

SOUTHWESTERN PUBLIC SERVICE COMPANY

ORDER No. EA-127

I. BACKGROUND

Exports of electric energy from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. §824a(e)).

On October 11, 1996, Southwestern Public Service Company (SPS) applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to transmit electric energy to Mexico. SPS is a regulated public utility engaged in the generation, transmission, distribution, and sale of electricity, primarily in Texas and New Mexico.

SPS proposes to transmit electricity to Comision Federal de Electricidad (CFE), the national electric utility of Mexico. The electric energy SPS proposes to sell to CFE would be energy purchased by SPS in the wholesale marketplace or excess energy from the SPS system. SPS asserts that all energy transmitted to CFE would be surplus to the requirements of the selling utility or generator. The energy to be exported would be delivered to Mexico over the international transmission lines owned by El Paso Electric Company (EPE).

Notice of this application appeared in the Federal Register on November 7, 1996 (61 FR 57663), requesting that comments, protests, and petitions to intervene be submitted to the DOE by December 9, 1996. One motion to intervene and protest was received from EPE.

II. DISCUSSION and ANALYSIS

EPE's comments relate basically to their concern that SPS has not provided adequate information on which DOE can make a proper reliability finding as required by section 202(e) of the FPA. EPE also objects to the adequacy of the reliability analysis DOE utilizes for power marketers or other third-party transmitters in general.

These and other similar issues have been raised by EPE and other entities in several previous export proceedings involving the use of international transmission lines for exports by third parties.¹ They have been adequately addressed by DOE in those dockets and are briefly discussed below. EPE has not demonstrated any basis upon which DOE should change its

¹Enron Power Marketing, Inc., FE Docket EA-102; North American Energy Conservation, Inc., FE Docket EA-103; Arizona Public Service Company, FE Docket EA-104; NorAm Energy Services, Inc., FE Docket EA-105; Destec Power Services, Inc., FE Docket EA-113; Edison Source, FE Docket EA-119; Electric Clearinghouse, Inc., FE Docket EA-121; Global Energy Services, LLC, FE Docket EA-138.

analysis of these issues or alter the approach it has used to assess reliability in export proceedings of this type.

The authority requested of DOE by SPS is a necessary condition for exporting under section 202(e) of the FPA. SPS must make the necessary commercial arrangements, including obtaining all necessary transmission access required to wheel the exported energy to the foreign purchaser, and obtain any and all other regulatory approvals which may be required in order to effect the export. In considering SPS's request for service, the transmitting utilities would have to assess the electric reliability impacts of moving the export through their system and, presumably, would only provide service under terms and conditions that would not cause reliability problems on their system.

An export authorization under section 202(e) does not impose on transmitting utilities a requirement to provide service. 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's Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities). The actual rates, terms and conditions of transmission service shall be consistent with the non-discrimination principles of the FPA and the transmitting utility's Open Access Transmission Tariff on file with the FERC.

All recipients of export authorizations, including owners of border facilities with Presidential permits, are required by their export authorization to conduct operations in accordance with the principles of the FPA and pertinent rules, regulations and orders, which include the comparable open access provisions of FERC Order No. 888. FERC concluded that the 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. (Order On Complaint issued October 4, 1996 (Docket EL96-74-000)). It further concluded that DOE, not FERC, had the authority, under the FPA and by the Executive Order authorizing Presidential permits in the public interest, to require such service over the domestic portion of the international lines up to and crossing the border. DOE agrees with these conclusions.

On October 29, 1996, the Secretary of Energy signed Delegation Order No. 0204-163, which delegated and assigned to the FERC authority to carry out such functions vested in the Secretary to regulate access to, and the rates, terms and conditions for, transmission services over EPE facilities, which are involved in this Order. This authority was delegated to FERC for the sole purpose of carrying out the Department's policy and, thus, authorized FERC to take any further actions that may be necessary to effectuate open access transmission over the United States portion of EPE's electric transmission lines. Notice and a copy of the Delegation Order were published in the Federal Register on November 1, 1996, at 61 FR 56525.

The Department's position is clear. International exports of electricity should be subject to the same principles of comparable open access and non-discrimination that apply to the domestic interstate transmission of electricity. Therefore, DOE expects owners of border

facilities to comply with the above stated policy such that no further action by the Department will be required.

Before an electricity export authorization is granted, DOE must find that the proposed export will not impair the sufficiency of electric supply within the U.S. and that it will not impede the coordinated use of regional transmission facilities. DOE has always used a flexible approach in determining the information necessary to evaluate reliability impacts for specific export proposals. In determining reliability impact for exports by power marketers or other entities operating in a similar manner, that do not own transmission, DOE has used a combination of established industry guidelines, operating procedures and/or infrastructure, as well as technical studies supporting authorizations issued for traditional entities operating at the border. Allowing these existing technical studies to suffice in this docket is sound and, thus, DOE need not perform additional reliability assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the previously authorized limit of the system.

III. 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 discussion and analysis, DOE has determined that the export of electric energy to Mexico as requested by SPS 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.

DOE also has determined that this action is among those classes of actions not normally requiring preparation of an environmental assessment or an environmental impact statement and, therefore, is eligible for categorical exclusion under Appendix B to Subpart D, paragraph B4.2 of the revised DOE Regulations implementing the National Environmental Policy Act of 1969. Documentation of the use of this categorical exclusion has been placed in this Docket.

EPE's request to intervene is hereby granted.

IV. ORDER

Based on the above finding, it is hereby ordered that SPS is authorized to export electric energy to Mexico under the following terms and conditions:

(A) The electric energy exported by SPS pursuant to this Order may be delivered to Mexico only over the following existing international transmission facilities for which an assessment of the transmission limits for operation in the export mode has been made:

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>
El Paso Electric Company	Diablo, NM	115 kV	PP-92
	Ascarate, TX	115 kV	PP-48

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in EPE's existing electricity export authorization associated with the international transmission facilities identified in paragraph (A). Specifically, exports made by SPS pursuant to this order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-92 and PP-48 to exceed an instantaneous transmission rate of 200 megawatts (MW).

(C) Amendment of the export authorization from which the export limits contained in subparagraph (B) were derived shall result in a concomitant change to the export limits in subparagraph (B). Notice will be provided to SPS of any amendments that would impact on this Order.

(D) SPS may commence exports only over the international transmission lines identified in paragraph (A) for which SPS provides DOE written evidence that sufficient transmission service has been obtained for delivery of the exported energy to the border. This evidence can consist of signed letters of agreement for the service between SPS and EPE and should identify specific facilities by name and Presidential permit number.

(E) In scheduling the delivery of electricity exports to Mexico, SPS shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council and Regional Councils, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(F) SPS shall conduct all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations, and orders adopted or issued thereunder, including the comparable open access provisions of FERC Order No. 888.

(G) The authorization herein granted may be modified from time to time or terminated by further order of the DOE, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permits referred to in paragraph (A).

(H) 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.

(I) SPS shall make and preserve full and complete records with respect to the electric energy exported to Mexico. SPS shall furnish a report to the DOE annually by February 15, detailing for each month of the calendar year: (1) the gross amount of electricity delivered, in kilowatt hours;

(2) the consideration received for such energy; and (3) the maximum hourly rate of transmission, in kilowatts.

Reports shall be submitted to the U.S. Department of Energy, Office of Fossil Energy, FE-52, 1000 Independence Avenue, SW, Washington, D.C. 20585-0305. Properly identified reports will also be accepted via facsimile at (202) 287-5736 to meet time requirements, but original copies should still be filed at the above address.

(J) 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 and 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.

(K) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system.

Issued in Washington, D.C. on April 4, 1997.

Anthony J. Como
Director, Electric Power Regulation
Office of Coal & Power Im/Ex
Office of Coal & Power Systems
Office of Fossil Energy