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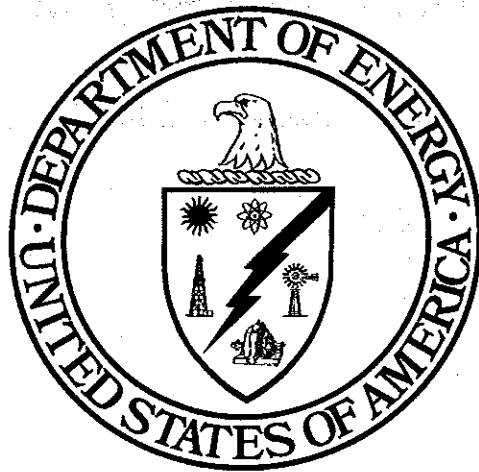
United States  
Department of Energy

Office of Electricity Delivery and Energy Reliability

TexMex Energy, LLC

OE Docket No. EA-294-B

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Order Authorizing Electricity Exports to Mexico

Order No. EA-294-B

December 7, 2012

# TexMex Energy, LLC

## Order No. EA-294-B

### I. BACKGROUND

Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C.824a(e))<sup>1</sup>.

On February 22, 2007 the Department of Energy (DOE) issued Order No. EA-294-A, which authorized TexMex Energy LLC (TexMex) to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities. That authority expired on February 22, 2012. On July 23, 2012, TexMex filed an application with DOE for renewal of the export authority contained in Order No. EA-294-A for an additional five-year term.

It is reasonable to presume that all of the electric energy that TexMex proposes to export to Mexico will be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. The existing international transmission facilities to be utilized by TexMex have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

TexMex also asserts in its application that it will make all of the necessary commercial arrangements and obtain any and all other regulatory approvals required to execute any power exports to Mexico. Some of TexMex's activities may also occur within the ERCOT region of Texas. ERCOT is an independent system operator with the responsibility to reliably operate the ERCOT Interconnection through the coordination of power generation and transmission in the ERCOT region. ERCOT's actions are governed by Texas law and the Northern American Electric Reliability Council (NERC) Reliability Standards.

Therefore, TexMex's actions in Texas must comply with the regulations of the Public Utilities Commission of Texas (PUCT) and ERCOT protocols, which govern the operation, planning, and market functions in the ERCOT region. This would include compliance with all rules, guidelines, and standards concerning scheduling, planning, and reliability, on such terms as expressed therein, and as such criteria, standards, guides, and requirements may be amended from time to time. TexMex is also required

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<sup>1</sup> The authority to administer the International Electricity Regulatory Program through the regulation of electricity exports and the issuance of Presidential permits has been delegated to the Assistant Secretary for the Office of Electricity Delivery and Energy Reliability in Redelegation Order No. 00-002.10C issued on May 29, 2008.

to comply with all reliability criteria, standards, and guidelines of NERC. A condition to this effect has been added to this Order in Section VI(C).

The electric energy that TexMex proposes to export to Mexico would be energy purchased from electric utilities, power marketers, Federal power marketing agencies, and affiliated suppliers that is available pursuant to voluntary agreements. TexMex asserts that its exports do not and will not impair the sufficiency of electric supply within the United States, because they will be made “on a firm or interruptible basis depending on power supply and transmission export capacity available to Mexico.” The existing international transmission facilities to be utilized by TexMex have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Notice of the TexMex application in Docket No. EA-294-B was published in the *Federal Register* on August 21, 2012 (77 Fed. Reg. 50486) requesting that comments, protests, and motions to intervene be submitted to DOE by September 20, 2012. None were received.

## **II. DISCUSSION AND ANALYSIS**

The authority requested of DOE by TexMex is a necessary condition for exporting under section 202(e) of the FPA. Before an electricity export authorization is granted, DOE evaluates the impact of the export on the reliability of the U.S. electric system.

Specifically, under the first criterion of section 202(e), 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....” 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 and capacity needs of the exporting region, including serving all load obligations in the region while maintaining appropriate reserve levels. Under the second criterion of section 202(e), 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 the Commission.” DOE has interpreted this second 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.

With respect to the first criterion, prior to deregulation, vertically integrated utilities were permitted to export generation capacity that was surplus to the needs of the utility’s native load obligations. With the development of deregulated wholesale markets, entities such as reliability coordinators, regional transmission organizations (RTOs), independent system operators (ISOs), balancing authorities, or ERCOT in Texas, now 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 to sufficiently serve demand at the regional level and to ensure that there are sufficient power supplies to maintain system reliability.

Power marketers, like TexMex, do not have franchised service areas and, consequently, do not have load obligations like the traditional local distribution utility. Power marketers build a power portfolio from electric power purchased from various entities that is surplus to the needs of that selling entity. The power marketer is free to sell its power portfolio on the open market domestically or as an export. Any exported power would be incremental to the needs of the exporting region. The responsible entity in the region, such as the reliability coordinator, RTO, ISO, balancing authority, or ERCOT in Texas, has an obligation to maintain transmission system security and reliability. That entity has the authority and responsibility to curtail, cancel, or deny scheduled flows to avoid shortages or to restore necessary energy and capacity reserves. Specifically, the entity responsible for maintaining system security in the region has the authority to suspend exports if the electric energy would be needed to support the regional power grid. Therefore, an export by a power marketer would meet the first statutory criterion of section 202(e) of the FPA of not impairing the sufficiency of supply within the United States.

With respect to the second criterion, prior to the restructuring of the electric power industry, the only entities able to export were those electric utilities that owned international transmission facilities and were contiguous with the U.S. international border. The exported energy generally originated from within the exporter's system and standard transmission studies could be performed to determine the impact of the export on regional electric systems.

However, deregulation of wholesale power markets and the introduction of open-access transmission expanded the number 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.

In evaluating the operational reliability impacts of export proposals, DOE has always used a variety of methodologies and information, including established industry guidelines, operating procedures and/or infrastructure, as well as traditional technical studies where available and appropriate. When determining these impacts for exports by power marketers or other entities operating in a similar manner, it is convenient to separate the export transaction into two parts: (1) moving the export from the source to a border system that owns the international transmission connection; and, (2) moving the export through that border system and across the border.

In order to deliver the export from the source to a border system, TexMex must make the necessary commercial arrangements and schedule sufficient transmission capacity to wheel the exported energy to the border system. In doing so outside of the ERCOT region in Texas, TexMex generally would be expected to use domestic transmission facilities for which open-access tariffs have been approved by the FERC. TexMex also must make reservations for transmission service in accordance with the FERC Open-Access Same-Time Information System (OASIS), and must schedule delivery of the export with the appropriate RTO, ISO, and/or balancing authority (formerly the control area operator). The posting of transmission capacity on OASIS indicates that transmission capacity is available. Within the ERCOT region, the electric power TexMex wants to export must be transmitted to the border system in accordance with 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 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. DOE understands 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, this export authorization has been conditioned to ensure that the export would not cause operating parameters on regional transmission systems to fall outside of established industry criteria or cause or exacerbate a transmission operating problem on the U.S. electric power supply system (paragraphs C, D, and I of this Order).

In determining the operational reliability impacts of moving the export through a border system and across the border, DOE relies on the traditional technical studies that were performed in support of electricity export authorizations issued to that border system or the technical reliability studies submitted in conjunction with an application for a Presidential permit to construct a new international transmission line. Allowing these technical studies to suffice in this docket is sound and, thus, DOE need not 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).

TexMex is being authorized to export electricity to Mexico over any authorized international transmission facility that is appropriate for open access transmission by third parties, including the facilities of Generadora del Desierto S.A. de C.V. and the Western Area Power Administration that have been authorized, but not yet constructed and placed into operation. Although a Presidential permit has been issued for these facilities, obviously they can not be utilized for export until they are placed into commercial operation.

## **Open Access**

An export authorization issued under section 202(e) does not impose on transmitting utilities a requirement to provide service. However, DOE expects transmitting utilities owning 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 61 FR 21540 (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., 77 FERC ¶61,013 (1996)). 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.

### **III. DATA COLLECTION AND REPORTING**

The responsibility for the data collection and reporting under Presidential permits authorizing electric transmission facilities at the U.S. international border and orders authorizing electricity exports to a foreign country has been transferred from OE to DOE's Energy Information Administration (EIA). In August 2010, EIA began collecting that data on a monthly basis in accordance with the data collection and reporting procedures required by Form OE-781R, "Monthly Electricity Imports and Exports Report." The data collection requirements of Form OE-781R were approved by the Office of Management and Budget (OMB) on November 23, 2009 (OMB Control No. 1901-0296)

On August 11, 2011, EIA published a notice in the *Federal Register* soliciting public comment on new quarterly data collection procedures under proposed Form EIA-111, "Quarterly Electricity Imports and Exports Report" (76 Fed. Reg. 49757). The new survey form would replace the monthly reporting requirements of existing Form OE-781R. The new proposal modifies the data being collected and, although data would still be collected monthly, respondents will only need to file the form quarterly.

Pending the receipt of authorization from OMB to administer the revised data collection procedures under the new form, EIA suspended the current data collection and reporting under Form OE-781R, effective June 1, 2011. Upon receipt of such authorization from OMB, EIA will terminate Form OE-781R. Because EIA intends to retroactively collect the core import and export data for the period of the suspension, EIA expects respondents to continue to collect monthly data. However, that data will not need to be reported to EIA until such time as the new survey under Form EIA-111 takes effect.

Therefore, a data collection and reporting requirement that reflects the transfer of the data collection responsibility to EIA has been added to this Order in paragraph G. However, the new data collection and reporting procedures under Form EIA-111 will not take effect until EIA obtains authorization from OMB to administer the revised form and begins operation of the new survey.

#### **IV. FINDING AND DECISION**

DOE has assessed the impact that the proposed export would have on the reliability of the U.S. electric power supply system. Based on the above, DOE has determined that the export of electric energy to Mexico by TexMex, as ordered below, 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 of section 202(e) of the FPA.

DOE received a comment from a member of the public expressing the view that the U.S. does not have enough electricity to send to Mexico. As discussed above, TexMex must comply with the reliability coordinators in the area it wishes to conduct the export of electricity out of the U.S. Specifically, the entity responsible for maintaining system security in the region has the authority to suspend exports if the electric energy would be needed to support the regional power grid.

DOE also has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment and, therefore, is eligible for categorical exclusion under paragraph B4.2 of Appendix B to Subpart D of Part 1021 of DOE's National Environmental Policy Act Implementing Procedures (10 CFR Part 1021). Specifically, this categorical exclusion is provided for transmission of electric energy using existing transmission systems. Documentation of the use of this categorical exclusion has been placed in this Docket.

DOE's policy that has developed over the years has been to authorize electricity exports to either Canada or Mexico by power marketers over all of the international electric transmission facilities authorized by Presidential permit or treaty applicable to that particular country that are appropriate for open access transmission by third parties, regardless of the specific line(s) requested by the applicant. These authorizations are conditioned on the export holder obtaining any and all other Federal and state regulatory approvals required to execute the export. The scheduling and delivery of the electricity exports must also comply with all reliability criteria, standards, and guides of NERC, Regional Coordinators, Regional Entities, RTOs, ISOs, including ERCOT, and/or balancing authorities, as required and appropriate. That is what is being done here with TexMex's renewal request.

Based on the above, DOE has granted TexMex's request for authorization to export electric energy to Mexico. The authorized export 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 for that facility.

## **V. COMPLIANCE**

DOE expects TexMex to abide by the terms and conditions established for its authority to export electric energy to Mexico, as set forth below. DOE intends to closely monitor TexMex compliance with these terms and conditions, especially the requirement in paragraph G of this Order that TexMex 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 TexMex to any applicable sanctions and penalties under the FPA.

As noted above, 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 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.

## **VI. TERMS AND CONDITIONS**

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



(A) The electric energy exported by TexMex 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>2</sup>:

<u>Present Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u> <sup>3</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>4</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):

<sup>2</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>3</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>4</sup> These transmission facilities have been authorized but not yet constructed or placed in operation.

(a) Exports by TexMex 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 when the AEPTCC system is at a minimum load condition. During all other load conditions on the AEPTCC system, exports by TexMex 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 TexMex 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 TexMex 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 TexMex 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 TexMex 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 TexMex.

(C) TexMex 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.

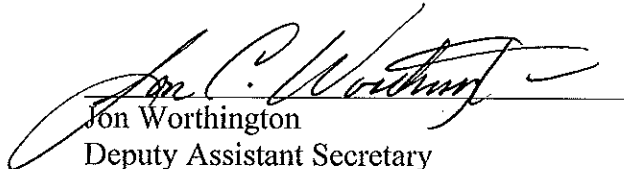
(G) TexMex shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Mexico. TexMex shall collect and submit the data to EIA as required by and in accordance with the procedures of Form EIA-111, "Quarterly Electricity Imports and 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 from the date of issuance indicated below, and remain in effect for a period of five (5) 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) working days to process a renewal application and provide adequate opportunity for public comment may result in a gap in TexMex's authority to export electricity.

Issued in Washington, D.C., on December 7, 2012.



Jon Worthington  
Deputy Assistant Secretary  
Office of Electricity Delivery and  
Energy Reliability