualify for a categorical exclusion. Second, Sierra Club asserts that DOE must prepare an environmental impact statement (EIS) "on the whole of the export action." Sierra Club Mot. at 11 (heading B), 15. Both arguments are based on Sierra Club's contention that, if DOE renews AEP-EP's authority to export energy to Mexico, coal-fired plants in the U.S. will have to burn "additional fossil fuels" to make up for the exported power, allegedly causing additional adverse environmental and health impacts from air pollution in the U.S. *Id.* at 14. As explained below, these arguments lack merit, and Sierra Club's request for an EIS is denied.

### **1. AEP-EP's Renewal Request Qualifies for DOE's Categorical Exclusion for Exports of Electric Energy**

Sierra Club's objection to DOE's use of a categorical exclusion is misplaced. Far from constituting an "extraordinary circumstance" under the governing regulations (10 C.F.R. § 1021.410(b)(2)) as Sierra Club claims, AEP-EP's renewal request presents a routine application of DOE's categorical exclusion for exports of electric energy. DOE's regulations set forth this categorical exclusion, codified as "B4.2," as follows:

Export of electric energy as provided by Section 202(e) of the Federal Power Act over existing transmission lines or using transmission system changes that are themselves categorically excluded.

10 C.F.R. Part 1021, App. B to Subpart D, § B4.2.

In establishing this categorical exclusion, DOE determined that exports of electric energy "do not individually or cumulatively have a significant effect on the human environment." 10 C.F.R. § 1021.410(a). Thus, absent extraordinary circumstances, the delivery of electricity over existing transmission lines (as AEP-EP seeks to do) does not necessitate independent NEPA review, and the categorical exclusion is appropriate.

To invoke this categorical exclusion, DOE also must determine that, in relevant part, "[t]here are no extraordinary circumstances related to the proposal that may affect

the significance of the environmental effects of the proposal,” and that “[t]he proposal has not been segmented to meet the definition of a categorical exclusion.” 10 C.F.R. § 1021.410(b)(2), (3). “Extraordinary circumstances” include “unique situations” such as “scientific controversy about the environmental effects of the proposal.” *Id.* at § 1021.410(b)(2). In more than 20 years of employing the B4.2 categorical exclusion, DOE has not once found a circumstance so “extraordinary” as to overcome the presumption in favor of exempting energy exports from NEPA review.<sup>12</sup> As explained below, AEP-EP’s renewal request does not present such a circumstance now.

Sierra Club is further mistaken in suggesting that DOE’s use of the categorical exclusion is outdated or that “assumptions” about its use have changed over time. In fact, just recently DOE reviewed its NEPA regulations and categorical exclusions, including the categorical exclusion at issue here. *See* National Environmental Policy Act Implementing Procedures, 76 Fed. Reg. 214, 217 (Jan. 3, 2011). DOE did not propose any changes to the B4.2 exclusion, but nonetheless “welcome[d]” comments on it, and even reopened the comment period to allow time for additional review. National Environmental Policy Act Implementing Procedures, 76 Fed. Reg. 9981, 9982 (Feb. 23, 2011). Sierra Club elected not to participate in the public review of DOE’s NEPA implementing procedures, and no other commenter objected to the exclusion. *See* 76 Fed. Reg. 63,764, 63,777 (Oct. 13, 2011). DOE retained the B4.2 categorical exclusion unchanged.

Finally, DOE’s longstanding practice of applying the B4.2 exclusion in energy export cases weighs strongly against requiring an environmental assessment (EA) or EIS in this case. Under governing NEPA regulations, “[w]hether to prepare an environmental impact statement” turns, in part, on whether the proposal is one which “[n]ormally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).” 40 C.F.R. § 1501.4(a)(2). DOE’s decision to apply the categorical exclusion is thus based on both agency precedent and the Department’s recent reaffirmation that it is appropriate to exclude exports of electric energy from a more detailed NEPA review.

## **2. An Environmental Impact Statement Is Not Required**

Sierra Club’s argument that DOE must conduct an EIS is based on two points: first, “*but for* the burning of additional fossil fuels, AEP-EP would not have available to it additional power to transmit to Mexico on the U.S. transmission system,” and second, under NEPA, “burning more coal in the U.S. is both indisputably connected to exporting electricity to Mexico and has significant harmful impacts that constitute extraordinary

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<sup>12</sup> A review of DOE’s regulations shows that Sierra Club is incorrect in asserting that “categorical exclusions are “reserved for ministerial actions like ‘payroll processing.’” Sierra Club Mot. at 14 (citation omitted). Categorical exclusions under appendix A of the regulations apply to general DOE actions, but the B4.2 exclusion and other exclusions under appendix B—of which there are more than 100—apply to “specific agency actions” that are substantive.

circumstances.” Sierra Club Mot. at 13-14 (emphasis in original). These assertions fail to support a request for an EIS for several reasons.

Sierra Club’s argument is based on the unsupported assertion that AEP’s renewal request will directly result in the burning of “more coal” (or “additional fossil fuels”) in the U.S. to produce that power. Sierra Club Mot. at 13, 14. In other words, “more coal” must be burned to support AEP-EP’s exports, and that coal would not otherwise be burned. *Id.* This argument reflects a misunderstanding of the electric power industry and AEP-EP’s role as a power marketer.

As explained above, DOE finds that the electric energy to be purchased by AEP-EP will be surplus to the needs of the selling entity. 77 Fed. Reg. 1474. Generally, excess generation is (and will be) sold to any number of power marketers for use both in the U.S. and outside of the U.S. Here, AEP-EP intends to purchase some electric energy on the wholesale market, and some electric energy from the Oklaunion coal-fired unit that would be selling its surplus power into the wholesale market regardless of this authorization. *Id.* There is no basis in the record to conclude that electric power will be newly produced to meet AEP-EP’s export objectives, or that absent this export authorization, “additional fossil fuels” would not be been burned. Indeed, as explained above, the typical exporter cannot identify the source of the electricity being transmitted across the border, including whether the exported energy was produced by a coal-fired unit. The causal relationship between export and power source that Sierra Club seeks to establish is not borne out by modern industry practice, nor is there record evidence of such “but for” causation to support Sierra Club’s claims. As the Supreme Court has explained:

Respondents must rest, then, on a particularly unyielding variation of “but for” causation, where an agency’s action is considered a cause of an environmental effect even when the agency has no authority to prevent the effect. However, a “but for” causal relationship is insufficient to make an agency responsible for a particular effect under NEPA and the relevant regulations. As this Court held in *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 774, 75 L. Ed. 2d 534, 103 S. Ct. 1556 (1983), NEPA requires “a reasonably close causal relationship” between the environmental effect and the alleged cause.

*Department of Transp. v. Public Citizen*, 541 U.S. 752, 754 (2004).

In sum, the requested renewal authorization depends on the same transmission facilities included in the 2007 export authorization and will be subject to the same limitations concerning the amounts of electricity that can be delivered. The power to be exported will come from available surplus generation produced by existing facilities, which must operate pursuant to existing permits. AEP-EP’s renewal request thus fits

squarely within B4.2 categorical exclusion for “exports of electrical energy.” The proposal has not been segmented to meet the definition of a categorical exclusion, and there are no extraordinary circumstances justifying the need for an EA or EIS. For these reasons, DOE finds that it appropriately applied the categorical exclusion, and that it will not require additional environmental review.

### **C. DOE Considered Sierra Club’s Objections, and No Discovery or Evidentiary Hearing Is Warranted**

In its Motion, Sierra Club states that DOE “must hold a hearing to ensure that AEP-EP’s application conforms with the Federal Power Act,” and to “explore[]” the “merits of AEP-EP’s application.” Sierra Club Mot. at 7 (heading A), 16. Sierra Club does not cite legal authority for these statements. Instead, it states that AEP-EP’s application raises “substantial questions” necessitating a hearing, including: (1) “evidence that a full NEPA review is warranted,” and (2) “evidence that the application omitted information regarding potential impacts on reliability.” *Id.* at 15. To address these questions, Sierra Club asks to “conduct discovery, cross-examine AEP-EP’s witnesses and present testimony and evidence in opposition to AEP-EP’s application.” *Id.* DOE denies this request. As explained below, FPA § 202(e) does not require DOE to hold an evidentiary or “trial-type” hearing, and there are no outstanding issues of material fact that might warrant additional procedures.

First, DOE has afforded Sierra Club a full and fair hearing through the written submissions in this case. Nothing more is required. Under FPA § 202(e), DOE must provide interested parties an “opportunity for hearing” before deciding on application. 16 U.S.C. § 824a(e). The statute does not specify the type of “hearing” required. Nor does it specify a hearing “on the record,” or mandate formal, “trial-type” procedures under section 554 of the Administrative Procedure Act, 5 U.S.C. § 554. DOE therefore interprets this ambiguous “hearing” requirement as allowing for an informal “paper” hearing, based on the parties’ written submissions. This interpretation is consistent with the FPA’s general hearing provision, which allows for “informality” in “any hearing.”<sup>13</sup> FPA § 308(b), 16 U.S.C. § 825g(b).<sup>14</sup>

Courts interpreting similar statutory language have deferred to the agency’s choice of informal hearing procedures. For example, the U.S. Court of Appeals for the District of Columbia Circuit held that, “an agency that *reasonably* reads a simple requirement that it hold a ‘hearing’ to allow for informal hearing procedures must prevail under the second step of *Chevron* [*Chevron U.S.A. v. Natural Res. Def. Council*,

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<sup>13</sup> “No informality in any hearing, ... proceeding or in the manner of taking testimony shall invalidate any order [or] decision ... issued [by DOE].” 16 U.S.C. § 825g(b).

<sup>14</sup> *Cf. Pension Benefit Guaranty Corp. v. LTV Corp.* 496 U.S. 633, 654-55 (1990) (upholding an agency’s choice of informal adjudication where statute did not specify more formal procedural requirements).

467 U.S. 837 (1984)]. *Chemical Waste Mgmt. v. U.S. Env't'l Protection Agency*, 873 F.2d 1477, 1480 (D.C. Cir. 1989).<sup>15</sup>

Under the same reasoning, there is no need for an evidentiary hearing here. As set forth in the procedural history above, Sierra Club presented its objections to AEP-EP's application and responded to AEP-EP's arguments. DOE carefully considered Sierra Club's evidence and objections, as well as AEP-EP's related arguments and the comments filed by ERCOT that addressed Sierra Club's principal reliability concerns. These detailed submissions provided a thorough basis for DOE to assess Sierra Club's concerns and to determine that AEP-EP's application satisfies the findings required by FPA § 202(e).<sup>16</sup> No further procedure is necessary merely to "explore" the merits of AEP-EP's application. Sierra Club Mot. at 16.

Second, Sierra Club has not met the standard for obtaining an oral, evidentiary hearing in the rare circumstances when discovery or a trial-type hearing might be appropriate. Such proceedings sometimes may be warranted where DOE determines that there is a genuine dispute over a material issue of fact that cannot be resolved on a written record,<sup>17</sup> but none exists here, and Sierra Club does not claim that it does. Indeed, Sierra Club requests a hearing to "ensure [AEP-EP's] application conforms with the Federal Power Act"—which is a legal, not a factual, question. Sierra Club Mot. at 7 (Heading A).

Likewise, the "substantial questions" identified by Sierra Club do not meet this standard. For example, whether "a full NEPA review is warranted" is a legal question concerning the proper application of the B4.2 categorical exclusion to AEP-EP's proposal. The facts supporting DOE's application of the categorical exclusion here are not disputed.<sup>18</sup>

In sum, allowing discovery of AEP-EP and/or a trial-type hearing would not resolve any material factual disputes, whereas they would impose a significant strain on

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<sup>15</sup> See also, e.g., *State of Cal. ex rel Lockyer v. Fed. Energy Regulatory Comm'n*, 329 F.3d 700, 708 n. 5, 713 (9th Cir. 2003) (FERC afforded petitioners "ample 'hearing' ... when [it] considered the petitioners' evidence and arguments in their motions to intervene and petitions for rehearing"); *Dominion Energy Brayton Point LLC v. Johnson*, 443 F.3d 12, 18-19 (1st Cir. 2006) (deferring to the U.S. Environmental Protection Agency's interpretation of a "public hearing" requirement in the Clean Water Act as not requiring an evidentiary hearing).

<sup>16</sup> To the extent Sierra Club implicitly asserts any claim to an evidentiary hearing under the Due Process Clause of the Fifth Amendment of the U.S. Constitution, the paper hearing employed in this proceeding also satisfies procedural due process requirements. See *Blumenthal v. Federal Energy Regulatory Comm'n*, 613 F.3d 1142, 1145-46 (D.C. Cir. 2010) (no due process right to an in-person evidentiary hearing); *State of Cal. ex rel Lockyer*, 329 F.3d at 711.

<sup>17</sup> See, e.g., *Blumenthal*, 613 F.3d at 1146 ("Even where there are disputed factual issues, FERC does not need to conduct an evidentiary hearing if it can adequately resolve the issues on a written record."); *State of Wisconsin v. Fed. Energy Regulatory Comm'n*, 104 F.3d 462, 467 (D.C. Cir. 1997).

<sup>18</sup> Sierra Club's second question—that AEP-EP's application "lacks information regarding potential impacts on reliability"—is addressed above. It does not raise a genuine dispute over issues of material fact.



scarce agency resources and unnecessarily delay what should be expedient decision-making in these routine circumstances. Sierra Club's request for discovery and an evidentiary hearing is denied.

#### **IV. DATA COLLECTION AND REPORTING REQUIREMENTS**

The responsibility for the data collection and reporting under orders authorizing electricity exports to a foreign country currently rests with the U.S. Energy Information Administration (EIA) within DOE. The reporting Form OE-781R, "Monthly Electricity Imports and Exports Report" (OMB Control No. 1901-0296), which EIA began collecting in August 2010, is undergoing revision to accommodate quarterly data collection. EIA suspended the current data collection and reporting under Form OE-781R, effective June 1, 2011, in anticipation of approval from the Office of Management and Budget (OMB) to administer data collection under the proposed substitute, Form EIA-111, "Quarterly Electricity Imports and Exports Report" (76 Fed. Reg. 49,757). Form EIA-111 modifies the data being collected and, although data would still be collected monthly, respondents would only need to file the form quarterly.

EIA intends to retroactively collect import and export data for the period of the suspension of Form OE-781R. Consequently, EIA expects respondents to continue to collect monthly data and prepare to report the data to EIA when Form EIA-111 takes effect following authorization from OMB.

Additionally, any change to the tariff of an entity with export authorization must be provided to DOE's Office of Electricity Delivery and Energy Reliability. 10 C.F.R. § 205.308(b).

#### **V. COMPLIANCE**

Obtaining a valid order from DOE authorizing the export of electricity under FPA § 202(e) is a necessary condition before engaging in the export. Failure to obtain such an order, or continuing to export after the expiration of such an order, may result in a denial of authorization to export in the future and subject the exporter to sanctions and penalties under the FPA. DOE expects transmitting utilities owning border facilities and entities charged with the operational control of those border facilities, such as ISOs, RTOs, or balancing authorities, to verify that companies seeking to schedule an electricity export have the requisite authority from DOE to export such power.

DOE expects AEP-EP to abide by the terms and conditions established for its authority to export electric energy to Mexico, as set forth below. DOE intends to monitor AEP-EP's compliance with these terms and conditions, including the requirement in paragraph G of this Order that AEP-EP create and preserve full and complete records and file reports with EIA as discussed above.

A violation of any of those terms and conditions, including the failure to submit timely and accurate reports, may result in the loss of authority to export electricity and subject AEP-EP to any applicable sanctions and penalties under the FPA.

## **VI. OPEN ACCESS POLICY**

An export authorization issued under FPA § 202(e) does not impose a requirement on transmitting utilities to provide service. However, DOE expects transmitting utilities that own border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the FPA and articulated in FERC Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities, FERC Statutes and Regulations 31,036 (1996)), as amended. The actual rates, terms and conditions of transmission service should be consistent with the non-discrimination principles of the FPA and the transmitting utility's Open-Access Transmission Tariff on file with FERC.

All recipients of export authorizations, including owners of border facilities for which Presidential permits have been issued, are required by their export authorization to conduct operations in accordance with the applicable principles of the FPA and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, which include the comparable open access provisions of FERC Order No. 888, as amended. Cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. *See Enron Power Marketing, Inc. v. El Paso Elec. Co.*, 77 FERC ¶ 61,013 (1996), *reh'g denied*, 83 FERC ¶ 61,213 (1998)). Thus, DOE expects owners of border facilities to comply with the same principles of comparable open access and non-discrimination that apply to the domestic, interstate transmission of electricity.

Recipients of authorizations for Mexican exports from the ERCOT region in Texas and owners of border facilities in the ERCOT region are required by their export order or Presidential permit to comply with all applicable rules and regulations of the PUCT and ERCOT Protocols. Therefore, DOE expects transmitting border utilities in the ERCOT region to provide open access in accordance with those applicable PUCT rules and ERCOT Protocols.

## **VII. ORDER**

Accordingly, pursuant to FPA § 202(e) and the Rules and Regulations issued thereunder (10 C.F.R. §§ 205.300-309), it is hereby ordered that AEP-EP is authorized to export electric energy to Mexico under the following terms and conditions:

(A) The electric energy exported by AEP-EP pursuant to this Order may be delivered to Mexico over any authorized international transmission facility that is appropriate for open access transmission by third parties in accordance with the export limits authorized by DOE.

(1) The following international transmission facilities located at the United States border with Mexico are currently authorized by Presidential permit and available for open access transmission<sup>19</sup>:

<b><u>Present Owner</u></b>	<b><u>Location</u></b>	<b><u>Voltage</u></b>	<b><u>Presidential Permit No.</u></b> <sup>20</sup>
AEP Texas Central Company	Laredo, TX	138 kV	PP-317
		230 kV	PP-317
	Brownsville, TX	138 kV	PP-94
		69 kV	
	Eagle Pass, TX	138 kV	PP-219
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 <sup>21</sup>
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

(2) The international transmission facilities consisting of a 138-kV line at Falcon Dam in Falcon Heights, Texas, were authorized by treaty signed February 3, 1944, between the United States and Mexico entitled “Utilization of Waters of Colorado and Tijuana Rivers and of the Rio Grande” and are available for open access transmission.

(3) The following are the authorized export limits for the international transmission lines listed above in subparagraphs (A)(1) and (2):

(a) Exports by AEP-EP shall not cause the total exports on a combination of the 138 kV facilities at the Falcon Dam, the facilities authorized by Presidential Permits PP-94, PP-219 (issued to AEP Texas Central Company (AEPTCC)), and the facilities authorized by PP-317 (issued to AEPTCC) to exceed an instantaneous transmission rate of 600 MW during those times

<sup>19</sup> This Order authorizes the export of electricity over any “authorized international transmission facility,” which is intended to include both large transmission lines and smaller distribution lines that have received a Presidential permit. However, the list in subparagraph (A)(1) of current facilities only includes transmission lines.

<sup>20</sup> These Presidential permit numbers refer to the generic DOE permit number and are intended to include any subsequent amendments to the permit authorizing the facility.

<sup>21</sup> These transmission facilities have been authorized but not yet constructed or placed in operation.

when the AEPTCC system is at a minimum load condition. During all other load conditions on the AEPTCC system, exports by AEP-EP over the facilities identified in this subparagraph shall not cause the maximum rate of transmission to exceed:

(i) 300 MW for the 138 kV and 69 kV facilities authorized by Presidential Permit PP-94; or,

(ii) 50 MW total for the 138 kV facilities at Falcon Dam and those authorized by Presidential Permit PP-219; or

(iii) 300 MW for the 138 kV and 230 kV facilities at Laredo authorized by Presidential Permit PP-317.

(b) Exports made by AEP-EP pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-48 and PP-92 (issued to El Paso Electric Company), to exceed an instantaneous transmission rate of 200 MW. All exports made pursuant to this Order must be consistent with the operating limitations of the Southern New Mexico Import Nomogram.

(c) Exports made by AEP-EP pursuant to this Order shall not cause the total exports on the facilities authorized by Presidential Permit No. PP-304 (issued to Generadora del Desierto and Western Area Power Administration) to exceed an instantaneous transmission rate of 550 MW.

(d) Exports made by AEP-EP pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permit PP-68 and PP-79 (issued to San Diego Gas & Electric (SDG&E)), to exceed an instantaneous transmission rate of 400 megawatts (MW). All exports made pursuant to this Order must be consistent with the operating limitations established by the SDG&E/CFE operating nomogram and the Southern California Import Transmission Nomogram.

(e) Exports made by AEP-EP pursuant to this Order, using the transmission facilities authorized by Presidential Permit PP-285 (issued to Sharyland), shall not cause the maximum instantaneous transmission rate to exceed 150 MW.

(B) Changes by DOE to the export limits in other orders shall result in a concomitant change to the export limits contained in subparagraph (A)(3) of this Order. Notice of these changes will be provided to AEP-EP.

(C) AEP-EP shall obtain any and all other Federal and state regulatory approvals required to execute any power exports to Mexico. The scheduling and delivery of electricity exports to Mexico shall comply with all reliability criteria, standards, and

guides of NERC, Reliability Coordinators, Regional Entities, RTOs, ISOs, including ERCOT, and/or balancing authorities, or their successors, as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(D) Exports made pursuant to this authorization shall be conducted in accordance with the applicable provisions of the FPA and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888, as amended, and, conducted in accordance with the applicable rules and regulations of the PUCT and ERCOT Protocols.

(E) The authorization herein granted may be modified from time to time or terminated by further order of DOE. In no event shall such authorization to export over a particular transmission facility identified in subparagraphs (A)(1) and (2) extend beyond the date of termination of the Presidential permit or treaty authorizing such facility.

(F) This authorization shall be without prejudice to the authority of any state or state regulatory commission for the exercise of any lawful authority vested in such state or state regulatory commission.

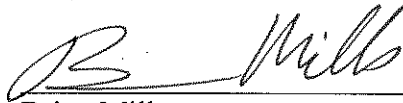
(G) AEP-EP shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Mexico. AEP-EP shall collect and submit the data to EIA as required by and in accordance with the procedures of Form EIA-111, "Quarterly Electricity Imports and Exports Report." The data reporting requirements of this section shall not take effect until EIA obtains authorization from OMB to administer the form and begins operation of the new survey.

(H) In accordance with 10 C.F.R. § 205.305, this export authorization is not transferable or assignable, except in the event of the involuntary transfer of this authority by operation of law. Provided written notice of the involuntary transfer is given to DOE within 30 days, this authorization shall remain in effect temporarily. The authorization shall terminate unless an application for a new export authorization has been received by DOE within 60 days of the involuntary transfer. Upon receipt by DOE of such an application, this existing authorization shall continue in effect pending a decision on the new application. In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file a joint application for a new export authorization, together with a statement of the reasons for the transfer.

(I) Nothing in this Order is intended to prevent the transmission system operator from being able to reduce or suspend the exports authorized herein, as necessary and appropriate, whenever a continuation of those exports would cause or exacerbate a transmission operating problem or would negatively impact the security or reliability of the transmission system.

(J) This authorization shall be effective as of January 28, 2013, and remain in effect for a period of ten (10) 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 AEP-EP's authority to export electricity.

Issued in Washington, D.C., on January 28, 2013.

A handwritten signature in cursive script, appearing to read "B. Mills", is written over a horizontal line.

Brian Mills  
Director, Permitting and Siting  
Office of Electricity Delivery and  
Energy Reliability