
United States
Department of Energy

Office of Electricity

ALEL Technologies LLC

OE Docket No. EA-476-A



Suspension of Export Authorization

Order No. EA-476-A

July 8, 2020

ALEL Technologies LLC

Order No. EA-476-A

I. BACKGROUND

The Department of Energy (the Department or DOE) regulates electricity exports from the United States to foreign countries in accordance with § 202(e) of the Federal Power Act (FPA) (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. DOE issued Order No. EA-476 to ALEL Technologies LLC (ALEL) on August 20, 2019. That Order authorized ALEL to export electric energy as a power marketer to Mexico for a term of five years expiring on August 19, 2024.

On June 18, 2020, the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury added ALEL to its list of Specially Designated Nationals (SDNs), pursuant to Executive Order No. 13,850 of November 1, 2018, as amended (EO 13850). *See* Office of Foreign Assets Control, Specially Designated Nationals and Blocked Persons List (SDN List), at 100 (June 18, 2020), <https://www.treasury.gov/ofac/downloads/sdnlist.pdf>. Under section 1(a) of EO 13850, “[a]ll property and interests in property” located in the United States and owned or controlled by SDNs “are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.”

The U.S. Department of Energy (Department or DOE) has determined that an authorization to export electric energy, issued under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)), falls within the description of blocked “property and interests in property” under EO 13850. Such authorization is equivalent to a license to exercise a valuable privilege. Courts have held that a license constitutes an interest in property. *See, e.g., Mackey v. Montrym*, 443 U.S. 1, 10 (1979) (finding that “suspension of a driver’s license for statutorily defined cause implicates a protectible property interest”); *Illinois v. Batchelder*, 463 U.S. 1112 (1983); *Hightower v. City of Boston*, 693 F.3d 61 (1st Cir. 2012).

Even if the export authorization were not itself blocked property, the action OFAC has taken pursuant to EO 13850 would still bar exports pursuant to the authorization. Section 4(a) of EO 13850 states that “[t]he prohibitions in section 1 of this order include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order.” Section 5(a) provides that “[a]ny transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or

attempts to violate any of the prohibitions set forth in this order is prohibited.” Taken together, these restrictions indicate that one who owns or controls property and interests in property may not receive or exchange anything of value in connection with that property, nor may execute any beneficial transactions. That is, for ALEL to export electricity pursuant to its export authorization, it must first purchase the electricity (since it does not own any generation resources), which is a commodity and therefore property.* Thus, all transactions under an export authorization issued to a blocked entity are themselves blocked, regardless of whether the authorization is a cognizable property interest.

Section 202(e) of the Federal Power Act states that the Department “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.” Section 8 of EO 13850 directs “[a]ll agencies of the United States Government [to] take all appropriate measures within their authority to carry out the provisions of this order.” OFAC’s placement of ALEL on its SDN list, and the resultant blocking of property, interests in property, and beneficial transactions, as explained above, provide good cause to suspend or revoke Order No. EA-476. In addition to exercising DOE’s statutory authority, suspension or revocation of Order No. EA-476 carries out the express directive of EO 13850. The Department notes that, but for ALEL’s placement on the list, suspension or revocation would not be contemplated at this time.

On June 22, 2020, the Department of Energy sent a letter to ALEL providing notice of DOE’s intention to review Order No. EA-476 and the opportunity to explain, in writing, why it believed that an SDN designation would not be sufficient cause for the Department to suspend or revoke Order No. EA-476. Counsel for ALEL responded on June 26, 2020. The response stated that “ALEL believes that OFAC’s designation was made in error, based on incomplete and inaccurate information,” that the company “has not been involved in any efforts to violate or evade U.S. sanctions, nor engaged in any activity intended to benefit the regime of Nicolás Maduro,” and that the company “intends to immediately file a petition for removal from the SDN List and to fully cooperate with any review of its activities that OFAC chooses to conduct.” Noting confidence that ALEL’s challenge will succeed, the response highlighted OFAC’s recent delisting of two sanctioned companies that promised to enhance their compliance with sanctions and to end their involvement in the Venezuelan oil sector “so long as the Maduro regime remains in power.” The response requested a suspension of Order No. EA-476: “In the event that the DOE elects to suspend Order No. EA-476, we ask that it do so temporarily and without prejudice, and that the DOE revisit its decision upon OFAC’s removal of ALEL from the SDN List.”

* See *Williams v. Duke Energy Int’l, Inc.*, 681 F.3d 788, 800 (6th Cir. 2012) (holding that electric energy is a commodity); *Town of Concord, Mass. v. Boston Edison Co.*, 676 F. Supp. 396, 397–98 (D. Mass. 1988) (holding that electricity is a commodity); *In re Escalera Res. Co.*, 563 B.R. 336, 349 (Bankr. D. Colo. 2017) (holding that “‘goods’ means ‘things that have value, whether tangible or not,’ ‘things that are produced for sale,’ ‘commodities,’ and ‘personal property,’ and that electricity falls within that definition).

DOE finds the suggestion of ALEL's counsel to be reasonable and appropriate. As explained above, by operation of law, ALEL is prohibited from transacting business under Order No. EA-476 while its SDN designation is active. Further, ALEL's SDN designation provides the sole basis for suspension or revocation of Order No. EA-476. Should ALEL prevail in its challenge, the SDN status would no longer provide the basis for suspending or revoking the order. Therefore, ALEL may seek reinstatement of Order No. EA-476 if and only if OFAC removes it from the SDN list.

II. ORDER

Based on the foregoing discussion, and pursuant to section 202(e) of the FPA and the Rules and Regulations issued thereunder (10 C.F.R. §§ 205.300 *et seq.*), the electricity export authorization issued to ALEL on August 20, 2019, in Order No. EA-476, is hereby suspended, effective July 8, 2020, for as long as ALEL is on OFAC's list of Specially Designated Nationals.

ALEL shall provide evidence to DOE, by July 22, 2020, that it has petitioned OFAC for reconsideration of its SDN status. On or before the eighteenth (18th) day of each subsequent month, ALEL must file a report advising DOE of the status of its dispute with OFAC, including dates of correspondence. If the eighteenth falls on a Saturday, Sunday, or Federal legal holiday, the report will be due on the first day after the eighteenth that is not a Saturday, Sunday, or Federal legal holiday. All reports, along with the initial confirmation, are to be sent by electronic transmission to christopher.lawrence@hq.doe.gov. Failure to provide evidence of a petition to OFAC by July 22, 2020, or timely reports of the status of its dispute, will be considered grounds to revoke Order No. EA-476.

Signed in Washington, D.C., on July 8, 2020.

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