

Duke Energy Trading and Marketing, L.L.C.

Order No. EA-166

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 December 11, 1997, Duke Energy Trading and Marketing, L.L.C. (Duke), applied to the Office of Fossil Energy (FE) of the Department of Energy (DOE) for authorization to transmit electric energy to Mexico as a power marketer. Duke has also been authorized by the Federal Energy Regulatory Commission (FERC) to make sales of electric power at wholesale in interstate commerce at negotiated rates. PCA does not own or control any electric generating or transmission facilities.

Duke proposes to purchase surplus electric energy from electric utilities and other suppliers within the United States and to export this energy on its own behalf to Mexico. The energy to be exported would be delivered to Mexico over the international electric transmission facilities owned and operated by Comision Federal de Electricidad (CFE), the national electric utility of Mexico, Central Power & Light Company (CPL), the El Paso Electric Company (EPE) and San Diego Gas & Electric Company (SDG&E).

Notice of this application appeared in the Federal Register on December 23, 1997, (62 FR 67068) requesting that comments, protests, and petitions to intervene be submitted to the DOE by January 22, 1998. Comments and motions to intervene were received from CPL and SDG&E.

II. SUMMARY OF COMMENTS

On January 22, 1998, CPL filed comments and a motion to intervene in this proceeding. CPL claims to have an interest because Duke is proposing to use CPL's international transmission facilities to deliver energy to Mexico. CPL commented that DOE should make clear that an export authorization does not require owners and operators of international transmission facilities to provide service nor does it relieve the exporter of other related regulatory or contractual obligations.

On January 22, 1998, SDG&E filed comments and a motion to intervene in this proceeding. SDG&E claims to have an interest because Duke is proposing to use SDG&E's international transmission facilities to deliver energy to Mexico. SDG&E has submitted similar comments that have been addressed in previous dockets regarding the potential reliability impacts

of undefined exports, the impact on existing agreements between SDG&E and CFE, and possible adverse impacts on SDG&E's favorable tax status with respect to Industrial Development Bonds.

III. DISCUSSION and ANALYSIS

The authority requested of DOE by Duke is a necessary condition for exporting under section 202(e) of the FPA. Duke 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 Duke'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 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 Federal Energy Regulatory Commission (FERC) Order Nos. 888 and 888-A (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 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 pertinent rules, regulations and orders, which include the comparable open access provisions of FERC Order Nos. 888 and 888-A. 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 Order On Complaint issued October 4, 1996 (Docket EL96-74-000)). 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.

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, 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.

II. FINDING

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 Duke 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 provided that, for exports through the system of SDG&E, Duke coordinate exports with SDG&E and/or the control area operator such that 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, Duke shall coordinate such exports with EPE and/or the control area operator 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 Fossil Energy for public review.

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 NEPA. 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.

The requests to intervene submitted by CPL and SDG&E are hereby granted.

ORDER

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

(A) The electric energy exported by Duke pursuant to this Order may be delivered to Mexico only over the following existing international transmission facilities:

<u>Owner</u>	<u>Location</u>	<u>Voltage</u>	<u>Presidential Permit No.</u>
San Diego Gas & Electric	Miguel, CA	230 kV	PP-68
	Imperial Valley, CA	230 kV	PP-79
El Paso Electric Company	Diablo, NM	115 kV	PP-92
	Ascarate, TX	115 kV	PP-48
Central Power & Light Company	Brownsville, TX	138 kV	PP-94
		69 kV	
Comision Federal de Electricidad	Eagle Pass, TX	138 kV	PP-50
	Laredo, TX	138 kV	PP-57
	Falcon Dam, TX	138 kV	None

(B) Exports authorized herein shall not cause a violation of the terms and conditions contained in existing electricity export authorizations associated with the international transmission facilities identified in paragraph (A). Specifically:

(1) Exports made by Duke pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by Presidential Permits PP-68 and PP-79 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.

(2) Exports made by Duke 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 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.

(3) Exports by Duke shall not cause the total exports on a combination of the 138 kV facilities at the Falcon Dam and the facilities authorized by Presidential Permits PP-50, PP-57, and PP-94 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 Duke over the facilities identified in this subparagraph shall not cause the maximum rate of transmission to exceed:

(a) 300 MW for the 138 kV and 69 kV facilities authorized by Presidential Permit PP-94; or,

(b) 50 MW total for the 138 kV facilities at Falcon Dam and those authorized by Presidential Permits PP-50 and PP-57.

(C) Amendment of the export authorizations from which the export limits contained in subparagraphs (B)(1) through (B)(3) were derived shall result in a concomitant change to the export limits contained in those subparagraphs. Notice will be provided Duke of any amendments to existing export authorizations that would impact on this Order.

(D) Duke may commence exports only over those international transmission lines identified in paragraph (A) for which Duke 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 Duke and each Presidential permit holder and should identify specific facilities by name and Presidential permit number.

(E) In scheduling the delivery of electricity exports to Mexico, Duke 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) Duke 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 Nos. 888 and 888-A.

(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) Duke shall make and preserve full and complete records with respect to the electric energy exported to Mexico. Duke shall furnish quarterly reports to the DOE, within 30 days following each calendar quarter, detailing for each month of the previous quarter: (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. Quarterly 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 quarter is sufficient.

Reports shall be submitted to the U.S. Department of Energy, Office of Fossil Energy, FE-27, 1000 Independence Avenue, SW, Washington, D.C. 20585-0305. Properly identified quarterly

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; 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.

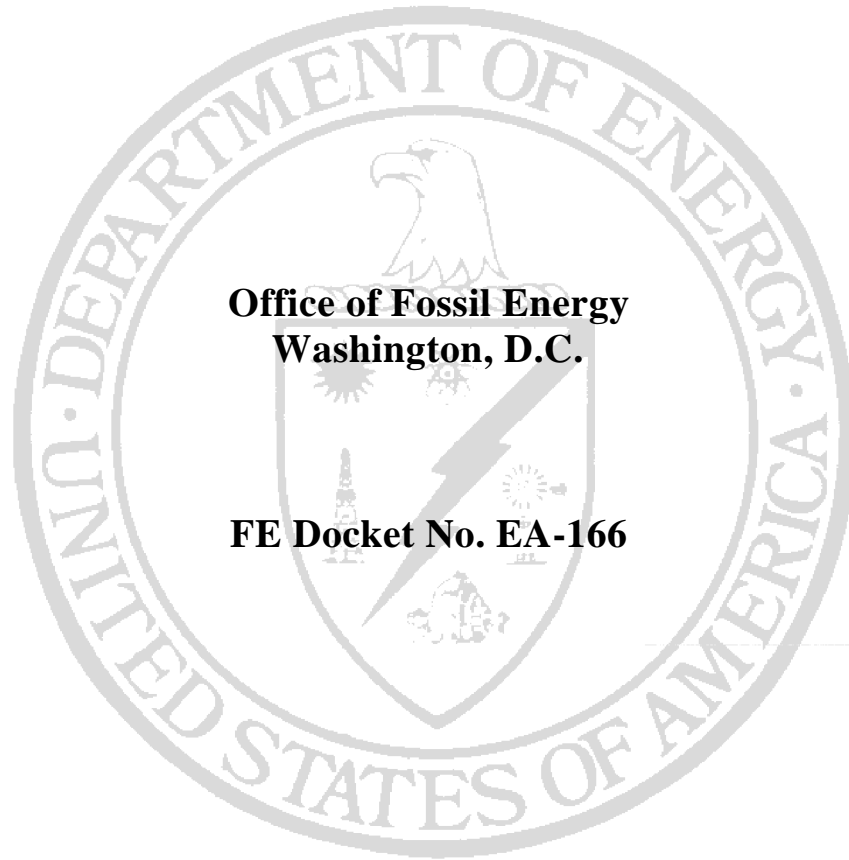
(K) Exports authorized herein shall be reduced or suspended, as appropriate, whenever a continuation of those exports would impair or tend to impair the reliability of the U.S. electric power supply system.

(L) This authorization shall be effective for a period of two (2) years from the date of this Order. Within six months prior to the expiration of this authorization, Duke may reapply for renewal of this authorization.

Issued in Washington, D.C., on March 9, 1998.

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UNITED STATES DEPARTMENT OF ENERGY



**Office of Fossil Energy
Washington, D.C.**

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March 9, 1998