

UNITED STATES DEPARTMENT OF ENERGY
BEFORE THE DEPARTMENT OF ENERGY
OFFICE OF ELECTRIC DELIVERY AND ENERGY RELIABILITY

US Department of Energy

Expedited Consideration
Requested

FEB 16 2012

In the Matter of:

AEP Energy Partners, Inc.

Electricity Delivery and
Energy Reliability

OE Docket No. EA-318-B

EMERGENCY REQUEST FOR A CONTINUANCE OR TEMPORARY EXTENSION
OF EXISTING EXPORT AUTHORIZATION
OR FOR A TEMPORARY EXPORT AUTHORIZATION AND
REQUEST FOR EXPEDITED CONSIDERATION

For good cause shown, AEP Energy Partners, Inc. (“AEP Energy Partners”) submits this emergency request (“Request”) for a continuance or temporary extension of its existing export authorization or, in the alternative, for a temporary export authorization for a period of six (6) months or until the Department of Energy (“DOE”) issues a final order in this Docket EA-318-B. AEP Energy Partners’ current authorization is effective through February 22, 2012,¹ meaning that absent affirmative action by the DOE to continue, extend or renew the AEP Energy Partners’ current export authorization, AEP Energy Partners will be without authority to export electricity to Mexico on and after February 23, 2012. A lapse in the export authorization held by AEP Energy Partners, even if short-lived, would be disruptive to AEP Energy Partners’ ongoing cross-border energy transactions with Comisión Federal de Electricidad (“CFE”),² remove a participant from the cross-border market and place AEP Energy Partners at a competitive disadvantage relative to other power marketers in the same export market. Of particular concern,

¹ *AEP Energy Partners, Inc.*, Order No. EA-318-A at Ordering Paragraph (K) (2007).

² CFE is Mexico’s national electric public utility.

AEP Energy Partners has agreements in place which facilitate the exchange of Emergency transfers of power and energy with CFE and these exchanges promote the reliable operation of both the U.S. and Mexican grids. Absent the requested continuance or temporary extension (and, ultimately, the renewal of the export authorization), the provision of emergency assistance to the Mexican grid under these agreements would be prohibited and could put CFE's willingness to provide comparable Emergency assistance to the U.S. at risk. The Electric Reliability Council of Texas ("ERCOT") recognizes the value of the availability of this emergency assistance, relies upon its availability as a part of its procedures and, as necessary, uses this Emergency assistance to maintain reliable service to its customers.

AEP Energy Partners makes this Request in light of the unexpected Notice of Intervention and Motion to Intervene and Protest ("Protest") filed in this docket by the Sierra Club on February 9, 2012. The Protest is ill-founded and without merit but, given the procedural posture of the docket, AEP Energy Partners determined to submit this request as a contingency should the DOE be unable to issue the renewed export authorization as requested on or before February 22, 2012.

The effect of a temporary continuance, extension or authorization would be imperceptible. By such action, the DOE would simply preserve the status quo in the cross-border export market until such time as DOE issues an order in this docket. AEP Energy Partners seeks no modifications of any kind to its current authority beyond the temporary continuance, extension or authorization. AEP Energy Partners would continue to operate in the export market subject to the same terms, conditions and limiting provisions imposed in the authorization issued to AEP Energy Partners in 2007 in Docket No. EA318-A, after DOE had completed a thorough review and analysis of the underlying application in that earlier docket. The harm to cross-border

commercial transactions that would be done by an unexpected and abrupt break in AEP Energy Partners' export authorization and the potential harm to AEP Energy Partners' competitive position vis-a-vis other power marketers transacting in the cross-border market far outweighs any purported adverse impacts associated with allowing business to continue as usual for a short period while DOE prepares an order in this docket. No party could seriously contend that allowing AEP Energy Partners to conduct business in the six months after February 22, 2012 in exactly the same manner as it has in the preceding five years would have a measurable adverse impact on the environment.

Given the brief time period before February 22, 2012, AEP Energy Partners respectfully requests expedited DOE consideration of this Request.

I. Background

On December 19, 2011, AEP Energy Partners filed an Application for Renewal of Authorization to Export Electricity from the United States to Mexico ("Application") with DOE in Docket No. EA-318-B. DOE noticed the Application on January 10, 2012 and set the deadline for comments or protests as February 9, 2012. As noted earlier, the Sierra Club filed its protest on February 9, 2012.

AEP Energy Partners is a power marketer and has held its current authorization for exports to Mexico since February 22, 2007.³ More than ninety-eight percent (98%) of AEP Energy Partners' transactions occur in the U.S. domestic wholesale market. Two percent or less of its transactions involve exports of energy across the U.S.-Mexico border to Mexico. In 2011, AEP Energy Partners exported only 78,000 Mwh to Mexico.

³ See n.1.

AEP Energy Partners owns neither generation nor transmission facilities. Accordingly, AEP Energy Partners can transact in the domestic market only when it can purchase excess generation from willing sellers and AEP Energy Partners or the purchasing entity can secure transmission with the appropriate Regional Transmission Organization (“RTO”), Independent System Operator (“ISO”), or central area operator. ERCOT is the ISO for nearly all of the state of Texas which is the primary, but not exclusive, domestic U.S. market for AEP Energy Partners.

Similarly, AEP Energy Partners can export energy to Mexico only when it can purchase excess generation from willing sellers and secure transmission to and across the U.S./Mexico border. ERCOT is critical to such transactions in its various ISO roles. ERCOT ensures that the grid can accommodate scheduled energy transfers, ensures grid reliability and promotes efficiency in energy markets. ERCOT does not permit AEP Energy Partners, or any other authorized exporters, to export to Mexico if such export threatens either the reliability of the transmission grid or the efficiency of generation in the state of Texas.

It should be noted that Powerex, or any power marketer for that matter, does not have the ability to affect an export contrary to the operating procedures of the transmission system operator. As discussed more fully below, an entity exporting like a power marketer would have no ability to affect an export, except for scheduling it through an ISO or other transmission operator, and the transmission operator in an area would violate its own requirements or the requirements applicable to it if it were to schedule the delivery of an export that created or exacerbated a problem on the subject transmission system.

Powerex Corporation, Order No. EA-171-B, *mimeo* at 7 (November 18, 2005).

II. Argument

The Sierra Protest is a wide-ranging assault on the Congressional determination that export of electricity to Mexico shall generally be authorized except in limited circumstances, on the DOE’s administration of the export authorization program and on the DOE’s interpretation of

its codified responsibilities under the Federal Power Act (“FPA”)⁴ and under the National Environmental Policy Act of 1969 (“NEPA”). 42 U.S.C. §4332, *et seq.* The Sierra Protest incorrectly implies that ERCOT lacks the expertise or the authority to halt exports to Mexico if and when ERCOT should determine that exports to Mexico under certain system conditions would threaten the reliability of the Texas grid. The Sierra Protest is extravagantly broad in its scope, misleading in its assertions and without foundation as to its legal conclusions. AEP Energy Partners intends to address these shortcomings and rebut these assertions in a separate pleading.

In the immediate future, however, AEP Energy Partners is concerned that the DOE may find it difficult to issue a final order by February 22, 2012, thereby creating a lapse in the authorization held by AEP Energy Partners to export electricity to Mexico. Hence, AEP Energy Partners seeks a temporary extension of AEP Energy Partners’ current export authorization to avoid disrupting ongoing cross-border transactions and to allow AEP Energy Partners to compete in the export market on the same basis with other power marketers if the DOE cannot issue an order on or before February 22, 2012. The DOE has long recognized that cross-border electric trade is to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce.

Because certain aspects of the export market for electricity are tied to or relate to reliability issues of the electricity grid of Mexico and in the U.S., a temporary export authorization or extension of AEP Energy Partners’ existing export authorization is appropriate. ERCOT protocols recognize that both imports and exports can promote reliability of the electric

⁴ Section 202(e) of the Federal Power Act reads as follows: “The Commission *shall* issue such order [granting authorization to export] upon application unless, after opportunity for hearing, it finds that the proposed transmission would impair the sufficiency of electric supply within the United States or would impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Commission.” 16 U.S.C. § 824(e) (emphasis added).

grids on both sides of the border. ERCOT Nodel Protocols, Section 6 (February 1, 2012). The ERCOT determination that a robust cross-border market promotes reliability is another reason that the DOE should issue a temporary export authorization and/or extension of its existing export authorization to allow AEP Energy Partners to continue to participate in the export market.

It would be both unfair and inequitable to impose a lapse in export authorization on AEP Energy Partners when its renewal Application is fully compliant with existing regulations and requirements applicable to export authorizations and Sierra Club makes no serious assertion to the contrary. Sierra Club does attack DOE's determination that an environmental impact statement ("EIS") is not required in analyzing applications for export authorizations. Protest at 13-14. However, Sierra Club fails to realize or acknowledge that DOE just recently confirmed that the categorical exclusion in DOE's NEPA regulations is appropriate for all authorizations approving the transmission of energy over existing transmission facilities. 10 CFR § 1021.410(b)(2).

AEP Energy Partners is unaware that DOE has ever subjected an applicant for an export authorization to the criteria that Sierra Club would have DOE impose on AEP Energy Partners. Sierra Club does not suggest that the concerns identified in its Protest would not be applicable to all current holders of export authorizations, meaning Sierra Club is asking DOE to treat AEP Energy Partners in a discriminatory manner. Sierra Club did file comments earlier this year in another DOE docket, raising similar concerns about exporting energy generated by coal and other fossil fuels over existing transmission lines. *TransAlta Energy Marketing (U.S.) Inc.*, OE Docket No. EA-216-C, *mimeo* at 2-3. Subsequently, Sierra Club withdrew the comments without explanation.

Sierra Club appears particularly concerned with AEP Energy Partners' mention in its renewal Application that AEP Energy Partners has purchase contracts with Oklaunion No. 1, a coal-fired plant, and various wind farms. Perhaps AEP Energy Partners failed to make it sufficiently clear that there is no earmarking of wind energy or coal-fired energy from the Oklaunion plant for sales to Mexico and the Oklaunion plant does not ramp up or down depending on whether AEP Energy Partners is scheduling power to CFE. Indeed, the Oklaunion plant, located in Vernon, Texas, is sufficiently remote from the U.S.-Mexico border that the plant is not a likely unit to source for sales to Mexico.

DOE has the authority to grant a temporary continuance or extension or authorization. The New York Independent System Operation ("NYISO") filed a Request for Emergency Temporary Authorization in Docket EA-227-A, by letter of September 25, 2002. By letter of September 26, 2002, the DOE ordered that the NYISO's authority to export was continued from the expiration date of the authorization to export (for which NYISO was seeking renewal) until the issuance of a final order by DOE. DOE further noted:

DOE notes that the circumstances surrounding this DOE action are virtually identical to those for which export authority had previously been granted in FE Order EA-227. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA-227 proceeding.

*New York Independent System Operator, Inc. ("NYISO"), Docket No. EA-227-A, mimeo at 2.*⁵

The circumstances in this Docket EA-318-B warrant the same result. There are no material differences in the AEP Energy Partners' pending renewal Application as compared with the 2007 application pursuant to which DOE granted the current export authorization. As noted,

⁵ AEP Energy Partners attaches a draft order approving the continuance, modeled on the letter order issued in *NYISO*, for DOE's use or not, in its discretion.

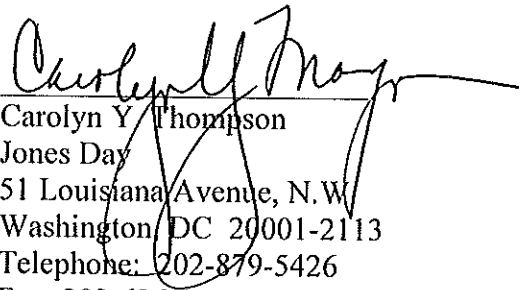
earlier, were a continuance or extension granted, AEP Energy Partners agrees that it would remain subject to the continuation of all terms, conditions, limits and governing provisions contained in the current authorization.

III. Conclusion

For good cause shown, AEP Energy Partners respectfully asks that DOE promptly grant this Request for a continuance or extension of AEP Energy Partners' current authorization or, in the alternative, a temporary authorization to export electricity to Mexico and that DOE act on the Request before February 21, 2012.

Respectfully submitted,

AEP Energy Partners, Inc.

By: 
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Counsel for AEP Energy Partners, Inc.

Dated: February 15, 2012

DRAFT ORDER

February __, 2012

Carolyn Y. Thompson
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Emergency Temporary Export Authority, Docket No. EA-318-B

Dear Ms. Thompson:

This letter order is issued in response to the Emergency Request for a Continuance or Temporary Extension of Existing Export Authorization or For a Temporary Export Authorization and Request for Expedited Consideration (“Request”), filed by AEP Energy Partners, Inc. (“AEP Energy Partners”) with Department of Energy (“DOE”) in this docket on February 15, 2012. AEP Energy Partners currently hold an export authorization issued by DOE in Docket No. EA-318-A in June 2007. The authorization terminates February 22, 2012. On December 19, 2011, AEP Energy Partners filed in Docket No. EA-318-B to renew the authorization for a further ten years. On February 9, 2012, the Sierra Club filed to intervene and protested the renewal application.

The Request seeks emergency temporary authority for AEP Energy Partners to continue exports of electric energy to Mexico on and after February 23, 2012 if DOE has not yet acted on the pending renewal Application from AEP Energy Partners. The Request is based on the adverse consequences of a possible lapse in the export authorization. AEP Energy Partners notes that such consequences would include a disruption to ongoing cross-border energy transactions

with Comisión Federal de Electricidad (“CFE” ”),⁶ the removal of a participant from the cross-border market that the Electric Reliability Council of Texas (“ERCOT”) recognizes as promoting the reliability of both the U.S. and Mexican grids by means of the exchange of Emergency transfers of power and energy with CFE, and the imposition on AEP Energy Partners of a competitive disadvantage relative to other power marketers in the same export market.

The Department of Energy (DOE) is processing the application by AEP Energy Partners in Docket No. EA-318-B to renew its export authorization and will render a final decision on it in the near future. However, in order that there be no lapse in the export authorization of AEP Energy Partners and in order to avoid the adverse consequences identified in the Request, DOE is granting your request for emergency temporary authority to export to Mexico on and after February 22, 2012 for a period six months or until a final order is issued in the EA-318-B proceeding.

Based upon the above, it is hereby ordered that the authority for AEP Energy Partners to export electric energy to Mexico, as granted in Order No. EA-318-A, is continued from February 22, 2012, for six months or until a final order is issued in the OE Docket AA-318-B proceeding. All terms, conditions, restrictions and governing provisions contained in the Order in Docket No. EA-318-A remain in place and fully applicable to this continuance of export authorization.

DOE notes that the circumstances surrounding this DOE action are virtually identical to those for which export authority had previously been granted in Order EA-318-A. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the Docket EA-318-A proceeding.

⁶ CFE is Mexico’s national electric public utility.

If you have any questions regarding this matter, please do not hesitate to contact me at
(202) 586-_____.

Sincerely,

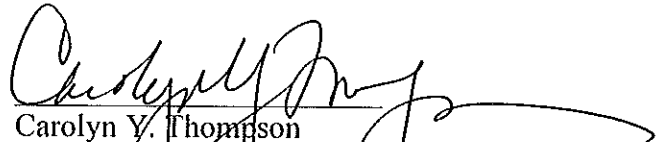
(name)
(title)
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United States Department of Energy

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document by electronic mail, hand delivery, or U.S. Mail on the following parties:

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February 15, 2012