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United States  
Department of Energy

Office of Electricity Delivery and Energy Reliability

DC Energy Texas LLC.

OE Docket No. EA-377

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Order Authorizing Electricity Exports to Mexico

Order No. EA-377

June 21, 2011

# DC Energy Texas, LLC

## Order No. EA-377

### **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 March 18, 2011, DOE received an application from DC Energy Texas (DCE Texas) requesting authority to transmit electric energy from the United States to Mexico for five years as a power marketer. The electric energy that DCE Texas proposes to export to Mexico would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States. DCE Texas proposes to use existing authorized international electric transmission facilities that are appropriate for open access by third parties, including facilities that have been authorized but not yet constructed and placed into operation. The existing international transmission facilities to be utilized by DCE Texas 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 DCE Texas application in Docket No. EA-377 was published in the *Federal Register* on April 14, 2011 (76 FR 20968) requesting that comments, protests, and petitions to intervene be submitted to DOE by May 16, 2011. One comment was received.

### **II. DISCUSSION AND ANALYSIS**

The authority requested of DOE by DCE Texas 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

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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.



States....” DOE has interpreted this criterion to mean that sufficient generating capacity must exist such that the exporter could sustain the export while still maintaining adequate generating reserves to meet all native load obligations.

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.

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. 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.

The electric energy that DCE Texas proposes to export to Mexico would 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 DCE Texas 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

### **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 ¶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 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.

### **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). EIA will be collecting that data on a monthly basis in accordance with the data collection procedures now required by EIA's Form OE-781R, "Monthly Electricity Imports and Exports Report."

On December 1, 2008, EIA placed a notice in the *Federal Register* (73 FR 72782) proposing a restructuring of Form OE-781R by increasing the number of data fields collected and requiring both U.S. transmission system operators and electricity importers and exporters to submit the information on a monthly basis. EIA received several comments in response to the December 1, 2008 notice. EIA addressed these comments in a document titled, "Supporting Statement for the Monthly Electricity Import and Export Survey," submitted to the Office of Management and Budget (OMB) as an attachment to EIA's request to begin implementation of this data collection (74 FR 31936, 7/6/09; also see correction 74 FR 34562, 7/16/09). The Supporting Statement, along with a draft of the proposed new form, was made available on the EIA website for comment.

OMB approved the new data collection requirements of Form OE-781R on November 23, 2009 (OMB Control No. 1901-0296). EIA opened the new monthly electronic data collection process using the computer-based Form OE-781R in August 2010.

Therefore, a data collection and reporting requirement consistent with the new EIA data collection procedures has been added to this Order in paragraph G.

### **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 DCE Texas, 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 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.

Based on these findings, DOE has granted DCE Texas request for authorization to export electric energy to Mexico.

## **V. COMPLIANCE**

DOE expects DCE Texas 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 DCE Texas compliance with these terms and conditions, especially the requirement in paragraph G of this Order that DCE Texas create and preserve full and complete records and file monthly reports with EIA as discussed above. A violation of any of those terms and conditions, including the failure to submit timely and accurate monthly reports, may result in the loss of authority to export electricity and subject DCE Texas to 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 ISO's or RTO's, to verify that companies seeking to schedule an electricity export have the requisite authority from DOE to export such power.

## **VI. ORDER**

Based on the above and pursuant to section 202(e) of the FPA and the Rules and Regulations issued thereunder (Title 10, Code of Federal Regulations, sections 205.300-309), it is hereby ordered that DCE Texas is authorized to export electric energy to Mexico under the following terms and conditions:

(A) The electric energy exported by DCE Texas 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:

<b><u>Present Owner</u></b>	<b><u>Location</u></b>	<b><u>Voltage</u></b>	<b><u>Presidential Permit No.</u></b> <sup>2</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>3</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 limits for the international transmission lines listed above in subparagraphs (A)(1) and (2):

(a) Exports by DCE Texas 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 CPL), and the facilities authorized by PP-317 (issued to AEPTCC) to exceed an instantaneous transmission rate of 600 MW during those times when the CPL system is at a minimum load condition. During all other load conditions on the CPL system, exports by DCE Texas 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,

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



- (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 DCE Texas 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 EPE), 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 DCE Texas 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 DCE Texas 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 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 DCE Texas 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 DCE Texas.

(C) The scheduling and delivery of electricity exports to Mexico shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Corporation, Regional Councils, Regional Transmission Organizations, Independent System Operators, and/or balancing authorities, 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 provisions of the Federal Power Act 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.

(E) The authorization herein granted may be modified from time to time or terminated by further order of the 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.

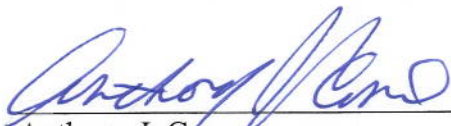
(G) DCE Texas shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Mexico. DCE Texas shall submit monthly data to EIA as required by and in accordance with the procedures of Form OE-781R, "Monthly Electricity Imports and Exports Report." (Approved by the Office of Management and Budget under OMB Control No. 1901-0296).

(H) In accordance with 10 C.F.R. §205.305, this 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 DOE within 30 days, this authorization shall continue in effect temporarily. This continuance also is contingent on the filing of an application for permanent authorization within 60 days of the involuntary transfer; the authorization shall then remain effective until a decision is made 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 jointly an application for a new export authorization, together with a statement of reasons for the transfer.

(I) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would cause or exacerbate a transmission operating problem.

(J) This authorization shall be effective for a period of five (5) years from the date of issuance of this Order. 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 DCE Texas authority to export electricity.

Issued in Washington, D.C., on June 21, 2011.



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