
United States
Department of Energy

Office of Electricity and Energy Assurance

Termoeléctrica U.S., L.L.C.

OE Docket No. PP-235-2



Presidential Permit
No. PP-235-2

April 18, 2005

TERMOELÉCTRICA U.S., LLC

PRESIDENTIAL PERMIT NO. PP-235-2

I. BACKGROUND

The Department of Energy (DOE) has the responsibility for implementing Executive Order (EO) 10485, as amended by EO 12038, which requires the issuance of Presidential permits for the construction, operation, maintenance, and connection of electric transmission facilities at the United States international border. DOE may issue the permit if it determines that the permit is in the public interest, and after obtaining favorable recommendations from the U.S. Departments of State and Defense.

On March 7, 2001, Sempra Energy Resources (Sempra) applied to DOE for a Presidential permit to construct, operate, maintain, and connect a double-circuit 230,000-volt (230-kV) transmission line that would extend approximately 6 miles from San Diego Gas & Electric Company's (SDG&E) existing Imperial Valley Substation to the U.S.-Mexico border (Docket No. PP-235). At the border, the line would connect with similar transmission facilities constructed in Mexico and would extend to the new 650-megawatt (MW), natural gas-fired Termoeléctrica de Mexicali (TDM) power plant being constructed west of the City of Mexicali, Baja California, Mexico. The subject transmission facilities would be used to deliver the entire electrical output of the new TDM power plant onto the southern California electrical grid.

Notice of Sempra's application for a Presidential permit was published in the *Federal Register* on March 22, 2001, (66 FR 16045) requesting that comments, protests, and petitions to intervene be submitted to DOE by April 23, 2001. Comments were received from the County of Imperial, California, and the Imperial County Air Pollution Control District.

In a separate but similar proceeding, on February 27, 2001, Baja California Power, Inc. (BCP) applied for a Presidential permit also proposing to construct a double-circuit, 230-kV transmission line immediately adjacent to the proposed Sempra line (Docket No. PP-234). The BCP line would connect to and be used to import electric power from the natural gas-fired La Rosita Power Complex also being constructed in Mexicali, Baja California, Mexico.

Due to the similarities of the Sempra and BCP proposals, DOE decided to consider both in a single environmental document and determined that the appropriate level of environmental review under the National Environmental Policy Act of 1969 (NEPA) was an environmental assessment (EA)¹ which was completed in December 2001. Based on the information in the EA, DOE issued a Finding of No Significant Impact (FONSI) and on December 5, 2001, issued Presidential Permits PP-235 to Sempra and PP-234 to BCP. Following these decisions, Sempra

¹ Because both proposed transmission lines would cross the same Federal lands managed by the Department of the Interior's Bureau of Land Management (BLM), both applicants applied for right-of-way (ROW) grants from BLM. BLM cooperated with DOE in the preparation of a single environmental document that would satisfy the needs of both Federal agencies. After completion of the EA, BLM issued two FONSI and ROW grants.

and BCP constructed and began commercial operation of the transmission lines, transmitting electricity to the U.S. from their respective power plants in Mexico.

On August 29, 2002, Sempra and Termoeléctrica U.S., LLC (T-US) jointly filed an application with DOE for the voluntary transfer from Sempra to T-US of the facilities authorized by Presidential Permit PP-235.² Sempra and T-US, both indirect wholly-owned subsidiaries of Sempra Energy, a California corporation, requested the transfer of PP-235 to enable the parties to effectuate an internal corporate reorganization that would result in T-US owning, operating, and maintaining the international transmission facilities as an exempt wholesale generator. Sempra and T-US did not propose any physical change to the PP-235 facilities.

Notice of the joint application for the voluntary transfer of the Permit from Sempra to T-US was published in the *Federal Register* on September 10, 2002, (67 FR 57418) requesting that comments, protests, and petitions to intervene be submitted to DOE by September 25, 2002. None were received. On November 12, 2002, DOE issued Presidential Permit PP-235-1 to T-US. Thus, this Permit is being issued in the name of T-US.

Pending Litigation

On March 19, 2002, the Border Power Plant Working Group (Border Power) sued DOE and BLM in the United States District Court for the Southern District of California (Case No. 02-CV-513-IEG (POR)), alleging violations of NEPA and the Administrative Procedure Act (APA) in the issuance of the Presidential permits and ROWs. In an order issued on May 2, 2003, the court ruled that the EA and the FONSI did not comply with NEPA and the APA. On July 8, 2003, after a hearing to determine an appropriate remedy, the court sent the matter back to DOE and BLM for additional NEPA review. At the same time, the court declined to immediately enjoin operation of the transmission lines; instead, it deferred the setting aside of the Presidential permits and the FONSI until July 1, 2004, or until such time as superseding NEPA documents were issued, whichever was earlier. Thus, the transmission lines could continue to provide electricity to California while DOE and BLM conducted the additional environmental review under NEPA. The court has since deferred the July deadline and the lines continue to operate.

In light of the concerns raised by the court and to increase opportunities for public and stakeholder participation in the environmental review process, DOE and BLM decided to cooperate in the preparation of a single environmental impact statement (EIS). DOE and BLM published a Draft EIS in May 2004. On December 10, 2004, they filed the Final EIS with the U.S. Environmental Protection Agency, which announced the document's availability in the *Federal Register* on December 17, 2004 (69 FR 75535). DOE has now completed the NEPA process with the issuance of a Record of Decision (ROD) announcing its decision to grant this Permit with certain conditions and limitations contained herein.

² Existing Presidential permits are not transferable or assignable. However, in accordance with 10 C.F.R. §205.323(b), in the event of a proposed voluntary transfer of facilities, the existing permit holder and the transferee are required to file a joint application with DOE for a new Presidential permit that includes a statement of reasons for the transfer.

II. DISCUSSION

In arriving at its decision, DOE considered the need for electric power supplies in the southern California area. This situation has been well documented in various ways over the past several years. Most recently, on January 19, 2005, the California Independent System Operator (Cal-ISO) issued a report entitled, "2004 Cal-ISO Controlled Grid Study," in which it notes that, "In years 2006 and 2009, at the import levels modeled, and with all generators (new and old) on-line there is barely enough generation available in order to bring the system back within normal operation after all single and double contingencies." The facilities permitted herein would connect the TDM power plant to the southern California electric grid and provide 650 MW of power to the California market.

As part of its Permit application, the applicant submitted technical studies demonstrating the operation of the regional electric system with and without the proposed international transmission lines in service. These studies were coordinated with SDG&E, Imperial Irrigation District and the Cal-ISO. The results of the system power flow, short circuit, transient stability, and post-transient stability studies demonstrate that the installation and operation of the proposed international 230-kV facilities would result in acceptable system performance consistent with the applicable reliability criteria of the Cal-ISO and the Western Electricity Coordinating Council.³ However, this conclusion was based upon the development and implementation of a Remedial Action Scheme (RAS) that would adjust power flows into the United States over the subject facilities during certain system operating conditions and/or contingencies. Therefore, this Permit is conditioned upon the development and implementation of such an RAS and adherence to its provisions by the permit holder.

DOE notes that the analysis in the EIS and the conclusions reached in the ROD were predicated upon the subject international transmission line being connected to a power plant (the TDM power plant) that would use a specified cooling system, water treatment plant, and air pollution control technology and would operate at a maximum capacity of 650 MW. Accordingly, a condition has been placed in this Permit requiring the permitted facilities to remain connected to a power plant that has these same specifications and limiting the maximum instantaneous rate of transmission of electric energy entering the United States over the permitted transmission line to 650 MW.

In the March 22, 2001 *Federal Register* notice, DOE referred readers to an administrative proceeding noticed in the *Federal Register* on July 27, 1999, indicating DOE's intention to require recipients of Presidential permits to provide non-discriminatory open access transmission services over their international transmission lines. The electrical configuration of the subject facilities renders them a radial line that could only be used to connect the TDM power plant to the Imperial Valley Substation. It is not possible for the subject facilities to be operated in parallel with the regional electrical grid. Such a situation makes the subject facilities unavailable for third party use and, therefore, DOE will not place an open access condition on the facilities authorized by this Permit.

³ Formerly the Western Systems Coordinating Council.

III. FINDING AND DECISION

In determining whether issuance of a Presidential permit for an international electric transmission facility is in the public interest, DOE considers the environmental impacts of the proposed project pursuant to NEPA, determines the project's impact on electric reliability, and any other factors that DOE may also consider relevant to the public interest. As discussed above, DOE considered the need for electric power in the southern California area as being relevant to the public interest.

DOE has assessed the impact that the operation of the proposed international transmission facilities would have on the reliability of the U.S. electric power supply system. Based on the information in the docket and as discussed above, DOE has determined that the installation and operation of the proposed international transmission facilities by T-US, as conditioned herein, would not adversely impact the reliability of the U.S. electric power supply system.

DOE also has assessed the impact that the issuance of this Permit would have on the environment pursuant to NEPA. This assessment is documented in the "Final Environmental Impact Statement for the Imperial-Mexicali 230-kV Transmission Lines" (DOE/EIS-0365) and in the ROD.

The Secretary of State and the Secretary of Defense have concurred in the issuance of a Presidential permit to T-US for the proposed facilities. However, the State Department has requested that DOE ensure that the facilities covered by this Permit, and any future changes to those facilities, be presented to the International Boundary and Water Commission for review and approval. DOE agrees with this request and has added this condition to the Permit.

Based upon the above discussion and analysis, DOE has determined that the issuance of a Presidential permit to T-US is consistent with the public interest.

DOE notes that any party to a Presidential permit proceeding, including the applicant, has an opportunity to apply for a rehearing within thirty (30) days of the issuance of a final decision should they have concerns over any aspect of the decision.

IV. ORDER

Pursuant to the provision of EO 10485, as amended by EO 12038, and the Rules and Regulations issued thereunder (Title 10, Code of Federal Regulations, section 205.320 et. seq.), Presidential Permit PP-235-1 issued to T-US on November 12, 2002, is hereby rescinded and permission is granted to T-US to construct, operate, maintain, and connect electric transmission facilities at the international border of the United States and Mexico, as further described in Article 2 below, upon the following conditions:

Article 1. The facilities herein described shall be subject to all conditions, provisions and requirements of this Permit. This Permit may be modified or revoked by the President of the

United States without notice, or by DOE after public notice, and may be amended by DOE after proper application thereto.

Article 2. The facilities covered by and subject to this Permit shall include the following facilities and all supporting structures within the right-of-way occupied by such facilities:

One double-circuit 230,000-volt electric transmission line installed on a single set of steel lattice towers connecting to SDG&E's Imperial Valley Substation and extending approximately 6 miles south to the U.S. international border with Mexico in the vicinity of Calexico, California.

These facilities are more specifically shown and described in the application filed in this docket and in the Final EIS (DOE/EIS-0365).

Article 3. The facilities described in Article 2 above shall be designed and operated in accordance with the applicable criteria established by the Western Electricity Coordinating Council, the California Independent System Operator, and consistent with that of the North American Electric Reliability Council or their successors. T-US shall participate in the development of and adhere to the requirements of a Remedial Action Scheme designed to adjust the operation of the subject facilities so as to maintain system reliability during varying system operating conditions and/or contingencies.

The facilities authorized herein shall be connected only to an electric power plant that employs the same cooling technology, water treatment plant, and air pollution control technologies as those analyzed in the "Final Environmental Impact Statement for the Imperial-Mexicali 230-kV Transmission Lines" (DOE/EIS-0365). Furthermore, the permitted transmission facilities shall be operated in such a manner that the maximum instantaneous rate of transmission of electric energy entering the United States over the permitted transmission line shall not exceed 650 MW.

T-US shall present plans for the permitted facilities to the International Boundary and Water Commission for review and approval.

Article 4. No change shall be made in the facilities covered by this Permit or in the authorized operation or connection of these facilities unless such change has been approved by DOE. Further, any proposed changes to the facilities covered by this Permit shall be presented to the International Boundary and Water Commission for review and approval.

Article 5. T-US shall at all times maintain the facilities covered by this Permit in a satisfactory condition so that all requirements of the National Electric Safety Code in effect at the time of construction are fully met.

Article 6. The operation and maintenance of the facilities covered by this Permit shall be subject to the inspection and approval of a properly designated representative of DOE, who shall be an authorized representative of the United States for such purposes. T-US shall allow officers

or employees of the United States, with written authorization, free and unrestricted access into, through, and across any lands occupied by these facilities in the performance of their duties.

Article 7. T-US shall investigate any complaints from nearby residents of radio or television interference identifiably caused by the operation of the facilities covered by this Permit. T-US shall take appropriate action as necessary to mitigate such situations. Complaints from individuals residing within one-half mile of the centerline of the transmission line are the only ones which must be resolved. T-US shall maintain written records of all complaints received and of the corrective actions taken.

Article 8. The United States shall not be responsible or liable: for damages to or loss of the property of, or injuries to, persons; for damages to, or loss of the facilities covered by this Permit; or for damages to, or loss of the property of, or injuries to the person of T-US officers, agents, servants or employees or of others who may be on said premises; any of which may arise from or be incident to the exercise of the privileges granted herein; and T-US shall hold the United States harmless from any and all such claims.

Article 9. T-US shall arrange for the installation and maintenance of appropriate metering equipment to record permanently the hourly flow of all electric energy transmitted between the United States and Mexico over the facilities authorized herein. T-US shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Mexico. T-US shall furnish annual reports to DOE, by the 15th of February each year, detailing for each month of the previous year: (1) the gross amount of electricity imported into the U.S., in kilowatt hours; (2) the consideration associated with the import; and (3) the maximum hourly rate of transmission, in kilowatts. Annual reports must be filed regardless of current activity and whether or not deliveries of electric energy have been made. If no transactions have been made, a one-sentence report indicating "no activity" for the previous year is sufficient.

Reports shall be submitted to the U.S. Department of Energy, Office of Electricity and Energy Assurance, OE-1, 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.

Article 10. Neither this Permit nor the facilities covered by this Permit, or any part thereof, shall be transferable or assignable, except in the event of the involuntary transfer of the facilities by the operation of law. In the case of such an involuntary transfer, this Permit shall continue in effect for a period of 60 days and then shall terminate unless an application for a new permit pursuant to Title 10, Code of Federal Regulations, section 205.323, has been received by DOE. Upon receipt by DOE of such an application, this existing Permit shall continue in effect pending a decision on the new application. During this decision period, the facilities authorized herein shall remain substantially the same as before the transfer.

In the event of a proposed voluntary transfer of the facilities, the existing permit holder and the party to whom the transfer would be made shall file a joint application with DOE for a Presidential permit together with a statement of the reasons for the transfer.

Article 11. Upon the termination, revocation or surrender of this Permit, the 230-kV transmission facilities which are owned, operated, maintained, and connected by T-US and described in Article 2 of this Permit, shall be removed and the land restored to its original condition within such time as DOE may specify and at the expense of T-US. If T-US fails to remove such facilities and/or any portion thereof authorized by this Permit, DOE may direct that such actions be taken for the removal of the facilities or the restoration of the land associated with the facilities at the expense of T-US. T-US shall have no claim for damages by reason of such possession, removal or repair. However, if certain facilities authorized herein are useful for other utility operations within the bounds of the United States, DOE will not require that those facilities be removed and the land restored to its original condition upon termination of the international interconnection.

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Kevin Kolevar
Director
Office of Electricity and Energy Assurance