

May 2, 2023

Ms. Christina Gomer  
Management and Program Analyst  
U.S. Department of Energy  
2900 4<sup>th</sup> Avenue N.  
Billings, MT 59101  
E-mail: electricity.export@hq.doe.gov

Re: Application of Elektron Power LLC for Authorization to Export Electricity from the United States to Mexico, Docket No. EA-

Dear Ms. Gomer:

Enclosed for filing is the "Application of Elektron Power LLC for Authorization to Export Electricity from the United States to Mexico." The filing fee of \$500.00 has been paid electronically via Pay.gov (Pay.gov Tracking ID: 275AONO8), as required by 10 C.F.R. § 205.309(2018). A copy of the Application is being served contemporaneously upon the Federal Energy Regulatory Commission as required by 10 C.F.R. § 205.309.

Elektron Power LLC ("Elektron") respectfully requests that the Department afford this Application expedited consideration to ensure that Elektron has all necessary authorizations to export power from the United States to Mexico effective as of 60 days from application. Please by reply email indicate receipt of these materials.

Thank you for your assistance in this matter. Please do not hesitate to contact me with any questions regarding this matter.

Very truly yours,

/s/ Mark F. Sundback

Mark F. Sundback  
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
For Elektron Power LLC

SMRH:4879-3090-0059.1

Enclosures

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

IN THE MATTER OF  
ELEKTRON POWER LLC

)  
) Docket No. EA-\_\_\_\_  
)

**APPLICATION OF ELEKTRON POWER LLC FOR AUTHORIZATION TO  
EXPORT ELECTRICITY FROM THE UNITED STATES TO MEXICO**

Pursuant to Section 202(e) of the Federal Power Act (“FPA”) (16 U.S.C. § 824a(e)) and 10 C.F.R. § 205.300, *et seq* Elektron Power LLC (“Elektron” or “Applicant”) hereby submits this Application for authorization to export electricity from the United States to Mexico for a period of five years (or such longer period as may be permitted by the Department). In support of this Application, Elektron respectfully states as follows:

**I. INTRODUCTION**

Elektron requests that it be authorized to export electricity from the United States to Mexico for a five-year period, or such longer period as the Department may authorize for similarly situated power marketers.

**II. DESCRIPTION OF APPLICANT**

The exact legal name of the Applicant is Elektron Power LLC. The Applicant is a Delaware limited liability company with its principal place of business in California and is authorized to do business in California and Texas. Elektron’s equity is not traded on public exchanges, but is privately owned by an individual investor. Applicant does not have any affiliates with authority to export electricity from the U.S. to Mexico at this time. In addition, Applicant is not seeking authorization to export power on behalf of, or in conjunction with, any partners or partnerships.

Applicant will be in the business of participating in the wholesale market for purchases and sales of electric energy. Applicant does not own or control any electric generating or transmission facilities, nor does the Applicant have a franchised service area. Upon obtaining authorization to export power, Applicant will operate as a power marketer<sup>1</sup> and broker and buy electric power at wholesale in the United States. Applicant contemplates making wholesale sales within the United States, and will seek all appropriate regulatory authorizations, including but not limited to authorization from the Federal Energy Regulatory Commission (“FERC”) to make sales of electric power at wholesale in interstate commerce at market-based rates. Applicant may: purchase the power to be exported from wholesale generators, electric utilities, power marketers, and power marketing agencies; or may return to Mexico energy transmitted to but not sold in the United States (*e.g.*, from battery storage in the U.S.). Applicant will have title to any electricity transmitted to Mexico under the authorization sought in this Application. This Application relates to Elektron as a marketer of electric power only.

### **III. COMMUNICATIONS**

Communications regarding this Application should be addressed to the following:

Roberto Gomez, President  
Elektron Power LLC  
939 Coast Blvd., 6F  
La Jolla CA 92037  
Tel: 850.518.8218  
Email: roberto.gomez@me.com

Mark F. Sundback  
Sheppard, Mullin, Richter & Hampton LLP  
2099 Pennsylvania Avenue, NW, Suite 100  
Washington, D.C. 20006-6801  
Telephone: 202.747.1946  
Fax: 202.747.1901  
Email: msundback@sheppardmullin.com

### **IV. JURISDICTION**

Pursuant to FPA Section 202(e), the Department has jurisdiction over the action proposed in this Application. No other known federal, state or local agency of a governmental body in the

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<sup>1</sup> As used herein, the terms “marketer” and “power marketer” mean an entity that buys and sells electric power for its own account.

U.S. has jurisdiction over the actions to be taken under the authority sought in this Application.

## **V. AUTHORIZATION AND TECHNICAL DISCUSSION**

Elektron hereby applies for authorization to transmit electric power to Mexico as a power marketer over any authorized international transmission facility that is appropriate for open access transmission by third parties in accordance with the export limits authorized by the Department. Elektron plans to export electric power over authorized transmission interconnections between Mexico and the United States. Such sales would be made in foreign commerce at the U.S. - Mexico border. Transmission to the point of delivery will be arranged by Elektron over any of the existing international electric transmission facilities set out in Exhibit G and over any international transmission facilities that may be approved for such use by the Department in the future.

Applicant does not currently own or control electric generation or transmission facilities, and does not have a power supply of its own in the United States on which its exports of power could have a reliability, fuel use or system stability impact. The electric power that Applicant will export, on either a firm or an interruptible basis, will be purchased from wholesale generators, electric utilities, and other marketers or federal power marketing agencies voluntarily, and therefore will be surplus to the needs of the selling entities. Accordingly, the proposed exports will not impair or tend to impede the sufficiency of electricity supplies in the United States or the regional coordination of electric utility planning or operations. Additionally, as a power marketer that does not own or operate a transmission system, Applicant does not have the ability to cause a violation of the terms and conditions in the existing authorizations associated with the international transmission facilities identified in Exhibit G. Specifically, Applicant does not have the ability to cause total exports on Presidential Permit facilities to exceed the authorized instantaneous transmission rate, given that it neither

owns nor operates any such transmission facility.

Applicant will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to carry out any power exports. This would include: (1) scheduling each transaction with the appropriate balancing authority area in compliance with all reliability criteria, standards, and guidelines of the North American Electric Reliability Corporation and the relevant Regional Entities (collectively, “NERC”) in effect at the time of export; and (2) obtaining all necessary transmission access over approved export facilities. Applicant agrees to abide by the export limits contained in the relevant export authorization of any transmission facilities over which it arranges exports electric power to Mexico. The controls that are inherent in any transaction that complies with all NERC requirements and the export limits imposed by the Department on the international transmission facilities are sufficient to ensure that exports by Applicant would not impede or tend to impede the coordinated use of transmission facilities within the meaning of FPA Section 202(e).

In previous orders granting export authorizations to electric power marketers, the Department declined to rigidly apply the information filing requirements contained in its regulations and instead used a flexible approach which takes into consideration the unique nature of power marketers and previously authorized export limits of cross-border facilities.<sup>2</sup> These same considerations demonstrate that Applicant’s proposed exports will not impair or tend to impede the sufficiency of electric supplies in the United States or the regional coordination of electric utility planning or operations.

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<sup>2</sup> See, e.g., *NorAm Energy Services, Inc.*, No. EA-105-CN (Aug. 16, 1996); *MidCon Power Services Corp.*, No. EA-114 (July 15, 1996); *USGen Power Services*, No. EA-112 (June 27, 1996); *CNG Power Services Corp.*, No. EA-110 (June 20, 1996); *Destec Power Services, Inc.*, No. EA-113 (May 31, 1996); *North American Energy Conservation, Inc.*, No. EA-103 (May 30, 1996); *NorAm Energy Services Inc.*, No. EA-105-MX (May 30, 1996); *Enron Power Marketing, Inc.*, No. EA-102 (Feb. 6, 1996); *Morgan Stanley Capital Group Inc.*, No. EA-185-A-CN (Aug. 14, 2000); *Saracen Energy Partners, LP*, No. EA-340 (June 18, 2008).

## **VI. CONSISTENCY WITH LAWS**

Authorization of the exports proposed by Applicant is consistent with the United States-Mexico-Canada Agreement and United States energy policy and will foster development of a more efficient and competitive North American energy market. Applicant 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 applicable reliability criteria, standards and guidelines of NERC, reliability coordinators, and balancing authority area operator(s), including any applicable regional transmission organizations or independent system operators.

Because the proposed exports will occur over existing transmission facilities, Applicant respectfully submits that the Application qualifies for a categorical exclusion under the National Environmental Policy Act of 1969, such that neither an Environmental Agreement nor an Environmental Impact Statement is required.

Finally, Applicant will continue to comply with such requirements as may be imposed by the Department on other power marketers with blanket electricity export authorization, including making periodic reports to the Department regarding exports, as may be applicable or required.

## **VII. EFFECTIVE DATE**

Elektron respectfully requests that the Department expedite review of the Application and issue the requested authorization by no later than and effective upon 60 days from application. The Department should find that good cause has been shown to grant Applicant authorization to export power to Mexico effective on such date. Allowing Elektron to engage in such transactions, as of such date will increase the liquidity of the wholesale electricity markets and promote economic growth by allowing the entry of another market participant. In these circumstances, an effective date of July 2, 2023 is appropriate.

## **VIII. EXHIBITS**

The following Exhibits are attached hereto:

Exhibit A	(Not applicable) -Agreements
Exhibit B	Legal Opinion of Elektron's counsel
Exhibit C	(Not applicable) - Map
Exhibit D	(Not applicable) – Designated Agent
Exhibit E	(Not applicable)- Corporate Relationship or Existing Contract
Exhibit F	(Not applicable) Operating Procedures
Exhibit G	Border Point Facilities
Exhibit H	Verification

## **IX. CONCLUSION**

Elektron respectfully requests that the Department of Energy grant this Application as requested herein.

Respectfully submitted,

/s/ Mark F. Sundback  
Mark F. Sundback  
Attorney for Elektron Power LLC

Date: May 2, 2023

EXHIBIT A  
(NOT APPLICABLE)



EXHIBIT B  
OPINION OF COUNSEL

May 2, 2023

File Number: 89YF-372130

**VIA ELECTRONIC MAIL**

Ms. Christina Gomer  
Management and Program Analyst  
U.S. Department of Energy  
electricity.exports@hq.doe.gov

Re: Application of Elektron Power LLC for authorization to Export Electricity from the United States to Mexico, Docket No. EA-

Dear Ms. Gomer:

We are providing this opinion as counsel to Elektron Power LLC, a Delaware limited liability company ("Elektron") pursuant to 10 C.F.R. § 205.303(b) in connection with the application ("Application") of Elektron for authority to export electricity from the United States to Mexico.

For purposes of this opinion, we have examined the following (the "Reviewed Documents"):

- (a) the Certificate of Formation of Elektron issued by the Secretary of State of the State of Delaware and dated April 3, 2023 (the "Certificate of Formation");
- (b) the Limited Liability Company Agreement of Elektron, dated April 3, 2023;
- (c) the Certificate of Registration of Elektron issued by the California Secretary of State and dated April 20, 2023 (the "California Certificate");
- (d) the Certificate of Filing of Elektron issued by the Texas Secretary of State and dated April 20, 2023 (the "Texas Certificate");
- (e) the Officer Certificate executed by Roberto Gomez, President of Elektron, dated April 27, 2023; and
- (f) the Application.

The opinions expressed herein are based solely on our review of the Reviewed Documents.

We have assumed that each of the Certificate of Formation, the Delaware Certificate, the California Certificate and the Texas Certificate remains accurate as of the date hereof. We also have assumed that Elektron will receive the authorization from the U.S. Department of Energy sought by the Application prior to its exporting electric energy to Mexico.

Ms. Christina Gomer  
May 2, 2023  
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Based upon and subject to the foregoing and subject also to all of the assumptions, qualifications and other matters set forth in this opinion letter, we are of the opinion that:

1. Elektron is a limited liability company validly existing under the laws of the State of Delaware.
2. Elektron has corporate power and authority to export electric energy from the United States to Mexico, as contemplated by the Application.
3. Elektron has taken all requisite limited liability company action to direct its officers and agents to take all necessary steps to comply with all applicable state and federal laws in connection with the actions to be taken under the Application.

The opinions in this opinion letter are limited to (a) the federal law of the United States, (b) the Delaware Limited Liability Company Act, (c) the Texas Limited Liability Company Act and (d) the California Revised Uniform Limited Liability Company Act.

The opinions expressed in this opinion letter (a) are strictly limited to the matters stated in this opinion letter, and without limiting the foregoing, no other opinions are to be implied and (b) are only as of the date of this opinion letter, and we are under no obligation, and do not undertake, to advise you or any other person or entity either of any change of law or fact that occurs, or of any fact that comes to our attention, after the date of this opinion letter, even though such change or such fact may affect the legal analysis of a legal conclusion in this opinion letter.

This opinion letter is (a) delivered to you solely for your benefit in connection with your review of the Application and may be relied upon only by you in connection with such review and may not be relied upon by you for any other purpose; (b) may not be relied on by, or furnished to, any other person or entity without our prior written consent; and (c) without limiting the foregoing, may not be quoted, published or otherwise disseminated, without in each instance our prior written consent. Notwithstanding the foregoing, you may furnish or disseminate a copy of this opinion letter to the extent required by law, but no other person or entity to which this opinion may be delivered or furnished may rely on it without our prior written consent.

Very truly yours,

/s/ Jerry J. Gumpel

Jerry J. Gumpel  
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

EXHIBIT C  
(NOT APPLICABLE)

EXHIBIT D  
(NOT APPLICABLE)

EXHIBIT E  
(NOT APPLICABLE)

EXHIBIT F  
(NOT APPLICABLE)

EXHIBIT G  
BORDER POINT FACILITIES



<b>Owner</b>	<b>Crossing Point</b>	<b>Location</b>	<b>Permit</b>
SDG&E	San Miguel	7310 San Miguel Road, Bonita, California	PP-68-2
BCP	Imperial Valley	North of Highway 98, 4.5 miles, Calexico, California	PP-234
AEP	Laredo	CPL Road 78041, Laredo, Texas	PP-317
CPL	Eagle Pass	Comal Street, Eagle Pass, Texas	PP-219
Frontera	Rail Road	3810 Mayberry Road, Mission, Texas	PP-206

EXHIBIT H  
VERIFICATION

## VERIFICATION

STATE OF CALIFORNIA

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CITY OF SAN DIEGO

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The undersigned, being duly sworn, states that he is the authorized presentative of Elektron Power LLC; that he has read the foregoing application and knows the contents thereof, and that all the statements contained therein with respect to Elektron Power LLC, are true and correct to the best of his knowledge, information and belief.

\_\_\_\_\_  
Roberto Gomez, President  
Elektron Power LLC

Subscribed and sworn to before me  
This \_\_\_\_ day of April, 2023

\_\_\_\_\_  
Notary Public

*see Attached*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

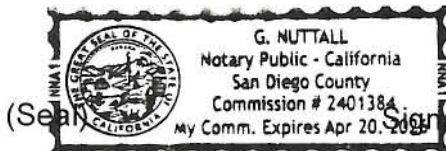
State of California

County of San Diego

Subscribed and sworn to (or affirmed) before me on this 18<sup>th</sup>  
day of April, 2023, by Roberto Gomez  
Hernandez

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.

Attached to verification of Roberto Gomez as  
to Elektron Power LLC



Signature

A handwritten signature in blue ink, appearing to be "G. Nuttall", written over a horizontal line.