

**DEPARTMENT OF ENERGY****[Docket No. PP-234 and PP-235]****Notice of Availability of Draft Environmental Impact Statement and Public Hearings for the Proposed Baja California Power, Inc., and Sempra Energy Resources Transmission Lines****AGENCY:** Department of Energy (DOE).**ACTION:** Notice of availability and public hearings.

**SUMMARY:** The Department of Energy (DOE), with the Department of the Interior's Bureau of Land Management (BLM) as a cooperating agency, announces the availability of the "Imperial-Mexicali 230-kV Transmission Lines Draft Environmental Impact Statement" (DOE/EIS-0365) for public review and comment. DOE and BLM also announce two public hearings on the Draft EIS. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA regulations, 40 CFR Parts 1500-1508, and the DOE NEPA regulations, 10 CFR Part 1021. The Draft EIS evaluates the environmental impacts of the DOE's proposed Federal actions of issuing Presidential permits to either Sempra Energy Resources or Baja California Power, Inc. (also known as Sempra and Intergen, respectively), or to both, for the construction, operation, maintenance, and connection of two double-circuit, 230,000-volt electric transmission lines that would cross the United States international border in the vicinity of Calexico, California, and connect to separate natural gas-fired electric power plants that have been constructed in Mexico. BLM's proposed Federal actions are the issuance of right-of-way grants to allow the transmission lines to cross Federal lands within BLM's management responsibility.

**DATES:** DOE and BLM invite interested Members of Congress, state and local governments, other Federal agencies, American Indian tribal governments, organizations, and members of the public to provide comments on the Draft EIS. The public comment period will start with the publication in the **Federal Register** by the Environmental Protection Agency of the "Notice of Availability" of the Draft EIS, expected to occur on May 14, 2004, and will continue until June 30, 2004. Written and oral comments will be given equal weight, and all comments received or postmarked by that date will be considered in preparing the Final EIS.

Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public hearings are:

1. June 17, 2004, 11 a.m. to 1 p.m., El Centro, California
2. June 17, 2004, 6 p.m. to 8 p.m., Calexico, California

Requests to speak at a specific public hearing should be received by Mrs. Russell as indicated in the **ADDRESSES** section below on or before June 15, 2004. Requests to speak may also be made at the time of registration for the hearing(s). However, persons who have submitted advance requests to speak will be given priority if time should be limited during the hearing.

**ADDRESSES:** Requests to speak at the public hearings should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE-27), U.S. Department of Energy, Washington, DC 20585, or transmitted by phone: 202-586-9624, by facsimile: 202-287-5736 or by electronic mail at [Ellen.Russell@hq.doe.gov](mailto:Ellen.Russell@hq.doe.gov).

The locations of the public hearings are:

1. El Centro City Hall, 1275 W. Main Street, El Centro, California
2. Calexico City Hall, 608 Heber Street, Calexico, California

Printed copies of the Draft EIS are available. Requests should be made to Mrs. Russell at one of the addresses provided above. Alternatively, the Draft EIS is available on the Internet at <http://web.ead.anl.gov/bajatermoeis>.

Written comments on the Draft EIS may be addressed to Mrs. Russell as indicated in the **ADDRESSES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the proposed project or to receive a copy of the Draft EIS, contact Mrs. Russell as indicated in the **ADDRESSES** section of this notice or Lynda Kastoll, Bureau of Land Management, U.S. Department of the Interior, 1661 South Fourth Street, El Centro, CA 92243, Phone 760-337-4421, facsimile: 760-337-4490, or electronic mail at [lkastoll@ca.blm.gov](mailto:lkastoll@ca.blm.gov).

For general information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: 202-586-4600 or leave a message at 800-472-2756; Facsimile: 202-586-7031.

**SUPPLEMENTARY INFORMATION:****Background**

Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a

Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The E.O. provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the E.O. have been codified at 10 CFR 205.320-205.329. Issuance of a permit indicates that there is no Federal objection to the project, but does not mandate that a project be completed.

On December 5, 2002, DOE issued Presidential permits to Sempra and Intergen based in part on the information contained in an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared pursuant to NEPA. BLM was also a cooperating agency in the preparation of the EA and prepared separate FONSI's for its Federal actions. Right-of-way grants were issued by BLM in December 2002. In February 2003, Sempra and Intergen completed construction of the permitted facilities and began exporting electricity to the United States in July 2003.

In March 2003, the Border Power Plant Working Group filed suit in the U.S. District Court for the Southern District of California requesting that the court declare that the EA, FONSI, BLM Decision Notice and DOE Presidential permits failed to comply with NEPA. The court granted in part plaintiff's request "to set aside the Presidential permits, the rights of way, and the FONSI" and remanded the NEPA review back to the Federal agencies "for the preparation of NEPA documents consistent with [the court's May 2 and July 8, 2003 orders]." At the same time, the court declined to enjoin the operation of the transmission lines immediately and "defer[red] the setting aside the permits and the FONSI until July 1, 2004, or until such time as superseding NEPA documents and permits have issued, whichever is earlier." In light of the concerns raised by the court, and to increase the opportunities for public and stakeholder participation, DOE and BLM decided to prepare an EIS.

In its July 8, 2003 order, the court expressly prohibited DOE and BLM from considering the interim operation of the transmission lines, completion of their construction, or the court's analysis of environmental impacts of the proposed actions in conducting the

agencies' additional environmental review. DOE and BLM have interpreted this language to require them to conduct their NEPA review from a fresh slate, as if the transmission lines had never been built. Accordingly, the discussion and analysis of the transmission lines are presented in this Draft EIS as if the lines do not exist.

On October 30, 2003, DOE published in the **Federal Register** (68 FR 61796) a Notice of Intent (NOI) to prepare an EIS for the proposed projects. The NOI informed the public of the proposed scope of the EIS, solicited public participation in the scoping process, and announced public scoping meetings that were held on November 20, 2003, in El Centro, and Calexico, California. The public scoping period closed on December 1, 2003. Comments received during the public scoping process were used in preparing the Draft EIS.

#### Action Alternatives Considered

The action alternatives analyzed in the Draft EIS are:

1. The proposed action of granting one or both Presidential permits and corresponding ROWs. This sets forth the impacts in the United States of constructing and operating the line(s) from powerplants in Mexico, as those plants are presently designed.

2. The "Alternative Technologies" action of granting one or both permits and corresponding ROWs to authorize transmission lines that connect to powerplants that would employ more efficient emissions controls and alternative cooling technologies.

3. The "Mitigation Measures" action of granting one or both permits and corresponding ROWs to authorize transmission lines whose developers would employ off-site mitigation measures to minimize environmental impacts in the United States.

NEPA requires the identification of the agency's preferred alternative or alternatives in a Draft EIS if one or more exists or, if one does not yet exist at the draft stage, in the Final EIS, 40 CFR Part 1502.14(e). DOE's and BLM's preferred alternative is to grant both permits and corresponding ROW grants.

#### No Action Alternative

The Council on Environmental Quality's (CEQ) regulations require that an agency "include the alternative of no action" as one of the alternatives it considers, 40 CFR 1502.14(d). For DOE and BLM, "no action" means neither of the proposed transmission lines would be constructed and the environmental impacts associated with their construction and operation would not occur. In the case of Sempra, lack of the

requested transmission line would preclude the powerplant from operating because there would be no delivery path for the electricity generated. Similarly, in the case of Interger, as discussed more fully in the Draft EIS, only a portion of the electricity generated inside Mexico would have been available to be transmitted to the United States because of powerplant design. One of Interger's generating units designated for export to the United States would be connected solely to the proposed transmission line. Its other generating unit designated for export to the United States normally would be connected to the proposed transmission line but also could be connected to other transmission lines within Mexico for export to the United States over an existing international transmission line. If the permit is denied, the electricity produced by the generating unit connected solely to the proposed transmission line would not have a transmission path.

The Draft EIS analyzes the potential environmental effects, or impacts, of Sempra and Interger constructing and operating the proposed transmission lines. CEQ's regulations require that an EIS contain a description of the environmental effects (both positive and negative) of the proposed alternatives. The regulations also distinguish between direct and indirect effects (40 CFR 1508.8). Direct effects are caused by an action and occur at the same time and place as the action. Indirect effects are reasonably foreseeable effects caused by the action that occur later in time or farther in distance. Both direct and indirect effects are addressed in the Draft EIS. CEQ's regulations also require that an EIS contain a description of the cumulative impacts of the proposed alternatives (40 CFR 1508.7). CEQ's regulations define cumulative impacts as those that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts are addressed in the Draft EIS.

The Draft EIS presents information on the potential environmental effects of the construction and subsequent operation of the transmission lines on land use and recreation, visual resources, biological resources, cultural resources, socioeconomic, geology and soils, water resources, air quality, noise, human health and environment, infrastructure, transportation, and minority and low income populations. The Draft EIS also includes a Floodplains and Wetlands Assessment, in accordance with E.O. 11988,

*Floodplain Management*, and E.O. 11990, *Protection of Wetlands*.

#### Availability of the Draft EIS

DOE has distributed copies of the Draft EIS to appropriate Members of Congress, state and local government officials in California, American Indian tribal governments, and other Federal agencies, groups, and interested parties. Copies of the document may be obtained by contacting DOE as provided in the section of this notice entitled **ADDRESSES**. Copies of the Draft EIS and supporting documents are also available for inspection at the locations identified below:

1. U.S. Department of Energy, Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC.

2. Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, California.

Comments on the Draft EIS may be submitted to Mrs. Russell (*see ADDRESSES*, above) or provided at the public hearings (*see DATES*, above). After the public comment period ends on June 30, 2004, DOE and BLM will consider all comments received, revise the Draft EIS as appropriate, and issue a Final EIS. DOE and BLM will consider the Final EIS, along with other information, such as electric reliability and national policy factors, in deciding whether or not to issue Presidential permits or right-of-way grants.

Issued in Washington, DC, this 5th day of May, 2004.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal and Power Import/Export, Office of Coal and Power Systems, Office of Fossil Energy.*

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#### DEPARTMENT OF ENERGY

#### Federal Energy Regulatory Commission

[Docket No. ER04-617-000]

#### Black River Generation, LLC; Notice of Issuance of Order

May 4, 2004.

Black River Generation, LLC (Black River) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy and ancillary services at market-based rates. Black River also requested waiver of various Commission regulations. In particular, Black River