United States
Department of Energy

Office of Electricity Delivery and Energy Reliability

Rainbow Energy Marketing Corporation

Docket No. EA-375

Order Authorizing Electricity Exports to Mexico

Order No. EA-375

December 15, 2010

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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))[1].

On September 16, 2010, DOE received an application from Rainbow Energy Marketing Corporation (Rainbow) for authority to transmit electric energy from the United States to Mexico for five years as a power marketer using existing international transmission facilities. Rainbow does not own any electric transmission facilities nor does it hold a franchised service area.

The electric energy that Rainbow 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 Rainbow 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.

The Rainbow export application in Docket No. EA-375 was published in the *Federal Register* on September 23, 2010, (75 FR 57912), requesting that comments, protests, and petitions to intervene be submitted to DOE by October 25, 2010. None were received.

II. DISCUSSION AND ANALYSIS

The authority requested of DOE by Rainbow 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 must exist such that the exporter could sustain the export while still maintaining

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[1] 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.

adequate generating reserves to meet all native load obligations. Power marketers, like Rainbow, do not have franchised service areas and, consequently, have no native load obligations like the traditional local distribution utility. Marketers build a power purchase portfolio from electric power purchased from various entities inside and outside the United States. The power purchased by a power marketer is, by definition, surplus to the needs of the selling entities. With no native load obligations, the power marketer is free to sell its power portfolio on the open market domestically or as an export. Because a marketer has no native load obligations and because power purchased by a marketer would be surplus to the needs of the entities selling the power to the marketer, an export occurring under such circumstances would meet the first statutory criterion of section 202(e) of the FPA of not impairing the sufficiency of supply within the United States.

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.

Prior to the restructuring of the electric power industry, the only entities able to export were those electric utilities that were contiguous with the U.S. international border that owned international transmission facilities. 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 geographic scope 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 systems.

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, Rainbow must make the necessary commercial arrangements and obtain sufficient transmission capacity to wheel the exported energy to the border system. In doing so, Rainbow

generally would be expected to use domestic transmission facilities for which open-access tariffs have been approved by the Federal Energy Regulatory Commission (FERC). Rainbow 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 Regional Transmission Organization(s) (RTO), Independent System Operator(s) (ISO), and/or balancing authority (formerly the control area operator). The posting of transmission capacity on OASIS indicates that transmission capacity is available. Furthermore, 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. 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 has determined that the existing industry procedures for obtaining transmission capacity on the domestic transmission system provide adequate assurances 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. 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).

Rainbow 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 ¶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 Rainbow, 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 provided that, for exports through the system of SDG&E, Rainbow coordinate exports with SDG&E and/or balancing authority (formerly the control area operator) or Independent System Operator (ISO), as appropriate, such that the total exports across the SDG&E/CFE interconnection are in conformity with the operating limitations established by the SDG&E/CFE operating nomogram and the Southern California Import Transmission Nomogram. For exports through the system of EPE, Rainbow shall coordinate such exports with EPE and/or the balancing authority or ISO, as appropriate, such that total exports across the EPE/CFE interconnection are in conformity with the requirements of the Southern New Mexico Import nomogram that governs the amount of imports allowed into the Southern New Mexico area. These nomograms are on file in the Office of Electricity Delivery and Energy Reliability for public review.

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 Rainbow, 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 Rainbow's request for authorization to export electric energy to Mexico for a five-year term.

V. COMPLIANCE

DOE expects Rainbow 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 Rainbow's compliance with these terms and conditions, especially the requirement in paragraph G of this Order that Rainbow 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 with EIA, may result in the loss of authority to export electricity and subject Rainbow to sanctions and penalties under the FPA.

DOE notes that paragraph J of this Order allows Rainbow to file an application for renewal of this authorization up to six months prior to its expiration. This Order also puts Rainbow on notice that DOE requires at least sixty days to adequately process any renewal application. Accordingly, DOE expects Rainbow to implement appropriate internal procedures to monitor the status of its authorization so as to ensure timely application to DOE for renewal of this authorization. Failure to provide DOE with sufficient time to process a renewal application may result in a gap in Rainbow's authority to export electricity and, therefore, may affect its ability to satisfy its contractual obligations.

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 Rainbow is authorized to export electric energy to Mexico under the following terms and conditions:

(A) The electric energy exported by Rainbow 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:

Present Owner	Location	Voltage	Presidential Permit No. [2]
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[3]
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 Rainbow 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 Rainbow 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

[2] 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.

[3] These transmission facilities have been authorized but not yet constructed or placed in operation.

(iii) 300 MW for the 138 kV and 230 kV facilities at Laredo authorized by Presidential Permit PP-317.

(b) Exports made by Rainbow 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 Rainbow 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 Rainbow 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 Rainbow 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 Rainbow.

(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 Council, 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) Rainbow shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Mexico. Rainbow 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 Rainbow's authority to export electricity.

Issued in Washington, D.C., on December 15, 2010.

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Energy Reliability