UNITED STATES DEPARTMENT OF ENERGY

Office of Fossil Energy
Washington, D.C.

FE Docket No. EA-247-A

Constellation NewEnergy, Inc.

Order Authorizing Electricity Exports to Mexico

Order No. EA-247-A

April 10, 2003

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I. BACKGROUND

Exports of electricity 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 November 13, 2001, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued Order No. EA-247 to AES NewEnergy, Inc. (AES) authorizing electricity exports to Mexico. That Order expires on November 13, 2003. Subsequent to the issuance of Order No. EA-247, FE was notified of a corporate restructuring of AES and a change of name to Constellation NewEnergy, Inc. (Constellation). As a result of these changes, on November 8, 2002, Constellation applied to FE for authorization to transmit electric energy to Mexico in its new name.

Constellation is a Delaware corporation and a wholly-owned subsidiary of Constellation Energy Group, Inc., a public utility holding company. Constellation is engaged in the marketing of electric energy and power at wholesale and retail throughout North America. Constellation does not own or control any facilities used for the generation, transmission, or distribution of electric energy nor does it have a franchised electric power service area. Constellation will purchase the power to be exported from electric utilities and Federal power marketing agencies within the United States. The energy to be exported will be delivered to Mexico over the international electric transmission facilities presently owned by Comision Federal de Electricidad (CFE), the national electric utility of Mexico, Central Power & Light Company (CPL), El Paso Electric Company (EPE) and San Diego Gas & Electric Company (SDG&E).

Notice of the Constellation export application was placed in the *Federal Register* on January 24, 2003, (68 FR 3521) requesting that comments, protests, and petitions to intervene be submitted to the DOE by February 24, 2003. None were received.

II. DISCUSSION and ANALYSIS

The authority requested of DOE by Constellation is a necessary condition for exporting under section 202(e) of the FPA. Before an electricity export authorization is granted, DOE must evaluate the impact of the export on the reliability of the U.S. electric system by determining whether the export will impair the sufficiency of electric supply within the U.S. and whether it will impede or tend to impede the coordinated use of regional transmission facilities.

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 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 of application, 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 reliability impacts of the export on regional electric systems.

In evaluating 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 reliability 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, Constellation must make the necessary commercial arrangements and obtain sufficient transmission capacity to wheel the exported energy to the border system. In doing so, Constellation would use domestic transmission facilities for which open-access tariffs have been approved by the Federal Energy Regulatory Commission (FERC). Constellation 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 Independent System Operator(s) (ISO) and/or control areas. The posting of transmission capacity on OASIS indicates that transmission capacity is available. Furthermore, it is the responsibility of the ISO and/or control area to schedule the delivery of the export consistent with established reliability criteria. During each step of the process of obtaining transmission service, the owners and/or operators of the transmission facilities will evaluate the reliability of the system and schedule the movement of the export only if it would not violate established operating reliability standards. Therefore, DOE has determined that the existing industry procedures for obtaining transmission capacity on the domestic transmission system provide adequate assurances that an export will not impair the reliability of the U.S. electric power supply system.

In determining the 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 reliability assessments here, provided the maximum rate of transmission for all exports through a border system does not exceed the authorized limit of the 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 FERC Order No. 888 (Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; FERC; Stats. & Regs. ¶31,036 (1996)), as amended. 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 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. 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 Constellation, 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; (1) for exports through the system of SDG&E, Constellation shall coordinate exports with SDG&E and/or the control area operator or Independent System Operator (ISO), as appropriate, 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; and (2) for exports through the system of EPE, Constellation shall coordinate such exports with EPE and/or the control area operator 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 the file in the Office of Fossil Energy for public review.

The circumstances described in the Constellation application are virtually identical to those for which export authority had previously been granted in FE Order EA-247. 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-247 proceeding.

IV. ORDER

Based on the above finding, Order No. EA-247 is hereby rescinded and it is ordered that Constellation is authorized to export electric energy to Mexico under the following terms and conditions:

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

Present Owner	Location	Voltage	Presidential Permit No.[1]
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 69 kV	PP-94
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) above. Specifically:

(1) Exports made by Constellation made 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 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 Constellation made pursuant to this Order shall not cause the total exports on a combination of the facilities authorized by President 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.

[1] 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) Exports by Constellation 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 Constellation 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) Changes by DOE to the export limits in other orders shall result in a concomitant change to the export limits contained in paragraph (B) of this Order. Notice of these changes will be provided to Constellation.

(D) In scheduling the delivery of electricity exports to Canada, Constellation shall comply with all reliability criteria, standards, and guides of the North American Electric Reliability Council, Regional Councils, or independent system operators, as appropriate, on such terms as expressed therein, and as such criteria, standards, and guides may be amended from time to time.

(E) Constellation 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 No. 888, as amended.

(F) 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 paragraph (A) extend beyond the date of termination of the Presidential permit authorizing such facility.

(G) 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.

(H) Constellation shall make and preserve full and complete records with respect to the electric energy exported to Mexico. Constellation 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.

(I) 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.

(J) 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.

(K) This authorization shall be effective for a period of two years from the date of this Order. Application for renewal of this authorization may be filed within six months prior to expiration of this authorization.

Issued in Washington, D.C., on April 10, 2003.

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