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United States  
Department of Energy

Office of Electricity

ALEL Technologies LLC

OE Docket No. EA-476-B

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Revocation of Export Authorization

Order No. EA-476-B

August 4, 2020

# ALEL Technologies LLC

## Order No. EA-476-B

### **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. §§ 205.300-309). 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located in the United States and owned or controlled by SDNs “are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.”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. Therefore, 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.

On June 22, 2020, the Department informed ALEL by letter that, in light of ALEL’s placement on OFAC’s SDN list, the export authorization issued in Order No. EA-476 was under scrutiny. The letter gave ALEL the opportunity to respond, in writing, with an explanation of why ALEL’s 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, stating that ALEL intended to challenge its SDN designation with OFAC and asking the Department to suspend the authorization in Order No. EA-476 until the challenge was resolved. On July 8, 2020, DOE issued Order No. EA-476-A, suspending ALEL’s export authorization “for as long as ALEL is on OFAC’s list of Specially Designated Nationals.” The Order directed ALEL to “provide evidence to DOE, by July 22, 2020, that it has petitioned OFAC for reconsideration of its SDN status,” and warned that “[f]ailure 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.”

DOE received no correspondence from ALEL by July 22, 2020, and none has been received as of the issuance date of this Order. OFAC regulations codified at 31 C.F.R. 501.807 set out the requirements and general procedures governing SDN delisting. ALEL never notified DOE or provided any evidence that it took action pursuant to those requirements or procedures. DOE wrote to ALEL’s counsel again on July 27, 2020, but still received no response. OFAC confirmed that as of August 3, 2020, neither ALEL nor its owners had petitioned for removal from the SDN list.

Because ALEL failed to comply with the directives of Order No. EA-476-A, provided no evidence of its efforts to be removed from OFAC’s SDN list, and has not in fact, according to OFAC, sought delisting, DOE will revoke Order No. EA-476.

## **II. COMPLIANCE**

Upon its effective date, this Revocation Order terminates ALEL’s authorization to export electricity to Mexico. As obtaining a valid order from DOE authorizing the

export of electricity under section 202(e) of the FPA is a necessary condition before engaging in an export, ALEL will be subject to sanctions and penalties under the FPA should it export any electricity without authorization.

### **III. ORDER**

Based on the above and for good cause shown, pursuant to section 202(e) of the FPA and the Rules and Regulations issued thereunder (10 C.F.R. §§ 205.300-309), the electricity export authorization issued to ALEL on August 20, 2019, in Order No. EA-476, is hereby revoked, effective August 4, 2020.

Signed in Washington, D.C., on August 4, 2020.

*Christopher Lawrence*

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Christopher A. Lawrence  
Management and Program Analyst  
Transmission Permitting and Technical Assistance  
Office of Electricity