General Counsel 2of 2

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
William L. Massey, and Donald F. Santa, Jr.

Enron Power Marketing, Inc.	)	
	)	
v.	)	Docket No. EL96-74-000
	)	
El Paso Electric Company	)	

ORDER ON COMPLAINT

(Issued October 4, 1996)

In this order, the Federal Energy Regulatory Commission (Commission) requires El Paso Electric Company (El Paso) to comply with its open access tariff 1/ by agreeing to provide transmission service to Enron Power Marketing, Inc. (EPMI) from EPMI's designated points of receipt on El Paso's transmission system to El Paso's two substations near the United States/Mexico border. We reject arguments that transmission service up to those points is in foreign rather than interstate commerce simply because the power will be consumed in a foreign country. We further conclude that the Department of Energy (DOE) under section 202(e) of the Federal Power Act (FPA) and through Presidential Permit authority has jurisdiction to require transmission access over the United States portion of the lines connecting the Diablo and Escarte substations in the United States with the Insurgentes and Riverena substations in Mexico.

In making these determinations, which respect Congress' division of authority between the Commission and DOE, we in no way countenance El Paso's exclusionary behavior. In fact, similar actions in denying transmission service led us to issue the Open Access Rule.

I. BACKGROUND

El Paso presently has a contract under which it sells power to Comisión Federal de Electricidad (CFE), the government-owned national electric utility of Mexico. That contract will expire at the end of 1996. CFE has solicited bids from El Paso and

1/ Docket No. OA96-200-000. The Commission has set the rates for hearing and postponed consideration of issues involving non-rate terms and conditions. Long Sault, Inc., et al., 76 FERC ¶ 61,313 (1996).

other power suppliers to meet its needs starting in 1997. EPMI, which is a power marketer, plans to bid; thus, it is directly competing with El Paso for CFE's business. In order to provide power to CFE, EPMI has filed a complaint that asks us to order El Paso to provide transmission service to deliver power to El Paso's two substations near the U.S./Mexico border (at Diablo, New Mexico and Ascarate, Texas). 2/

EPMI requested transmission service under El Paso's open access tariff on July 18, 1996. El Paso refused to provide the service, giving several reasons. 3/ First, it said that

> [w]e need to keep [the facilities at issue] available if the CFE were to request additional power pursuant to the existing agreement or any future agreements . . . . EPE considers the CFE one of its most valuable customers. We have a long standing relationship with the CFE, which we not only plan to continue, but to expand. We are aggressively pursuing a renewal of our contract with the CFE and therefore do not believe that the interconnection facilities will be available to accommodate your request. [4/]

El Paso also claimed that the Commission's Open Access Rule 5/ does not require El Paso to provide the transmission service requested because the transmission would be across an

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2/ EPMI Complaint at 8. As discussed below, unlike its September 13, 1996 complaint, which refers to transmission service to the Diablo and Ascarte points of interconnection, EPMI's September 30, 1996 answer to El Paso's motion to dismiss appears to seek transmission not only to the substations but also from the substations to the border. In addition, it appears that EPMI's request for transmission service originally asked El Paso to deliver power not just to the two substations, but at the border.

3/ Letter of August 30, 1996; attachment 7 to EPMI's complaint.

4/ Id. at 1.

5/ See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Transmitting Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), III FERC Stats. & Regs. ¶ 31,036 (1996), reh'g pending (Open Access Rule).

international boundary for consumption in a foreign country, "and [El Paso] believes that the [Commission] lacks the authority under Sections 205 and 206 of the Federal Power Act to remedy undue discrimination in interstate commerce by requiring such services." El Paso also claimed that the facilities at issue "that are used only to serve CFE are not included in [El Paso's] integrated transmission network over which service is being offered under the Tariff." 6/

EPMI then filed a complaint under FPA section 206 and requested emergency relief. 7/ It asks the Commission immediately to order El Paso to enter into an agreement to provide firm point-to-point service to EPMI under El Paso's open access tariff. Such an order is needed by October 4, 1996, it says, because bids are due to CFE by October 14 and EPMI's bid cannot be competitive unless it can show that it will actually be able to deliver the power.

The essence of EPMI's complaint is that El Paso is refusing to provide the transmission service requested in order to prevent EPMI from competing for CFE as a customer; in other words, El Paso appears to feel it is entitled to keep this customer permanently without having to face competition. EPMI argues that this is anticompetitive behavior that violates section 206, the Open Access Rule, and El Paso's open access tariff. It challenges El Paso's claim that the service is not required by the Open Access Rule because the power will be sold in a foreign country.

Notice of the complaint was published in the Federal Register, 61 Fed. Reg. 49,442 (1996), with comments, protests, and interventions due on or before September 23, 1996.

El Paso filed a timely response. Timely interventions were filed by Central Power and Light Company (Central P&L), Destec Power Services, Inc. (Destec), Southwestern Public Service Company (SPS), Central Vermont Public Service Corporation (Central Vermont), Salt River Project (Salt River), Panenergy

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6/ El Paso also stated that "in the unlikely event" that EPMI were to replace El Paso as CFE's supplier, El Paso "would expect to be compensated" for its stranded investment in generation facilities that El Paso acquired because it expected to continue serving CFE. Moreover, El Paso would expect EPMI to pay the cost of redispatching El Paso's system to accommodate the transmission service. In a later pleading, El Paso agreed that these are rate issues and are not reasons not to provide service.

7/ Filed September 13, 1996; errata filed September 16, 1996.

Power Services, Inc. (Panenergy), Eastern Power Distribution, Inc. (Eastern Power), San Diego Gas & Electric Company (SDG&E), Electric Clearinghouse, Inc. (Clearinghouse), and Detroit Edison Company (Detroit Edison). The Public Utility Commission of Texas (Texas Commission) filed a notice of intervention stating that it would meet on September 30, 1996, to decide what position to take.

El Paso, Central P&L, and Detroit Edison argue that the complaint should be dismissed for procedural reasons and because the Commission lacks jurisdiction. Destec, SPS, and Clearinghouse argue that we should order transmission service. Several intervenors are concerned about the precedential effect of a Commission decision.

On October 2, 1996, the Texas Commission amended its intervention. It supports EPMI's complaint and states that even if the Commission lacks jurisdiction to order the service needed, we should exercise our authority over El Paso to prevent anti-competitive behavior. The Texas Commission also says that it will take "all actions within its power to prevent [El Paso] from thwarting the development of a competitive wholesale electric market." 8/

EPMI filed an answer to El Paso's motion to dismiss. It challenges El Paso's argument that the complaint should be dismissed because of procedural deficiencies and again argues that the Commission has jurisdiction over the service requested.

II. DISCUSSION

A. Procedural Issues

Under Rule 214 of the Commission's Rules of Practice and Procedure, 9/ the notice of intervention and timely, unopposed motions to intervene serve to make all those listed above parties to this case.

El Paso argues that the Commission should reject EPMI's complaint because El Paso's Open Access Tariff requires that parties try to resolve disputes through an alternative dispute resolution (ADR) procedure before coming to the Commission. 10/ While recognizing that the tariff allows exceptions, El

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8/ Filing of October 2, 1996 at 4.

9/ 18 C.F.R. § 385.214 (1996).

10/ Section 11.1.

Paso argues that this dispute is particularly well-suited to ADR because it is fact-specific. EPMI argues in its answer that it did request arbitration.

We conclude that arbitration is not required, nor would it be helpful, given the timeframes of CFE's request for proposals (RFP). The tariff preserves the right to file a complaint with this Commission under the FPA. 11/ More important, the issue here is a legal one and, if we were to require ADR, the time required for ADR would effectively defeat EPMI's effort to compete for CFE's business. As discussed below, we do not agree that the issues here are fact-specific.

Next, El Paso argues that the expedited procedural schedule requested by EPMI is unnecessary and unfair to itself and other participants; it claims that there are factual issues that should be set for hearing before an Administrative Law Judge. El Paso claims 12/ that EPMI "has not established as a preliminary matter . . . that it would suffer irreparable harm from adoption of a more orderly procedural schedule. . . ."

We do not agree that acting at this time on the complaint is unfair. Numerous parties were able to file timely interventions and make arguments. Moreover, there are no material factual issues requiring a trial-type hearing. El Paso merely claims that the complaint "is based on certain allegations of material fact that are incorrect. . . ." 13/ It is not at all clear to what factual allegations El Paso is referring. The scope of El Paso's open access tariff and of this Commission's jurisdiction are legal, not factual issues. El Paso also argues that EPMI originally asked it to wheel power to the border and that the RFP requires such delivery. However, EPMI's complaint clearly asks for wheeling to El Paso's two substations in the United States. 14/ It is not up to this Commission to decide for EPMI whether wheeling power to those points is sufficient to allow EPMI to compete to serve CFE. Finally, El Paso claims that EPMI has not shown that it needs a Commission order by October 4, 1996. However, EPMI has clearly stated why it needs quick action; it points out that the RFP requires bids by October 14, and common sense tells us that a competitor that cannot deliver its power cannot compete effectively. El Paso makes no effort to respond to these arguments.

11/ Section 11.5.

12/ El Paso Response at 8.

13/ Id.

14/ Complaint at 8.

B. What Service is Required Under the Open Access Rule and El Paso's Open Access Tariff?

1. Introduction

This case raises issues involving several FPA provisions. First, under section 201(b) of the FPA, we have jurisdiction over transmission in interstate commerce and sales at wholesale in interstate commerce. Transmission in interstate commerce is defined in section 201(c): "[E]lectric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States." (Emphasis added.)

Sections 202(e) and (f) address transmission to a foreign country. Subsection (e) provides that

> [n]o person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order 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. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

Subsection (f) states:

> The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State. . . shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within

> which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202(e).

Under the Department of Energy Organization Act (DOE Act), 15/ DOE, rather than this Commission, administers sections 202(e) and (f). 16/ Pursuant to section 202(e), DOE has given both El Paso and EPMI authority to export power. In addition, the Presidential Permits authorizing El Paso to build and maintain the facilities that run from the substations to the border are under authority delegated to DOE by the President.

The parties have used certain terms rather loosely in a manner that creates confusion. This case raises questions about three distinct categories of transmission service: service from El Paso's points of receipt with other U.S. utilities to the substations located in the United States, service from the substations "to" the border, and service "across" the border into Mexico. EPMI's most explicit words on this issue occur when it states in its complaint that the two substations to which it wants transmission are in the U.S., not in Mexico. 17/ This indicates that the transmission service which EPMI seeks us to order would be entirely in the U.S.

In its answer, 18/ however, EPMI refers to service "to the border" and claims that El Paso's transmission system, "including lines interconnecting with CFE," is in interstate commerce. In addition, in its original request for transmission service from El Paso, EPMI stated: "The point of delivery to CFE will be at the interconnection points between EPE and CFE at the U.S.-Mexico border." 19/

As an initial matter, we note that as a matter of physics there is no such thing as service exactly up to, but not across, the border. This is because although the Diablo and Ascarte substations are within the United States, El Paso also owns the United States portions of two transmission lines that go from the

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15/ 42 U.S.C. § 7101 et seq. (1994).

16/ Id. at §§ 7151, 7172.

17/ Complaint at 8.

18/ EPMI's Answer at 4.

19/ EPMI Letter of July 18, 1996; attachment 3 to EPMI's complaint.

substations across the border. (On the other side of the border, the lines are owned by CFE.) Power flows from the substations over El Paso's portions of the two lines to (and over) the border only when El Paso takes positive action to allow that to happen by closing the connections at the substations. Thus, when EPMI refers to service "to the border," this means service beyond the two substations -- service that inevitably includes transmitting power to (and across) the border into Mexico.

The other parties also use imprecise terms in their pleadings. El Paso in its response dwells primarily on service across the border into Mexico, which El Paso argues is not under our jurisdiction. It is not entirely clear that El Paso refuses to provide the service that EPMI says it wants in its complaint -- that is, service to the two substations. However, at times El Paso (and other parties) appear to make a much broader argument that transmission is not under the Commission's jurisdiction, or required by the open access tariff, simply because the power is destined to be consumed in another country.

2. Arguments

El Paso argues that neither its open access tariff nor the Open Access Rule apply to the service requested because the service is not under the Commission's jurisdiction. It characterizes that service as being "in foreign commerce" rather than "in interstate commerce" because the power would be consumed in Mexico.

El Paso disputes EPMI's claim that the points to which the power would be delivered are on the United States side of the border. It says that CFE's RFP specifies that the power is to be delivered at two substations in Mexico, Insurgentes and Riverena. Moreover, according to El Paso, the transmission facilities that it uses to serve CFE (and that EPMI would also have to use) are not part of El Paso's transmission system over which service must be available under the Open Access Rule. 20/

El Paso argues that under FPA section 201(b), we have jurisdiction only over "the transmission of electric energy in interstate commerce and [ ] the sale of electric energy at wholesale in interstate commerce," and facilities used in such interstate transactions (emphasis added). We do not have jurisdiction over "foreign commerce." According to El Paso, the phrase "interstate commerce" in section 201(c) implies commerce between two states, not transmission from a state to a foreign country. To support this view, it cites Border Pipe Line Co. v.

20/ El Paso's Response at 13-14.

FPC (Border), 21/ in which the court construed allegedly parallel provisions of the Natural Gas Act (NGA). The court held that the term "interstate commerce" does not normally include "foreign commerce." El Paso also cites various decisions under the Natural Gas Act.

El Paso next cites FPA section 202(f) as evidence that the facilities at issue are not under the Commission's jurisdiction. It claims that this provision supports its claim that the transmission at issue here would be in foreign commerce and thus not subject to our jurisdiction:

> Since a "public utility" is an entity that owns or operates [Commission]-jurisdictional facilities, and since the ownership of facilities used for the transmission of electric energy across an international border into a foreign country will not cause an entity to become a "public utility," it is evident that such facilities are not facilities over which [the Commission] has jurisdiction. . . . 22/

Finally, El Paso argues that the Open Access Rule does not require transmission of power to foreign countries, citing section 1.49 of the pro forma tariff contained in that rule. That provision defines a utility's transmission system (which is subject to open access) as facilities used to provide point-to-point or network service. According to El Paso, the facilities at issue here are not part of its transmission system because they are not used to provide either point-to-point or network service; they are used solely to deliver power to customers in Mexico. Returning to the distinction between interstate and foreign commerce, El Paso argues that the Open Access Rule could not apply to facilities used only in foreign commerce, since the Commission lacks authority over such facilities.

Central P&L and Detroit Edison agree with El Paso that the service at issue here is in foreign commerce and thus is not required by the Open Access Rule. Central P&L argues that we have no authority to approve exports of electricity and notes that DOE's order authorizing EPMI to export power does not provide for transmission.

In its answer, EPMI argues that we should not interpret the FPA as leaving a regulatory gap; no portion of El Paso's transmission system interconnecting it with CFE should be outside

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21/ 171 F.2d 149 (D.C. Cir. 1948).

22/ El Paso Response at 16.

all federal regulatory jurisdiction. EPMI suggests that the Commission "determine that the distribution of jurisdiction between itself and the DOE with respect to exports is comprehensive." 23/ It argues that we should not read DOE's order authorizing EPMI to export power (which does not address transmission) as stripping this Commission of its jurisdiction over the transmission of electric energy in interstate commerce. Finally, EPMI addresses El Paso's section 202(f) argument by arguing that that provision deals with jurisdiction over sales across a border.

SPS argues that this Commission has already decided that comparability requires El Paso to provide access to Mexico. When El Paso applied to merge with the Central and South West Corporation, we stated that the comparable transmission access the merged entity would have to provide to others would include access to Mexico. 24/

3. Resolution

We find that we have jurisdiction to order the service that EPMI requested in its complaint -- service from designated points of receipt between El Paso and other U.S. utilities to the two designated points of delivery, i.e., the two substations at Diablo and Ascarte -- and that El Paso is required to provide such service under its open access tariff. 25/ We reject El Paso's claim that we have no jurisdiction to order transmission within the U.S. simply because the power will be consumed in another country. Transmission service on the interstate grid

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23/ Answer at 4.

24/ El Paso Electric Company, 68 FERC ¶ 61,181 at 61,915 (1994), dism'd, 72 FERC ¶ 61,292 (1995).

25/ This assumes that El Paso has capacity available. We caution, however, that we reject El Paso's position that it will not have capacity because it will win the RFP and will continue to serve CFE in the future. El Paso's agreement to provide transmission can be contingent on EPMI winning the RFP.

We note that Salt River has also been requested by CFE to bid. If it requests transmission service from El Paso it (and any other bidder) should be treated in the same manner as EPMI.

from a point within a state to a substation located within U.S. boundaries is not in foreign commerce. 26/

We note that EPMI also needs to have El Paso close the connections of the substations so that power can move across the border into Mexico. This raises the question of who has jurisdiction to order El Paso to provide comparable transmission service over the U.S. portion of the lines connecting the Diablo and Ascarte substations in the U.S. with the Insurgentes and Riverena substations in Mexico.

We agree with EPMI that Congress did not intend that there be no federal regulation of facilities such as these. We believe that DOE clearly has jurisdiction over the U.S. portion of the lines that lead from the Diablo and Ascarte substations to (and across) the U.S.-Mexico border. It has jurisdiction under both 202(e) of the FPA and the Presidential Permits that authorized El Paso to build the lines. We further believe that DOE can interpret or amend its section 202(e) authorization (or the Presidential Permit) to require El Paso to make comparable transmission service available to others. 27/ In particular, section 202(e) gives DOE authority to authorize transmission to a foreign country upon such terms and conditions as it may find necessary or appropriate and to make such supplemental orders as it may find necessary or appropriate.

This Commission firmly believes that the cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to the interstate electric industry. Even if we do not have jurisdiction over transmission facilities used solely for the

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26/ See FPC v. Southern California Edison Company, 376 U.S. 205 (1964).

In making this determination, we find inapposite certain cases under the Natural Gas Act that are relied upon by El Paso and others. They claim that these cases demonstrate that service is in foreign, rather than interstate, commerce if the power will ultimately be sold to a customer in a foreign country.

27/ We note that Article 3 of the 1946 Presidential Permit (signed by President Truman and adopted by El Paso) authorizing El Paso to construct facilities at the international border provides that the facilities may be used for the transmission of electric energy "only in the amount, at the rate, and in the manner authorized by the Commission [now DOE] under section 202(e) of the Federal Power Act."

export of power across the international border, it would be inconsistent with Order No. 888 and contrary to the principles of non-discrimination contained in the Federal Power Act if the owners of these facilities are able to block access for competitors to the cross-border trade. In order to prevent undue discrimination and anticompetitive conduct, we believe it would be appropriate for DOE to condition export authorizations and Presidential permits (pursuant to supplemental orders if necessary) on the provision of comparable open access transmission over the U.S. portion of transmission lines that cross the international border. 28/ Given the time constraints in this particular case, we encourage DOE to act expeditiously to use its authority to ensure that El Paso will provide the access necessary to allow all potential bidders to participate in CFE's RFP.

This Commission does not at present have authority to order service over the international lines. We recognize that portions of the lines are within the borders of the U.S. and thus could be viewed under section 201(c) as being facilities for transmission in interstate commerce. However, the legislative history of the FPA indicates that Congress intended for sections 202(e) and 202(f) (which are now administered by DOE), rather than sections 201, 205, and 206, to govern transmission to a foreign country. Early versions of section 201(c) would have explicitly given this Commission jurisdiction over transmission directly to or from a foreign country, 29/ and the removal of this language in the version of the FPA that was eventually enacted demonstrates that Congress decided not to give the Commission jurisdiction over such transmission in section 201(c). Instead, Congress in 1935 gave the Commission jurisdiction over transmission in foreign commerce in section 202(e). The addition to the FPA of section 202(e) at the same time that the language covering transmission to and from foreign countries was deleted from section 201(c) confirms that Congress intended transmission to a foreign country

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28/ We do not know whether DOE interprets its authorizations to either El Paso or EPMI to require El Paso to provide access to (and across) the border. However, we believe that DOE, having conducted a hearing under section 202(e) on whether to grant Enron's export authorization, could issue a supplemental order under section 202(e) directing El Paso to provide access to (and thus across) the border.

29/ H.R. 5423 and S. 2796, when introduced, would have included foreign as well as interstate commerce in section 201(c). In both bills, transmission in interstate commerce included transmission "to or for a foreign country; but only in so far as such transmission takes place within the United States."

to be authorized and governed by a separate statutory provision. The authority under this separate provision, however, eventually was transferred to DOE by the DOE Organization Act. 30/ Thus, under the FPA, regulation of exports of electricity is under DOE's jurisdiction.

Finally, the legislative history of section 202(f) further reveals that Congress viewed transmission to a foreign country as being in a special category. Section 202(f), which was added to the FPA in 1953, states that a person does not become a public utility simply by owning facilities for the transmission or sale at wholesale of electric energy that is generated within a state and then transmitted from that state across an international boundary (without being thereafter transmitted into another state). The state where the facilities are located may regulate the transaction, but only insofar as its regulation does not conflict with the exercise of federal jurisdiction under section 202(e). 31/ This again indicates Congress' view that transmission across an international boundary is in a special category to be regulated under federal law under section 202(e).

EPMI argues that transmission service can simultaneously be in interstate as well as foreign commerce, citing Barton Village v. Citizens Utility Company (Barton). 32/ In that case, the Commission found that power sales were interstate in nature, and thus under its jurisdiction. The utility claimed that these power sales were not interstate because all of the power was defined by contract as coming from Canada. The Commission disagreed, pointing out that despite the contract's attempt to define the power as coming from Canada, in fact it came at times from interstate resources within the U.S., as well. This case is not on point. The holding described above, and cited by EPMI, concerned power sales only, not transmission service; whether the utility's transmission service was in interstate commerce was not an issue.

30/ After the DOE Act, the Commission sent to DOE the rate schedules it had been keeping covering transmission to foreign countries.

31/ Section 202(f) does not apply to the circumstances of this case because El Paso is already a public utility. In addition, at least some of the energy sold by EPMI presumably would be generated in states other than the border state. We discuss section 202(f) because it and section 202(e) are the only FPA provisions that specifically address transmission of energy to foreign countries, and must be read in tandem.

32/ 63 FERC ¶ 61,329 (1993), aff'd, 68 FERC ¶ 61,005 (1994).

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32/ 63 FERC ¶ 61,329 (1993), aff'd, 68 FERC ¶ 61,005 (1994).

C. Standards of Conduct

EPMI alleges that El Paso "apparent[ly]" violated the Commission's Standards of Conduct, which require that employees engaged in operating a utility's transmission system function independently of employees that engage in the utility's wholesale merchant function. It says that it sent its request for transmission service to an employee engaged in operating El Paso's transmission system, Mr. John Whitacre, as El Paso's open access tariff requires, and that the request contained sensitive commercial information. However, El Paso's response came from Mr. John C. Horne, Vice President for Power Generation. 33/

The Standards of Conduct do not become effective until January 3, 1997. At that point, the Commission intends to rigorously enforce the standards of conduct and will require that El Paso's wholesale merchant function be separated from its transmission function. If EPMI believe that El Paso has violated the Standards of Conduct after they became effective, it may file a complaint.

The Commission orders:

The relief requested in the complaint is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Secretary.

33/ Complaint at 12-13, citing section 37.4 of the OASIS rule, Open Access Same-Time Information System (Formerly Real-Time Information Networks) and Standards of Conduct, Order No. 889, 61 Fed. Reg. 21,737 (May 19, 1996), FERC Stats. & Regs. ¶ 31,035 (1996), reh'g pending (OASIS Rule).

cc: Jim In
Doug S

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

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FROM: Betsy Moler

ORGANIZATION: Federal Energy Regulatory Commission
Office of the Chair

TELEPHONE NUMBER: 208-0000

COMMENTS: The background materials are too voluminous to fax - they're on the way. B.

TAB 1

EXECUTIVE ORDERS

Enron Complaint

EL96-74-000

Legislative Materials

A.

by the act of August 24, 1912, c. 369, 37 Stat. 497, Executive Order No. 5886 of July 12, 1932, withdrawing public lands in Wyoming pending a resurvey, is hereby revoked as to the following-described township:

SIXTH PRINCIPAL MERIDIAN

T. 26 N., R. 116 W.

This order shall become effective upon the date of the official filing of the plat of the resurvey of the above-described township.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
July 11, 1939.

EXECUTIVE ORDER 8201

AMENDMENT OF EXECUTIVE ORDER NO. 7302 OF FEBRUARY 21, 1936, TRANSFERRING CERTAIN LANDS TO THE CONTROL AND JURISDICTION OF THE SECRETARY OF THE NAVY

VIRGIN ISLANDS

By virtue of the authority vested in me by the act of March 3, 1917, c. 171, 39 Stat. 1132, and the Second Deficiency Act, Fiscal Year 1931 (46 Stat. 1552, 1570), and as President of the United States, Executive Order No. 7302 of February 21, 1936, transferring certain lands in the Virgin Islands from the control and jurisdiction of the Secretary of the Interior to the control and jurisdiction of the Secretary of the Navy for use in the establishment, construction, and operation of aviation facilities, as amended by Executive Orders No. 7686 of August 5, 1937 [1], No. 7790 of January 12, 1938 [2], and No. 8103 of May 2, 1939, is hereby further amended by adding thereto the following:

"It is further ordered that the following tract of land embracing the east beach and bath house fronting on Lindbergh Bay, St. Thomas, Virgin Islands, more particularly described below by metes and bounds, be, and it is hereby, subject to valid existing rights, transferred from the control and jurisdiction of the Secretary of the Interior to the control and jurisdiction of the Secretary of the Navy for use in the establishment, construction and operation of aviation facilities at the Naval Air Station, St. Thomas, Virgin Islands.

"Beginning at a point marked '1' on Public Works Drawing No. 28, on file in the Navy Department, thence North 25°5' East, 210.06 feet to a point marked '2'; thence North 64° 55' West, 282.21 feet, to a point marked '3'; thence South 25°5' West 172.22 feet to a point marked '4'; thence along the shore line of Lindbergh Bay to the point of beginning."

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
July 11, 1939.

EXECUTIVE ORDER 8202

AUTHORIZING AND REQUESTING THE FEDERAL POWER COMMISSION TO PERFORM CERTAIN FUNCTIONS RELATING TO THE TRANSMISSION OF ELECTRIC ENERGY BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES AND TO THE EXPORTATION AND IMPORTATION OF NATURAL GAS FROM AND INTO THE UNITED STATES

By virtue of the authority vested in me as President of the United States, and as an aid in effectuating the provisions of the Federal Power Act, approved August 26, 1935 (49 Stat. 838), and the Natural Gas Act, approved June 21, 1938 (52 Stat. 821), I hereby authorize and request the Federal Power Commission (1) to receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and foreign countries, and for the exportation and importation of natural gas to or from foreign countries, and (2), after obtaining the recommendations of the Secretary of State and the Secretary of War thereon, to submit each such application to the President with a recommendation as to whether the permit applied for should be granted, and if so, upon what terms and conditions.

The Federal Power Commission may prescribe such regulations not inconsistent herewith as it may deem necessary or desirable for carrying out the provisions of this order.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
July 13, 1939.

[1] 2 F.R. 1374.
[2] 3 F.R. 82.

B

ersonal, tangible or intangible, acquired or used by such Gov-
agency in connection with any of the property or interests
d to the Commission by paragraphs 1 and 2 above.

1 Government agency shall supply the Atomic Energy Com-
ith a report on, and an accounting and inventory of, all inter-
roperty, described in paragraphs 1, 2 and 4 above, owned by
possession, custody, or control of such Government agency,
and detail of such report, accounting and inventory, to be de-
by mutual agreement, or, in case of nonagreement, by the Di-
the Bureau of Budget.

here also are transferred to the Atomic Energy Commission,
1 officers and employees of the Manhattan Engineer District,
rtment, except that the Commission and the Secretary of War
utual agreement exclude any of such personnel from transfer
nmission.

military and naval personnel heretofore assigned or detailed
nhattan Engineer District, War Department, shall continue to
available to the Commission, for military and naval duty, in
nner, without prejudice to the military or naval status of such
for such periods of time as may be agreed mutually by the
on and the Secretary of War or the Secretary of the Navy.

assistance and the services, personal or other, including the
perty, heretofore made available by any Government agency
nhattan Engineer District, War Department, shall be made
o the Atomic Energy Commission for the same purposes as
and under the arrangements now existing until terminated
ays notice given by the Commission or by the Government
icerned in each case.

Commission is authorized to exercise all of the powers and
ested in the Secretary of War by Executive Order No. 9001,
er 27, 1941, as amended, in so far as they relate to contracts
made by or hereby transferred to the Commission.

further measures and dispositions as may be determined by
c Energy Commission and any Government agency con-
e necessary to effectuate the transfers authorized or directed
er shall be carried out in such manner as the Director of the
he Budget may direct and by such agencies as he may desig-

order shall be effective as of midnight, December 31, 1946.

**Order 10485—Providing for the performance of certain func-
etofore performed by the President with respect to electric
id natural gas facilities located on the borders of the United**

e provisions of Executive Order 10485 of Sept. 3, 1953, appear at 18 FR
1949-1953 Comp., p. 970, unless otherwise noted.

AS section 202(e) of the Federal Power Act, as amended,
(16 U.S.C. 824a(e)), requires any person desiring to trans-
ctric energy from the United States to a foreign country to

obtain an order of the Federal Power Commission [1] authorizing it to so; and

WHEREAS section 3 of the Natural Gas Act, 52 Stat. 22 U.S.C. 717b), requires any person desiring to export any natural from the United States to a foreign country or to import any nat gas from a foreign country to the United States to obtain an order fr the Federal Power Commission authorizing it to do so; and

WHEREAS the proper conduct of the foreign relations of United States requires that executive permission be obtained for construction and maintenance at the borders of the United States of cilities for the exportation or importation of electric energy and nat gas; and

WHEREAS it is desirable to provide a systematic method in con tion with the issuance and signing of permits for such purposes:

NOW, THEREFORE, by virtue of the authority vested in me President of the United States and Commander in Chief of the arm forces of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Secretary of Energy is hereby designated and powered to perform the following-described functions:

(1) To receive all applications for permits for the construction, o ation, maintenance, or connection, at the borders of the United St of facilities for the transmission of electric energy between the Un States and a foreign country.

(2) To receive all applications for permits for the construction, o ation, maintenance, or connection, at the borders of the United St of facilities for the exportation or importation of natural gas to or f a foreign country.

(3) Upon finding the issuance of the permit to be consistent with public interest, and, after obtaining the favorable recommendation the Secretary of State and the Secretary of Defense thereon, to issu the applicant, as appropriate, a permit for such construction, operat maintenance, or connection. The Secretary of Energy shall the power to attach to the issuance of the permit and to the exercise of rights granted thereunder such conditions as the public interest ma its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretar State, and the Secretary of Defense cannot agree as to whether or n permit should be issued, the Secretary of Energy shall submit to President for approval or disapproval the application for a permit the respective views of the Secretary of Energy, the Secretary of S and the Secretary of Defense.

[Sec. 1 amended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p

SEC. 2. [Deleted]

[Sec. 2 deleted by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p.

SEC. 3. The Secretary of Energy is authorized to issue such rules regulations, and to prescribe such procedures, as it may from tim

[1] EDITORIAL NOTE: The Federal Power Commission was terminated and its fun transferred to the Department of Energy by Pub. L. 95-91 (91 Stat. 565, 42 U.S.C. nt.), effective Oct. 1, 1977.

eem necessary or desirable for the exercise of the authority dele-
o it by this order.

mended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136]

4. All Presidential Permits heretofore issued pursuant to Execu-
der No. 8202 of July 13, 1939, and in force at the time of the
e of this order, and all permits issued hereunder, shall remain in
ce and effect until modified or revoked by the President or by
retary of Energy.

mended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136]

5. Executive Order No. 8202 of July 13, 1939, is hereby re-

ve Order 10500—Designation of the Power Authority of the of New York and establishment of the United States Section of l. Lawrence River Joint Board of Engineers

: The provisions of Executive Order 10500 of Nov. 4, 1953, appear at 18 FR
FR, 1949-1953 Comp., p. 978, unless otherwise noted.

REAS pursuant to the provisions of the Boundary Waters
of January 11, 1909 (36 Stat. 2448), the Government of the
States of America and the Government of Canada on June 30,
ed concurrent and complementary applications with the Inter-
Joint Commission for an Order of Approval of the construc-
ntly by entities to be designated by the respective Governments,
in works for the development of power in the International
Section of the St. Lawrence River and of the maintenance and
n of such works; and

REAS the Commission on October 29, 1952, issued an Order of
l for the construction, maintenance, and operation of such
jointly by The Hydro-Electric Power Commission of Ontario
an entity to be designated by the Government of the United
ubject to the terms and conditions contained in that Order of
l; and

REAS condition (g) of the Order of Approval reads in part as

rdance with the Applications, the establishment by the Governments of
l of the United States of a Joint Board of Engineers to be known as the St.
River Joint Board of Engineers (hereinafter referred to as the "Joint Board of
consisting of an equal number of representatives of Canada and the United
: designated by the respective Governments, is approved. The duties of the
of Engineers shall be to review and coordinate, and, if both Governments so
pprove the plans and specifications of the works and the programs of con-
ereof submitted for the approval of the respective Governments as specified
to assure the construction of the works in accordance therewith as approved.

EAS the Federal Power Commission on July 15, 1953, issued
hereinafter referred to as the License) to the Power Author-
State of New York for the construction, maintenance, and
of Project No. 2000, which project represents that portion of

TAB 2

DOE ORGANIZATION ACT

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary— Hearing

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing.

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission. 42 USC 6213, 6214.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act. Notice.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission. Limitation.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department. Review, limitation.

(h) The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to section 402. Rules, regulations, and statements of policy.

INITIATION OF RULEMAKING PROCEEDINGS BEFORE COMMISSION

SEC. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act. 42 USC 7173.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views. 16 USC 791a. 15 USC 717w.

(d) With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act, the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto. Written questions and responses.

S-826	SEN REP. 95-164	HR-6804	REP. 95-346	S. CF 95-3[illegible]
SECT.	PAGE	SECT.	PAGE	PG
402 (d) (e)	39	401 (a)	24	7
402 (f)	39	Cf. 301 (b) (5) (6)	Cf. 21	[illegible]
				7
				7
* Curtailments were in the Senate bill but omitted in the enactment; cf. Life Act Sec. 402-a-1-3.				
	H.R. Sec. 402(g)			
404 (a)	41	403 (a)	25	H. 7
(5 USC 704 is APA's old s c), [illegible]				
	H.R. Sec. 402(h)			
402 (a)	38	401 (a) (3)	24	
	H.R. Sec. 403			
403	40	Cf. 401 (a) (3)	24	76-

A.

DEPARTMENT OF ENERGY ORGANIZATION ACT

P.L. 95-91, see page 91 Stat. 565

Senate Report (Governmental Affairs Committee) No. 95-164, May 14, 1977 [To accompany S. 826]

House Report (Government Operations Committee) No. 95-346, (Part I) May 16, 1977 [To accompany H.R. 6804]

House Report (Post Office and Civil Service Committee) No. 95-346, (Part II) May 24, 1977 [To accompany H.R. 6804]

Senate Conference Report No. 95-367, July 27, 1977 - [To accompany S. 826]

House Conference Report No. 95-539, July 26, 1977 [To accompany S. 826]

Cong. Record Vol. 123 (1977)

DATES OF CONSIDERATION AND PASSAGE

Senate May 18, August 2, 1977

House June 3, August 2, 1977

The Senate bill was passed in lieu of the House bill. The Senate Report and the House Conference Report are set out.

SENATE REPORT NO. 95-164

[page III]

CONTENTS

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Purpose of the legislation	1
History and background	6
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[page 1]

The Committee on Governmental Affairs, to which was referred the bill (S. 826) to establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes, having considered the same, reports favorably thereon with an amendment ( ) and recommends that the bill (as amended) do pass.

B

of the Emergency Petroleum Allocation Act to be transmitted to and reviewed by each House of Congress under section 551 of the Energy Policy and Conservation Act. Major pricing and allocation matters that will fall within the Board's jurisdiction include:

Any amendment to provide for adjustment to the composite price for domestic crude oil at a rate in excess of 10 percent per year;

Any amendment to remove up to 2 million barrels a day of crude oil transported through the trans-Alaska pipeline from the composite price limitation and to specify the price for such crude oil; and any further amendments to such amendment;

Any amendment to exempt, with respect to a class of persons or class of transactions, crude oil, residual fuel oil, or any refined petroleum product or product category from allocation regulations, or from price regulations. Refined product categories as to which energy actions are required are gasoline, No. 2 oils, propane, and all or any portion of a number of other refined products.

Section 402(c) provides that the Board shall have the jurisdiction to hear and adjudicate matters transferred to the Secertary with respect to oil pipeline rates and valuation from the Interstate Commerce Commission.

Section 402 thus gives the Board the responsibility for setting prices, awarding certificates or the like. In order for the Board's jurisdiction to be meaningful any action which in reality determines the ultimate rate, or in reality determines the award of the certificate, will reside in the Board.

Section 402(d) provides that the Board shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary which involves any agency determination required by law to be made on the record after an opportunity for an agency hearing. The intended effect of this provision is to place in the Board, subject to the exceptions in section 402(e), jurisdiction over all proceedings where by statute or by judicial precedent such matters are required to be decided only after a formal on the record proceeding pursuant to section 556 of title 5 of the United States Code. The subsection also places in the Board any other agency determination which the Secretary determines shall similarly be made on the record after an opportunity for hearing.

Section 402(e) provides that the Board shall have jurisdiction over any other matter which the Secretary may wish to assign to the Board.

Section 402(f) provides that no functions described in this section which relate to exports or imports of natural gas or electricity, or curtailments under sections 4, 5, and 7, of the Natural Gas Act, or leasing production rates shall be within the jurisdiction of the Board unless the Secretary assigns such functions to the Board.

Under the terms of sections 301 and 402, all functions now exercised by the Federal Power Commission which are not enumerated in section 402 as within the Board's jurisdiction would be within the

[page 40]

jurisdiction of the Secretary. The Secretary could, however, delegate these functions to the Board.

Section 403 provides procedures for the initiation and expeditious consideration of proposed rules by the Board.

ESTIMATED COST OF THE LEGISLATION

Pursuant to section 402 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the cost implications of S. 826.

Based on this review, the Director of the Congressional Budget Office estimated that the most significant additional cost to the government, as a result of enactment of this legislation, would be an estimated $2 million in fiscal year 1978 required for moving and other logistical expenses. The primary nature of the Department of Energy Organization Act is one of combining existing agencies into one department with a cabinet-level director and because funds appropriated for those agencies involved would be transferred to the Department no new budget authority would be required as a result of this bill.

HOUSE CONFERENCE REPORT NO. 95-539

* * * * * * * * * *

[page 55]

JOINT EXPLANTORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the Senate and the House at the Conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 826), Department of Energy Organization Act, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

Section 1—Short Title

The conference substitute in section 1 states that the Act is to be cited as the "Department of Energy Organization Act".

Section 2—Definitions

The conference substitute in section 2 defines the terms "Department," "function," "perform," and "Federal lease." These definitions had previously been scattered in the Senate and House bills.

TITLE I

Section 101—Declaration of Findings, Policy and Purposes

The Senate bill contains a statement of findings that because of the possible interruption of foreign energy supplies and the serious consequences which arise from the vulnerability of this Nation to energy shortages, a central organizational mechanism is needed to achieve

D

matters only. On the other hand, the Senate also placed in the Board responsibility for promulgating major oil pricing and allocation decision, requiring Congressional review and responsibility for the regulation of oil pipelines transferred from the ICC at the same time. The Senate bill provided for greater involvement than specified in the House amendment for the Secretary or the President in initiating procedures before the Board and in approving or disapproving the Board's decisions.

The Conferees agreed upon a series of amendments to resolve the differences between the Senate bill and House amendments consistent with the principle endorsed by both Houses that major pricing and licensing matters should be made by an independent collegial body appointed for a fixed term, rather than by a single political entity. At the same time it sought to preserve for the Secretary the opportunity to initiate and where appropriate to participate in the Commission's decision-making process.

Commission Jurisdiction on Matters Transferred from the FPC

Section 402(a) describes the exclusive jurisdiction of the Commission over certain functions transferred from the FPC. This exclusive jurisdiction consists of functions transferred from the FPC which will be within the sole responsibility of the Commission to consider and to take final agency action on without further review by the Secretary or any other executive branch official.

The Conferees adopted the more detailed approach contained in the Senate bill by specifically listing those functions transferred to the Commission. However, it significantly broadened the list of Commission functions from those specified in the Senate bill in order to give the Commission some of the additional jurisdiction provided the Commission in the House amendment. This includes the issuance and renewal of hydroelectric licenses, determinations on construction work in progress, the regulations of mergers and securities acquisition, curtailments (other than the establishment and review of priorities), and electrical interconnections (under Sec. 202(b) of the Power Act). In addition to these functions, Section 402 specifically states and the Commission will be responsible for establishing wholesale electricity rates or charges, natural gas rates and charges, and for the issuance of certificates of public convenience and necessity under section 7 of the Natural Gas Act.

In addition, section 402(a) is worded to make it clear that the Commission will have exclusive jurisdiction over related matters necessary to carry out the Commission's responsibilities, even where they are not referred to specifically in the section.

For example, section 402(a)(1)(B) and (C) gives the Commission jurisdiction over the establishment of rates and charges for natural gas and wholesale electricity. The Conferees intentionally deleted the wording contained in the Senate bill, giving the Commission jurisdiction in the area of rates and charges only where the Commission action *directly* established the rates or charges. At the same time it specified that the Commission should have jurisdiction over rules governing construction work in progress, as well as the powers to enforce and

E

review rates and charges established by it. The proposed action, therefore, need not directly establish rates or charges, or directly issue permits or licenses, to be within the exclusive jurisdiction of the Board.

Similarly, Section 402(a)(2) provides a broad list of authorities contained in the Natural Gas Act or the Federal Power Act which the Commission may rely upon in carrying out the Natural Gas Act and Federal Power Act functions within the Commission's exclusive jurisdiction. It is the intent of the Conference that this provision confer upon the Commission the right to take on its own, without review by the Secretary, rulemaking or other actions under these authorities, even though not specifically referred to in Section 402(a)(1), where the Commission determines such action should be taken in order to carry out the Commission's responsibility over the licensing and pricing and other regulatory matters described in Section 402(a)(1).

As a result, the Commission, under Section 402, will perform the functions now carried out by the FPC in establishing, reviewing and enforcing rates and charges for the transmission or sale of electric energy. The Commission's authority will include but not be limited to suspending rate changes, initiating investigations of rates and charges, including conducting audits of utilities and establishing accounting procedures, holding hearings, and establishing rates after hearing. All rates and charges will be filed with the Commission.

The Secretary's own, direct jurisdiction over other functions transferred from the FPC is derived from two sources. Section 301(b) provides generally that any functions not placed in the Commission by title IV shall be within the authority of the Secretary. This includes, but is not limited to the collection and analysis of energy information under Section 304 and 311 of the Federal Power Act and Sections 10 and 110 of the Natural Gas Act; the regulation of interlocking directorates, and the establishment of regional districts or other coordination and interconnection of facilities under Section 202(a) of the Federal Power Act. In addition, Section 402(a) and (f) explicitly exempt certain matters from the Commission's jurisdiction, thereby placing responsibility for such matters with the Secretary. The matters given to the Secretary in this way are the exports and imports of natural gas, the exports and imports of electricity, and emergency interconnections under Part II of the Federal Power Act, and establishment of curtailment priorities.

In carrying out functions transferred to him from the FPC, the Secretary as well as the Commission, may utilize the incidental power contained in the Federal Power Act or the Natural Gas Act. For example, the Secretary may invoke the authority of these acts to enforce functions carried out by him, or to adopt accounting rules so long as they are limited to what is necessary in order to carry out those functions vested exclusively in the Secretary.

Because the role of the Commission in energy regulatory matters will be a large and important one, the Conferees retained provisions in the Senate bill, but not the House amendment, designed to assure the Secretary an opportunity to participate actively in the Commission's decision-making process, and to assure expeditious Commission consideration of important regulatory matters. Section 403 specifies that either the Secretary or the Commission may propose a rule to

TAB 3

DOE REGULATIONS

remitted pursuant to the relevant enforcement order, plus any accu-ed interest, reduced by the nt of any administrative costs ap-d by the Office of Hearings and ls. In the event that the aggre-amount of approved claims ex-the aggregate amount of funds ied above, the Office of Hearings ppeals may make refunds on a ta basis. The Office of Hearings ppeals may delay payment of any ls until all Applications have processed.

The Office of Hearings and Ap-may decline to consider Applica-for refund amounts that, in view direct administrative costs in-l, are too small to warrant indi-l consideration.

87 Escrow accounts, segregated nds and other guarantees.

n implementing the refund proce-specified in this subpart, the Di-of the Office of Hearings and Ap-or his designee shall issue an providing for the custody of the to be tendered pursuant to the dial Order or Consent Order. This may require placement of the in an appropriate interest-bear-scrow account, retention of the by the firm in a segregated ac-under such terms and conditions specified by the DOE, or the g of a sufficient bond or other ntee to ensure payment.

All costs and charges approved by fice of Hearings and Appeals and ed in connection with the proc-of Applications for Refund or in-by an escrow agent shall be paid the amount of funds, including cumulated interest, to be remit-rsuant to the Remedial Order or nt Order.

After the expenses referred to in aph (b) of this section have been ed and refunds distributed to sful applicants, any remaining remitted pursuant to the Reme-der or Consent Order shall be de-d in the United States Treasury tributed in any other manner ed in the Decision and Order re-to in § 205.282(c).

unds contained in an escrow ac-segregated fund, or guaranteed by other approved means shall be dis-bursed only upon written order of the Office of Hearings and Appeals.

§ 205.288 Interim and ancillary orders.

The Director of the Office of Hearings and Appeals or his designee may issue any interim or ancillary orders, or make any rulings or determinations to ensure that refund proceedings, including the actions of the administrator and the custodian of the funds involved in a refund proceeding, are conducted in an appropriate manner and are not unduly delayed.

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

AUTHORITY: Department of Energy Organization Act, Pub. L. No. 95-91, 91 Stat. 565 (42 U.S.C. Section 7101), Federal Power Act, Pub. L. 66-280, 41 Stat. 1063 (16 U.S.C. Section 792) *et seq.*, Department of Energy Delegation Order No. 0204-4 (42 FR 60726), E.O. 10485, 18 FR 5397, 3 CFR, 1949-1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136.

SOURCE: 45 FR 71560, Oct. 28, 1980; 46 FR 63209, Dec. 31, 1981, unless otherwise noted.

(Approved by the Office of Management and Budget under Control No. 1901-0245)

APPLICATION FOR AUTHORIZATION TO TRANSMIT ELECTRIC ENERGY TO A FOREIGN COUNTRY

§ 205.300 Who shall apply.

(a) An electric utility or other entity subject to DOE jurisdiction under part II of the Federal Power Act who proposes to transmit any electricity from the United States to a foreign country must submit an application or be a party to an application submitted by another entity. The application shall be submitted to the Office of Utility Systems of the Economic Regulatory Administration (EPA).

(b) In connection with an application under §§ 205.300 through 205.309, attention is directed to the provisions of §§ 205.320 through 205.327, below, concerning applications for Presidential Permits for the construction, connection, operation, or maintenance, at the borders of the United States, of facili-

ties for the transmission of electric energy between the United States and a foreign country in compliance with Executive Order 10485, as amended by Executive Order 12038.

§ 205.301 Time of filing.

Each application should be made at least six months in advance of the initiation of the proposed electricity export, except when otherwise permitted by the ERA to resolve an emergency situation.

§ 205.302 Contents of application.

Every application shall contain the following information set forth in the order indicated below:

(a) The exact legal name of the applicant.

(b) The exact legal name of all partners.

(c) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed.

(d) The state or territory under the laws of which the applicant is organized or incorporated, or authorized to operate. If the applicant is authorized to operate in more than one state, all pertinent facts shall be included.

(e) The name and address of any known Federal, State or local government agency which may have any jurisdiction over the action to be taken in this application and a brief description of that authority.

(f) A description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities.

(g) A technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation.

(h) The original application shall be signed and verified under oath by an officer of the applicant having knowledge of the matters set forth therein.

§ 205.303 Required exhibits.

There shall be filed with the application and as a part thereof the following exhibits:

(a) *Exhibit A.* A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.

(b) *Exhibit B.* A showing, including a signed opinion of counsel, that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State laws.

(c) *Exhibit C.* A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.

(d) *Exhibit D.* If an applicant resides or has its principal office outside the United States, such applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.

(e) *Exhibit E.* A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the purchase, sale or transmission of electric energy.

(f) *Exhibit F.* An explanation of the methodology (Operating Procedures) to inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before delivery of such capacity to the

n purchaser. Approved firm ex- diversity exchange and emer- exports are exempted from this ement. Those materials required is section which have been filed usly with the ERA may be incor- d by reference.

:04 Other information.

re the application is for author- export less than 1,000,000 kilo- hours annually, applicants need rnish the information called for 05.302(g) and 205.303 (Exhibit C). ants, regardless of the amount of ic energy to be exported, may be ed to furnish such supplemental nation as the ERA may deem per-

:05 Transferability.

An authorization to transmit ic energy from the United States oreign country granted by order ERA under section 202(e) of the al Power Act shall not be trans- e or assignable. Provided written is given to the ERA within 30 the authorization may continue ect temporarily in the event of voluntary transfer of this author- y operation of law (including ers to receivers, trustees, or pur- s under foreclosure or judicial This continuance is contingent filing of an application for per- it authorization and may be ef- e until a decision is made there-

In the event of a proposed vol- y transfer of this authority to ex- lectricity, the transferee and the eror shall file jointly an applica- ursuant to this subsection, set- orth such information as required 205.300 through 205.304, together a statement of reasons for the er.

The ERA may at any time subse- to the original order of author- n, after opportunity for hearing, such supplemental orders as it ind necessary or appropriate.

06 Authorization not exclusive.

uthorization granted pursuant to n 202(e) of the Act shall be d to prevent an authorization eing granted to any other person or entity to export electric energy or to prevent any other person or entity from making application for an export authorization.

§205.307 Form and style; number of copies

An original and two conformed copies of an application containing the information required under §§205.300 through 205.309 must be filed.

§205.308 Filing schedule and annual reports.

(a) Persons authorized to transmit electric energy from the United States shall promptly file all supplements, notices of succession in ownership or operation, notices of cancellation, and certificates of concurrence. In general, these documents should be filed at least 30 days prior to the effective date of any change.

(b) A change in the tariff arrangement does not require an amendment to the authorization. However, any entity with an authorization to export electric energy shall file with the ERA, and the appropriate state regulatory agency, a certified copy of any changed rate schedule and terms. Such changes may take effect upon the date of filing of informational data with the ERA.

(c) Persons receiving authorization to transmit electric energy from the United States shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year detailing the gross amount of kilowatt-hours of energy, by authorized category, received or delivered, and the cost and revenue associated with each category.

(Approved by the Office of Management and Budget under Control No. 1901-0245)

[45 FR 71560, Oct. 28, 1980, as amended at 46 FR 63209, Dec. 31, 1981]

§205.309 Filing procedures and fees.

Applications shall be addressed to the Office of Utility Systems of the Economic Regulatory Administration. Every application shall be accompanied by a fee of $500.00. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications and notifications of rate changes shall be furnished to the Federal Energy

Regulatory Commission and all affected State public utility regulatory agencies.

APPLICATION FOR PRESIDENTIAL PERMIT AUTHORIZING THE CONSTRUCTION, CONNECTION, OPERATION, AND MAINTENANCE OF FACILITIES FOR TRANSMISSION OF ELECTRIC ENERGY AT INTERNATIONAL BOUNDARIES

§ 205.320 Who shall apply.

(a) Any person, firm, co-operative, corporation or other entity who operates an electric power transmission or distribution facility crossing the border of the United States, for the transmission of electric energy between the United States and a foreign country, shall have a Presidential Permit, in compliance with Executive Order 10485, as amended by Executive Order 12038. Such applications should be filed with the Office of Utility Systems of the Economic Regulatory Administration.

NOTE: E.O. 12038, dated February 3, 1978, amended E.O. 10485, dated September 3, 1953, to delete the words "Federal Power Commission" and "Commission" and substitute for each "Secretary of Energy." E.O. 10485 revoked and superseded E.O. 8202, dated July 13, 1939.

(b) In connection with applications hereunder, attention is directed to the provisions of §§ 205.300 to 205.309, above, concerning applications for authorization to transmit electric energy from the United States to a foreign country pursuant to section 202(e) of the Federal Power Act.

§ 205.321 Time of filing.

Pursuant to the DOE's responsibility under the National Environmental Policy Act, the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement (EIS) must be prepared, the permit processing time normally will be 18-24 months. If no environmental impact statement is required, then a six-month processing time normally would be sufficient.

§ 205.322 Contents of application.

Every application shall be accompanied by a fee prescribed in § 205.326 of this subpart and shall provide, in the order indicated, the following:

(a) *Information regarding the applicant.*

(1) The legal name of the applicant;

(2) The legal name of all partners;

(3) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed;

(4) Whether the applicant or its transmission lines are owned wholly or in part by a foreign government or directly or indirectly assisted by a foreign government or instrumentality thereof; or whether the applicant has any agreement pertaining to such ownership by or assistance from any foreign government or instrumentality thereof.

(5) List all existing contracts that the applicant has with any foreign government, or any foreign private concerns, relating to any purchase, sale or delivery of electric energy.

(6) A showing, including a signed opinion of counsel, that the construction, connection, operation, or maintenance of the proposed facility is within the corporate power of the applicant, and that the applicant has complied with or will comply with all pertinent Federal and State laws;

(b) *Information regarding the transmission lines to be covered by the Presidential Permit.* (1)(i) A technical description providing the following information: (A) Number of circuits, with identification as to whether the circuit is overhead or underground; (B) the operating voltage and frequency; and (C) conductor size, type and number of conductors per phase.

(ii) If the proposed interconnection is an overhead line the following additional information must also be provided: (A) The wind and ice loading design parameters; (B) a full description and drawing of a typical supporting structure including strength specifications; (C) structure spacing with typical ruling and maximum spans; (D) conductor (phase) spacing; and (E) the designed line to ground and conductor side clearances.

(iii) If an underground or underwater interconnection is proposed, the following additional information must also be provided: (A) Burial depth; (B) type of cable and a description of any re-

supporting equipment, such as
:ion medium pressurizing or
cooling; and (C) cathodic protec-
:heme. Technical diagrams which
e clarification of any of the
items should be included.
. general area map with a scale
eater than 1 inch=40 kilometers
ı=25 miles) showing the overall
ı, and a detailed map at a scale
ch=8 kilometers (1 inch=5 miles)
ıg the physical location, lon-
and latitude of the facility on
ıternational border. The map
ndicate ownership of the facili-
or on each side of the border be-
the United States and the for-
ɔuntry. The maps, plans, and de-
on of the facilities shall distin-
:he facilities or parts thereof al-
constructed from those to be
ucted.
ıpplications for the bulk power
facility which is proposed to be
ed at 138 kilovolts or higher
ontain the following bulk power
ı information:
ıta regarding the expected power
:r capability, using normal and
time emergency conductor rat-

System power flow plots for the
ınt's service area for heavy sum-
ıd light spring load periods, with
thout the proposed international
ɔnnection, for the year the line is
led to be placed in service and
fifth year thereafter. The power
ots submitted can be in the for-
ıstomarily used by the utility,
: ERA requires a detailed legend
included with the power flow

Data on the line design features
nimizing television and/or radio
rence caused by operation of the
, transmission facilities;
ı description of the relay protec-
heme, including equipment and
:d functional devices;
fter receipt of the system power
lots, the ERA may require the
.nt to furnish system stability
:s for the applicant's system.
ıformation regarding the envi-
ıtal impacts shall be provided as
for each routing alternative:
tatement of the environmental
s of the proposed facilities in-
cluding a list of each flood plain, wetland, critical wildlife habitat, navigable waterway crossing, Indian land, or historic site which may be impacted by the proposed facility with a description of proposed activities therein.

(2) A list of any known Historic Places, as specified in 36 CFR part 800, which may be eligible for the National Register of Historic Places.

(3) Details regarding the minimum right-of-way width for construction, operation and maintenance of the transmission lines and the rationale for selecting that right-of-way width.

(4) A list of threatened or endangered wildlife or plant life which may be located in the proposed alternative.

(d) A brief description of all practical alternatives to the proposed facility and a discussion of the general environmental impacts of each alternative.

(e) The original of each application shall be signed and verified under oath by an officer of the applicant, having knowledge of the matters therein set forth.

§ 205.323 Transferability.

(a) Neither a permit issued by the ERA pursuant to Executive Order 10485, as amended, nor the facility shall be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of the facility by operation of law (including transfers to receivers, trustees, or purchases under foreclosure or judicial sale). This continuance is contingent on the filing of an application for a new permit and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of the facility, the permittee and the party to whom the transfer would be made shall file a joint application with the ERA pursuant to this paragraph, setting forth information as required by § 205.320 *et seq.*, together with a statement of reasons for the transfer. The application shall be accompanied by a filing fee pursuant to § 205.326.

(c) No substantial change shall be made in any facility authorized by permit or in the operation thereof unless

329 01—96——4

or until such change has been approved by the ERA.

(d) Permits may be modified or revoked without notice by the President of the United States, or by the Administrator of the ERA after public notice.

§ 205.324 Form and style; number of copies.

All applicants shall file an original and two conformed copies of the application and all accompanying documents required under §§ 205.320 through 205.327.

§ 205.325 Annual report.

Persons receiving permits to construct, connect, operate or maintain electric transmission facilities at international boundaries shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year, detailing by category the gross amount of kilowatt-hours of energy received or delivered and the cost and revenue associated with each category.

§ 205.326 Filing procedures and fees.

Applications shall be forwarded to the Office of Utility Systems of the Economic Regulatory Administration and shall be accompanied by a filing fee of $150. The application fee will be charged irrespective of the ERA's disposition of the application. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

§ 205.327 Other information.

The applicant may be required after filing the application to furnish such supplemental information as the ERA may deem pertinent. Such requests shall be written and a prompt response will be expected. Protest regarding the supplying of such information should be directed to the Administrator of the ERA.

§ 205.328 Environmental requirements for Presidential Permits—Alternative 1.

(a) *NEPA Compliance.* Except as provided in paragraphs (c) and (e) of this section, when an applicant seeks a Presidential Permit, such applicant will be responsible for the costs of preparing any necessary environmental document, including an Environmental Impact Statement (EIS), arising from ERA's obligation to comply with the National Environmental Policy Act of 1969 (NEPA). ERA will determine whether an environmental assessment (EA) or EIS is required within 45 days of the receipt of the Presidential Permit application and of environmental information submitted pursuant to 10 CFR 205.322 (c) and (d). ERA will use these and other sources of information as the basis for making the environmental determination:

(1) If an EIS is determined to be necessary, the applicant shall enter into a contract with an independent third party, which may be a Government-owned, contractor-operated National Laboratory, or a qualified private entity selected by ERA. The third party contractor must be qualified to conduct an environmental review and prepare an EIS, as appropriate, under the supervision of ERA, and may not have a financial or other interest in the outcome of the proceedings. The NEPA process must be completed and approved before ERA will issue a Presidential Permit.

(2) If an EA is determined to be necessary, the applicant may be permitted to prepare an environmental assessment pursuant to 10 CFR 1506.5(b) for review and adoption by ERA, or the applicant may enter into a third party contract as set forth in this section.

(b) *Environmental Review Procedure.* Except as provided in paragraphs (c) and (e) of this section, environmental documents, including the EIS, where necessary, will be prepared utilizing the process set forth above. ERA, the applicant, and the independent third party, which may be a Government-owned, contractor-operated National Laboratory or a private entity, shall enter into an agreement in which the

:ant will engage and pay directly ıe services of the qualified third to prepare the necessary environ- ıl documents. The agreement outline the responsibilities of party and its relationship to the two parties regarding the work done or supervised. ERA shall ap- the information to be developed ıupervise the gathering, analysis resentation of the information. In ıon, ERA will have the authority prove and modify any statement, sis, and conclusion contained in ıvironmental documents prepared e third party. Before commencing ration of the environmental docu- the third party will execute an prepared disclosure document ıg that it does not have any con- ɔf interest, financial or otherwise, e outcome of either the environ- ıl process or the Permit applica-

Financial Hardship. Whenever ERA mines that a project is no longer ımically feasible, or that a sub- ial financial burden would be im- by the applicant bearing all of :osts of the NEPA studies, ERA waive the requirement set forth in raphs (a) and (b) of this section perform the necessary environ- al review, completely or in part, its own resources.

Discussions Prior to Filing. Prior to preparation of any Presidential it application and environmental t, a potential applicant is encour- to contact ERA and each affected public utility regulatory agency scuss the scope of the proposed ct and the potential for joint and Federal environmental re-

Federal Exemption. Upon a showing :e applicant that it is engaged in ransaction of official business of 'ederal Government in filing the :ation pursuant to 10 CFR 205.320 ., it will be exempt from the re- ments of this section.

. 33819, July 25, 1983]

329 Environmental requirements ır Presidential Permits—Alter- ative 2.

NEPA Compliance. Except as pro- in paragraph (b) and (e) of this section, applicants seeking Presidential Permits will be financially responsible for the expenses of any contractor chosen by ERA to prepare any necessary environmental document arising from ERA's obligation to comply with the National Environmental Policy Act of 1969 (NEPA) in issuing such Presidential Permits:

(1) ERA will determine whether an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) is required within 45 days of receipt of the Presidential Permit application and of the environmental information submitted pursuant to 10 CFR 205.322 (c) and (d). ERA will use these and other sources of information as the basis for making the environmental determination.

(2) If an EIS is determined to be necessary, ERA will notify the applicant of the fee for completing the EIS within 90 days after the submission of the application and environmental information. The fee shall be based on the expenses estimated to be incurred by DOE in contracting to prepare the EIS (*i.e.*, the estimated fee charges to ERA by the contractor). DOE employee salaries and other fixed costs, as set forth in OMB Circular A-25, shall not be included in the applicant's fee. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States, and shall be submitted to ERA. Upon submission of fifty percent of the environmental fee, ERA will provide to the applicant a tentative schedule for completion of the EIS.

(3) If an EA is determined to be necessary, the applicant may be permitted to prepare an environmental assessment pursuant to 40 CFR 1506.5(b) for review and adoption by ERA, or the applicant may choose to have ERA prepare the EA pursuant to the fee procedures set forth above.

(4) The NEPA process must be completed and approved before ERA will issue a Presidential Permit.

(b) *Financial Hardship.* Whenever ERA determines that a project is no longer economically feasible, or that a substantial financial burden would be imposed by the applicant bearing all of the costs of the NEPA studies, ERA may waive the requirement set forth in

paragraphs (a) and (b) of this section and perform the necessary environmental review, completely or in part, with its own resources.

(c) *Discussions Prior to Filing.* Prior to the preparation of any Presidential Permit application and environmental assessment, a potential applicant is encouraged to contact ERA and each affected State public utility regulatory agency to discuss the scope of the proposed project and the potential for joint State and Federal environmental review.

(d) *Fee Payment.* The applicant shall make fee payment for completing the EIS to ERA in the following manner:

(1) 50 percent of the total amount due to be paid within 30 days of receipt of the fee information from DOE;

(2) 25 percent to be paid upon publication of the draft EIS; and

(3) 25 percent to be paid upon publication of the final EIS.

If costs are less than the amount collected, ERA will refund to the applicant the excess fee collected. If costs exceed the initial fee, ERA will fund the balance, unless the increase in costs is caused by actions or inactions of the applicant, such as the applicant's failure to submit necessary environmental information in a timely fashion. If the application is withdrawn at any stage prior to issuance of the final EIS, the fee will be adjusted to reflect the costs actually incurred; payment shall be made by the applicant within 30 days of above referenced events.

(e) *Federal Exemption.* Upon a showing by the applicant that it is engaged in the transaction of official business of the Federal Government in filing an application pursuant to 10 CFR 205.320 *et seq.*, it will be exempt from the requirements of this section.

[48 FR 33820, July 25, 1983]

REPORT OF MAJOR ELECTRIC UTILITY SYSTEM EMERGENCIES

AUTHORITY: Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7101); Federal Power Act, Pub. L. 66-280 (16 U.S.C. 791 *et seq.*)

SOURCE: Sections 205.350 through 205.353 appear at 51 FR 39745, Oct. 31, 1986, unlesss otherwise noted.

§ 205.350 General purpose.

The purpose of this rule is to establish a procedure for the Office of International Affairs and Energy Emergencies (IE) to obtain current information regarding emergency situations on the electric energy supply systems in the United States so that appropriate Federal emergency response measures can be implemented in a timely and effective manner. The data also may be utilized in developing legislative recommendations and reports to the Congress.

(Approved by the Office of Management and Budget under control number 1901-0288)

§ 205.351 Reporting requirements.

For the purpose of this section, a report or a part of a report may be made jointly by two or more entities. Every electric utility or other entity engaged in the generation, transmission or distribution of electric energy for delivery and/or sale to the public shall report promptly, through the DOE Emergency Operations Center, by telephone, the occurrence of any event such as described in paragraphs (a) through (d) of this section. These reporting procedures are mandatory. Entities that fail to comply within 24 hours will be contacted and reminded of their reporting obligation.

(a) *Loss of Firm System Loads*, caused by:

(1) Any load shedding actions resulting in the reduction of over 100 megawatts (MW) of *firm* customer load for reasons of maintaining the *continuity* of the bulk electric power supply system.

(2) Equipment failures/system operational actions attributable to the loss of *firm* system loads for a period in excess of 15 minutes, as described below:

(i) Reports from entities with a previous year recorded peak load of over 3000 MW are required for all such losses of *firm* loads which total over 300 MW.

(ii) Reports from all other entities are required for all such losses of *firm* loads which total over 200 MW or 50 percent of the system load being supplied immediately prior to the incident, whichever is less.

(3) Other events or occurrences which result in a continuous interruption for

TAB 4

DOE LEGISLATIVE HISTORY

74TH CONGRESS
1ST SESSION

H. R. 5423

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 6, 1935

Mr. RAYBURN introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce and ordered to be printed

A BILL

To provide for control in the public interest of public-utility holding companies using the mails and the facilities of interstate commerce, to regulate the transmission and sale of electric energy and natural gas in interstate and foreign commerce, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Utility Act of 1935."

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public

B

1 "(c) No public utility shall transmit any electric
2 energy from the United States to a foreign country with-
3 first having received the approval of the Commission.
4 "ENCUMBRANCE OF PROPERTY; CONSOLIDATIONS; PUR-
5 CHASE OF SECURITIES
6 "SEC. 205. (a) No public utility shall sell, lease,
7 assign, mortgage, or otherwise dispose of or encumber the
8 whole or any part of its facilities subject to the jurisdiction
9 of the Commission, or by any means whatsoever, directly
10 or indirectly, merge or consolidate such facilities or any
11 part thereof with those of any other person without first
12 having secured an order of the Commission authorizing it
13 to do so.
14 "(b) No public utility shall hereafter purchase,
15 acquire, take, or hold any security of any other public
16 utility without first having been authorized to do so by
17 the Commission. This subsection shall not prevent the
18 holding of any security lawfully acquired before the enact-
19 ment of this title.
20 "ISSUANCE OF SECURITIES; ASSUMPTION OF LIABILITIES
21 "SEC. 206. (a) No public utility shall issue any se-
22 curity, or assume any obligation or liability as guarantor,
23 endorser, surety, or otherwise in respect of any security of
24 another person, unless and until, and then only to the ex-
25 tent that, upon application by the public utility, the Com-

Section 201(c)

A

FEDERAL POWER COMMISSION
NATIONAL POWER SURVEY

ONGRESS
SESSION

S. 1725

N THE SENATE OF THE UNITED STATES

FEBRUARY 6, 1935

CELER introduced the following bill; which was read twice and referred to the Committee on Interstate Commerce

A BILL

vide for the control and elimination of public-utility hold-g companies operating, or marketing securities, in inter-ate and foreign commerce and through the mails, to regu-e the transmission and sale of electric energy in interstate mmerce, to amend the Federal Water Power Act, and other purposes.

Be it enacted by the Senate and House of Representa-es of the United States of America in Congress assembled,

TITLE I

SHORT TITLE

SECTION 1. This Act may be cited as the "Public ility Holding Company Act of 1935."

C

transmission and sale, but shall not apply to the retail sale of energy in local distribution. The Commission shall have jurisdiction over all facilities for such transmission, sale, and/or production of energy by any means and over all facilities connected therewith as parts of a system of power transmission situated in more than one State, except facilities for the retail distribution of electric energy, or for the production or transmission of energy solely for the use of the producer or transmitter or the use of his tenants on property owned or controlled by him and not for resale. Every person who owns or operates facilities subject to the jurisdiction of the commission under this title and every person who controls, directly or indirectly, any such person shall be subject to the provisions of this title and title III. The term 'public utility' when used in this title and title III means any person who owns or operates such facilities.

"(b) Electric energy shall be held to be transmitted in interstate commerce if transmitted from a State to any point outside thereof; or between points within the same State but through any point outside thereof; or from or to any place in the United States to or from a foreign country; but only insofar as such transmission takes place within the United States.

"SEC. 202. (a) It shall be the duty of every public utility to furnish energy to, exchange energy with, and trans-

1 MY

[CONFIDENTIAL COMMITTEE PRINT]

MAY 4, 1935

[Comparative print showing proposed changes from introduced bill, except minor changes of punctuation, form, and arrangement, and changes to correct clerical and minor drafting errors]

TH CONGRESS
1ST SESSION

S. 1725

[Omit the part struck through and insert the part printed in italic]

ITLE II—AMENDMENTS TO FEDERAL WATER POWER ACT

SECTION 201. Section 3 of the Federal Water Power Act, *as amended*, is amended to read as follows:

"SEC. 3. The words defined in this section shall have he following meanings for the purposes of this Act, to wit:

"(1) 'public lands' means such lands and interest in ands owned by the United States as are subject to private ppropriation and disposal under public land laws. It shall not include 'reservations', as hereinafter defined;

"(2) 'reservations' means national monuments, national parks, national forests, tribal lands embraced within Indian reservations, military reservations, and other lands

tate commerce and to the production of *electric* energy for uch transmission ~~and~~ *or* sale, ~~but shall not apply to the~~ etail sale of *such* energy in local distribution. The Com- nission shall have jurisdiction over all facilities for such *roduction,* transmission, *or* sale ~~and/or~~ ~~production~~ of *lectric* energy by any means and over all facilities con- ected therewith as parts of a system of power transmission tuated in more than one State, except facilities *used only* ~~r the retail distribution of electric energy, or~~ for the pro- uction or transmission of *electric* energy *in intrastate mmerce or in local distribution* or for the production or ansmission of energy ~~solely~~ for the use of the producer or nsmitter ~~or the use of his tenants on property owned or ntrolled by him and not for resale~~. Every person who ns or operates facilities subject to the jurisdiction of the mmission under this title ~~and every person who controls ectly or indirectly any such person~~ shall be subject to the visions of this title and the title next following ~~and title~~ ~~The term 'public utility' when used in this title and~~ e ~~III means any person who owns or operates such~~ ~~lities~~.

"~~(b)~~ *(c)* Electric energy shall be held to be trans- ted in interstate commerce if transmitted from a State ny point outside thereof; or between points within the e State but through any point outside thereof; or from

to any place in the United States to or from a foreign
untry; but only insofar as such transmission takes place
ithin the United States.

*"(d) The term 'public utility' when used in this title
r in the title next following means any person who owns
r operates facilities subject to the jurisdiction of the Com-
ission under this title.*

*"(e) No provision in this title shall apply to, or be
eemed to include, the United States, a State or any
unicipality or other political subdivision of a State, or
ny agency, authority, or instrumentality of any one or
nore of the foregoing, or any corporation which is wholly
wned, directly or indirectly, by any one or more of the
oregoing, or any officer, agent, or employee of any of the
oregoing acting as such in the course of his official duty,
nless such provision makes specific reference thereto.*

~~"SEC. 202. (a) It shall be the duty of every public
tility to furnish energy to, exchange energy with, and
ransmit energy for any person upon reasonable request
herefor; and to furnish and maintain such services and
facilities as shall promote the safety, comfort, and con-
venience of all its customers, employees, and the public,
and shall be in all respects adequate, efficient, and
reasonable.~~

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1935d

74TH CONGRESS
1ST SESSION

S. 2796

IN THE SENATE OF THE UNITED STATES

MAY 7 (calendar day, MAY 9), 1935

Mr. WHEELER introduced the following bill; which was read twice and referred to the Committee on Interstate Commerce

A BILL

To provide for the control and elimination of public-utility holding companies operating, or marketing securities, in interstate and foreign commerce and through the mails, to regulate the transmission and sale of electric energy in interstate commerce, to amend the Federal Water Power Act, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Public Utility Act of 1935".

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national

1 diction of the Commission under this part shall be subject to
2 the provisions of this part and the part next following.
3 "(c) Electric energy shall be held to be transmitted
4 in interstate commerce if transmitted from a State to
5 any point outside thereof; or between points within the
6 same State but through any point outside thereof; or from
7 or to any place in the United States to or from a foreign
8 country; but only insofar as such transmission takes place
9 within the United States.
10 "(d) The term 'public utility' when used in this part
11 or in the part next following means any person who owns
12 or operates facilities subject to the jurisdiction of the Com-
13 mission under this title.
14 "(e) No provision in this part shall apply to, or be
15 deemed to include, the United States, a State or any munici-
16 pality or other political subdivision of a State, or any
17 agency, authority, or instrumentality of any one or more
18 of the foregoing, or any corporation which is wholly owned,
19 directly or indirectly, by any one or more of the foregoing,
20 or any officer, agent, or employee of any of the foregoing
21 acting as such in the course of his official duty, unless such
22 provision makes specific reference thereto.
23 "INTERCONNECTION AND COORDINATION OF FACILITIES
24 "SEC. 202. (a) For the purpose of assuring an abun-
25 dant supply of electric energy throughout the United States

Union Calendar No. 451

:ONGRESS
SESSION

S. 2796

[Report No. 1318]

IN THE HOUSE OF REPRESENTATIVES

JUNE 13, 1935

Referred to the Committee on Interstate and Foreign Commerce

JUNE 24, 1935

ed with amendments, committed to the Committee of the Whole House on the state of the Union, and ordered to be printed

:rike out all after the enacting clause and insert the part printed in italic]

AN ACT

ovide for the control and elimination of public-utility hold-
ıg companies operating, or marketing securities, in inter-
tate and foreign commerce and through the mails, to regu-
ıte the transmission and sale of electric energy in interstate
ommerce, to amend the Federal Water Power Act, and
ɔr other purposes.

Be it enacted by the Senate and House of Representa-
ives of the United States of America in Congress assembled,
~~That this Act may be cited as the "Public Utility Act~~

1 *such Federal regulation, however, to extend only to those*
2 *matters which are not subject to regulation by the States.*
3 *"(b) The provisions of this Part shall apply to the*
4 *transmission of electric energy in interstate commerce and to*
5 *the sale of electric energy at wholesale in interstate com-*
6 *merce, but shall not apply to any other sale of electric energy*
7 *or deprive a State or State commission of its lawful*
8 *authority now exercised over the exportation of hydroelectric*
9 *energy which is transmitted across a State line. The*
10 *Commission shall have jurisdiction over all facilities for*
11 *such transmission or sale of electric energy, but shall*
12 *not have jurisdiction over facilities used for the generation*
13 *of electric energy or over facilities used in local distribution*
14 *or only for the transmission of electric energy in intrastate*
15 *commerce, or over facilities for the transmission of electric*
16 *energy consumed wholly by the transmitter.*
17 *"(c) For the purpose of this Part, electric energy*
18 *shall be held to be transmitted in interstate commerce if*
19 *transmitted from a State and consumed at any point outside*
20 *thereof; but only insofar as such transmission takes place*
21 *within the United States.*
22 *"(d) The term 'sale of electric energy at wholesale'*
23 *when used in this Part means a sale of electric energy to*
24 *any person for resale.*

MEMORANDUM FOR MR. McKERNAN:

This memorandum is written in response to the inquiry raised by Mr. McAllister as to whether the courts in any case have interpreted the words "interstate commerce" to include "foreign commerce". The inquiry has reference to the provisions of the Federal Power Act in Section 201(c) which reads as follows:

> "(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only in so far as such transmission takes place within the United States."

I have found no reported cases in which the courts have interpreted the words "interstate commerce" to include "foreign commerce". An analysis of the legislative history of Section 201(c) shows that this section was to be restricted solely to interstate commerce and not to foreign commerce.

H.R. 5423 and S. 2796 both when they were originally introduced in their respective Houses contained language that would include interstate and foreign commerce. H.R. 5423, the companion bill in the House to S. 2796 which later became the Public Utility Holding Company Act of 1935, contains the following language in Section 201(b):

> "(b) Electric energy shall be held to be transmitted in interstate commerce if transmitted from a State to any point outside thereof; or between points within the same State but through any point outside thereof; or from or to any place in the United States to or from a foreign country; but only in so far as such transmission takes place within the United States."

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Section 201(c) of S. 2796 contained identical language:

> "(c) Electric energy shall be held to be transmitted in interstate commerce if transmitted from a State to any point outside thereof; or between points within the same State but through any point outside thereof; or from or to any place in the United States to or from a foreign country; but only so far as such transmission takes place within the United States."

The hearings on H.R. 5423 before the House Committee on Interstate and Foreign Commerce illustrates that Section 201(b) would include interstate and foreign commerce. The statement of Dr. Friday on page 945 of the hearings before the House Committee was indicative of this thought. He stated:

> "DR. FRIDAY. That is Title I. Under Title II, in case the company gets any part of its energy from outside the State or from another nation or has any connection or any dealing, as I understand the bill, with companies that do get any part of their energy from outside of the State it becomes subject to all of these restrictions upon its management."

Commissioner Heavey was of the same opinion as Dr. Friday as to the jurisdiction conferred upon the Commission by Section 201(b). Commissioner Heavey in speaking on page 392 of the House hearings stated:

> "Therefore, this title asserts Federal jurisdiction over the transmission and production of electric energy in interstate and foreign commerce. It places the administration of that jurisdiction in the hands of the present Federal Power Commission, which at the present time has a limited power of similar regulation."

The debate in both Houses on these sections were very limited. The only amendment offered in the debate was that of Senator Bailey which is found in the Congressional Record of June 7, 1935 at page 8859:

> MR. BAILEY. Mr. President, I send to the desk another amendment which I ask to have stated.
>
> The VICE PRESIDENT. The amendment will be stated.
>
> The Chief Clerk. On page 118, beginning with line 3, it is proposed to strike out all down to and including line 9, and to insert in lieu thereof the following:
>
> '(c) Electric energy shall be held to be transmitted in interstate commerce within the meaning of this part if transmitted from a State to any point outside thereof, or from or to any place in the United States to and from a foreign country, but only so far as such transmission takes place within the United States; but electric energy shall not be held to be transmitted in interstate commerce within the meaning of this part if transmitted between points within the same State but through any point outside thereof.'
>
> Mr. [illegible]. I have no objection to that amendment.
>
> The VICE PRESIDENT. The question is on agreeing to the amendment offered by the Senator from North Carolina.
>
> The amendment was agreed to."

After S. 2796 had passed the Senate with the Bailey amendment which included transmission to and from a foreign country it was referred to the House Committee on Interstate and Foreign Commerce. The action of the House Committee resulted in substitution for the Senate bill, as an amendment thereto, of an entirely new bill. This

new bill which was passed by both Houses contains the present Section 201(c) of the Federal Power Act. There was no statement before the House Committee in its report nor no statement in the debates stating why the change deleting transmission to and from a foreign country had been made. The action of the House Committee however does show that the jurisdiction of the Commission under Section 201(c) was to be restricted solely to transmission within the United States and not to and from a foreign country.

Francis J. Walsh.

FJW/E.
6/30/42

Section 202(e)

G.

Section 202(e)

A search on the legislative history of section 202(e) was conducted. However, we have not been able to locate the genesis or even any discussion in the House and Senate hearings or the Congressional Record on the appearance of section 202(e). The earlier drafts of section 202 did not contain section 202(e) or a similar provision elsewhere. Drafts of H.R. 5423 (attached) and S.1725 (containing identical language to H.R. 5423) dated February 6, 1935 show the earlier version of section 202 without the section 202(e) language. S.2796 (attached) subsequently replaced S.1725 and was introduced on May 13, 1935. In that draft the current language of 202(e) appears seemingly without any explanation. It should be noted, however, that the 202(e) language appeared at approximately the same time (May 1935) that the references to transmission to or from a foreign country was inexplicably dropped from section 201(c) (June 1935).

R. 5423
1725
(same language)
p. 6, 1935

1 transmission [illegible]
2 and over all facilities connected therewith as parts of a sys-
3 tem of power transmission situated in more than one State,
4 except facilities for the retail distribution of electric energy,
5 or for the production or transmission of energy solely for the
6 use of the producer or transmitter or the use of his tenants
7 on property owned or controlled by him and not for resale.
8 Every person who owns or operates facilities subject to the
9 jurisdiction of the Commission under this title and every
10 person who controls, directly or indirectly, any such per-
11 son, shall be subject to the provisions of this Act. The
12 term 'public utility' when used in this Act means any
13 person who owns or operates such facilities.

14 "(b) Electric energy shall be held to be transmitted
15 in interstate commerce if transmitted from a State to any
16 point outside thereof; or between points within the same
17 State but through any point outside thereof; or from or to
18 any place in the United States to or from a foreign country;
19 but only insofar as such transmission takes place within the
20 United States.

21 "SERVICE AND CHARGES; PREFERENCES

22 "SEC. 202. (a) It shall be the duty of every public
23 utility to furnish energy to, exchange energy with, and
24 transmit energy for any person upon reasonable request
25 therefor; and to furnish and maintain such services and

facilities as shall promote the safety, health, and convenience of all its customers, employees, and the public, and shall be in all respects adequate, efficient, and reasonable.

"(b) All rates and charges made, demanded, or received by any public utility for any service furnished or to be furnished, and all rules and regulations affecting or pertaining to such rates and charges, shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

"(c) No public utility shall, as to rates, charges, services, facilities, or in any other respect, make or grant any preference or advantage to any person or subject any person to any prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

"ESTABLISHMENT OF REGIONAL DISTRICTS; EXTENSION OF FACILITIES

"SEC. 203. (a) The Commission is empowered and directed to establish regional districts for the control of the production and transmission of electric energy, including interchange of energy, interconnection of facilities, and determination of the uses to be made of the facilities in such districts. Such control shall be designed to secure an abundant supply of electricity with the greatest possible economy

S. 2746 May 13,

such lands open to location, entry, or selection, for such purpose or purposes and under such restrictions as the Commission may determine, subject to and with a reservation of the right of the United States or its permittees or licensees to enter upon, occupy, and use any part or all of said lands necessary, in the judgment of the Commission, for the purposes of this Part, which right shall be expressly reserved in every patent issued for such lands; and no claim or right to compensation shall accrue from the occupation or use of any of said lands for said purposes. The United States or any licensee for any such lands hereunder may enter thereupon for the purposes of this Part, upon payment of any damages to crops, buildings, or other improvements caused thereby to the owner thereof, or upon giving a good and sufficient bond to the United States for the use and benefit of the owner to secure the payment of such damages as may be determined and fixed in an action brought upon the bond in a court of competent jurisdiction, said bond to be in the form prescribed by the Commission: *Provided*, That locations, entries, selections, or filings heretofore made for lands reserved as water-power sites, or in connection with water-power development, or electrical transmission may proceed to approval or patent under and subject to the limitations and conditions in this section contained.

SEC. 212. Sections 1 to 29, inclusive, of the Federal Water Power Act, as amended, shall constitute Part I of that Act, and sections 25 and 30 of such Act, as amended, are repealed: *Provided*, That nothing in that Act, as amended, shall be construed to repeal or amend the provisions of the amendment to the Federal Water Power Act approved March 3, 1921 (41 Stat. 1353), or the provisions of any other Act relating to national parks and national monuments.

SEC. 213. The Federal Water Power Act, as amended, is further amended by adding thereto the following parts:

"PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

"DECLARATION OF POLICY; APPLICATION OF PART; DEFINITIONS

"SECTION 201. (a) It is hereby declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this Part and the Part next following and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

"(b) The provisions of this Part shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction

except as specifically provided in this Part and the Part next following, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

"(c) For the purpose of this Part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

"(d) The term 'sale of electric energy at wholesale' when used in this Part means a sale of electric energy to any person for resale.

"(e) The term 'public utility' when used in this Part or in the Part next following means any person who owns or operates facilities subject to the jurisdiction of the Commission under this Part.

"(f) No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

"INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

"SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

"(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical

connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

"(c) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

"(d) During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided*, That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further*, That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

"(e) After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order 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. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions

the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

"DISPOSITION OF PROPERTY; CONSOLIDATIONS; PURCHASE OF SECURITIES

"SEC. 203. (a) No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

"(b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

"ISSUANCE OF SECURITIES; ASSUMPTION OF LIABILITIES

"SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorizes such issue or assumption of liability. The Commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (b) is reasonably necessary or appropriate for such purposes. The provisions of this section shall be effective six months after this Part takes effect.

"(b) The Commission, after opportunity for hearing, may grant any application under this section in whole or in part, and with such modifications and upon such terms and conditions as it may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate, and may by any such supplemental order modify the provisions of any

Section 202(f)

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U.S. Congress. Senate. Committee on Interstate and Foreign Commerce.
Amending section 202 of the Federal Power Act ... Rept... S. 1442. (Sen. Rept. 513, 83/1 Cong.)

S. Congress. Senate. Committee on Interstate and Foreign Commerce.

Calendar No. 514

83D CONGRESS, 1st Session | SENATE | REPORT No. 513

N. CAPITOL LIBRARY

AMENDING SECTION 202 OF THE FEDERAL POWER ACT, WITH RESPECT TO THE JURISDICTION OF THE FEDERAL POWER COMMISSION OVER PERSONS AND FACILITIES ENGAGED IN THE TRANSMISSION OR SALE OF ELECTRIC ENERGY TO FOREIGN COUNTRIES

JULY 10 (legislative day, JULY 6), 1953.—Ordered to be printed

Mr. POTTER, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

To accompany S. 1442]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1442) to amend section 202 (e) of the Federal Power Act, with respect to the jurisdiction of the Federal Power Commission over persons and facilities engaged in the transmission or sale of electric energy to foreign countries, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment approved by the committee is as follows:

Strike out all after the enacting clause and insert the following:

That section 202 of part II of the Federal Power Act is hereby amended by adding at the end thereof the following subsection:

"(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202 (e)."

PURPOSE

The purpose of S. 1442 is to clarify the jurisdiction of the Federal Power Commission with respect to foreign commerce in electric energy. The bill provides explicitly that owning and operating facilities for the transmission of electric energy in foreign commerce does not make

one a "public utility" subject to the general regulations of the Federal Power Commission. This is accomplished by adding at the end of section 202 of part II of the Federal Power Act a subsection which would confine supervision of foreign commerce in electric energy by the Federal Power Commission to section 202 (e) of that act, thereby specifically excluding such activity from regulation under any other provision of the act, and would affirmatively delegate to the States within which any such facilities are located the power to regulate electric sales and exportations of electric energy to adjoining foreign countries.

JUSTIFICATION

S. 1442 was introduced by Senator Potter of Michigan, primarily to remove a barrier to pooling hydroelectric-power resources of Ontario and the steam-electric systems in Michigan. It would apply, however, to all foreign commerce in electric energy. The clarification of the jurisdiction of the Federal Power Commission is deemed advisable because the Federal Power Commission asserts general jurisdiction over anyone exporting electric energy, although the United States Circuit Court of Appeals for the District of Columbia decided in the *Border Pipeline* case (171 Fed. 2d 149), under similar provisions of the Natural Gas Act, that Congress did not intend to give the Commission jurisdiction over utilities engaged in foreign commerce by export of natural gas.

The Federal Power Act (pt. II, sec. 202 (e)) provides that no person shall transmit electric energy from the United States to a foreign country without first having secured an order from the Federal Power Commission. S. 1442 would leave that control in full force.

The rest of part II of the act is devoted to interstate commerce. The act subjects to regulation by the Commission any person who owns or operates facilities for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce. Section 201 (c) of the act defines transmission in interstate commerce by providing that—

> For the purpose of this part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

Despite this language of section 201 (c), and despite the decision in the Border Pipeline case, referred to above, rule 03.27 of the Federal Power Commission, adopted prior to the Border Pipeline decision but still in effect, declares that—

> The ownership or operation of facilities for the transmission of electric energy from a point within a State to a foreign country makes one a "public utility" under the Federal Power Act, even though the portion of such facilities in this country is located wholly within such State.

S. 1442 would instead give effect to the original intent of the Congress by providing explicitly that owning or operating facilities for foreign commerce in electric energy does not make one a public utility under the Federal Power Act.

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DELEGATION OF REGULATORY POWERS TO THE STATES

S. 1442 affirmatively provides that the State within which the facilities for the transmission or sale at wholesale of electric energy are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the powers of the Federal Power Commission under or relating to section 202 (e). A question was raised at the committee's hearing on this bill by a witness for the Federal Power Commission as to whether the Congress can by law authorize such State regulation of the transmission of electric energy across an international boundary. The committee has received a memorandum from the American Law Division of the Legislative Reference Service and letters from the Federal Power Commission and the attorneys for the Detroit Edison Co. From this advice the committee concludes that Congress may properly circumscribe the exercise of its regulatory powers if it so provides by legislation in that this is a matter which does not require uniformity and where State regulation should not constitute an undue burden on interstate or foreign commerce. The committee is, therefore, of the opinion that the proposed delegation of regulatory authority to the States is proper and constitutional. The opinions of the Legislative Reference Service, the Federal Power Commission, and the attorneys for the Detroit Edison Co. are set forth in the appendix to this report.

The committee finds that the Detroit Edison Co. is a public utility operating wholly within the State of Michigan and, as such, is regulated by the public-service commission of that State. A witness for the Michigan Public Service Commission testified that its regulation adequately covers any foreign commerce of this company. If at any time in the future this company should engage in the interstate transmission of electric energy, the company would become subject to regulation under the Federal Power Act. Accordingly, there is not now a gap in the regulation of this company as a public utility, nor will the proposed amendment to section 202 of part II create such a gap as regards this company or any other company under the same conditions.

POSITION OF INTERESTED PARTIES

The proposed legislation is supported by the Detroit Edison Co. which, as stated above, proposes to make a physical connection between their steam-powered system and the hydroelectric system in Ontario. Witnesses for the company testified that this connection would involve an expense of more than $3 million and would be of considerable technical advantage to both systems. The desirability of an interconnection between the United States and Canada at Detroit has been recognized for many years by all concerned. Canada, with an abundance of water power, and the United States, with a lower cost steam generation than Canada, make an ideal combination to serve cheaper power, especially in the great industrial area of southern Michigan. The company's witness explained that the company would not make the connection, however, if it would subject the company's entire system within the State of Michigan to the general jurisdiction of the Federal Power Commission, inasmuch as they believe that such submission would subject the company to greater

expense and disadvantage than the advantages which would be derived from making the connection with the Ontario system.

The Federal Power Commission asserts that its jurisdiction should be extended and not contracted, as provided in S. 1442, and that the "waiver of Federal regulation should not be the price of adopting superior methods of operating through international powerpooling." A witness for the Commission testified that the Commission did not consider the decision in the Border Pipeline case, discussed above, to be good law and considered it contrary to the original intent of Congress. The witness, however, failed to convince the committee of either of these points or that the public interest would not be served best by authorizing the States to regulate electric energy moving across its adjacent international boundary.

The State Department is opposed to S. 1442 on the ground that it would deprive that Department of the opportunity of adequately reviewing new arrangements for the transmission of electric energy to foreign countries, which the Department asserts is necessary to maintain "satisfactory foreign relations." The committee is of the [illegible] that the powers vested in the Commission by section 202 (e) of the act will afford adequate powers to protect these interests.

Your committee believes that the enactment of this legislation will be in the public interest.

CHANGES IN EXISTING LAW

In compliance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted enclosed in black brackets; new matter is printed in italics):

FEDERAL POWER ACT

PART II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

* * * * * * *

INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSIONS TO FOREIGN COUNTRIES

* * * * * * *

SEC. 202. (a) * * *

* * * * * * *

(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transmission insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202 (e).

FEDERAL POWER COMMISSION,
Washington, July 6, 1953.

Re S. 1442, 83d Congress

Senator CHARLES E. POTTER,
United States Senate, Washington, D. C.

DEAR SENATOR POTTER: In response to your inquiry, we have had our legal staff study the question of whether the amendment of the Federal Power Act proposed in S. 1442 to add a new section at the end of section 202 would "create a gap or no man's land" where a public utility would be subject to no govern-

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DERAL POWER COMMISSION,
Washington, July 6, 1953.

our inquiry, we have had our legal
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mental regulation by reason of its transmission in foreign commerce and sale at wholesale of electric energy received by it from another company.

We are advised that, in the absence of a specific holding by the Supreme Court of the United States, a categorical answer to your inquiry could not be given with any assurance. Foreign commerce, of course, even to a greater extent than domestic commerce, must be within the realm of governmental authority delegated by the several States to the Federal Government under the Constitution. However, your attention is invited to the holding of the Supreme Court in *Bob-Lo Excursion Company* v. *Michigan* (333 U. S. 28 (1948)). In that case the excursion company transported patrons between Detroit and an amusement park located on an island in Canadian waters. It was convicted of violating the Michigan Civil Rights Act by refusing passage to a Negro, and the conviction was upheld by the Supreme Court.

There have been, of course, many Supreme Court decisions in which attempts to assert State jurisdiction over phases of interstate commerce have not been sustained, and the same reasoning would be applicable in the case of foreign commerce as proposed in S. 1442. The assertion of State control over insurance, for example, was held by the court in *Prudential Insurance Company* v. *Benjamin* (328 U. S. 1108), but in other cases the court has held to the contrary.

Under these circumstances, if, as a matter of policy, Congress should desire to attempt the delegation of jurisdiction to the States as proposed in S. 1442, it would appear desirable to use the language which is carried in that bill to indicate the intention of Congress to make the delegation effective. If it should later appear that the delegation is not constitutional, the determination would have to be made by the Supreme Court.

Sincerely yours,

JEROME K. KUYKENDALL, *Chairman.*

LIBRARY OF CONGRESS,
LEGISLATIVE REFERENCE SERVICE,
AMERICAN LAW DIVISION,
June 29, 1953.

To: Hon. Charles E. Potter.
Subject: A proposed amendment to the Federal Power Act.

Your letter of June 18, 1953, refers to "an important constitutional question" raised in a hearing on your bill S. 1442 (83d Cong.), held by the Senate Interstate and Foreign Commerce Committee June 11, 1953. You have requested an examination of the applicable decisions of the Federal courts and an opinion as to whether your redrafted bill constitutes a valid delegation of jurisdiction to the States to regulate the aspect of foreign commerce as proposed in the draft. You have requested a reply by June 30, 1953.

We are not certain that we understand your reference to the Border Pipe Line Co. case. We assume that the Detroit Edison Co. believes the same situation applies to it that applied in that case, while the Commission takes the contrary position.

Border Pipe Line Co. v. *Federal Power Commission* ((1948) 171 F. 2d 149) involved a belated attempt of the Commission to assert what was determined to be nonexistent regulatory authority to require the company to obtain a certificate of public convenience in order to sell gas, at its terminus near the Rio Grande to an industrial consumer which transported the gas into Mexico for use there. The company had an order, for the exportation of gas, issued years earlier by the Commission under section 3 of the Natural Gas Act of June 21, 1938 (U. S. C. 15:717 b).

The case was decided strictly on the basis of statutory construction. The court noted that interstate and foreign commerce have been distinct ideas ever since they appeared as two concepts in the Constitution; that interstate commerce does not include foreign commerce unless Congress by definition, for the purpose of the particular statute, includes them both in the single expression. Congress has frequently done that, said the court. Aside from the export feature of the case, the company's operation was wholly local. Tracing the legislative history of the law, the court found that Congress had stricken from the legislation, as first introduced, a foreign-commerce provision. Said the court:

* * * Congress uses expressions of established meaning. It takes action of recognized implications; e. g., it strikes from a pending bill a clause of clear import. But the administrative body finds a sufficient penumbra of meaning to justify a claim to more authority than appears upon the face of its grant. It asserts the

extended authority and thus forces the issue upon the courts. It asks the courts to divine an intent on the part of Congress and then to decree that the words of the statute spell that intent. Of course, if there be a plain intent, or purpose, or objective, the statute must be deemed to be in pursuit of it, and the courts will enforce that view. But where the relatively plain language and congressional conduct of accepted implication point one way and the contrary appears only through strained and complex assumptions and deductions, questions which the administrators may have as to the full intent and desirable scope of the congressional action ought to be addressed to the Congress. The prime responsibility for making statutory meaning clear is on the Congress. It is bad from the viewpoint of sound government for the courts to twist strange results out of otherwise understood expressions of the legislature. If, perchance, the judiciary does not reach the objective at which the legislature aimed, there is a most undesirable confusion of functions of the two branches. Such practice by the judiciary is also bad from the viewpoint of the law generally. Words of established meaning are given an unnatural significance, and thereafter whenever they appear the law is uncertain. * * * If an administrative agency thinks that the real intent and purpose of a statute is broader than or different from its terms, it need only ask Congress for an enlargement or clarification. We are no longer in an age when such inquiry is impractical. The wise and sound course for the courts is to give to the terms of a statute their plain meaning, so long as the resultant effect is sensible and not in conflict with a discernable purpose (pp. 152–153).

The above case stems, of course, from a different provision of law (U. S. C. 15: 717 et seq.), and the Detroit Edison Co. apparently is reluctant to rely on that decision, though it argues that the same limitation applies with respect to the power of the Commission relating to the regulation of electric-utility companies engaged in interstate or foreign commerce (U. S. C. 16: 824 et seq.). In line with the decision, it seeks clarifying legislation. We do not think you intend that we attempt to resolve the dispute on the basis of present statutory and case law. Accordingly we limit our presentation to authorities illuminating your precise question. We regret that pressure of previously assigned congressional work will not permit a more comprehensive study and analysis.

1. *The draft of the bill.*—The pertinent part of the draft reads:

"Section 202 of part II of the Federal Power Act is hereby amended by adding at the end thereof the following subsection:

"(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202 (e)."

Section 202 (e) (U. S. C. 16: 824a (e)) requires an order of the Federal Power Commission, similar to that in the Border Pipe Line case, supra, for transmission of electric energy from the United States to a foreign country. The question is whether or not Congress can by law authorize State regulation of the transmission of electric energy across the international boundary, as provided in the draft, except for the matter of obtaining an order. We believe that it can in the absence of a showing that the national public interest requires uniformity of regulation. We base this opinion on a combination of principles stated in decisions involving both interstate and foreign commerce.

2. *The commerce clause.*—Article I, section 8, clause 3, of the Constitution of the United States grants to Congress the power to regulate commerce with foreign nations and among the several States. This clause has been held to be a direct limitation on the power of the States even in the absence of action by Congress preempting regulation (*Richfield Oil Corp.* v. *State Board of Equalization* (1946), 329 U. S. 69, 75). The words themselves are said to forbid undue interference by the States through taxation (*Joseph* v. *Carter & Weekes Stevedoring Co.* (1947), 330 U. S. 422, 427, 433–434).

In enacting legislation, Congress may circumscribe its own regulation of commerce and occupy only a limited field. An intent to supersede the exercise by a State of its police power as to matters not covered by the Federal legislation is not to be implied unless the Federal statute, fairly interpreted, is in actual conflict with the State law (*Townsend* v. *Yeomans, Attorney General of Georgia,*

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et al. (1937), 301 U. S. 441, 454, citing other cases). However, not even an internal regulation by a State will be allowed if it directly burdens interstate commerce (*Freeman* v. *Hewit* (1946), 329 U. S. 249, 252–259). (See also *Brennan* v. *Titusville* (1894), 153 U. S. 289.) Ordinarily action by Congress is required to place matters relating to interstate or foreign commerce directly within the jurisdiction of a State. (See *Leisy* v. *Hardin* (1890), 135 U. S. 100, 108–109.)

3. *State regulation in the absence of Federal regulation.*—The precise boundary between delegated national, and State incidental, powers over commerce cannot be delineated by a single abstract definition (*U. S.* v. *South-Eastern Underwriters Assoc.* (1944), 322 U. S. 533, 550). State regulation of its internal affairs ordinarily is permissible though such regulation may impose some incidental burden on interstate commerce (*Giffrin* v. *Beeves, Commissioner of Revenue of Kentucky, et al.* (1939), 308 U. S. 132, 141). Legitimate local police regulation of interstate commerce, therefore, may be taken by the State until Congress exercises its exclusive constitutional power (*Sligh* v. *Kirkwood* (1915), 237 U. S. 52, 61). States cannot, however, by legislation place undue burdens upon commerce with foreign nations or among the several States (*Sherlock* v. *Alling* (1876), 93 U. S. 99; *Brown* v. *Houston* (1885), 114 U. S. 622; *Smith* v. *Alabama* (1888), 124 U. S. 465; *Standard Oil Co.* v. *Graves* (1919), 249 U. S. 389). A State must not go beyond the bounds of its legitimate authority (*Lemke* v. *Farmers Grain Co.* (1922), 258 U. S. 50), for the Constitution forbids discrimination whether forthright or ingenious (*Best & Co.* v. *Maxwell* (1940), 311 U. S. 454).

Ordinarily a State cannot regulate rates charged by a local electrical corporation for current sold to a foreign corporation and delivered at the State boundary, although rates to the local consumers may be affected by the inadequacy of the contract rate under which the current is being delivered to the foreign corporations (*Public Utilities Commission* v. *Attleboro Steam & E. Co.* (1927), 273 U. S. 83, 90).

As indicated earlier, State legislation affecting interstate or foreign commerce is permissible in the absence of Federal legislation, unless the subject is one demanding uniformity of regulation (*Kelly* v. *Washington ex rel. Foss Co.* (1937), 302 U. S. 1, 9–10). If it unduly burdens interstate commerce in matters where uniformity is necessary, in the constitutional sense of usefulness in accomplishing a permitted purpose, and where uniformity is essential for the functioning of commerce, a State may not interpose its regulation (*Morgan* v. *Virginia* (1946), 328 U. S. 373, 377, 380). In matters affecting interstate and foreign commerce, where the national importance is imminent and direct, silence of Congress does not authorize action by the States (*Sanitary District of Chicago* v. *U. S.* (1925), 266 U. S. 405, 426).

4. *State regulation under Federal statutory authority.*—As we have already indicated, the commerce clause does not completely exclude States from all legislative relation to foreign and interstate commerce. The incidence of the particular State enactment must determine whether it has transgressed the power left, or granted by statute, to the States to protect their special interests. (See *Union Brokerage Co.* v. *Jensen* (1944), 322 U. S. 202.) Congress may permit, and Congress has permitted, the States to regulate matters of interstate commerce in a manner which otherwise would not be permissible (*Southern Pacific Co.* v. *Arizona ex rel. Sullivan* (1945), 325 U. S. 761, 769), and in specific instances impose burdens upon commerce (*International Shoe Co.* v. *Washington* (1945), 326 U. S. 310, 315).

Despite theoretical inconsistency with the rationale of the commerce clause as a limitation in its own right, Congress may redefine the areas in which State or national interests respectively predominate as to matters affecting interstate commerce (*California* v. *Zook* (1949), 336 U. S. 725, 728). In line with the foregoing, it has been held that the national public interest has not required uniformity of regulation of the interstate business of insurance. Accordingly, the McCarran Act (58 Stat. 33; U. S. C. 15: 1011–1015), declaring the continued regulation and taxation of the insurance industry by the several States to be in the public interest, has been sustained (*Prudential Ins. Co.* v. *Benjamin* (1946), 328 U. S. 408; *Robertson* v. *California* (1946), 328 U. S. 440).

5. *Conclusion.*—The foregoing indicates, we believe, that Congress can circumscribe the exercise of its regulatory power if it so desires and leave regulation to the State. This assumes, of course, that the matter is one which does not require uniformity of regulation. It further assumes that State regulation as applied will not unduly burden commerce so as to offend the commerce clause directly, or against article I, section 10, clause 2 of the Constitution.

The draft, if enacted, would not bind future Congresses and would therefore be subject to such amendatory action as might thereafter be taken by Congress either by circumscribing State regulation or by granting regulatory powers to the Federal Power Commission.

FRANK B. HORNE.

SULLIVAN & CROMWELL,
New York, N. Y., June 19, 1953.

Hon. CHARLES W. TOBEY,
Chairman, Committee on Interstate and Foreign Commerce of the Senate of the United States of America, Washington, D. C.

MY DEAR SENATOR: In accord with the thought expressed by Senator Potter at the recent hearing before your committee on S. 1442, alternate language for the proposed legislation has been worked out with counsel for the Federal Power Commission. A copy has been furnished for the record of the committee, and another copy is enclosed.

The substance of the new language is, I believe, the same as that of the original bill. The reference to State regulation has, however, been stated in the affirmative rather than in the negative (as also suggested at the hearing), and I have been asked to express my opinion as to the constitutionality of that provision.

In my opinion, an act adopted by Congress in the enclosed form would be valid under the Constitution.

As early as 1789, by the act of August 7, chapter 9, section 4 (1 Stat. 53–4), it was provided that all pilots in the harbors and ports of the United States should continue to be regulated by the States until further action by Congress. The propriety of that affirmative permission for State regulation of that foreign commerce was recognized by the Supreme Court in 1851 in the famous case of *Cooley* v. *Board of Wardens* (12 How. 298).

Time does not permit exhaustive exposition of the consistent application of that doctrine down to the present day, but it has been illustrated by recent cases with which your committee is familiar.

In 1937 the Supreme Court, in *Kelly* v. *Washington* (302 U. S. 1), upheld the constitutionality of statutes of the State of Washington prescribing standards of seaworthiness of tugboats. The fact that these standards applied to some tugs engaged in foreign commerce was deemed irrelevant.

In 1945 the Supreme Court, in *Prudential Insurance Co.* v. *Benjamin* (328 U. S. 408), upheld the act of Congress declaring that the business of insurance and every person engaged therein shall be subject to the laws of the several States relating to the regulation or taxation of such business.

In 1947 the Supreme Court, in *Bob-Lo Excursion Co.* v. *Michigan* (333 U. S. 28), upheld a State statute prohibiting discrimination against passengers on an excursion boat fully engaged in foreign commerce.

In 1951, in *Buck* v. *California* (343 U. S. 99), the Supreme Court held valid a local ordinance requiring a permit for taxicabs operating within the limits of a city in California, although the operator was engaged in foreign commerce, transporting passengers to and from Mexico.

Also in 1951, the Supreme Court held, in *Panhandle Eastern Pipeline Co.* v. *Michigan Public Service Commission* (341 U. S. 329), that a State could require a natural-gas company engaged in interstate commerce to obtain permission of a State commission for direct sales of gas to industrial customers within the State. The same national policy is reflected in the Federal Power Act itself, which has left entirely to the States the regulation of foreign commerce in electric energy imported from a foreign country. That point was noted at the hearing on this bill and admitted by counsel for the Commission.

On April 6, 1953, in cases Nos. 205 and 206 (not yet reported), cited as *U. S.* v. *Public Utilities Commission* and currently known as the California Electric Power Co. case, the Supreme Court of the United States decided that certain sales of electric energy made in California, partly for consumption and partly for resale in a neighboring State, were subject to regulation under the Federal Power Act although partially generated by hydroelectric projects. The decision interpreted the statute, which would not have been necessary if the Court had thought that Congress had no power to allow a State to regulate such commerce.

The Federal Power Act itself, in the first section of part II, here concerned, provided that it should not apply to any other sale of electric energy (i. e., other than one at wholesale in interstate commerce) or deprive a State or State commission of its lawful authority then exercised over the exportation of hydroelectric energy.

The *Border Pipeline* case (171 Fed. 2d 149), decided by the United States Court of Appeals for the District of Columbia in 1948, held that provisions of the Natural Gas Act (almost identical with those of the Federal Power Act) did exclude foreign commerce in natural gas from Federal regulation under that act, and that the act was valid. Under that act, and under this bill, a utility left to State regulation would be engaged otherwise in this country solely in intrastate commerce, within the confines of a single State.

LLIVAN & CROMWELL,
York, N. Y., June 19, 1953.

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I respectfully submit that the history of regulation of foreign commerce and of legislation and judicial decision concerning it, to which I refer, supports the opinion I have expressed.

Respectfully yours,

PAUL W. MCQUILLEN.

Enclosure.

Suggested substitute for S. 1442 and H. R. 3898:

"Section 202 of part II of the Federal Power Act is hereby amended by adding at the end thereof the following additional subsection:

"'(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202 (e).'"

STATE DEPARTMENT,
Washington, D. C., June 11, 1953.

Hon. CHARLES W. TOBEY,
Chairman, Committee on Interstate and Foreign Commerce,
United States Senate.

MY DEAR SENATOR TOBEY: This is in further answer to your letter of March 26, 1953, transmitting for the comment of the Department of State a copy of S. 1442, to amend section 202 (e) of the Federal Power Act, with respect to the jurisdiction of the Federal Power Commission over persons and facilities engaged in the transmission or sale of electric energy to foreign countries.

The Department of State considers that it should have an opportunity to review any new arrangements which may be made from time to time for the transmission of electric energy between this country and adjacent countries in order to gain assurances thereby that the circumstances and prospective associated developments are favorable to the maintenance of satisfactory foreign relations with these countries. The consultations with this Department required by Executive Order 8202 of 1939 have been useful in this connection (C. F. R. Supp. 1939, title 3, p. 202).

The most rational arrangements respecting electric-energy distribution throughout regions which include portions of adjacent countries probably can result only if a Federal agency such as the Federal Power Commission continues to exercise coordinating authority over United States exports and imports of electric energy. The provisions of S. 1442 contained in lines 6 through 12 of page 2 appear to eliminate Federal licensing control over exports of electric energy whenever a State exercises authority over such exports. It would seem undesirable to enact legislation which would cause confusion respecting Federal licensing control over and Federal coordination of exports and imports of electric energy or which would unduly hamper such Federal licensing control and coordination.

The Department of State feels that because of the above considerations enactment of S. 1442 would not be in the public interest.

The Department is furnishing to the Honorable Charles A. Wolverton, chairman, House of Representatives Committee on Interstate and Foreign Commerce, statements of views concerning H. R. 3898 which are the same as those given above concerning S. 1442.

The Department has been informed by the Bureau of the Budget that there is no objection to the submission of this report.

Sincerely yours,

THRUSTON B. MORTON,
Assistant Secretary
(For the Secretary of State).

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goals or quantities would render ineffective the purpose of the bill. Even if that defect were corrected by amendment some provision would have to be made for stockpiling or controlling distribution of production of minerals no longer considered to be in short supply, otherwise the unbalanced supply against demand would certainly render continued production of such minerals economically unsound with respect to the producers.

H.R. 2823 contains no authorization for the appropriation of funds and there is no existing legislation which would permit use of any funds authorized by other legislation in carrying out the purpose of this bill beyond a limited application of funds appropriated pursuant to the Stock Piling Act (50 U.S.C. 98 et seq.).

It is the view of this Agency that the authorities in title III of the Defense Production Act of 1950, as amended, provide the fundamental requirements necessary to insure, as much as it is possible to do so under the circumstances, adequate supplies of strategic materials. Even if H. R. 2823 were amended in accordance with the above observations, it still would fall far short of the Defense Production Act in providing the authority necessary to procure the means with which to meet the tests of the uncertain future. Greater authority than is contained in the act may not be needed, but less authority should not be considered. Concurrent authority under the act and this proposed legislation would be misleading to the mining industry, confusing to administer, uneconomical to all, and wholly unnecessary.

In view of the foregoing, this Agency is constrained to recommend against enactment of H.R. 2823 in anticipation of an extension of title III of the Defense Production Act of 1950, as amended.

In view of the urgency of your request, it has not been possible to obtain the customary budget clearance prior to submission of this report. A copy, however, is being sent this date to the Director of the Bureau of the Budget.

Respectfully submitted.

TOM LYON
(For Howard I. Young, Deputy Administrator).

The Committee on Interior and Insular Affairs recommends the enactment of H.R. 2824 as reported.

FEDERAL POWER COMMISSION—ELECTRIC ENERGY—TRANSMISSION TO FOREIGN COUNTRIES—JURISDICTION

For text of Act see p. 505

Senate Report No. 513, July 10, 1953 [To accompany S. 1442]

House Report No. 978, July 27, 1953 [To accompany S. 1442]

The House Report repeats in substance the Senate Report.

House Report No. 978

THE Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1442) to amend section 202 of the Federal Power Act, with respect to the jurisdiction of the Federal Power Commission over persons and facilities engaged in the transmission or sale of electric energy to foreign countries, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of this legislation is to clarify the jurisdiction of the Federal Power Commission over companies which may be transmitting electric energy from the United States to a foreign country.

This purpose is accomplished by adding to section 202 of the Federal Power Act a new subsection (f) providing that the ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is either generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into another State, shall not make a person a public utility subject to regulation as such under other provisions of part II of the Natural Gas Act. At the same time, the bill in no way restricts, but indeed affirms, the right of the Federal Power Commission, as provided by section 202 (e) of the existing law, to control the export of electric energy.

Part II of the Federal Power Act was enacted in 1935 to provide for Federal regulation of transmission of electric energy in interstate commerce. The act, however, does not contain specific language covering the transmission of electric energy to a foreign country, other than a provision in section 202 (e) that such transmission must have received the prior authorization of the Federal Power Commission.

The Federal Power Act does contain, in section 201(c), a definition of interstate commerce which reads as follows:

> (c) For the purpose of this part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

Quite similar provisions defining "interstate commerce," covering the regulation of transportation of natural gas in interstate commerce, and requiring prior authorization for the export of natural gas, are contained in the Natural Gas Act, enacted in 1938.

Under both acts, the Federal Power Commission, to quote from the Commission's own statement, has "heretofore interpreted the exportation and transportation as bringing the exporters and transporters within the class of companies otherwise subject to the two statutes." With this interpretation as it pertained to the Natural Gas Act, however, the Court of Appeals for the District of Columbia has disagreed, Border Pipe Line Co. v. Federal Power Commission (1948), 171 F.2d 149. The Commission did not appeal this decision.

Notwithstanding this decision under the Natural Gas Act, the Commission has continued in effect a rule under the Federal Power Act, which it adopted prior to such decision. Rule 2.3 declares that—

> The ownership or operation of facilities for the transmission of electric energy from a point within a State to a foreign country makes one a "public utility" under the Federal Power Act, even though the portion of such facilities in this country is located wholly within such State.

The continued effectiveness of this rule has operated as a barrier against the pooling of hydroelectric power resources of Ontario with steam electric systems in Michigan, according to witnesses at the subcommittee hearings. Representatives of the Detroit Edison Co. testified as to the savings to consumers which would result from a combination of water power generation in Canada and lower cost steam generation in Michigan. They stated, however, that the company would not make this connection if the company's

entire system in Michigan thereby became subject to the general jurisdiction of the Federal Power Commission, as the ensuing expense would be greater than the advantages accruing from such connection.

A subcommittee conducted hearings on this bill, and a companion measure, H.R. 3898, on July 14 and 21. On the earlier date, the Federal Power Commission opposed the measure as taking the Detroit Edison out from under the jurisdiction it would have were the connection to be made. The Commission was asked, in the light of the Border Pipe Line case, just where the Commission would derive such jurisdiction under the act. The Commission requested time to restudy its position on the proposed legislation, inasmuch as its Chairman indicated this jurisdictional question had not been considered.

On the later date, the Commission expressed itself in agreement with the proponents of the bill that the court's decision and rule 2.3 were inconsistent, and stated that the Commission promptly would rescind the rule. The Commission stated that this action would eliminate any need for the legislation, but it would not oppose S. 1442 as it was before the House committee, or H.R. 3898, if amended to conform to the Senate bill as to preservation of Federal control over the export of electric energy.

Your committee is pleased to note the agreement that now exists on all sides as to the correct interpretation of the statute. However, the rule, now being rescinded, was kept effective for more than 4 years by the Federal Power Commission after the court had rendered its decision as to the incorrect interpretation the Commission had been making. We are cognizant that changing membership of Federal commissions oftimes results in changes in the promulgation, rescission, or repromulgation of rules. We believe, therefore, that it is desirable to have the policy expressed in statutory language so clear that different administrative interpretations cannot be given.

There is an additional feature to the bill.

The intent in enacting part II of the Federal Power Act was to complement, and not to supplant, State regulatory authority over electric energy. As had been emphasized by a Supreme Court decision in the Attleboro case, the State authority could not regulate the rate charged for interstate transmission of electric energy. The Federal statute, accordingly, was passed to cover this "gap" in regulatory authority over public utilities.

We are of opinion that the original intent of part II of the Federal Power Act did not bring under the jurisdiction of the Federal Power Commission for general regulatory purposes those companies engaging in the transmission of electric energy in foreign commerce, and not otherwise under the Commission jurisdiction. This opinion is supported by the Border Pipe Line case above referred to.

We do not, in recommending the passage of this bill, intend to create or to perpetuate any "gap" where a public utility would be subject to no governmental regulation by reason of its transmission or sale in foreign commerce of electric energy generated within a State, or its sale within a State of electric energy generated in a foreign country. For that reason language is included in the bill to the effect that the State within which the facilities are located may regulate such transactions.

Testimony at the hearings by representatives of Detroit Edison Co. and of the Michigan Public Service Commission is that Detroit Edison and the

utilities with which it is connected in Michigan operate wholly within the State and are fully regulated by the State. The chairman of the Detroit Edison Co. testified that any contractual or other arrangement for the proposed Ontario interchanges would be subject to approval by the Michigan commission, and added—

> In short, there is no lack of regulation which need be supplied by a Federal commission, nor, if this bill becomes law, would there be any gap in the regulation.

Your committee believes that the enactment of this legislation will be in the public interest, and recommends that the bill do pass.

STATEMENT OF JEROME K. KUYKENDALL, CHAIRMAN, FEDERAL POWER COMMISSION, ON H. R. 3898, BEFORE HOUSE COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE

Mr. Chairman and members of the committee, at the conclusion of the hearing, a week ago, on H.R. 3898, I was asked to return today and give the views of the FPC on the effect of the decision of the United States Court of Appeals for the District of Columbia rendered in 1948 in the Border Pipe Line case (171 F.2d 149). This matter was not dealt with in my statement of last week.

The Border Pipe Line decision of the Court of Appeals for the District of Columbia Circuit arose under section 7 (c) of the Natural Gas Act and is relevant to H.R. 3898 for the reason that the exportation of electric energy from the United States to a foreign country is treated in section 202(e) of the Federal Power Act in much the same manner as the transportation of natural gas from the United States to a foreign country under section 3 of the Natural Gas Act. Under both acts the Commission has heretofore interpreted the exportation and transportation as bringing the exporters and transporters within the class of companies otherwise subject to the two statutes. The court disagreed with this interpretation.

This case is the only judicial authority on the point. It is regrettable that the court of last resort has not passed on this question. However, a majority of this Commission finds itself in agreement with the contention of representatives of Detroit Edison that the Border Pipe Line decision is inconsistent with the Commission's rule 2.3 and feel that, in these circumstances, said rule should be repealed.

In view of this situation the Commission will promptly rescind rule 2.3 which is as follows:

"The ownership or operation of facilities for the transmission of electric energy from a point within a State to a foreign country makes one a 'public utility' under the Federal Power Act, even though the portion of such facilities in this country is located wholly within such State," or amend it so as to remove the inconsistency of it with the Border Pipe Line decision.

This action by the Federal Power Commission will eliminate any need for the passage of H.R. 3898. The Commission notes that the companion measure to H.R. 3898, which is S. 1442, has been amended so as clearly to preserve in the Federal Government the right to control the export of electric energy from this country. This amendment has removed what the Commission believed to be one of the most objectionable features of this bill. Therefore, in view of the Border Pipe Line case, and the amendment to S. 1442, the Federal Power Commission will not oppose the enactment of S. 1442 as amended or the enactment of H.R. 3898 if it is similarly amended.

The Federal Power Commission believes, as it has stated before, that the interconnection which Detroit Edison proposes to make with its neighboring electric utility in Canada is in the public interest. Likewise, this Commission believes that similar interconnections should be made

with electric utilities in the adjacent State to the south of Detroit Edison's service area.

Mr. Cisler, now president of Detroit Edison, was of this same opinion in 1947 when he testified before this committee in part as follows:

"On map B, I have indicated the possible interstate and intercounty ties which the Detroit Edison Co. might make. If you will examine this map, you will see that a transmission tie from the end of the present transmission line to the south across the Michigan-Ohio line to systems in that State could be made and would certainly be in the interest of both those in Michigan and Ohio.

"It might be said by some who would oppose a change in the provision of the act that if we take advantage of all of the interstate ties during peacetime, no such possibilities will exist during wartime and, therefore, there is greater margin of reserve security if additional ties are not made.

"To me this is false reasoning and cannot stand up under the light of logical examination. We ought to build the margin of reserve for national security and preparedness right into the systems themselves, in the powerplants, the transmission lines, and the transformation and switching facilities. The whole body should be made strong and not just segregated isolated parts as some have proposed."

As former chairman of the Public Service Commission of the State of Washington, I have observed the extensive benefits which can come from power pooling of generating and transmission facilities. In the great Northwest power pool which operates in the States of Washington, Oregon, Idaho, Montana, and Utah, a large number of privately owned generating plants are interconnected with municipal, State, and Federal powerplants and power is drawn from the cheapest available source in meeting the demands of the customers served by those who are members of the pool. Because of the enormous growth in the use of electric energy in the Pacific Northwest, this power pooling has been essential in order to take advantage of the diversity of rainfall in the various sections of the area, and we have found the arrangements not only to be workable, notwithstanding the commingling of publicly owned and privately owned plants, but the general public has been immeasurably benefited by these arrangements. It would certainly be in the public interest for the Detroit Edison Co. to make interconnections both with Canada and with other electric utilities in the United States, and to pass on to its customers any savings and improvements in service which may result therefrom.

Commissioners Draper and Smith concur with me in the foregoing statement. Commissioner Doty recommends the enactment of H.R. 3898 if it is amended to correspond with S. 1442 as recommended by the Senate Committee on Interstate and Foreign Commerce in Senate Report No. 513, 83d Congress, 1st session, and passed by the Senate on July 15. He does not believe that the Border Pipe Line case (171 F.2d 149) is applicable to this situation, but, in his opinion, the objective sought to be accomplished by this legislation is in the public interest.

[S. 1442, 83d Cong., 1st sess.]

AN ACT To amend section 202 of the Federal Power Act, with respect to the jurisdiction of the Federal Power Commission over persons and facilities engaged in the transmission or sale of electric energy to foreign countries

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Section 202 of part II of the Federal Power Act is hereby amended by adding at the end thereof the following subsection:

"(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not

thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202(e)."

Passed the Senate July 15 (legislative day, July 6), 1953:

Attest:

J. MARK TRICE, *Secretary.*

ADDITIONAL VIEWS

I do not dissent from the action proposed by the committee. Inasmuch as the Federal Power Commission has stated that it would revoke its rule giving it jurisdiction over the Detroit Edison Co. which will be transmitting electric energy in foreign commerce after the proposed interchanges with Ontario are completed, it makes no difference whether the bill, which does the same thing, passes or not.

Yet there are certain aspects of the situation which seem to me to require some discussion.

The Detroit Edison Co. testified that it was not seeking to avoid any regulation over this foreign commerce in electric energy, merely the duplication of regulation which would occur were the Federal Power Commission to exercise jurisdiction in addition to the complete jurisdiction already possessed by the Michigan Public Service Commission. It seems to me that there is grave doubt whether the Michigan authorities have such power over foreign commerce, regardless of the apparent intent as expressed in the bill that the State may exercise such jurisdiction.

The authorities on which counsel for the company, in a separate brief filed with the committee by Sullivan & Cromwell, appear to rely as to the constitutionality of this delegation by the Congress, do not impress me. Neither do those of the American Law Division of the Library of Congress Legislative Reference Service. Practically all of them are decisions pertaining to the delegation to the States of the right to exercise certain jurisdiction in the field of interstate commerce. The principal case seemingly relied upon as to foreign commerce is that of Bob-Lo Excursion Company v. Michigan (333 U.S. 28 (1948)), which involved a violation by the company of the Michigan Civil Rights Act by refusing passage to a Negro between Detroit and an amusement park on an island in Canadian waters.

Foreign commerce, of course, even to a greater extent than domestic commerce, must be within the realm of governmental authority delegated by the several States to the Federal Government under the Constitution. Whether there is a proper and successful redelegation under this bill to the States seems to me very doubtful, and not very desirable. If there is not, of course, the bill simply succeeds in recreating the "Attleboro gap," absence of any governmental regulation of the transaction, which was the very basis for the enactment originally of the Federal Power Act. On the other hand, it would appear that the Detroit Edison Co., by its assertions in the testimony on this bill, is effectively estopped from urging any such lack of State jurisdiction insofar as it is concerned.

Secondly, I cannot fully subscribe to the reasoning of the circuit court of appeals in its holding in the Border Pipe Line case that the Congress did not intend that the domestic part of the foreign transportation of natural gas should be within the jurisdiction of the Commission. It is regrettable that the court of last resort has not passed on this question. The language of the Federal Power Act reads:

Section 201 (c). "For the purposes of this part, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States."

It certainly seems to me that it was intended that this transmission to a foreign country would bring one within the jurisdiction of the Commission, since clearly the transmission in interstate commerce does so. Otherwise, what do the words mean, "any point outside thereof"? They are not limited in any way by phraseology that Ontario is not "outside." It is true that the Interstate Commerce Act uses the language "to or from any foreign country," but I cannot see that this is any more explicit than "any point outside."

On the other hand, in view of the doubt cast upon the correct interpretation of the language, by reason of the differing Federal Power Commission interpretations, the court decision, and sundry arguments advanced at the hearing, it would seem proper to clear it up. Whether or not electric, or for that matter, natural gas, companies engaged in foreign commerce should be brought within the Federal Power Commission, is a subject on which I in nowise now would attempt to pass. I do agree, however, with what seems to be the thought of the committee, that any determination of this question is certain a policy decision to be made by the Congress, and not by any administrative ruling of a regulatory body through strained construction placed upon statutory language.

Finally, while the discussion of what the effect of the bill will be as far as Detroit Edison is concerned seems clear, I cannot foresee what may be the result of this bill in terms of any interchanges between other States and foreign countries, such as the prospective connections between the State of New York and Ontario, either by private companies or by State generating authorities.

JOHN W. HESELTON

TAB 5

MEMO § 202 (F)

J.

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF THE GENERAL COUNSEL

NOV 19 1990

Honorable Stephen Wakefield
General Counsel
Department of Energy
Forrestal Building
1000 Independence Avenue S.W.
Room 6A-245
Washington, D.C. 20585

Dear Mr. Wakefield:

The Federal Energy Regulatory Commission (FERC) considers the attached memorandum, addressing whether certain investor-owned Texas utilities that are members of the Electric Reliability Counsel of Texas would become subject to FERC's jurisdiction as public utilities if they engaged in the transmission or sale of electric energy to Mexico, to be an inter-agency memorandum. We do not interpret your request for a legal opinion on this issue to be a formal request for interpretation as provided in 18 C.F.R. § 381.305 (1990).

Accordingly, the attached memorandum will <u>not</u> be placed in the public files with formal General Counsel opinion letters processed under 18 C.F.R. § 381.305 (1990).

Sincerely,

David N. Cook
Deputy General Counsel

Enclosure

K.

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D C 20426

OFFICE OF THE GENERAL COUNSEL

NOV 19 1990

Honorable Stephen Wakefield
General Counsel
Department of Energy
Forrestal Building
1000 Independence Avenue S.W.
Room 6A-245
Washington, D.C. 20585

Dear Mr. Wakefield:

Pursuant to your request for a legal opinion regarding the Federal Energy Regulatory Commission's (Commission) jurisdiction, the attached memorandum addresses whether certain investor-owned Texas utilities that are members of the Electric Reliability Council of Texas would become subject to the Commission's jurisdiction as public utilities if they engaged in the transmission or sale of electric energy to Mexico.

Please note that the views expressed herein are mine, as General Counsel, and do not bind the Commission in any manner. In addition, the views expressed herein are based upon the factual materials supplied by the Department of Energy.

Sincerely,

William S. Scherman
General Counsel

Enclosure

L.

THE IMPACT OF A POTENTIAL UNITED STATES/MEXICO FREE TRADE AGREEMENT ON FERC JURISDICTION OVER TEXAS UTILITIES

I. ISSUE

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II. ANSWER

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III. BACKGROUND

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Jnited States Government

Department of Energy

Bonneville Power Administration

memorandum

DATE: June 17, 1999

REPLY TO ATTN OF: BPA-L-7

SUBJECT: ~~FERC Decision on Enron Complaint~~

TO: Mary Anne Sullivan, General Counsel
Eric J. Fygi, Deputy General Counsel
Mark S. Schwartz, Deputy General Counsel for Energy Policy
Lawrence A. Gollomp, Deputy General Counsel for Regulatory Intervention and Power Marketing

Attached is the Federal Energy Regulatory Commission's decision in response to Enron's complaint that the Bonneville Power Administration violated the Standards of Conduct.

Harvard P. Spigal
General Counsel

Attachment

140.

DRAFT

CRE-30

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Enron Power Marketing, Inc. v. United States of Department of Energy - Bonneville Power Administration	)	Docket No. EL99-51-000
United States Department Of Energy - Bonneville Power Administration	)	Docket Nos. EL99-49-000 and NJ97-3-006

ORDER FINDING AMENDED OPEN ACCESS TARIFF TO BE ACCEPTABLE RECIPROCITY TARIFF AND DISMISSING COMPLAINT

In this order, we dismiss Enron Power Marketing, Inc.'s (EPMI) complaint and find that Bonneville Power Administration's (Bonneville) proposed reciprocity tariff, as amended, continues to be an acceptable reciprocity tariff. We also grant Bonneville's request to withdraw its filing of March 23, 1999 in Docket No. EL99-49-000.

Background

These proceedings began with a request by Bonneville, filed March 23, 1999, for an expedited declaratory order approving an amendment to its open access transmission tariff. This was initially assigned Docket No. EL99-49-000. Subsequently, Commission staff notified Bonneville that its request should be in the form of a petition for an expedited declaratory order that Bonneville's proposed amended open access transmission tariff maintains the Commission's reciprocity finding. Bonneville filed such a petition on March 30, 1999, and it was designated as Docket No. NJ97-3-006. In the meantime, on March 26, 1999, EPMI filed a complaint and request for expedited relief. This complaint was designated as Docket No. EL99-51-000.

The matter at issue in these proceedings concerns Section 12.7(c) of Bonneville's open access transmission reciprocity tariff, 1/ which states that: "For Long-Term Firm Transmission

1/ Bonneville's open access tariff was found to be an (continued...)

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Service, Transmission Demand shall be an annual amount, except for the first year of a new Service Agreement under this Tariff." Bonneville states that it included this "shaped service" option to allow customers to grow into a multi-year service without having to pay for the maximum annual kW amount from the start. Bonneville explains, however, that customers have instead used this option to request service for only 13 months, with large reservations for the summer months and little capacity during the rest of the year. By using long-term service instead of short-term to reserve large amounts of seasonal capacity, Bonneville explains that customers can bump short-term customers. Bonneville states that it has received numerous requests for this service over its Southern Intertie, and it is unable to grant all of the requests. One customer that applied for and was granted shaped service (or varying monthly reservations) for a 13-month term was Bonneville's merchant function, Power Business Line (PBL). Bonneville has decided to delete the option and requests a reciprocity determination from the Commission with respect to its amended tariff.

EPMI filed a protest as well as a separate complaint. EPMI requests that the Commission condition reciprocity on Bonneville: (1) voiding PBL's service agreement reflecting the Section 12.7(c) option; and (2) convening an open season for reoffering the capacity that Bonneville granted to PBL.

Answers and Other Pleadings

Notice of Bonneville's filing in Docket No. EL99-49-000 was published in the Federal Register, 64 Fed. Reg. 17,356 (1999), with comments, protests and motions to intervene due on or before April 16, 1999. Notice of Bonneville's subsequent withdrawal of its petition in Docket No. EL99-49-000 was also published in the Federal Register, 64 Fed. Reg. 18,014 (1999), with a comment date of April 19, 1999.

Notice of Bonneville's filing in Docket No. NJ97-3-006 was published in the Federal Register, 64 Fed. Reg. 18,611 (1999), with comments, protests and motions to intervene due on or before April 19, 1999.

1/(...continued)
acceptable open access reciprocity tariff by the Commission in a series of orders. See United States Department of Energy - Bonneville Power Administration, 80 FERC ¶ 61,119, reh'g granted in part and denied in part, 81 FERC ¶ 61,165 (1997) (Bonneville). See also United States Department of Energy - Bonneville Power Administration, 84 FERC ¶ 61,068 (1998), reh'g denied, 84 FERC ¶ 61,250 (1998), 85 FERC ¶ 61,070 (1998) and 86 FERC ¶ 61,278 (1999).

Notice of EPMI's complaint in Docket No. EL99-51-000 was published in the Federal Register, 64 Fed. Reg. 17,356 (1999), with comments, protests and motions to intervene due on or before April 20, 1999. This date was extended to April 30, 1999 for Bonneville's response to the complaint.

In its complaint in Docket No. EL99-51-000, EPMI asks the Commission to find that Bonneville has violated the service comparability and nondiscrimination requirements of Order No. 888 and the pro forma tariff, and, on penalty of losing the reciprocity status of its open access tariff, order Bonneville to: (1) cease and desist from these violations; (2) void the service agreements with PBL that were entered into in violation of the service comparability and nondiscrimination requirements of Order No. 888 and the pro forma tariff; and (3) convene promptly an open season for re-offering to the market the transmission capacity that it granted PBL pursuant to those service agreements. EPMI asserts that Bonneville "selectively and discriminatorily enforced the provisions of its . . . [open access tariff] . . . to prevent others from obtaining 'shaped' service."

In their timely joint motion to intervene in Docket No. EL99-49-000, Goldendale Aluminum Company, Northwest Aluminum Company and Reynolds Metals Company (Aluminum Companies) support Bonneville's request. In its timely motions to intervene in Docket Nos. EL99-49-000 and EL99-51-000, PacifiCorp supports Bonneville's proposed amendment to its reciprocity tariff, asserting that if the Commission determines that the sale to PBL was improper, the Commission should consider making any remedy a condition of continued recognition of Bonneville's reciprocity tariff as meeting the reciprocity standard. The members of the Public Generating Pool filed a motion for late intervention in Docket No. EL99-49-000 and a timely motion to intervene in Docket No. EL99-51-000, raising no substantive issues. Electric Clearinghouse, Inc. filed a timely motion to intervene in Docket No. EL99-51-000, raising no substantive issues. Puget Sound Energy, Inc. filed a motion for late intervention in Docket Nos. EL99-49-000 and NJ97-3-006, raising no substantive issues. The Public Utility Districts of Benton County, Franklin County, and Grays Harbor County, Washington (Washington Counties) filed a late motion to intervene in Docket No. EL99-51-000 and to consolidate Docket Nos. EL99-49-000, EL99-51-000 and NJ97-3-006, taking no position on the accuracy of the allegations of EPMI, but asserting that if true, the allegations would constitute a strong showing of affiliate misdealing by Bonneville and PBL. Bonneville filed an answer in opposition to the motion to consolidate, asserting that Docket Nos. EL99-51-000 and NJ97-3-006 have nothing to do with each other. Portland General Electric Company (PGE) filed a motion for late intervention in Docket No. EL99-51-000. British Columbia Power Exchange

Corporation (Powerex) filed a motion to intervene and comments in Docket Nos. EL99-51-000 and NJ97-3-006. Powerex states that it takes no position with respect to Bonneville's proposed amendment to its reciprocity tariff, nor with respect to the remedies sought by EPMI. Powerex does assert that the Commission should make clear that all transmission requests made to Bonneville by non-affiliated customers prior to the date of any Commission order concerning Bonneville's reciprocity tariff must be governed by the provisions of the reciprocity tariff in effect when such requests were made.

In its answer to EPMI's complaint, Bonneville noted that the Commission has previously found Bonneville's reciprocity tariff, subject to certain revisions required by the Commission, to be consistent with or superior to the pro forma tariff of Order No. 888. Bonneville further notes that its reciprocity tariff has consistently included a provision that allows long-term transmission customers to request varying monthly reservations of transmission for the first year of a new transmission service agreement. Bonneville also denies EPMI's allegations that Bonneville has used its reciprocity tariff to discriminate against EPMI. Bonneville asserts, citing its own internal investigation, that it has applied all of the provisions of its reciprocity tariff, including the first-year shaping provisions, in the same way to all of its customers. EPMI filed a response to Bonneville's answer.

Discussion

Procedural Matters

Under Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1998), the timely, unopposed motions to intervene of Aluminum Companies, PacifiCorp, EPMI, Public Generating Pool, Electric Clearinghouse, Inc., and Powerex serve to make them parties to the proceedings in which they seek intervention. Given the interests of the parties, the early stage of the proceeding and the absence of undue delay and prejudice, we will allow the untimely motions to intervene filed by PGE, Washington Counties, and Puget Sound Energy, Inc. The response filed by EPMI to Bonneville's answer will be rejected as an answer to an answer, pursuant to Rule 385.213(a)(2).

The Complaint and Proposed Amendment

Bonneville's reciprocity tariff, as revised to delete reference to varying monthly reservations under Section 12.7(c), satisfies the Commission's reciprocity provision. The pro forma tariff does not prohibit customers from specifying varying reservation amounts during the term of a long-term agreement. However, the pro forma tariff contemplates that customers will be billed on the basis of their reserved capacity, which is defined

as the maximum amount of capacity and energy that the transmission provider agrees to transmit for the transmission customer (Section 1.39 of the pro forma tariff). To the extent that any transmission provider agrees to charge a long-term customer on a basis other than its reserved (maximum) capacity, the transmission provider is, in effect, offering discounted service, an option that is permitted under the Commission's open access policies. Bonneville's decision to rescind this standard discount because it is being used in a manner that was not anticipated and has become unmanageable is within its discretion. Because Bonneville was never required to offer this option to satisfy the Commission's reciprocity condition, Bonneville's amended tariff satisfies the reciprocity condition of Order No. 888.

EPMI complains that providing for varying demands for long-term service is inconsistent with the pro forma tariff as it allows a customer to combine the reservation priority of long-term service with the flexibility of short-term service at a cost significantly below the price of long-term service. EPMI compares the service to the "interruptible firm" service offered by Washington Water Power Company (Washington Water Power) to its marketing affiliate and rejected by the Commission in Washington Water Power Company. 2/

Bonneville responds that the option for varying monthly reservations under Section 12.7(c) is nothing new and was part of its original reciprocity filing which the Commission accepted in Bonneville. 3/ Moreover, Bonneville argues that Washington Water Power involved a non-tariff transaction offered off-OASIS, unlike Section 12.7(c), which has continually been offered as a service under its reciprocity tariff and which was posted on its OASIS.

We agree with Bonneville that EPMI's reliance on Washington

2/ Washington Water Power Company (Washington Water Power), 83 FERC ¶ 61,097, order on responses to show cause order, 83 FERC ¶ 61,282 (1998).

3/ Bonneville notes that EPMI did not raise the issue of varying demands being inconsistent with the pro forma tariff during the original reciprocity proceeding. Bonneville believes that, until it informed EPMI, EPMI did not understand that such service was available. Bonneville indicates that shortly after its meeting with EPMI, EPMI requested such service and that "[s]ince then, [Bonneville] has offered several Service Agreements to [EPMI] for long term service with [varying demands during the first year]." EPMI has not yet acted on these offers. Bonneville Answer at 20.

Water Power is misplaced. Washington Water Power concerned Washington Water Power Company entering into a transmission service agreement of a preferential nature with its affiliated power marketer, Avista Energy, Inc. (Avista). The service was negotiated off-OASIS and was not made available to other non-affiliated entities. Moreover, the service was specifically designed as a combination of firm and nonfirm service to reflect the fact that Washington Water Power Company at the time had no firm Available Transmission Capacity and that Avista wanted superior curtailment provisions. Thus, the Commission found that the transaction violated Order Nos. 888 and 889 as well as Avista's market-based rate authority. Here, by contrast, PBL obtained the service pursuant to Bonneville's approved reciprocity tariff and the availability of such service was posted on Bonneville's OASIS for use by any eligible customer, including EPMI. Moreover, as Bonneville notes, the option for varying demands is nothing new and was part of Bonneville's approved reciprocity tariff.

With respect to EPMI's request that the Commission void Bonneville's service agreement with PBL, we conclude that Bonneville has done nothing that would warrant such action. Instead, Bonneville has implemented its reciprocity tariff consistently for all customers. EPMI alleges that Bonneville's implementation of various provisions under its reciprocity tariff was inconsistent, resulting in PBL being the only customer eligible for such service. EPMI contends that Bonneville favored PBL by not enforcing the requirement that requests for service be tendered no more than 60 days prior to the date service began and by failing to enforce the requirement to identify the source (delivering party) and sink (receiving party) for each transaction.

Bonneville correctly notes that the 60-day restriction applies only to short-term transactions and not to long-term requests such as the service offered under Section 12.7(c). Bonneville adds that source and sink requirements had to do with scheduling problems that were unrelated to long-term transmission service. Bonneville explains that, historically, it required that transmission requests include a source and a sink. As a result of customer comments, Bonneville began allowing reference to locations rather than to parties for a source and sink, e.g., California-Oregon Border (COB) and Nevada-Oregon Border (NOB). On December 16, 1997, Bonneville posted on its OASIS notice that, due to scheduling problems, it would no longer accept COB or NOB as a sink. On January 30, 1998 in response to customer comments, Bonneville reversed itself and continued to allow COB and NOB designations.

Bonneville has demonstrated that it: (1) did not violate any terms of its tariff; (2) consistently applied, and posted on its OASIS, the source and sink rules; and (3) at the time EPMI's

request was denied for lack of source and sink, denied many other requests for the same reason. Accordingly, there is no basis to conclude that Bonneville applied its reciprocity tariff so as to favor PBL.

Finally, EPMI argues that Bonneville's treatment of PBL violated the Standards of Conduct. In support, EPMI points to the fact that, within 5 hours after Bonneville posted an announcement about service under Section 12.7(c) on its OASIS, PBL tendered its request for service. EPMI concludes that PBL could not have responded so promptly if there had been no off-OASIS communications.

Bonneville provides a comprehensive explanation of the events leading up to the announcement to which EPMI refers and of PBL's ability to respond quickly. Bonneville explains that its practice in implementing Section 12.7(c) was to require varying demands to reflect increasing quantities, i.e., reservations could increase from the first year to the second, but could not decrease. Bonneville states that this practice reflected the purpose of the option which was to allow a customer to grow into its full reservation amount. Bonneville states that, when Powerex (a marketer affiliated with a Canadian utility) requested service which reflected decreasing demands, the request should have been rejected as inconsistent with Bonneville's requirement, but it was instead granted by Bonneville's Transmission Business Line (TBL) without challenge. When the error was identified, TBL decided that it would be equitable to give other customers an opportunity to request this type of service for a limited period of two months. TBL posted a notice on its OASIS advising customers of the terms of this offer.

According to Bonneville, one of PBL's Transmission Acquisition Group employees saw the TBL announcement and recommended to superiors that PBL take advantage of this option. 4/ At the time the announcement was posted, PBL was in the midst of an office relocation and senior management suggested that this matter could wait a day or two until the move was completed. The Transmission Acquisition Group employee insisted that the opportunities presented in TBL's offer were extremely valuable and convinced superiors to evaluate how they might take advantage of the offer and to place a request. PBL's request was

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4/ Transmission Acquisition Group employees are responsible for ensuring that the merchant staff obtains the transmission services it needs at the lowest possible cost. Because PBL relies extensively on the Bonneville transmission system, Transmission Acquisition Group employees are expected to be extremely knowledgeable about the Bonneville transmission system and monitor Bonneville's OASIS to keep abreast of current conditions.

tendered five hours after the announcement was posted, and it was subsequently granted. EPMI never made a request for this type of service during the window specified in the OASIS announcement.

In preparing its response to EPMI's complaint, Bonneville states that it directed its General Counsel to investigate this matter. The results of that investigation, including affidavits of PBL and TBL staff that were involved, have been presented in Bonneville's answer to the complaint. These materials show no violations of the Standards of Conduct. To the contrary, these materials show that Bonneville is diligent in ensuring that its staff adheres to the functional separation requirements of the Standards of Conduct. These materials also show that PBL's advantage comes not from improper conduct, but from its practice of carefully monitoring and evaluating the transmission information presented on Bonneville's OASIS. The Commission will therefore dismiss this aspect of the complaint.

The Commission orders:

(A) Bonneville's request to withdraw its petition in Docket No. EL99-49-000 is hereby granted.

(B) EPMI's complaint in Docket No. EL99-51-000 is hereby dismissed.

(C) Bonneville's reciprocity tariff, as amended, continues to satisfy the Commission's reciprocity provisions.

(D) The late motions to intervene of Washington Counties, PGE and Puget Sound Energy, Inc. are hereby granted.

(E) EPMI's response to Bonneville's answer is hereby rejected.

By the Commission.

Secretary

HELLER EHRMAN WHITE & McAULIFFE
ATTORNEYS
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

SAN FRANCISCO
SILICON VALLEY
LOS ANGELES
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815 CONNECTICUT AVENUE, N.W.
SUITE 200
WASHINGTON, D.C. 20006-4004
TELEPHONE (202) 785-4747
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PORTLAND
ANCHORAGE
HONG KONG
SINGAPORE

99 JUN 16 AM 10: 40

CONFIDENTIAL AND PRIVILEGED
ATTORNEY-CLIENT COMMUNICATION

FACSIMILE TRANSMITTAL

TO:	COMPANY	FAX NUMBER	TELEPHONE NUMBER
Stephany Watson Steve Larson Harvey Spiegel	Bonneville Power Administration	503-230-7405	503-230-4201

FROM:	REFERENCE NUMBER	NUMBER OF PAGES	DATE
Adelia Borrasca		9 (including cover page)	6/16/99

MESSAGE:

Please see attached.

The information contained in this communication is intended only for the use of the addressee and may be confidential, may be attorney-client privileged and may constitute inside information. Unauthorized use, disclosure or copying is strictly prohibited, and may be unlawful. If you have received this communication in error or you have not received all pages, please call the sender immediately at (202) 785-4747.

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AIMS DOCUMENT TICKET

From	REICHER, DAN W.	**Doct Date**	02-NOV-99	**Document No**	9900838
		Rec Date	19-NOV-99	**Es Num**	99-016828
		Due Date	23-DEC-99	**Route Sym**	GC-70
		Comp Date	22-DEC-99	**Other Id**	GC-72
To	SECRETARY RICHARDSON	**Doc Type**	MEM	**Entry Userid**	DEHIYTQZY

Con Req GC-72, GC-70, GC-1

Program Offic EE

Action CONCURRENCE

For Sign Of

Subject (REICHER) ENRON WIND DEVELOPMENT CORP. REQUEST FOR SECRETARIAL AID

Encl/Remarks

No.	Referred To	Ref Date	Ref For
1	AMY ROYDEN	24-NOV-99	ACTN
2	SUSAN BEARD	24-NOV-99	ACTN
3	RALPH GOLDENERG	24-NOV-99	ACTN

Status Date	Status
19-NOV-99	ROUTED TO GC-72 (OLIVER) FOR CONC.
22-NOV-99	TO GC-72--11-19 FROM GC-1
22-NOV-99	CONCURRED PER OLIVER--GC-72--11-22--TO GC-70--11-22--1:15
24-NOV-99	TO GC-80 FOR REVIEW (RLB).
24-NOV-99	GC-80 REVIEWED AND CONCURRED W/COMMENTS. RET'D TO A. ROYDEN
24-NOV-99	FOR FURTHER ACTION (RLB).
29-NOV-99	PKG. RETURNED TO PROGRAM OFFICE FOR REWRITE. JT
17-DEC-99	PKG. RETURNED TO OGC FOR GC-1 CONC. JT
22-DEC-99	GC-1 (SULLIVAN) REVIEWED/CONC'D W/CHANGES. JT

A

Folder Profile

Control # 1999-016828

Name Action Memo for the Secretary from EE/Reicher dated 11/2/9

Priority Important Critical

Folder Trigger Internal Memo

DOE Addressee
Bill Richardson

Source OL

Date Received 11/2/99

Subject Text
Request by Enron Wind Development Corp. for Secretarial aid in negotiating a power purchase agreement with Empresa Nacional de Energia for a 60 MW wind project in Honduras

Correspondence Date 11/2/99

RIDS Information Head of Agency

Sensitivity Management Practices

Action Office # JCadogan, EE-12

Classification None

Signature/Approval
Bill Richardson

Point of Contact POLICYC

Organization ID EXECCORR2

Action Requested
Approval/Signature

Assigned To
EE

Special Instructions
10/12/00 Per EE/Cadogan, this action is OBE. Ic This needs GC, Dept. of Commerce and the State Department concurrences.

Date Due 11/12/99

Date Completed 10/12/00

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MEMORANDUM FOR THE SECRETARY:

FROM: Dan W. Reicher
Assistant Secretary
Energy Efficiency and Renewable Energy

SUBJECT:

BACKGROUND:

(b)(5)

SENSITIVITIES: Enron Wind requests that the Secretary intervene with the President

A.

MEDIA COVERAGE:

RECOMMENDATION:

(b)(5)

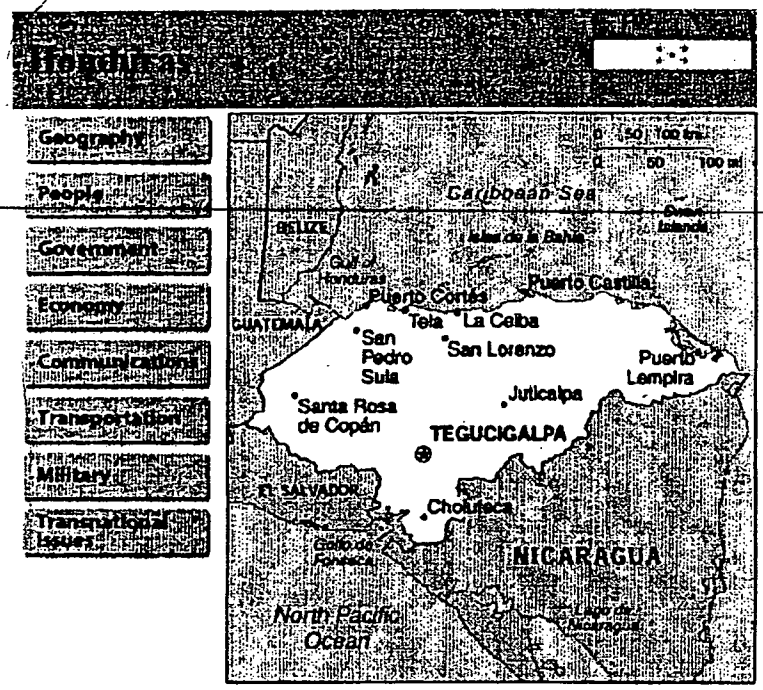
Attachment

The Honorable Carlos Flores Facussé
President
Republic of Honduras
Tegucigalpa, Honduras

Dear President Flores:

[redacted] (b)(5)

[Country Listing] [*Factbook* Home Page]



Honduras

Geography

[Top of Page]

Location: Middle America, bordering the Caribbean Sea, between Guatemala and Nicaragua and bordering the North Pacific Ocean, between El Salvador and Nicaragua

Geographic coordinates: 15 00 N, 86 30 W

Map references: Central America and the Caribbean

Area:
total: 112,090 sq km
land: 111,890 sq km
water: 200 sq km

Area—comparative: slightly larger than Tennessee

Land boundaries:
total: 1,520 km
border countries: Guatemala 256 km, El Salvador 342 km, Nicaragua 922 km

Coastline: 820 km

Maritime claims:
contiguous zone: 24 nm
continental shelf: natural extension of territory or to 200 nm
exclusive economic zone: 200 nm
territorial sea: 12 nm

D

Climate: subtropical in lowlands, temperate in mountains

Terrain: mostly mountains in interior, narrow coastal plains

Elevation extremes:
lowest point: Caribbean Sea 0 m
highest point: Cerro Las Minas 2,870 m

Natural resources: timber, gold, silver, copper, lead, zinc, iron ore, antimony, coal, fish

Land use:
arable land: 15%
permanent crops: 3%
permanent pastures: 14%
forests and woodland: 54%
other: 14% (1993 est.)

Irrigated land: 740 sq km (1993 est.)

Natural hazards: frequent, but generally mild, earthquakes; damaging hurricanes and floods along Caribbean coast

Environment—current issues: urban population expanding; deforestation results from logging and the clearing of land for agricultural purposes; further land degradation and soil erosion hastened by uncontrolled development and improper land use practices such as farming of marginal lands; mining activities polluting Lago de Yojoa (the country's largest source of fresh water) as well as several rivers and streams with heavy metals; severe Hurricane Mitch damage

Environment—international agreements:
party to: Biodiversity, Climate Change, Desertification, Endangered Species, Hazardous Wastes, Law of the Sea, Marine Dumping, Nuclear Test Ban, Ozone Layer Protection, Tropical Timber 83, Tropical Timber 94, Wetlands
signed, but not ratified: Climate Change-Kyoto Protocol

[Top of Page]

Population: 5,997,327 (July 1999 est.)

Age structure:
0-14 years: 41% (male 1,262,190; female 1,217,752)
15-64 years: 55% (male 1,643,550; female 1,665,666)
65 years and over: 4% (male 98,715; female 109,454) (1999 est.)

Population growth rate: 2.24% (1999 est.)

Birth rate: 30.98 births/1,000 population (1999 est.)

Death rate: 7.14 deaths/1,000 population (1999 est.)

Net migration rate: -1.46 migrant(s)/1,000 population (1999 est.)

Sex ratio:
at birth: 1.05 male(s)/female
under 15 years: 1.04 male(s)/female
15-64 years: 0.99 male(s)/female
65 years and over: 0.9 male(s)/female

total population: 1 male(s)/female (1999 est.)

Infant mortality rate: 40.84 deaths/1,000 live births (1999 est.)

Life expectancy at birth:
total population: 64.68 years
male: 63.16 years
female: 66.27 years (1999 est.)

Total fertility rate: 3.97 children born/woman (1999 est.)

Nationality:
noun: Honduran(s)
adjective: Honduran

Ethnic groups: mestizo (mixed Amerindian and European) 90%, Amerindian 7%, black 2%, white 1%

Religions: Roman Catholic 97%, Protestant minority

Languages: Spanish, Amerindian dialects

Literacy:
definition: age 15 and over can read and write
total population: 72.7%
male: 72.6%
female: 72.7% (1995 est.)

Government

[Top of Page]

Country name:
conventional long form: Republic of Honduras
conventional short form: Honduras
local long form: Republica de Honduras
local short form: Honduras

Data code: HO

Government type: republic

Capital: Tegucigalpa

Administrative divisions: 18 departments (departamentos, singular—departamento) plus probable Central District (Tegucigalpa); Atlantida, Choluteca, Colon, Comayagua, Copan, Cortes, El Paraiso, Francisco Morazan, Gracias a Dios, Intibuca, Islas de la Bahia, La Paz, Lempira, Ocotepeque, Olancho, Santa Barbara, Valle, Yoro

Independence: 15 September 1821 (from Spain)

National holiday: Independence Day, 15 September (1821)

Constitution: 11 January 1982, effective 20 January 1982

Legal system: rooted in Roman and Spanish civil law; some influence of English common law; accepts ICJ jurisdiction, with reservations

Suffrage: 18 years of age; universal and compulsory

Executive branch:
chief of state: President Carlos Roberto FLORES Facusse (since 27 January 1998); note—the president is both the chief of state and head of government
head of government: President Carlos Roberto FLORES Facusse (since 27 January 1998); note—the president is both the chief of state and head of government
cabinet: Cabinet appointed by president
elections: president elected by popular vote for a four-year term; election last held 30 November 1997 (next to be held NA November 2001)
election results: Carlos Roberto FLORES Facusse elected president; percent of vote—Carlos Roberto FLORES Facusse (PLH) 53%, Nora de MELGAR (PNH) 42%, other 5%

Legislative branch: unicameral National Assembly or Asamblea Nacional (128 seats; members are elected by popular vote to serve four-year terms)
elections: last held on 30 November 1997 (next to be held November 2001)
election results: percent of vote by party—PLH 50%, PNH 42%, PINU-SD 4%, PDCH 2%, other 2%; seats by party—PLH 70, PNH 55, PINU-SD 3

Judicial branch: Supreme Court of Justice (Corte Suprema de Justica), judges are elected for four-year terms by the National Assembly

Political parties and leaders: Liberal Party or PLH [Raphael PINEDA Ponce, president]; National Party of Honduras or PNH [Nora de MELGAR, president]; National Innovation and Unity Party-Social Democratic Party or PINU-SD [Olban VALLADARES, president]; Christian Democratic Party or PDCH [leader NA]

Political pressure groups and leaders: National Association of Honduran Campesinos or ANACH; Honduran Council of Private Enterprise or COHEP; Confederation of Honduran Workers or CTH; National Union of Campesinos or UNC; General Workers Confederation or CGT; United Federation of Honduran Workers or FUTH; Committee for the Defense of Human Rights in Honduras or CODEH; Coordinating Committee of Popular Organizations or CCOP

International organization participation: BCIE, CACM, ECLAC, FAO, G-77, IADB, IBRD, ICAO, ICFTU, ICRM, IDA, IFAD, IFC, IFRCS, ILO, IMF, IMO, Intelsat, Interpol, IOC, IOM, ITU, LAES, LAIA (observer), MINURSO, NAM, OAS, OPANAL, OPCW, PCA, UN, UNCTAD, UNESCO, UNIDO, UPU, WCL, WFTU, WHO, WIPO, WMO, WTrO

Diplomatic representation in the US:
chief of mission: Ambassador (vacant)
chancery: 3007 Tilden Street NW, Washington, DC 20008
telephone: [1] (202) 966-7702
FAX: [1] (202) 966-9751
consulate(s) general: Chicago, Houston, Los Angeles, Miami, New Orleans, New York, San Francisco, and San Juan (Puerto Rico)
consulate(s): Boston, Detroit, and Jacksonville

Diplomatic representation from the US:
chief of mission: Ambassador James Francis CREAGAN
embassy: Avenida La Paz, Apartado Postal No. 3453, Tegucigalpa
mailing address: American Embassy, APO AA 34022, Tegucigalpa
telephone: [504] 238-5114, 326-9320
FAX: [504] 236-9037

Flag description: three equal horizontal bands of blue (top), white, and blue with five blue five-pointed stars arranged in an X pattern centered in the white band; the stars represent the members of the former Federal Republic of Central America—Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua; similar to the flag of El Salvador, which features a round emblem encircled by the words REPUBLICA DE EL SALVADOR EN LA AMERICA CENTRAL centered in the white band; also similar to the flag of Nicaragua, which features a triangle encircled by the word REPUBLICA DE NICARAGUA on top and

AMERICA CENTRAL on the bottom, centered in the white band

Economy

[Top of Page]

Economy—overview: Prior to Hurricane Mitch in the fall of 1998, Honduras had been pursuing a moderate economic reform program and had posted strong annual growth numbers. The storm has dramatically changed economic forecasts for Honduras, one of the poorest countries in Central America and the hardest hit by Mitch. Honduras sustained approximately $3 billion in damages and will probably see GDP shrink by 2% in 1999 and unemployment rise. Hardest hit was the all-important agricultural sector, which is responsible for the majority of exports. As a result, the trade deficit is likely to balloon in 1999 to $445 million. However, significant aid has helped to stabilize the country. In addition, the Paris Club and bilateral creditors have offered substantial debt relief, and Tegucigalpa is currently under consideration for inclusion in the IMF-World Bank Highly Indebted Poor Countries Initiative (HIPC). Additional financing will be needed to restore the economy to its pre-Mitch level.

GDP: purchasing power parity—$14.4 billion (1998 est.)

GDP—real growth rate: 3% (1998 est.)

GDP—per capita: purchasing power parity—$2,400 (1998 est.)

GDP—composition by sector:
agriculture: 20%
industry: 19%
services: 61% (1997)

Population below poverty line: 50% (1992 est.)

Household income or consumption by percentage share:
lowest 10%: 1.2%
highest 10%: 42.1% (1996)

Inflation rate (consumer prices): 14.5% (1998 est.)

Labor force: 1.3 million (1997 est.)

Labor force—by occupation: agriculture 37%, services 39%, industry 24% (1996)

Unemployment rate: 6.3% (1997); underemployed 30% (1997 est.)

Budget:
revenues: $655 million
expenditures: $850 million, including capital expenditures of $150 million (1997 est.)

Industries: sugar, coffee, textiles, clothing, wood products

Industrial production growth rate: 10% (1992 est.)

Electricity—production: 2.73 billion kWh (1996)

Electricity—production by source:
fossil fuel: 12.09%
hydro: 87.91%
nuclear: 0%
other: 0% (1996)

Electricity—consumption: 2.734 billion kWh (1996)

Electricity—exports: 0 kWh (1996)

Electricity—imports: 4 million kWh (1996)

Agriculture—products: bananas, coffee, citrus; beef; timber; shrimp

Exports: $1.3 billion (f.o.b., 1996)

Exports—commodities: bananas, coffee, shrimp, lobster, minerals, meat, lumber

Exports—partners: US 54%, Germany 7%, Belgium 5%, Japan 4%, Spain 3% (1995)

Imports: $1.8 billion (c.i.f. 1996)

Imports—commodities: machinery and transport equipment, industrial raw materials, chemical products, manufactured goods, fuel and oil, foodstuffs

Imports—partners: US 43%, Guatemala 5%, Japan 5%, Germany 4%, Mexico 3%, El Salvador 3% (1995)

Debt—external: $4.1 billion (1995)

Economic aid—recipient: $418.7 million (1995)

Currency: 1 lempira (L) = 100 centavos

Exchange rates: lempiras (L) per US$1 (end of period)—13.8076 (December 1998), 13.8076 (1998), 13.0942 (1997), 12.8694 (1996), 10.3432 (1995), 9.4001 (1994)

Fiscal year: calendar year

Communications

[Top of Page]

Telephones: 105,000 (1992 est.)

Telephone system: inadequate system
domestic: NA
international: satellite earth stations—2 Intelsat (Atlantic Ocean); connected to Central American Microwave System

Radio broadcast stations: AM 176, FM 0, shortwave 7

Radios: 2.115 million (1992 est.)

Television broadcast stations: 11 (in addition, there are 17 repeaters) (1997)

Televisions: 400,000 (1992 est.)

Transportation

[Top of Page]

Railways:

[Top of Page]

Disputes—international: demarcation of boundary with El Salvador defined by 1992 International Court of Justice (ICJ) decision has not been completed; small boundary section left unresolved by ICJ decision not yet reported to have been settled; with respect to the maritime boundary in the Golfo de Fonseca, ICJ referred to an earlier agreement in this century and advised that some tripartite resolution among El Salvador, Honduras, and Nicaragua likely would be required; maritime boundary dispute with Nicaragua

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Illicit drugs: transshipment point for drugs and narcotics; illicit producer of cannabis, cultivated on small plots and used principally for local consumption

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[Country Listing] [*Factbook* Home Page]

URGENT → DAN
BOB DIXON + PETER GOLDMAN: Let's see if we can get them help, e.g. an S-1 letter. Let's get to this fast. TY DWR *
PMD 10/15

FAX COVER SHEET

ENRON, WASHINGTON
1775 Eye Street Street, N.W.
Washington, DC 20006
202-828-3360
202-828-3372 (fax)

TO: Dan Reicher - Assistant Secretary for Efficiency and Renewables

FROM: HAP BOYD

FAX #: 586-9260

RE: Honduras Wind Project

DATE: 10/15/99

* Please follow up with me by 10/29 + let me know status.

Number of pages including cover sheet: 5

Message:

Dear Dan,
We are having a problem getting our PPA signed by the utility in Honduras. As far as we know we are the sole source and there are no other U.S. companies working on this deal. We are going to the Advocacy Center at Commerce. Anything you can do to get Secretary Richardson involved would be helpful. Call if you have any questions. Thanks for your help.
Hap

cc. Peter Goldman 586-6582

Enron Wind Development Corp.
13000 Jamason Road
Tehachapi, CA 93581
Tel: (661) 823-6712
Fax: (661) 823-6809
wind@enron.com
www.wind.enron.com

Memo

To: Hap Boyd

Date: October 8, 1999

From: Rafael Alcalde-Navarro

Subject: US Government Support for our Honduran 60MW Wind Power Project

cc: Bob Gates
Dave Ramm
Maher Kassicieh

Attached is a summary which details the current status of our 60MW Wind Project in Honduras.

We will appreciate any support you are able to obtain from Mr. Bill Richardson which will move our project forward.

I:\Wanda_B\WPDOCS\WB\MEMOS\HONDURAS\boyd100899.wpd

A.

HONDURAS 2000

60 MW Wind Electric Generation Plant

Project Developer:	Enron Wind Development Corp. (EWDC) 13000 Jameson Road Tehachapi, CA 93561 (661) 822-6835 Contact: Rafael Alcalde Navarro
Project Company	Honduras Power Partners S. de R.L. de C.V.
Location:	Department Francisco Morazán is located 24 km from Tegucigalpa, on the hills named Cerro de Hula, Montaña de Azacualpa, Ojojona and Isopo.
60 MW Project Cost:	Approximately US$75,000,000
Average Wind Speed:	20 mph
Average Annual Production:	193,053,000 kWh/Year which is equivalent to a capacity factor of 36.73%, using 80 Z-750 kW wind turbines with 50m rotor diameters.
Land Rights:	We have obtained long-term leases with municipalities and private owners with the exclusive right to develop wind farms as needed. The leases are for a term of 30 years.
Permitting:	Permit has been renewed from SERNA (the Ministry of Natural Resources and the Environment) for the project zone (a square of 7 km x 30 km). We will apply for the environmental permit and all local permits as soon as we sign the Power Purchase Agreement (PPA) and the Operation Contract (OC).
Power Purchaser:	Empresa Nacional de Energía Eléctrica (ENEE) is the Government owned electric utility. The installed capacity in the National Interconnected grid is made up of 706 MW, 438 MW hydro and 268 MW thermal. The wind project will increase installed generation capacity by 8.5%
PPA:	The renewables law was approved on December 5, 1998, which gives renewable projects a 10% incentive over the short term marginal cost, income tax exemption for the first 5 years, and no duties or VAT during construction. Net assets tax is not applicable. The target date for the PPA execution was the first semester of 1999, however delays by the utility did not allow this to happen. The PPA includes a

B.

Government Guarantee of Support for performance of the contract. This guarantee also includes a protection against expropriation or nationalization, as well as, the convertibility of US currency at the government-owned Honduran Central Bank. The Government waives any rights to claim sovereign immunity. The PPA includes International Arbitration Rules and the lender's right to cure. The term of the PPA will be 20 years. The project will have political risk insurance to cover: political violence, nationalization or expropriation and currency convertibility. Close of financing is expected six months after the PPA is executed. The PPA includes a paragraph which gives the developer 18 months to finance (without any responsibility to the developer if the developer fails to close financing) and an additional 6 months in the construction schedule for unexpected delays.

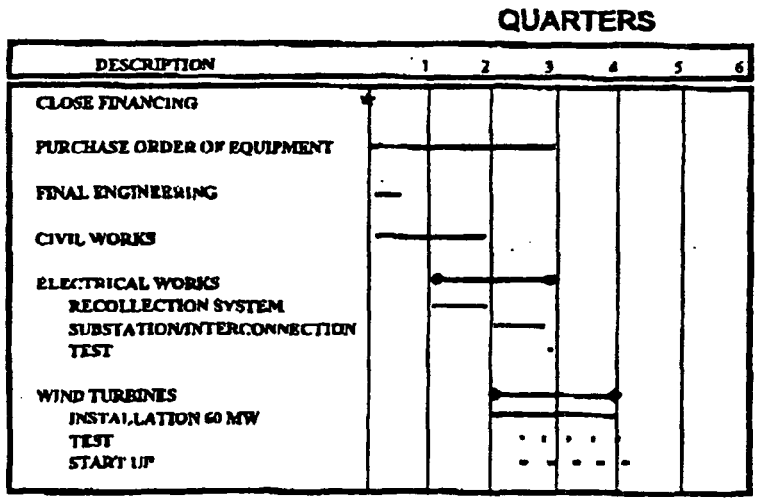
Project Status:

In 1998, the President of Honduras informed both the Ministry of Natural Resources & Environment and the President of ENEE, that renewable energy projects capable of fast implementation should receive priority over other projects currently being analyzed by ENEE.

The final feasibility study is completed. With this is mind, once the PPA is signed we will be able to sign the Operation Contract with the Ministry of Natural Resources & Environment and start the financing process, as well as, begin obtaining the additional permits which require a signed PPA. Approximately 95% of the PPA's terms have already been negotiated with ENEE.

This major electrical infrastructure project will help to reduce the increasing dependency on imported fossil fuel, avoid the volatility of fossil fuel prices that the country currently experiences, and will support the Government's compliance with international agreements regarding green house gas emissions.

Project Implementation Schedule



Support Required from the US Government:

We strongly believe that in order to overcome the many delays our project has encountered which have been mainly caused by the utility, a direct instruction by President Flores to ENEE has to be issued.

We have tried to approach the President through the Minister of the Presidency, Mr. Gustavo Alfaro. However, we believe (based on media statements) that Mr. Alfaro is not in favor of renewable projects.

We would like to request the personal intervention of Mr. Bill Richardson to speak directly with President Carlos Flores Facussé. Our company has been working for 4 years with ENEE on this project. We have executed a Letter of Intent with them and have complied with all the rules, regulations and current laws in effect. Our PPA (which has undergone 10 revisions with ENEE) is in compliance with the renewable law, and our project fits well within ENEE's power expansion plan.

Department of Energy
Washington, DC 20585

DEC 17 1999

1999-016828

MEMORANDUM FOR THE SECRETARY:

FROM: Dan W. Reicher DWR
Assistant Secretary
Energy Efficiency and Renewable Energy

SUBJECT:

BACKGROUND:

(b)(5)

(b)(5)

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SENSITIVITIES:

(b)(5)

MEDIA COVERAGE: None

RECOMMENDATION:

Attachment

CONCURRENCE: International/Goldwyn 11/8/99

GC-1 MAS 12/21/99

#99-016828

1/19/00

Linda:

Per Jim:
Package needs to go back to program office. NEEDS STATE & ~~COMMERCE~~ COMMERCE CONCURRENCES.

TRAY

A

Dreda Perry 03/13/2000 02:04 PM

To: Ruth Mosby/EE/DOE@DOE
cc:
Subject: Enron Request for Secretarial letter

---------- Forwarded by Dreda Perry/EE/DOE on 03/13/2000 02:01 PM ----------

Jack Cadogan
03/13/2000 12:08 PM

To: ~~Robyn Hebron~~ Ruth Mosby, Dreda Perry
cc: Robert Dixon, Peter Goldman
Subject: Enron Request for Secretarial letter

Enron VP Hap Boyd returned my call from last week a few minutes ago.

With regrard to the pending request for a letter of support from the Secretary to the President of Honduras, they are on-hold. They have received a initial contract offer from the state power company and they hope to negotiate that version face to face.

So, can we put the request on hold, or suspend it?

I'll let State and Commerce representatives know.

Cheers, Jack

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Jack Cadogan
05/16/2000 09:56 AM

~~To: Ruth Mosby/EE/DOE@DOE~~
cc: Robert Dixon/EE/DOE@DOE, Peter Goldman/EE/DOE
Subject: Enron Letter

Yesterday I circulated an informal draft of the revised Enron Honduras package to 1) Patrice Williams at the Department of Commerce's Advocacy Center, 2) John Haynes on the State Honduras Desk and 3) Hap Boyd at Enron Wind.

The recent delay is due to the apparent change of heart at Enron in Honduras. Rather than ask for a Presential push for a waiver from the likelihood of an electricity restructuring law that would nullify the power purchase agreement for the wind project, they are asking for the Secretary to encourage the President of Honduras to direct the state electric power authority to expedite completion of the power purchase contract.

We're not sure how State will react. Ms. Williams offerred to transmit the two recent e-mails from Enron staff in Honduras that stress the changed position to her contacts in Honduras on this project.

The proposed revised package is very similar to what went up stairs to the 7th floor last time, except I've added talking points in the event the Secretary elects to make the telephone call. We've also acknowledged that several other U.S.-sponsored projects are in a similar situation to Enron's.

I believe that State's response will be the critical factor here, as Commerce is willing to accept Enron's judgment on the need for the telephone call.

So, I can't give your a time frame.

Cheers, Jack

Jack Cadogan
05/23/2000 03:04 PM

To: Ruth Mosby/EE/DOE@DOE, Robert Dixon/EE/DOE@DOE
cc: Peter Goldman/EE/DOE, Stanley Calvert/EE/DOE@DOE
Subject: Status of Enron Request

We've been waiting on the State Department on this one, after Enron narrowed its request to asking for the Secretary to help move their wind project's power purchase agreement forward.

This morning, at the suggestion of my counterpart at the Commerce Advocacy Center, I faxed the current draft of the package to John Haynes at the Honduras desk at State.

Embassy staff is meeting wih tthe Honduras state utility on this Thursday and we hope to hear something on the Enron project then. It was felt that the embassy staff were in a better position if they had a draft of the package in hand, and Mr. Haynes agreed to sent it down.

We should know the outcome on the meeting by Friday. And we could change the package if needed or otherwise make appropriate adjustments.

Cheers, Jack

Dickerson, Katharine

From: Lindh, Frank (Law) [FRL3@pge.com]
Sent: Friday, February 02, 2001 9:27 PM
To: Carrier, Paul; Skinker, Michael; Bradley, Samuel; White, James; Fygi, Eric
Cc: Bar-Lev, Joshua (Law); Kline, Steven (Corp); Anderson, David W (Law); Warner, Christopher (Law)
Subject: PG&E: Weekly Report to DOE

Importance: High

DOE Order Weekly Report 1_19.x... DOE Order Weekly Report 1_26.x... Noncompliance Cumulative Recap...

Eric Fygi, et al. --

Attached below is the second of PG&E's Weekly Reports to the Secretary of Energy, pursuant to Ordering Paragraph 5 of the Secretary's "Temporary Emergency Natural Gas Purchase and Sale Order," issued January 19, 2001. This Report provides daily data since the date the Emergency Order was issued, through January 31, 2001. We will supplement the Report with data for February 1 and 2 (yesterday and today) early next week, as soon as the February data become available.

Also attached below is a revised version of the First Weekly Report, which shows day-by-day results.

In a nutshell, both Weekly Reports show generally good success in PG&E's ability to obtain supplies under the Emergency Gas Order, but with several important exceptions. Because there are only a few days left before the Order is due to expire, we earnestly solicit DOE's assistance in clarifying that suppliers must make up these shortfalls in order to be in full compliance with the Emergency Order.

First, several suppliers, especially J. Aron, have refused to make up volumes they failed to provide for the first few days the Emergency Order was in effect. In the case of J. Aron, a large supplier with a daily quantity of approximately 138,000 MMBtu, this supplier simply refused to provide any volume until Tuesday, January 23, five days after the Order was in effect. We urge DOE to instruct these suppliers, especially J. Aron, to make up the deficits as soon as reasonably practicable, even if this means making deliveries to PG&E after expiration of the Emergency Order.

Second, several suppliers have refused PG&E's request to maintain January volume levels during February. We firmly believe that this was the intention of the Order, which was designed to override any provisions allowing for termination or reduction of volumes, and instead to hold the supplier to the January volume levels. Again, we respectfully ask that DOE instruct suppliers to honor the Order in this manner, and not to short PG&E any volumes by reducing February volumes below the January level.

Third, still other suppliers have resisted PG&E's request for volumes under contract arrangements that were in effect in December 2000 but expired before January 1, 2001. Again, our reading is that the Order is unambiguous in requiring that suppliers must deliver, at PG&E's request, any volume under any contract arrangements in effect during the 30-day period prior to issuance of the Order. We hope you will clarify this requirement as well.

Finally, several suppliers, although they initially provided volumes pursuant to the Order from sources in Canada, are now asserting that they have no obligation to flow supplies from a Canadian affiliate, nor to provide alternate volumes from a U.S. source. This is in clear defiance of Ordering Paragraph 2 of the January 19 Order, which states that each supplier's supply requirement is measured by the terms of any arrangements between PG&E and either the supplier itself, or the supplier's affiliates.

The total deficit volumes still owing to PG&E by suppliers, as of January 31, are shown in a separate document, below. The two suppliers with the

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biggest deficits in this group are J. Aron & Company, and Sempra Energy. We urgently request DOE's assistance in bringing these shortfall suppliers into compliance with the Emergency Order. Their continued resistance to the DOE Emergency Order is unconscionable and harmful to the public interest.

We hope the information in this Weekly Report is useful to you. We also hope you will respond to the above-stated requests for clarification, so that PG&E can get the additional volumes we believe we are entitled to get from suppliers under the Emergency Order. These volumes are urgently needed.

Thank you for your continued attention to these matters.

> Frank Lindh
Attorney
> Pacific Gas and Electric Company
> telephone: (415) 973-2776
> facsimile: (415) 973-5520
>
<<DOE Order Weekly Report 1_19.xls>> <<DOE Order Weekly Report 1_26.xls>>
<<Noncompliance Cumulative Recap 02-02-01.doc>>

Pacific Gas and Electric Company
Gas Procurement
DEPARTMENT OF ENERGY ORDER REPORT
JANUARY 19, 2001

Confidential Material
Submitted under CPUC
P.U. Code Section 583

Natural Gas Suppliers	Nominated Volumes Per Existing Contractual Arrangements existing within 30 Days Prior to January 19, 2001 (MMBtu's)	Delivered Volumes (MMBtu's)	Average Price Per Trade to $USD[2]
ADONIS ENERGY CORPORATION (source supplier is Enron (US))[1]	10,000	9,931	$16.32
AEP ENERGY SERVICES, INC	0	0	$0.00
ALTRADE TRANSACTION, L.L.C.	0	0	$0.00
AVISTA CORPORATION	0	0	$0.00
BP ENERGY COMPANY[1]	50,000	49,999[3]	$16.31
CALPINE FUELS CORPORATION	0	0	$0.00
COAST ENERGY GROUP, A DIV CORNERSTONE PROP.	0	0	$0.00
COASTAL MERCHANT ENERGY, L.P.	20,000	20,000	$16.32
COOK INLET ENERGY SUPPLY, L.L.C.	15,000	14,999[3]	$16.30
CORAL ENERGY RESOURCES L.P.	4,739	4,739	$4.26
DUKE ENERGY TRADING AND MRKTG LLC[1]	90,805	89,223[3]	$10.75
DYNEGY MARKETING & TRADE[1]	188,325	188,063[3]	$10.77
EL PASO MERCHANT ENERGY - GAS, L.P.	15,000	15,000	$16.32
ENRON NORTH AMERICA CORP.[1]	196,255	195,733	$8.26
KEYSPAN ENERGY (Gulf Midstream Services)	948	948	$2.38
ICC ENERGY CORPORATION	3,500	3,500	$8.71
J. ARON & COMPANY	138,429	0	$7.12
ONEOK ENERGY MKTG. & TRADING CO., L.P.	0	0	$0.00
PG&E ENERGY TRADING CORPORATION	40,000	39,710[3]	$14.97
RELIANT ENERGY SERVICES, INC.[1]	21,848	21,848	$7.56
SEMPRA ENERGY TRADING CORP.	112,804	27,500	$6.95
SOUTHERN COMPANY ENERGY MARKETING L.P.	36,575	33,695[3]	$10.21
TEXACO NATURAL GAS[1]	65,820	65,820	$9.74
TXU ENERGY TRADING COMPANY[1]	24,217	24,217	$12.42
WESTERN GAS RESOURCES, INC.	5,000	0	$16.31
WILD GOOSE STORAGE INC.	0	20,000	$0.00
WILLIAMS ENERGY MKTG & TRADING CO.	12,843	12,843	$12.24

Suppliers refusing to supply full contractual volumes during this reporting period (January 26 - February 1, 2001). Prices for these Suppliers are still subject to negotiations. PG&E recommends using the January contract price for these volumes.

SWING (OR SPOT) TRADES

Natural Gas Suppliers	Nominated Volumes Per Existing Contractual Arrangements existing within 30 Days Prior to January 19, 2001 (MMBtu's)	Delivered Volumes (MMBtu's)	Average Price Per Trade to $USD[2]
BP ENERGY COMPANY[1]	10,000	10,000	$13.21
EL PASO MERCHANT ENERGY - GAS, L.P.	100,000	100,000	$10.00
WILD GOOSE STORAGE	20,000	20,000	$0.26

Footnote:

[1] Volumes delivered include US and Canadian affiliates.

[2] When applicable Canadian prices have been converted to US dollars using an FX rate of .66.

[3] Delivered volumes are less than contracted volumes due to pipeline cuts/constraints.

Notes:

a) All contract and delivered volumes include "Term" (firm contracts lasting several months), "Baseload" (one month (Jan) firm contracts, and "Swing" (spot or daily purchases).

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Pacific Gas and Electric Company
Gas Procurement
DEPARTMENT OF ENERGY ORDER REPORT
JANUARY 31, 2001

Natural Gas Suppliers	Nominated Volumes Per Existing Contractual Arrangements existing within 30 Days Prior to January 19, 2001 (MMBtu's)	Delivered Volumes (MMBtu's)	Average Price Per Trade to $USD[2]
*ADONIS ENERGY CORPORATION	10,000	7,575	$16.32
AEP ENERGY SERVICES, INC	0	0	
ALTRADE TRANSACTION, L.L.C.	0	0	
AVISTA CORPORATION	0	0	
BP ENERGY COMPANY[1]	50,000	50,000	$16.31
CALPINE FUELS CORPORATION	0	0	
COAST ENERGY GROUP, A DIV CORNERSTONE PROP.	0	0	
COASTAL MERCHANT ENERGY, L.P.	20,000	20,000	$16.32
COOK INLET ENERGY SUPPLY, L.L.C.	15,000	14,818[3]	$16.30
CORAL ENERGY RESOURCES L.P.	4,739	4,739	$4.26
DUKE ENERGY TRADING AND MRKTG LLC[1]	125,804	122,934[3]	$9.44
DYNEGY MARKETING & TRADE[1]	188,325	193,183[4]	$10.77
EL PASO MERCHANT ENERGY - GAS, L.P.	15,000	15,000	$16.32
*ENRON NORTH AMERICA CORP.[1]	196,255	190,994	$8.26
KEYSPAN ENERGY (Gulf Midstream Services)	948	948	$2.38
ICC ENERGY CORPORATION	3,500	3,443[3]	$8.71
J. ARON & COMPANY	138,429	138,429	$7.12
ONEOK ENERGY MKTG. & TRADING CO., L.P.	0	0	
PG&E ENERGY TRADING CORPORATION	40,000	39,985[3]	$14.97
RELIANT ENERGY SERVICES, INC.[1]	21,848	21,848	$7.56
*SEMPRA ENERGY TRADING CORP.	112,604	94,004	$6.95
SOUTHERN COMPANY ENERGY MARKETING L.P.	36,575	36,515[3]	$10.21
TEXACO NATURAL GAS[1]	65,820	65,730[3]	$9.75
TXU ENERGY TRADING COMPANY[1]	24,217	24,217	$12.42
*WESTERN GAS RESOURCES, INC.	5,000	6,191[4]	$16.31
WILD GOOSE STORAGE INC.	0	0	
WILLIAMS ENERGY MKTG & TRADING CO.	12,843	12,843	$12.24

*Suppliers refusing to supply full contractual volumes during this reporting period (January 26 - February 1, 2001). Prices for these Suppliers are still subject to negotiations. PG&E recommends using the January contract price for these volumes.

SWING (OR SPOT) TRADES

Natural Gas Suppliers	Nominated Volumes Per Existing Contractual Arrangements existing within 30 Days Prior to January 19, 2001 (MMBtu's)	Delivered Volumes (MMBtu's)	Average Price Per Trade to $USD[2]
BP ENERGY COMPANY[1]	30,000	30,000	$9.60
EL PASO MERCHANT ENERGY - GAS, L.P.	150,000	141,266	

Footnote:

[1] Volumes delivered include US and Canadian affiliates.

[2] When applicable Canadian prices have been converted to US dollars using an FX rate of .66.

[3] Delivered volumes are less than contracted volumes due to pipeline cuts/constraints.

[4] Make-up gas for previous shortage.

Notes:

a) All contract and delivered volumes include "Term" (firm contracts lasting several months), "Baseload" (one month (Jan) firm contracts, and "Swing" (spot or daily purchases).

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Noncompliance Cumulative Recap for the reporting period 1/19/01-1/31/01

(GJs converted to MMBtus)

Natural Gas suppliers:	Deficit Volumes	Reason for deficit
J. Aron	553,716	4 days of zero flow 1/19-1/24
~~Sempra Energy~~	~~323,580~~	~~13 days of shortfall, average shortfall of approx. 25,000/d~~
Western Gas Resources	9,535	2 days of zero flow, 2 days short
Adonis (Enron North America source supply of Gas)	19,465	9 days of shortfall, at varying rates
Enron North America	31,566	shortfall of 5,261/d, 1/25/01-1/31/01

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file copy

Portland General Electric Company
121 SW Salmon Street • Portland, OR 97204
503-464-8390 • facsimile 503-778-5566

Walter E. Pollock
Senior Vice President
Power Supply

~~December 28, 2000~~

Mary Anne Sullivan, Esq.
General Counsel
United States Department of Energy
Washington, D.C.

VIA FACSIMILE

Re: Request for Clarification

Dear Ms. Sullivan:

On December 26, 2000 the California Independent System Operator Corporation ("ISO") commented to you on our inquiry of December 21, 2000 regarding Portland General Electric Company ("PGE") obligations under Secretary Richardson's December 14, 2000 order ("Secretary's Order").

The ISO's comments address aspects of the Secretary's Order, but not the circumstance that was the subject of our inquiry. The time frame in question is following the ISO's declaration of requirements, but preceding actual commitment of the ISO to purchase the energy. The ISO has, in recent days, declined energy we indicated would potentially be available, thus the initial declaration of the ISO cannot be considered a commitment. This is the period of time during which we propose to make such energy available to a Pacific Northwest entity that has urgently requested it.

Thank you for your assistance in clarifying this matter.

Respectfully submitted,

Walter E. Pollock

Walter E. Pollock

cc: Ron W. Johnson
Terri Peschka

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Department of Energy
Washington, DC 20585

December 22, 2000

Mr. Terry Winter
President
California Independent System Operator
P.O. Box 639014
Folsom, CA 95763-9014

Dear Mr. Winter:

The purpose of this letter is to request comments of the California Independent System Operator (ISO) on the issues raised in the enclosed letter from Portland General Electric Company (PGE) dated December 21, 2000.

The letter seeks clarification about the implementation of the Order Pursuant to Section 202(c) of the Federal Power Act issued by Secretary Richardson on December 14, 2000 (Order), and as modified on December 20, 2000.

We request that the ISO provide its comments on the PGE inquiry by noon E.S.T. on December 27, 2000.

Sincerely,

Mary Anne Sullivan
General Counsel

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Portland General Electric Company
121 SW Salmon Street • Portland, OR 97204
503-464-8390 • facsimile 503-778-5566

Walter E. Pollock
Senior Vice President
Power Supply

December 21, 2000

Mary Anne Sullivan, Esq.
General Counsel
United States Department of Energy
Washington, D.C.

VIA FACSIMILE

Re: Request for Clarification

Dear Ms. Sullivan:

Portland General Electric Company ("PGE") is one of the entities required to generate, deliver, interchange and transmit electric energy to the California Independent System Operator ("CAISO") pursuant to Secretary Richardson's December 14, 2000 order ("Secretary's Order"). PGE is making a good faith effort to comply with the Secretary's Order. By this letter we seek an interpretation of PGE's obligations under that order when faced with an urgent, competing request from a Pacific Northwest utility.

On Tuesday, December 19, 2000, PGE responded to the CAISO's certification of inadequate energy supply and associated request for declaration of hourly excess capacity by hour for HE6 through HE24 for December 20, 2000. PGE's response set forth its good faith estimate of its excess capacity. The CAISO did not immediately commit to purchase such excess capacity; instead, it committed to purchase for each hour very shortly before the commencement of the hour. In the course of December 20, 2000, PGE received a request from Tacoma Power for energy. Under normal circumstances, PGE would have supplied the requested energy to Tacoma Power; however, due to the Secretary's Order and the CAISO's certification, PGE first offered the energy to the ISO, which accepted.

PGE's choice to offer the requested energy to the CAISO in the above circumstances could have led to difficulty meeting firm loads of a Northwest utility, even though the CAISO had not committed to purchase the energy and even though it might have been used to serve interruptible California loads. By this letter, PGE seeks a clarification that at times when it is required by the Secretary's Order to sell energy to the CAISO, PGE is permitted to sell excess capacity to a Pacific Northwest entity that has urgently requested it if the CAISO has not yet committed to purchase such excess capacity.

Respectfully submitted,

Walter E. Pollock

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Department of Energy
Washington, DC 20585

December 14, 2000

Order Pursuant to Section 202(c) of the Federal Power Act

Pursuant to Section 202(c) of the Federal Power Act (16 U.S.C. 824a(c)) and 10 C.F.R. § 205.370, in this order I consider the question of whether an emergency exists in California by reason of a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, and whether to require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as will best meet the emergency and serve the public interest. Because of a shortage of currently operational electric generation facilities, a shortage of water used to generate electricity, unusual volatility of electricity and natural gas markets, and for other reasons, California is experiencing an unexpected shortage of electric energy. Therefore, pursuant to Section 202(c) of the Federal Power Act, I find an emergency exists in California by reason of the shortage of electric energy.

Accordingly, I hereby order the entities listed in Attachment A to make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO), acting as agent for and on behalf of Scheduling Coordinators (as that term is defined in the California ISO tariff on file at the Federal Energy Regulatory Commission), consistent with the terms of this order. The entities listed in Attachment A are only required to sell electricity to the California ISO that is available in excess of electricity needed by each entity to render service to its firm customers.

This order is effective immediately and expires at 3:00 a.m., EST, December 21, 2000, unless altered or revoked by further order. However, the entities in Attachment A are not required to deliver energy or services under the terms of this order until 12 hours after the California ISO has filed with the Department of Energy (DOE) a signed certification that it has been unable to acquire in the market adequate supplies of electricity to meet system demand, and, as a consequence, it has, or reasonably anticipates, an "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375. In order to continue to avail itself of this order, the California ISO is required to submit to DOE a further certification as set forth in the preceding sentence every twenty-four hours until the expiration of the order. The California ISO shall provide a signed copy of all certifications to the entities in Attachment A at the time it provides them to DOE.

The California ISO must inform each entity subject to this order of the amount and type of energy or services requested by 9:00 p.m., EST, the day before the requested service. In making requests for power pursuant to this order, to the extent feasible, the California ISO is directed to

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allocate those requests among the entities listed in Attachment A in proportion to each entity's available excess power.

The terms of any arrangement made between the entities subject to this order and the California ISO pursuant to this order are to be as agreed to by the parties. If no agreement as to terms can be reached, I will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

ORDER

For the reasons set forth above, pursuant to Section 202(c) of the Federal Power Act, it is ordered that:

A. Consistent with the requirements set forth below, the entities listed on Attachment A will make arrangements to generate, deliver, interchange, and transmit electric energy when, as, and in such amounts as may be requested by the California Independent System Operator (California ISO), acting as agent for and on behalf of Scheduling Coordinators (as that term is defined in the California ISO tariff on file at the Federal Energy Regulatory Commission).

B. The entities listed in Attachment A are only required under the terms of this order to sell electricity to the ISO that is available in excess of electricity needed by each entity to render service to its firm customers.

C. This order is effective immediately and expires at 3:00 a.m., EST, December 21, 2000, unless altered or revoked by further order.

D. The entities in Attachment A are not required to deliver energy or services under the terms of this order until 12 hours after the California ISO has filed with the Department of Energy (DOE) a signed certification that it has been unable to acquire in the market adequate supplies of electricity to meet system demand, and, as a consequence, it has, or reasonably anticipates, an "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375. In order to continue to avail itself of this order, the California ISO is required to submit to DOE a further certification as set forth in the preceding sentence every twenty-four hours until the expiration of the order. This certification should be submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, Office of Policy, PO-5, 1000 Independence Avenue, S. W., Washington, D.C. 20585, (202) 586-5659, fax: (202) 586-5391, e-mail: Paul.Carrier@hq.doe.gov. The California ISO shall provide a copy of all certifications to the entities in Attachment A at the time it provides them to DOE.

E. The California ISO must inform each entity subject to this order of the amount and type of energy or services requested by 9:00 p.m., EST, the day before the requested service. In making requests for power pursuant to this order, to the extent feasible, the California ISO is directed to allocate those requests among the entities listed in Attachment A in proportion to each entity's available excess power.

F. The terms of any arrangement made between the entities subject to this order and the California ISO pursuant to this order are to be as agreed to by the parties. If no agreement as to terms can be reached, I will immediately prescribe the conditions of service and refer the rate issue to the Federal Energy Regulatory Commission for a determination at a later date by that agency in accordance with its standards and procedures, and will prescribe by supplemental order such rates as it finds to be just and reasonable.

Issued in Washington, D. C., on December 14, 2000

Bill Richardson

Bill Richardson
Secretary

Attachment

Organization
American Electric Power Services 5555 San Felipe, Ste. 2000 Houston, TX 77056
Aquila Power Corporation 10750 E 350 Highway Kansas City, MO 64138
Arizona Electric Power Cooperative
Arizona Public Service Company 400 North Fifth Street Phoenix, AZ 85005
Automated Power Exchange, Inc. 5201 Great America Parkway, Suite 522 Santa Clara, CA 95054
Avista Energy 201 W. North River Dr., Ste. 610 Spokane, WA 99201
Bonneville Power Administration PO Box 3621 Portland, OR 97208-3621
California Dept. of Water Resources 3310 El Camino Ave, Ste. 300 Sacramento, CA 95821

A.

Organization
California Polar Brokers, LLC 150 Spear Street, Ste. 725 San Francisco, CA 94105
California Power Exchange 1000 S. Freemont Ave., Bldg. A9 West Alhambra, CA 91803
Cargill-Alliant, LLC 12700 Whitewater Drive Minnetonka, MN 55344
Citizens Power Sales 160 Federal Street Boston, MA 02110
City of Anaheim 201 S. Anaheim Blvd., Ste. 802 Anaheim, CA 92805
City of Azusa 729 No. Azusa Ave. Azusa, CA 91702
City of Banning 99 East Ramsey Ave. Banning, CA 92220

Organization
City of Burbank, Public Service Department 164 West Magolia Blvd. Burbank, CA 91502
City of Glendale
City of Pasadena 45 E. Glenarm Ste.. Pasadena, CA 91105
City of Riverside 3900 Main Street Riverside, CA 92522
City of Seattle, City Light Department 700 5th Avenue, Ste. 330 Seattle, WA 98104
City of Shasta Lake Post Office Box 777, Shasta Lake, CA 96019-0777
City of Vernon 4305 Santa Fe Avenue Vernon, CA 90058
Colorado River Storage Project (CRSP) 1800 S. Rio Grand Avenue, Montorse, CO 81401

Organization
Constellation Power Source 111 Market Place, Suite 500 Baltimore, MD 21202
Coral Power, L.L.C. 4320 La Jolla Village Drive Ste. 250 San Diego, CA 92122
Duke Energy Trading & Marketing, L.L.C. 4 Triad Center, Ste. 1000 Salt Lake City, UT 84180
Dynegy Power Marketing Inc. (formerly Electric Clearinghouse) 1000 Louisiana, Ste. 5800 Houston, TX 77002-5006
Edison Mission Marketing & Trading, Inc. 18101 Von Karmen, Ste. 1700 Irvine, CA 92612
Edison Source 13191 Crossroads Parkway N. City of Industry, CA 91746
El Paso Electric Company 123 W. Mills, El Paso, TX 79901

Organization

El Paso Merchant Energy
1001 Louisiana
Houston, TX 77002

Enron Energy Services
PO Box 1188
Houston, TX 77251-1188

Enron Power Marketing, Inc.
121 S.W. Salmon Street, 3WTC-0306
Portland, OR 97204

FPL Energy Power Marketing, Inc.
11770 US Highway One
South Tower, 4th Floor
North Palm Beach, FL 33408

Grant County Public Utility District
30 C Street SW
Ephrata WA 98823

Hafslund Energy Trading
101 Elliot Ave,
Seattle, WA 98119

Idaho Power Company
1221 West Idaho Street
Boise, ID 83707

Illinova Energy Partners, Inc.
1420 Kenningston Road, Ste. 305
Oak Brook, IL 60523

Organization
Koch Energy Trading, Inc. 20 E. Greenway Plaza (PO Box 1478) Houston, TX 77046
LA Department of Water & Power 111 North Hope Street Los Angeles, CA 90012
LG & E Energy Marketing, Inc. 220 West Main Street Louisville, KY 40202
Merchant Energy Group of the Americas (MEGA) 151 West Street, Ste. 300 Annapolis, MD 21401
Mieco, Inc. 301 East Ocean Blvd., Ste. 1100 Long Beach, CA 90802-4832
Modesto Irrigation District 1231 11th Street Modesto, CA 95354
Nevada Power Company PO Box 230, MX #20, Attn: Energy Accounting, Las Vegas, NV 89151

Organization

New Energy Inc.
535 Boylston St.
Boston, MA 02116

Northern California Power Agency
180 Cirby Way
Roseville, CA 95678

PacifiCorp
9951 SE Ankeny
Portland, OR 97216

PacifiCorp Power Marketing, Inc.
830 NE Holladay Street, Suite 200
Portland, OR 97232

PECO
2004 Renaissance Blvd.
King of Prussia, PA 19406

PG & E
77 Beale Street, Bldg. 23A
San Francisco, CA 94105

PG & E Energy Trading
7500 Georgetown Road, 14th Floor
Bethesda, MD 20814

Portland General Electric Company
121 SE Salmon Street
Portland, OR 97204

Power Resource Managers, LLC
2100 112th Avenue NE, Ste.
100,Bellevue, WA 98004-2911

PP&L Montana 45
Basin Creek Road Butte,
MT 59701

Public Service Company of Colorado
(New Century Energies)
1099 18th Street,Suite 3000
Denver, CO 80202

Public Service Company of New Mexico
Alvarado Square, MS-EP11, Albuquerque,
NM 87158

Public Utility District No.1 of Douglas County
1151 Valley Mall Parkway, E. Wenatchee,
WA 98802

Puget Sound Energy
411 108th Avenue NE
Bellevue, WA 98009

Reliant Energy Services
P.O. Box 4455
Houston, TX 77210-4455

Sacramento Municipal Utilities District
6308 S Street, P.O. Box 15830,
Sacramento, CA 95852-1830

Salt River Project
PO Box 52025
Phoenix, AZ 85072-2025

San Diego Gas & Electric
101 Ash Street
San Diego, CA 92101

Sempra Energy Trading
58 Commerce Road
Stamford, CT 06902

Sierra Pacific Power Co.
6100 Neil Road
PO BOX 10100
Reno, NV 89520-0004

Silicon Valley Power (City of Santa Clara)
1500 Warburton Ave.
Santa Clara, CA 95050

Southern California Edison
2244 Walnut Grove Avenue, Rosemead, CA 91770

Southern Company Energy Marketing
900 Ashwood Parkway, Ste. 490 Atlanta, GA 30338-4780

Strategic Energy Ltd.
2 Gateway Center
Pittsburgh, PA 15222

Tacoma City Light
3628 South 35th Street, Tacoma. WA 98409

Tucson Electric Power
220 W. Sixth, PO Box 711, Tuscan, AZ 85702

Washington Water Power
PO Box 3727, Spokane, WA 99220

Western Area Lower Colorado
PO Box 6457, Phoenix, AZ 85005-6457

Organization
Western Area Power Administratio (WAPA) 114 Parkshore Drive Folsom, CA 95630
Williams Energy Marketing and Trading One Williams Center Energy Resource Center Tulsa, OK 74172

PORTLAND GENERAL ELECTRIC

121 S.W. Salmon Street, 17th Floor
Portland, OR 97204

Phone: (503) 464-8900
Fax: (503) 778-5566

Date: December 21, 2000	To: Mary Anne Sullivan, Esq.
At: United States Dept. of Energy	
Receiver's Phone No.:	Receiver's Fax No.: 202-586-7479
From: Walt Pollock	
Sender's Phone No.: 503-464-8390	Sender's Fax No.: 503-778-5566
Number of pages including cover sheet: 2	

Remarks:

If you have any trouble receiving this fax, please contact:

155.

April 5, 2001

To: Ted Pulliam
GC-71, 6A-179

From: Michael Whatley

Ted, Can you review the attached and provide an analysis as to how this could impact the Department and the Energy industry.

Thanks

SECTION 1. Short Title

This Act may be cited as the Electricity Information Disclosure, Efficiency and Accountability Act.

SECTION 2. Definitions

Section 3 of the Federal Power Act (16 U.S.C. §796) is amended by adding at the end the following:

"(26) BULK-POWER SYSTEM. The term 'bulk-power system' means all facilities and control systems necessary for operating an interconnected transmission grid (or any portion thereof), including, but not limited to, high-voltage transmission lines; substations; control centers; communications data, and operations planning facilities, energy exchanges formally aligned with system operators and used to determine dispatch priority ; and the output of generating units connected to transmission systems.

"(27) RELIABILITY. The term 'reliability' or 'reliable' means the degree of performance of the bulk-power system that results in electricity being delivered to customers within accepted standards and in the amount desired in order to maintain adequacy and security of the bulk-power system.

"(28) SYSTEM OPERATOR. The term 'system operator' means any entity that operates, or is responsible for the operation of, a bulk-power system, including, but not limited to, a control-area operator, an independent system operator, a security coordinator,

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a regional transmission organization, a transmission company, or a transmission system operator.

"(29) USER OF THE BULK-POWER SYSTEM. The term 'user of the bulk-power system' means any entity that sells, purchases, or transmits electric power over a bulk-power system, or that owns, operates, or maintains facilities or control systems that are part of a bulk-power system, or that is a system operator. Every such user shall comply with uniform reliability standards that take effect under section 215 of this Part.

"(30) BULK-POWER SYSTEM OPERATING DATA. The term "bulk-power system operating data means all transmission line and generation facility data in the possession of a system operator and used to ascertain available transmission line capacity, transmission line capacity constraints, the supply and demand for electrical energy, and other relevant operating data used to maintain reliability of the bulk-power system within the control of the system operator, for relevant operational periods.

"(31) RELEVANT OPERATIONAL PERIODS. The term 'relevant operational periods' shall mean those time periods monitored by the system operator in order to maintain adequate and secure reliability of the bulk-power system and shall include, but is not limited to, data monitored on an hourly, within -day and day ahead basis.

SECTION 3. Disclosure of Bulk Power System Operation Information

SEC 213. Section 213 of the Federal Power Act (16 U.S.C. 824*l*) is amended by adding at the end the following:

"(c) BULK-POWER SYSTEM OPERATING DATA

"(1) Not later than 180 days after the enactment of this subsection, the Commission shall promulgate a rule requiring that each system operator establish an information system that provides all users of the bulk power system, state regulatory authorities and the public access to bulk-power system operating data including making data available on a widely accessible computerized data base. Bulk power system operating data shall be provided to all users of the bulk power system on an instantaneous basis and updated hourly to reflect changes to such data for the relevant operational periods.

"(2) Unless the Commission, after a hearing, determines that certain information shall remain confidential due to its commercially sensitive nature, all bulk-power system operational information shall be provided on a real time basis. In making such a determination the Commission shall consider practical measures capable of protecting confidential information while realizing the objective of providing real time information to the parties referenced in section (c) (1).

"(3) MARKET BID DATA. To the extent a system operator utilizes a competitive bidding or price auction mechanism conducted by the system operator or by an energy exchange formally associated with the system operator that is used to schedule or allocate use of the bulk power system transmission capacity or to maintain reliability of the bulk power system, such bidding information must be provided to all users of the bulk power system and state regulatory authorities on a real time basis.

(b) HISTORICAL MARKET BID DATA. Market bid data referenced in subsection (a) above shall be stored by the system operator or the relevant energy exchange and made available

to all bulk power systems users, state regulatory authorities and the general public without disclosure of the identity of the bidding party. Disclosure of the bidding party shall only be made to state regulatory authorities and other authorized State or Federal agencies acting in their official capacity upon a motion filed with the Commission demonstrating that the relevant state regulatory authority or agency is conducting an investigation germane to its jurisdiction.

Steven J. Kean
Executive Vice President
and Chief of Staff

Enron Corp.
P. O. Box 1188
Houston, TX 77251-1188
(713) 853-1586
Fax (713) 646-8160
skean@enron.com

February 26, 2001

The Honorable Ron Wyden
US Senate
516 Senate Hart Office
Washington, DC 20510

Dear Senator Wyden:

Thank you very much for providing Enron with an opportunity to testify before the Senate Energy Committee on January 31st. I believe that the exchange of views was very useful and will help inform the critical debate on U.S. energy policy that is now underway.

At the January 31st hearing, you had expressed concern about the lack of coherent public information about energy issues that is creating confusion among energy consumers in the West. I agree that the lack of data (e.g., plant shut-downs) creates unnecessary confusion among consumers. However, there is also a critical lack of data that hinders the ability of power suppliers to provide the best possible products to the marketplace. This lack of data has a negative impact on wholesale power prices and reliability and these costs are ultimately borne by consumers. Moreover, it is clear that the Federal Energy Regulatory Commission (FERC) can take action to rectify this problem.

Certain operational information should be released to all participants in competitive bulk power markets, including the California market. Enron believes that the FERC has the authority under the Federal Power Act to require release of such information from jurisdictional public utilities, Security Coordinators, and Regional Transmission Organizations (RTOs) but has not chosen to do so.[1] We recommend that you, as part of your oversight role under the Federal Power Act, encourage the FERC to implement new rules to increase information transparency and increase market efficiency. There are market entities (the Power Marketing Administrations) not currently under FERC jurisdiction that possess information, which, if released, would enhance market efficiency. Legislation that extends FERC jurisdiction to public transmission systems and directs FERC to require information release from all transmission system operators in bulk power markets would be very beneficial.

Increasing the amount of information to market participants and regulators has four clear advantages. First, it improves the efficiency of system dispatch in the short term. It allows participants to identify transactions that will improve resource allocation and lower production costs. Second, it improves generation and transmission investment decisions. Armed with

[1] The Federal Power Act requires that wholesale power rates be just and reasonable and not unduly discriminatory (FPA sections 205, 206).. Improved information transparency increases market efficiency and decreases prices and/or improves quality of service, thus improving the degree to which rates are just and reasonable. Further, by making market information available to all market participants, it mitigates opportunities for undo discrimination by individual sellers.

accurate information, investors will place generation and transmission facilities where they are needed, when they are needed. Third, transparency enhances liquidity in energy and transmission-capacity product markets. Increasing liquidity reduces barriers to entry and allows more entities to actively buy and sell power in the western market. Fourth and finally, transparency improves market-monitoring capabilities. Today, only a handful of economists in California have exclusive access to key market data. By making market data easily accessible to many participants, including state and federal regulators as well as private companies, there can be independent verification of the health of the market. In particular, it will be easier to identify anomalous bidding strategies and potentially collusive behavior.

Enron has raised the need for improved transparency numerous times since the creation of the California Independent System Operator (CAISO). Most recently, Enron suggested concrete reforms to improve transparency as part of its Comments on the Commission's November 1, 2000 proposed order.[2] Unfortunately, the Commission chose not to adopt this market reform as part of the Commission's December 15, 2000 Final Order. Apparently, in its urgency to address short-term reforms, the Commission lost sight of a simple, yet powerful tool to improve the efficiency of bulk power markets.

I have attached a document that identifies that type of information for which the FERC should require release. Members from Enron's staff are available to go through these issues in more detail with you or your staff.

Enron recognizes that these are very difficult issues and that there is no easy and immediate answer to the energy problems in the Northwest. But we are working hard to solve this problem and are committed to fulfilling the promise that competition will deliver to energy consumers throughout the U.S.

Thank you once again for your time.

Sincerely,

Steven J. Kean

[2] Comments of Enron Power Marketing and Enron Energy Services, Inc. FERC Docket EL00-95-000 et al., November 22, 2000.

Improving the Efficiency of U.S. Bulk Power Markets Through The Release of Market Data

Objectives of an Information Release Policy

Enron supports the general principle that there should be broad disclosure of system information to market participants. Enron believes that there are two types of data that should be made publicly available. The first kind of data is physical electric system conditions, including generation, transmission, and load data. These data are currently collected by the CAISO in California and, in the rest of the Western Interconnection, by control area Security Coordinators. The second kind of data is the economic and market data exchanged between market participants and the CAISO (or RTO). This type of data includes unit status, scheduling, and bid data. In the case of the CAISO, this data currently resides on CAISO computer systems and can be easily made public.

Enron recognizes that any information release policy must be carefully crafted to prevent efficiency-reducing behavior. First, maximizing market efficiency does not mean that all information be released in real time. There is information that, if released in real-time, could be used to enable potentially collusive behavior. For example, it may be prudent to delay specific bid (price and quantity) until after the real-time hour has passed to prevent potentially collusive behavior. During the window between the close of markets and the real time hour, there may be sufficient time for certain generators to withhold output but insufficient time for other generators to step in thus creating opportunities for the exercise of market power. Second, market efficiency is not enhanced by the release of individual participant cost information and bilateral contract information. Enron strongly believes that such information should remain confidential. In competitive markets, participants compete by lowering costs and competing with each other for customers. Cost information is part of a producer's competitive advantage and should not be released to the public. Similarly, releasing information on forward (or spot) bilateral contracts would allow competitors to deduce a company's risk management and trading strategies and should not be made public.

Specific Information Release Requirements

Enron recommends that the FERC initiate a rulemaking to determine the level of information release for the Cal ISO and all other RTOs with the goal of maximizing market efficiency. As part of the rulemaking, the Commission must consider the specific information items that all RTOs and market participants must release. At a bare minimum, FERC should consider the following information items for mandatory release:

1) Generator Information:
   a) Scheduled generation by unit (including control area interfaces):
      i) Day-ahead
      ii) Day-of
      iii) If unit is down, specify nature of outage (scheduled or unscheduled) and expected duration

   b) Real time generator run-status information:
      i) Status of breakers (open/closed)
      ii) Capability (in MW and MVAR)
      iii) Net output (in MW and MVAR)
      iv) Status of automatic voltage control facilities

c) Mapping of generation and transmission locations to the electricity grid

2) Reliability Must Run (RMR) Generator Information:
   a) Current RMR contracted plants
   b) Forecasted RMR generation
      i) RMR calls exercised and price paid

3) Ancillary Services (A/S) including real-time power:
   a) Supply bid and demand bid prices and quantities
   b) Real-time power merit order
   c) Ramp rate constraints
   d) Identification of marginal unit
   e) Rules for determining A/S quantities
   f) Algorithm used in A/S procurement model
   g) Algorithm used for determining target price

4) Out-of-Market (OOM) purchases:
   a) Seller (or buyer) quantity and price paid

5) Congestion pricing information:
   a) Input and output information from model
   b) Algorithm used in congestion model

6) Load information
   a) All ISO load forecasts by zone including revisions made:
      i) day-ahead
      ii) day-of
      iii) hour ahead
   b) Actual load by zone

7) Transmission information at each control area interface and flowgate:
   a) Total transfer capability (full rating and current-day's rating in MW)
   b) Existing contracts (under full rating and current-day's rating in MW)
   c) Available transmission (under full rating and current-day's rating in MW)
   d) Scheduled transmission usage
   e) Actual flows (with dis-aggregation for scheduled and loop flow)
   f) Scheduled maintenance and protocol for decisions regarding scheduled maintenance.

8) Congestion information:
   a) Intra-zonal congestion management re-dispatch by unit
   b) Out of area calls

As part of its rulemaking, the FERC may also propose other information for release to the extent that it furthers the goal of maximizing market efficiency. The FERC may set appropriate terms and conditions associated with information release. Specific conditions may include necessary time delays on release to protect against potentially collusive behavior; the level of detail or dis-aggregation of data, and protections to ensure that commercially sensitive information is protected. Any restriction placed on the release of information must be justified on the basis of how the restriction enhances market efficiency.

MEMORANDUM

DATE: April 6, 2001

FROM: Ted Pulliam, GC-71, 6A-179
Phone: 586-3397; FAX: 586-5870

SUBJECT: Draft Legislation to Require ISOs to Provide More Information

TO: Mark Friedrichs (PO) 7C-034, FAX: 6-3047
John Conti (PO) FAX: 6-2062
Lot Cook (GC) FAX: 6-7479

Please review the attached. Michael Whatley in CP asked for an analysis of its effect on DOE and on energy industries.

NOTE: I am not sure who actually prepared the draft. Possibly ENRON but possibly not.

Please provide me with your comments or let me know if you have no comments by 3:30 p.m. today, Friday April 6, 2001.

Attachment

159

MEMORANDUM

DATE: April 6, 2001

FROM: Ted Pulliam, GC-71, 6A-179
Phone: 586-3397; FAX: 586-5870

SUBJECT: Draft Legislation to Require ISOs and PMAs to Provide more Information

TO: Roger Seifert (BPA) 8G-061, FAX: 6-6763
Tim Meeks (WLO) 8G-027, FAX: 6-6261
Loy Kirkpatrick (GC) 6D-033, FAX: 6-7479

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Please provide me with your comments or let me know if you have no comments by noon Monday, April 9, 2001.

Attachment

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SECTION 1. Short Title

This Act may be cited as the Electricity Information Disclosure, Efficiency and Accountability Act.

SECTION 2. Definitions

Section 3 of the Federal Power Act (16 U.S.C. §796) is amended by adding at the end the following:

"(26) BULK-POWER SYSTEM. The term 'bulk-power system' means all facilities and control systems necessary for operating an interconnected transmission grid (or any portion thereof), including, but not limited to, high-voltage transmission lines; substations; control centers; communications data, and operations planning facilities, energy exchanges formally aligned with system operators and used to determine dispatch priority ; and the output of generating units connected to transmission systems.

"(27) RELIABILITY. The term 'reliability' or 'reliable' means the degree of performance of the bulk-power system that results in electricity being delivered to customers within accepted standards and in the amount desired in order to maintain adequacy and security of the bulk-power system.

"(28) SYSTEM OPERATOR. The term 'system operator' means any entity that operates, or is responsible for the operation of, a bulk-power system, including, but not limited to, a control-area operator, an independent system operator, a security coordinator,

a regional transmission organization, a transmission company, or a transmission system operator.

"(29) USER OF THE BULK-POWER SYSTEM. The term 'user of the bulk-power system' means any entity that sells, purchases, or transmits electric power over a bulk-power system, or that owns, operates, or maintains facilities or control systems that are part of a bulk-power system, or that is a system operator. Every such user shall comply with uniform reliability standards that take effect under section 215 of this Part.

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Steven J. Kean
Executive Vice President
and Chief of Staff

Enron Corp.
P. O. Box 1188
Houston, TX 77251-1188
(713) 853-1586
Fax (713) 646-8160
skean@enron.com

February 26, 2001

The Honorable Ron Wyden
US Senate
516 Senate Hart Office
Washington, DC 20510

Dear Senator Wyden:

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      iv) Status of automatic voltage control facilities

A

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5) Congestion pricing information:
   a) Input and output information from model
   b) Algorithm used in congestion model

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   a) All ISO load forecasts by zone including revisions made:
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      iii) hour ahead
   b) Actual load by zone

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*** MULTI TX/RX REPORT ***
****

TX/RX NO	2172
PGS.	9
TX/RX INCOMPLETE	-----
TRANSACTION OK	(1) 63047
	(2) 62062
ERROR INFORMATION	-----

MEMORANDUM

DATE: April 6, 2001

FROM: Ted Pulliam, GC-71, 6A-179
Phone: 586-3397; FAX: 586-5870

Ted Pulliam

SUBJECT: Draft Legislation to Require ISOs to Provide More Information

TO: Mark Friedrichs (PO) 7C-034, FAX: 6-3047
John Conti (PO) FAX: 6-2062
Lot Cook (GC) FAX: 6-7479

Please review the attached. Michael Whatley in CP asked for an analysis of its effect on DOE and on energy industries.

NOTE: I am not sure who actually prepared the draft. Possibly ENRON but possibly not.

Please provide me with your comments or let me know if you have no comments by 3:30 p.m. today, Friday April 6, 2001.

Attachment

161

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*** MULTI TX/RX REPORT ***
****

TX/RX NO	2174	
PGS.	9	
TX/RX INCOMPLETE	-----	
TRANSACTION OK	(1)	66763
	(2)	66261
	(3)	67479
ERROR INFORMATION	-----	

MEMORANDUM

DATE: April 6, 2001

FROM: Ted Pulliam, GC-71, 6A-179
Phone: 586-3397; FAX: 586-5870

SUBJECT: Draft Legislation to Require ISOs and PMAs to Provide more Information

TO: Roger Seifert (BPA) 8G-061, FAX: 6-6763
Tim Meeks (WLO) 8G-027, FAX: 6-6261
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NOTE: I am not sure who actually prepared the draft. Possibly ENRON but possibly not.

Please provide me with your comments or let me know if you have no comments by <u>noon Monday, April 9, 2001</u>.

Attachment

A

Pulliam, Edward

From: Cooke, Lot
Sent: Friday, April 06, 2001 10:42 AM
To: Pulliam, Edward
Subject: RE: Draft Legislation on ISO Providing Information

Ted, a couple observations. (1) The definition of bulk power system would seem to extent the information posting requirements to all transmission facilities, to include the PMAs and coops, which are not regulated by FERC. So we should run this by the PMAs for comments. (2) FERC already has an Open Access Same-time Information System (OASIS) rule in place requiring electronic posting of transmission information (18 CFR Part 37). I'm not sure what requiring an additional information posting rule will accomplish. Thanks, Lot.

---Original Message---
From: Pulliam, Edward
Sent: Friday, April 06, 2001 9:37 AM
To: Cooke, Lot
Subject: Draft Legislation on ISO Providing Information

Lot, Could you please provide me with your thoughts on the effect of the legislation on DOE and the energy industry by 3:30 this afternoon (Friday)? I also have sent it to John Conti in PO. Ted

162

Pulliam, Edward

From: Terry, Tracy
Sent: Friday, April 06, 2001 2:19 PM
To: Pulliam, Edward
Cc: Anderson, Margot; Friedrichs, Mark; Conti, John
Subject: Comments on ISO Legislation

Ted,

Mark Friedrichs asked that I send you these comments directly regarding the draft legislation to require ISOs to release more information. Please call if you have any questions on these comments.

Tracy Terry
6-3383

comments_info discl..doc

163

MEMORANDUM

TO: Ted Pulliam, GC

FROM: Tracy Terry, PO-21
6-3383

~~SUBJECT: Comments on Proposed Legislation on ISO Information Disclosure~~

This proposed legislation deals with a number of very complex issues related to information disclosure. NERC has tried to tackle some of this issue to a limited, but has not met with much success in getting agreement among industry participants.

With respect to effects on DOE, the proposed legislation would primarily affect FERC, and would appear to have very little impact (if any) on DOE. Since the requirement is for system operators to make public information they are already receiving from market participants, there would appear to very limited reporting burdens placed on the energy industry.

As to the substance of the legislation, there are a lot of pros and cons here. On the one hand, if more information is made available to market participants on a real-time basis, it will improve transparency and market efficiency to a great extent. On the other hand, market participants could use much of this information to exercise market power.

The proposal directs FERC to conduct a rulemaking to determine what information should be released and when. Since the issues are complex, and data selected to be released on a real-time basis should be considered carefully, this seems to be the best way to handle the issue. It will allow all participants (including system operators) to make their case.

However, the language in the legislation does not appear to go far enough to guard against potential market power abuses resulting from the broad information disclosure requirements proposed. It states that the data should be made available on a real-time basis "unless the Commission...determines that such information shall remain confidential due to its commercially sensitive nature." Although the term "commercially sensitive" is broad, it generally applies to information that might harm individual firms. This might not provide adequate protection for the ISO or consumers. The legislation should include language along the following lines: "unless the Commission...determines that such information shall remain confidential due to its commercially sensitive nature, *or because such information could facilitate anti-competitive behavior by market participants.*"

Section (3) "MARKET BID DATA" seems extremely vague. It is unclear if this applies only to aggregate data, or individual bids and offers.

A

Western Area Power Administration

04/08/01

Bob Harris thoughts and comments on the draft legislation entitled "Electricity Information Disclosure, Efficiency and Accountability Act"

1. The data requirements are very encompassing "all transmission line and generation facility data in the possession of a system operator". The expense to "establish an information system that provides all users of the bulk power system, state regulatory authorities and the public access to bulk-power operating data including making data available on a widely accessible computerized data base" would have an enormous cost to set up initially, and to maintain. This cost would be both in facility costs and labor costs. All cost would need to be passed on to the users of the system and would add to consumer cost. I do not feel the information disclosure benefits will have a return equal to the cost to provide, resulting in a net cost increase to the consumer.
2. I do not believe the data requirements in the legislation will provide substantial, if any, increased reliability of the power system. The NERC and their Reliability Regions, currently release adequacy information as well as security information for the upcoming season and for future years to the public as part of their regular publications. If additional data is needed either in publications or real time to aid reliability, the data requirements and best manner to communicate this data to the user community established by NERC. Canadian entities impact reliability in North America and participate in NERC. Any legislation and subsequent Commission orders will not apply to the Canadian entities. NERC is in a better position to include the Canadian entities in the reporting of needed data. NERC has just moved to a completely Independent Board of Directors on a volunteer basis, demonstrating their dedication to reliability without undue influence. As such, any claimed undue influence in the past no longer exists. It is NERC's responsibility and charter to develop these type needs and as such, we should expect and allow them to address these issues. As reliability requirements change, NERC is in a far better position to make timely changes rather than require legislative fixes. I support items like this developed within NERC and not create additional legislation and government regulations.
3. The legislation specifies that "Unless the Commission, after a hearing, determines that certain information shall remain confidential due to its commercially sensitive nature, all bulk-power-power system operational information shall be provided on a real time basis." With this provision, it would seem that one could not criticize the legislation as requiring disclosure of market sensitive data. However the requirement is very specific that "unless" and "after a hearing" all data will be made available. This does not seem to be written with the intent of protecting data. Scheduling data, absent pricing data, does allow others to analyze and understand the market strategy of other marketing entities. This has and continues to happen to us with companies who currently get our schedule information and begin making sales to entities with which we developed sales opportunities. Certainly the information suggested in the ENRON memo provides opportunity for entities to gain insight and a marketing understanding of others strategy in my opinion.
4. Although not part of the legislation, the memorandum asking for our review implies the legislation applies only to ISOs and PMAs. The definition of "system operator" includes "any entity that operates, or is responsible for the operation of, a bulk-power system, including, but not limited to, a control-area operator, an independent system operator, a security coordinator, a regional transmission organization, a transmission company, or a transmission system operator." It does not seem to apply only to ISOs and PMAs. Certainly it needs to apply to the entire industry and not a segment of the industry. Legislation could give the Commission the authority to apply this requirement on the entire industry in the United States but would not include interconnected Canadian entities and Mexican entities. I know the Canadian entities substantially effect reliability in our region. I am not aware in other regions. It would seem for reasons other than the need for reliability information; some may fight this Commission authority, again supporting NERC as a better forum for this initiative.
5. If legislation goes forward, I would suggest the Commission establish what data would be included and not specify all data in the possession, as is currently drafted. The Commission could establish this requirement based on consultation with NERC and technical conferences held across North America.
6. The legislation requires system operators to post all the data they possess but does not require "Users of the Bulk-Power System" to supply data. It should also require users to provide system operators the data

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required in the format specified by the system operators.

7. The legislation should specify the cost associated with this information system will be passed on to the users.

OFFICE OF GENERAL COUNSEL
SOUTHWESTERN POWER ADMINISTRATION
COMMENTS ON PROPOSED "ELECTRICITY INFORMATION DISCLOSURE, EFFICIENCY
AND ACCOUNTABILITY ACT"
APRIL 9, 2001

We have reviewed the subject legislation and have the following comments:

1. Southwestern currently provides most of the data covered by the proposed legislation to the Southwest Power Pool. However, building a system to provide such information to the public could be a significant expense, particularly with respect to "hacker security".

3. Much of the data encompassed by the proposed legislation has significant commercial value. Southwestern anticipates that many of its customers would have significant reservations about Southwestern releasing loading and status information regarding customer generators to the public.

4. We note that the legislation provides that all bulk-power system operational information shall be provided on a real time basis unless FERC determines after a hearing that certain commercially sensitive information should remain confidential. The bill could be improved by specifying confidentiality for certain data.

Contact: Laurence Yadon
(918) 595-6607

Comments from Southeastern Power Administration on Draft Legislation to Require ISOs and PMAs to provide more information.

Southeastern foresees no problem with the concept of broad disclosure of system information. However, we do have two areas of concern. They are:

(1) Depending on the type of data required, the frequency requirements of data, and methods of submittal, the procedures could become burdensome and costly.

(2) Depending upon timing of data releases, the release of certain information could be sensitive and impact bulk power system commercial operations.

Pulliam, Edward

From: Seifert, Roger - KN-DC [reseifert@bpa.gov]
Sent: Monday, April 09, 2001 2:55 PM
To: Pulliam, Edward
Subject: FW: Electricity information disclosure act.

This is the information I promised to send you. We will also try to get a one or two page summary piece.

> -----Original Message-----
> From: Hull Gerit F - LP
> Sent: Sunday, April 08, 2001 11:22 PM
> To: Seifert, Roger - KN-DC
> Cc: Stier, Jeffrey K - KN-DC; Roach, Randy A - L-7; Van Buren, Marybeth
> - LP; Skidmore, Lara - LP-7; Barnes, Arlena M - LP-7; Bennett, Barry -
> LT-7; Larson, Stephen R - LT-7; Watson, Stephany A - LT-7; Norman, Paul -
> P; Oliver, Stephen - PT-5; Mills, David - PTF-5; Wolfe, Don - PTT-5;
> Nabors, Ottie F - PMB-6; Maher, Mark W - T-DITT2; Arnold, Paul F - TO
> -DITT2; Olds, Peggy A - T-Ditt2
> Subject: Electricity information disclosure act.
>
> The following is intended as background on limited aspects of this very
> complicated issue and is in draft form.
>
> Release of Bid Data
>
> At least in the RTO West Market Monitoring context, PBL has supported
> public release of bid data on a lagged basis no earlier than six months
> after-the-fact, and with participants disguised. This position is largely
> consistent with FERC policy on ISO market bid data disclosure. The draft
> legislation would require real time disclosure of market bid data, unless
> the Commission conducted a hearing to determine that certain information
> must remain confidential due to its commercially sensitive nature. This
> hearing requirement may entail significantly more process than FERC has
> used to make determinations on disclosure requirements in the past. The
> Commission has engaged in analyzing such disclosure requirements and has
> struck the balance it believes is just and reasonable. This begs the
> question of whether the proposed legislation is necessary to prompt a
> neglectful Commission into action, as some might suggest, or whether it is
> really an ex post attempt to reverse particular Commission policy. The
> following discussion demonstrates the Commission's deliberations and
> current policy.
>
> In March 2000, FERC approved, in part, CAISO Tariff Amendment No. 25,
> which provided for publication of individual bid data with a six-month
> delay. The Commission rejected a CAISO proposal to waive notice
> requirements and allow publication of data sets when that data accompanies
> an ISO or Market Surveillance Committee report, with as little as a
> one-month lag, subject to approval by the ISO Board. FERC stated that the
> "proposed release of bid information with less than six months' delay does
> not protect the commercial sensitivity of the data. The approval of the
> ISO's Board of Governors does not make one-month old bid information any
> less sensitive." CAISO, 90 FERC ? 61,316 at p.62,047 (2000). In
> rejecting intervenors' suggestions that such information should never be
> released, the Commission relied on its previous determination that a six
> month delay is sufficient to protect the interests of bidders. See PJM
> Interconnection, 88 FERC ? 61,274, at p. 61,854-55 (1999); Central Hudson
> Electric and Gas Corp., 86 FERC ? 61,062, at p. 61,231 (1999) (NYISO);
> Central Hudson Electric and Gas Corp., 88 FERC ? 61,138, at p. 61,396

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> (1999).
>
> In the orders cited above, the Commission has rejected complaints that
> disclosure after six months will:
> * undermine the bidders' expectation of confidentiality in PX markets,
> discouraging participation
> * cause suppliers to raise bid levels in excess of true costs to avoid
> disclosure of information
> * facilitate exercise of market power by sellers or reduce competition
> * allow use of "cost based bid data" combined with sophisticated
> methods for estimating fuel costs to allow construction of highly accurate
> models of a generator's heat rate, operating parameters and other
> confidential cost information.
> The Commission has found that the commercial sensitivity of bid data
> decreases over time. The Commission does not require that the names of
> individual bidders be disclosed, but does require that the bid data be
> posted in a way that permits analysts to track each individual bidder's
> bids over time. Such data must be made available to every market
> participant.
>
> Disclosure of System Operations Information in Real Time
> * Legislation would require real time disclosure of generation
> operations info, not just transmission.
> * Questions of liability for erroneous data dissemination are
> unaddressed.
> * The legislation makes security coordinators subject to mandatory
> disclosure of system operations information. The security coordinator is
> a likely source of comprehensive transmission system operating
> information. However, the practical ability of the legislation to compel
> disclosure from the security coordinator may be limited. The
> confidentiality of much transmission system information receives strong
> protections in the PNW Security Coordinator Agreement. That agreement
> conditionally permits the release of such information where compelled by
> law. However, any party may withdraw from the agreement on 30 days
> notice. Many parties may withdraw upon enactment of the proposed
> legislation. Source: Stephany Watson.
>
> Definition of "Use of the Bulk Power System"
> * Requires all system users to comply with uniform reliability
> standards, which are not described in the legislative language.

April 9, 2001

Note
To: Ted Pulliam
From: Loy Kirkpatrick Loy Kirkpatrick
Re: Request to Review Legislation to Require System Operators to Supply System Information

Summary: The words "system operator" as used in the proposed bill do not include the PMAs. "System operator" could be expanded to include "transmitting utility." 1/ Since "transmitting utility" includes PMAs, such an expansion would clearly cover the PMAs. For another fix see the end of this memo.

`The words "system operator," as used in the subject bill, would be defined by a proposed new Section 3(28) of the FPA as "any entity that operates, or is responsible for the operation of a bulk-power system, including, but not limited to, a control-area operator, an independent system operator, a security coordinator, a regional transmission organization, a transmission company, or a transmission system operator."

The subject legislation would add a new subsection (c) to Section 213 of the Federal Power Act, 16 USC 8241. New Section 213(c) would require an entity known as a "system operator," i.e. one operating a bulk power system to establish an information system that provides detailed system data to all users of the bulk power system, regulatory agencies, and the public This operating data would be instantaneously available to any entity having computer capability.

To summarize the proposed Section 213(c) would most likely be interpreted to exclude the PMAs. PMAs are generally exempt from the FPA. See Section 201(f) of the FPA, 16 USC 824(f). The 1992 EPACT made PMAs subject to FERC wheeling orders. . This

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1/ The words "transmitting utilities" as used in existing Section 213(b) of the FPA, 16 USC 8241(b), are defined to include Federal power marketing agencies," as well as any element of the electric utility industry, which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." See 16 USC 796(23).

The words "transmitting utility" were added to the FPA by the 1992 Energy Policy Act (EPACT).

Section 211 and 212 of the FPA, as amended by the 1992 Energy Policy Act, 16 USC 824j(a) and 824k(a), gives FERC broad authority to order "transmitting utilities" to provide wholesale transmission service to any: (1) electric utility, (2) Federal power marketing agency, or (3) any other person generating power for sale or resale. 824L

The 1992 EPACT also added Section 213 to the FPA. Section 213(a) of the FPA requires a "transmitting utility" that did not agree to provide requested wholesale transmission service to list with FERC any physical constraints upon its system.

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was done by including PMAs within the definition of " transmitting utilities," as used within Section 211 and 212 of the FPA. 2/

New Section 213(c) would appear to go beyond the reporting requirements to FERC under Section 213(b) of the FPA.

Section 213(b) of the FPA ordered FERC to require by rule-making that "transmitting utilities" submit to FERC annually "information" concerning "potentially available transmission capacity and known constraints."

The operative words of proposed Section 213(c), i.e., system operator, do not include PMAs. On the other hand, the operative words of Section 213(b), i.e. "transmitting utility" expressly include PMAs .

Several "legislative fixes" suggest themselves. The most logical one would be to expand the definition of "system operator," as used in proposed Section 3(28)of the FPA to include "transmitting utility," within the meaning of Section 3(23) of the FPA, 16 USC 796(2). Since PMAs are expressly included with "transmitting utility," expanding the definition of system operator would cover the PMAs as respects disclosure.

Another fix would be to interlineate the words "notwithstanding Section 201(f) of the FPA, 16 USC 824(f), after "system operator," on page 3, line 2 of the draft. This would mean that a PMA as a bulk system operator would have to supply the information, notwithstanding the general information of PMAs from the FPA.

2/ BPA attorney Stephen R. Larson, (BPA's expert on transmission legal issues), in a January 7, 1997 memorandum re Legal Issues Regarding Indego, stated:

> *10. Will IndeGO be able to assume all of Bonneville's obligations to provide transmission service as mandated by section 211 of the Energy Policy Act of 1992?*
>
> Under section 211 of the Federal Power Act, the Federal Energy Regulatory Commission may order a "transmitting utility" to provide transmission services to eligible customers. The term "transmitting utility" is defined as "any electric utility ... or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale." 16 U.S.C. section 796(23). Pursuant to section 212(i)(1) of the Federal Power Act, 16 U.S.C. section 824k(i)(1), FERC's authority to order Bonneville to provide transmission services is reiterated, as is its authority to order Bonneville to interconnect its system with applicants under section 210. Though Bonneville would no longer "operate" the transmission facilities transferred to the IGO, it would continue to "own" them. Consequently, to avoid any confusion and "double jeopardy", it would be advisable that the IGO tariff filing with FERC include a request that FERC explicitly exempt the owners of transmission facilities transferred to the IGO from any obligations under sections 210, 211 and 212 of the Federal Power Act with regard to those facilities.

Cc:

Larry Gollomp

Jack Dodd

Roger Seifert

MEMORANDUM

DATE: April 6, 2001

FROM: Ted Pulliam, GC-71, 6A-179
Phone: 586-3397; FAX: 586-5870

SUBJECT: Draft Legislation to Require ISOs and PMAs to Provide more Information

TO: Roger Seifert (BPA) 8G-061, FAX: 6-6763
Tim Meeks (WLO) 8G-027, FAX: 6-6261
Loy Kirkpatrick (GC) 6D-033, FAX: 6-7479

Please review the attached. Michael Whatley in CP asked for an analysis of its effect on DOE and on energy industries.

NOTE: I am not sure who actually prepared the draft. Possibly ENRON but possibly not.

Please provide me with your comments or let me know if you have no comments by noon Monday, April 9, 2001.

Attachment

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SECTION 1. Short Title

This Act may be cited as the Electricity Information Disclosure, Efficiency and Accountability Act.

SECTION 2. Definitions

Section 3 of the Federal Power Act (16 U.S.C. §796) is amended by adding at the end the following:

"(26) BULK-POWER SYSTEM. The term 'bulk-power system' means all facilities and control systems necessary for operating an interconnected transmission grid (or any portion thereof), including, but not limited to, high-voltage transmission lines; substations; control centers; communications data, and operations planning facilities, energy exchanges formally aligned with system operators and used to determine dispatch priority ; and the output of generating units connected to transmission systems.

"(27) RELIABILITY. The term 'reliability' or 'reliable' means the degree of performance of the bulk-power system that results in electricity being delivered to customers within accepted standards and in the amount desired in order to maintain adequacy and security of the bulk-power system.

"(28) SYSTEM OPERATOR. The term 'system operator' means any entity that operates, or is responsible for the operation of, a bulk-power system, including, but not limited to, a control-area operator, an independent system operator, a security coordinator,

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a regional transmission organization, a transmission company, or a transmission system operator.

"(29) USER OF THE BULK-POWER SYSTEM. The term 'user of the bulk-power system' means any entity that sells, purchases, or transmits electric power over a bulk-power system, or that owns, operates, or maintains facilities or control systems that are part of a bulk-power system, or that is a system operator. Every such user shall comply with uniform reliability standards that take effect under section 215 of this Part.

"(30) BULK-POWER SYSTEM OPERATING DATA. The term "bulk-power system operating data means all transmission line and generation facility data in the possession of a system operator and used to ascertain available transmission line capacity, transmission line capacity constraints, the supply and demand for electrical energy, and other relevant operating data used to maintain reliability of the bulk-power system within the control of the system operator, for relevant operational periods.

"(31) RELEVANT OPERATIONAL PERIODS. The term 'relevant operational periods' shall mean those time periods monitored by the system operator in order to maintain adequate and secure reliability of the bulk-power system and shall include, but is not limited to, data monitored on an hourly, within -day and day ahead basis.

SECTION 3. Disclosure of Bulk Power System Operation Information

SEC 213. Section 213 of the Federal Power Act (16 U.S.C. 824*l*) is amended by adding at the end the following:

"(c) BULK-POWER SYSTEM OPERATING DATA

"(1) Not later than 180 days after the enactment of this subsection, the Commission shall promulgate a rule requiring that each system operator establish an information system that provides all users of the bulk power system, state regulatory authorities and the public access to bulk-power system operating data including making data available on a widely accessible computerized data base. Bulk power system operating data shall be provided to all users of the bulk power system on an instantaneous basis and updated hourly to reflect changes to such data for the relevant operational periods.

"(2) Unless the Commission, after a hearing, determines that certain information shall remain confidential due to its commercially sensitive nature, all bulk-power system operational information shall be provided on a real time basis. In making such a determination the Commission shall consider practical measures capable of protecting confidential information while realizing the objective of providing real time information to the parties referenced in section (c) (1).

"(3) MARKET BID DATA. To the extent a system operator utilizes a competitive bidding or price auction mechanism conducted by the system operator or by an energy exchange formally associated with the system operator that is used to schedule or allocate use of the bulk power system transmission capacity or to maintain reliability of the bulk power system, such bidding information must be provided to all users of the bulk power system and state regulatory authorities on a real time basis.

(b) HISTORICAL MARKET BID DATA. Market bid data referenced in subsection (a) above shall be stored by the system operator or the relevant energy exchange and made available

1 to all bulk power systems users, state regulatory authorities and the general public without disclosure
2 of the identity of the bidding party. Disclosure of the bidding party shall only be made to state
3 regulatory authorities and other authorized State or Federal agencies acting in their official capacity
4 upon a motion filed with the Commission demonstrating that the relevant state regulatory authority
5 or agency is conducting an investigation germane to its jurisdiction.

Steven J. Kean
Executive Vice President
and Chief of Staff

Enron Corp.
P. O. Box 1188
Houston, TX 77251-1188
(713) 853-1586
Fax (713) 646-8160
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February 26, 2001

The Honorable Ron Wyden
US Senate
516 Senate Hart Office
Washington, DC 20510

Dear Senator Wyden:

Thank you very much for providing Enron with an opportunity to testify before the Senate Energy Committee on January 31st. I believe that the exchange of views was very useful and will help inform the critical debate on U.S. energy policy that is now underway.

At the January 31st hearing, you had expressed concern about the lack of coherent public information about energy issues that is creating confusion among energy consumers in the West. I agree that the lack of data (e.g., plant shut-downs) creates unnecessary confusion among consumers. However, there is also a critical lack of data that hinders the ability of power suppliers to provide the best possible products to the marketplace. This lack of data has a negative impact on wholesale power prices and reliability and these costs are ultimately borne by consumers. Moreover, it is clear that the Federal Energy Regulatory Commission (FERC) can take action to rectify this problem.

Certain operational information should be released to all participants in competitive bulk power markets, including the California market. Enron believes that the FERC has the authority under the Federal Power Act to require release of such information from jurisdictional public utilities, Security Coordinators, and Regional Transmission Organizations (RTOs) but has not chosen to do so.[1] We recommend that you, as part of your oversight role under the Federal Power Act, encourage the FERC to implement new rules to increase information transparency and increase market efficiency. There are market entities (the Power Marketing Administrations) not currently under FERC jurisdiction that possess information, which, if released, would enhance market efficiency. Legislation that extends FERC jurisdiction to public transmission systems and directs FERC to require information release from all transmission system operators in bulk power markets would be very beneficial.

Increasing the amount of information to market participants and regulators has four clear advantages. First, it improves the efficiency of system dispatch in the short term. It allows participants to identify transactions that will improve resource allocation and lower production costs. Second, it improves generation and transmission investment decisions. Armed with

[1] The Federal Power Act requires that wholesale power rates be just and reasonable and not unduly discriminatory (FPA sections 205, 206).. Improved information transparency increases market efficiency and decreases prices and/or improves quality of service, thus improving the degree to which rates are just and reasonable. Further, by making market information available to all market participants, it mitigates opportunities for undo discrimination by individual sellers.

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accurate information, investors will place generation and transmission facilities where they are needed, when they are needed. Third, transparency enhances liquidity in energy and transmission-capacity product markets. Increasing liquidity reduces barriers to entry and allows more entities to actively buy and sell power in the western market. Fourth and finally, transparency improves market-monitoring capabilities. Today, only a handful of economists in California have exclusive access to key market data. By making market data easily accessible to many participants, including state and federal regulators as well as private companies, there can be independent verification of the health of the market. In particular, it will be easier to identify anomalous bidding strategies and potentially collusive behavior.

Enron has raised the need for improved transparency numerous times since the creation of the California Independent System Operator (CAISO). Most recently, Enron suggested concrete reforms to improve transparency as part of its Comments on the Commission's November 1, 2000 proposed order.[2] Unfortunately, the Commission chose not to adopt this market reform as part of the Commission's December 15, 2000 Final Order. Apparently, in its urgency to address short-term reforms, the Commission lost sight of a simple, yet powerful tool to improve the efficiency of bulk power markets.

I have attached a document that identifies that type of information for which the FERC should require release. Members from Enron's staff are available to go through these issues in more detail with you or your staff.

Enron recognizes that these are very difficult issues and that there is no easy and immediate answer to the energy problems in the Northwest. But we are working hard to solve this problem and are committed to fulfilling the promise that competition will deliver to energy consumers throughout the U.S.

Thank you once again for your time.

Sincerely,

Steven J. Kean

[2] Comments of Enron Power Marketing and Enron Energy Services, Inc. FERC Docket EL00-95-000 et al., November 22, 2000.

Improving the Efficiency of U.S. Bulk Power Markets Through The Release of Market Data

Objectives of an Information Release Policy

Enron supports the general principle that there should be broad disclosure of system information to market participants. Enron believes that there are two types of data that should be made publicly available. The first kind of data is physical electric system conditions, including generation, transmission, and load data. These data are currently collected by the CAISO in California and, in the rest of the Western Interconnection, by control area Security Coordinators. The second kind of data is the economic and market data exchanged between market participants and the CAISO (or RTO). This type of data includes unit status, scheduling, and bid data. In the case of the CAISO, this data currently resides on CAISO computer systems and can be easily made public.

Enron recognizes that any information release policy must be carefully crafted to prevent efficiency-reducing behavior. First, maximizing market efficiency does not mean that all information be released in real time. There is information that, if released in real-time, could be used to enable potentially collusive behavior. For example, it may be prudent to delay specific bid (price and quantity) until after the real-time hour has passed to prevent potentially collusive behavior. During the window between the close of markets and the real time hour, there may be sufficient time for certain generators to withhold output but insufficient time for other generators to step in thus creating opportunities for the exercise of market power. Second, market efficiency is not enhanced by the release of individual participant cost information and bilateral contract information. Enron strongly believes that such information should remain confidential. In competitive markets, participants compete by lowering costs and competing with each other for customers. Cost information is part of a producer's competitive advantage and should not be released to the public. Similarly, releasing information on forward (or spot) bilateral contracts would allow competitors to deduce a company's risk management and trading strategies and should not be made public.

Specific Information Release Requirements

Enron recommends that the FERC initiate a rulemaking to determine the level of information release for the Cal ISO and all other RTOs with the goal of maximizing market efficiency. As part of the rulemaking, the Commission must consider the specific information items that all RTOs and market participants must release. At a bare minimum, FERC should consider the following information items for mandatory release:

1) Generator Information:
   a) Scheduled generation by unit (including control area interfaces):
      i) Day-ahead
      ii) Day-of
      iii) If unit is down, specify nature of outage (scheduled or unscheduled) and expected duration

   b) Real time generator run-status information:
      i) Status of breakers (open/closed)
      ii) Capability (in MW and MVAR)
      iii) Net output (in MW and MVAR)
      iv) Status of automatic voltage control facilities

c) Mapping of generation and transmission locations to the electricity grid

2) Reliability Must Run (RMR) Generator Information:
   a) Current RMR contracted plants
   b) Forecasted RMR generation
      i) RMR calls exercised and price paid

3) Ancillary Services (A/S) including real-time power:
   a) Supply bid and demand bid prices and quantities
   b) Real-time power merit order
   c) Ramp rate constraints
   d) Identification of marginal unit
   e) Rules for determining A/S quantities
   f) Algorithm used in A/S procurement model
   g) Algorithm used for determining target price

4) Out-of-Market (OOM) purchases:
   a) Seller (or buyer) quantity and price paid

5) Congestion pricing information:
   a) Input and output information from model
   b) Algorithm used in congestion model

6) Load information
   a) All ISO load forecasts by zone including revisions made:
      i) day-ahead
      ii) day-of
      iii) hour ahead
   b) Actual load by zone

7) Transmission information at each control area interface and flowgate:
   a) Total transfer capability (full rating and current-day's rating in MW)
   b) Existing contracts (under full rating and current-day's rating in MW)
   c) Available transmission (under full rating and current-day's rating in MW)
   d) Scheduled transmission usage
   e) Actual flows (with dis-aggregation for scheduled and loop flow)
   f) Scheduled maintenance and protocol for decisions regarding scheduled maintenance.

8) Congestion information:
   a) Intra-zonal congestion management re-dispatch by unit
   b) Out of area calls

As part of its rulemaking, the FERC may also propose other information for release to the extent that it furthers the goal of maximizing market efficiency. The FERC may set appropriate terms and conditions associated with information release. Specific conditions may include necessary time delays on release to protect against potentially collusive behavior; the level of detail or dis-aggregation of data, and protections to ensure that commercially sensitive information is protected. Any restriction placed on the release of information must be justified on the basis of how the restriction enhances market efficiency.

§§ 794, 795. Omitted

HISTORICAL AND STATUTORY NOTES

Codifications

Section 794, which required the work of the commission to be performed by and through the Departments of War, Interior, and Agriculture and their personnel, consisted of the second paragraph of section 2 of Act June 10, 1920, c. 285, 41 Stat. 1063, which was omitted in the revision of said section 2 by Act June 23, 1930, c. 572, § 1, 46 Stat. 798. The first and third paragraphs of said section 2 were formerly classified to sections 793 and 795 of this title.

Section 795, which related to expenses of the commission generally, consisted of the third paragraph of section 2 of Act June 10, 1920, c. 285, 41 Stat. 1063. Such section 2 was amended generally by Act June 23, 1930, c. 572, § 1, 46 Stat. 798, and is classified to section 793 of this title. The first and second paragraphs of said section 2 were formerly classified to sections 793 and 794 of this title.

§ 796. Definitions

The words defined in this section shall have the following meanings for purposes of this chapter, to wit:

(1) "public lands" means such lands and interest in lands owned by the United States as are subject to private appropriation and disposal under public land laws. It shall not include "reservations", as hereinafter defined;

(2) "reservations" means national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but shall not include national monuments or national parks;

(3) "corporation" means any corporation, joint-stock company, partnership, association, business trust, organized group of persons, whether incorporated or not, or a receiver or receivers, trustee or trustees of any of the foregoing. It shall not include "municipalities" as hereinafter defined;

(4) "person" means an individual or a corporation;

(5) "licensee" means any person, State, or municipality licensed under the provisions of section 797 of this title, and any assignee or successor in interest thereof;

(6) "State" means a State admitted to the Union, the District of Columbia, and any organized Territory of the United States;

(7) "municipality" means a city, county, irrigation district, drainage district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing, or distributing power;

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(8) "navigable waters" means those parts of streams or other bodies of water over which Congress has jurisdiction under its authority to regulate commerce with foreign nations and among the several States, and which either in their natural or improved condition notwithstanding interruptions between the navigable parts of such streams or waters by falls, shallows, or rapids compelling land carriage, are used or suitable for use for the transportation of persons or property in interstate or foreign commerce, including therein all such interrupting falls, shallows, or rapids, together with such other parts of streams as shall have been authorized by Congress for improvement by the United States or shall have been recommended to Congress for such improvement after investigation under its authority;

(9) "municipal purposes" means and includes all purposes within municipal powers as defined by the constitution or laws of the State or by the charter of the municipality;

(10) "Government dam" means a dam or other work constructed or owned by the United States for Government purposes with or without contribution from others;

(11) "project" means complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water-rights, rights-of-way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit;

(12) "project works" means the physical structures of a project;

(13) "net investment" in a project means the actual legitimate original cost thereof as defined and interpreted in the "classification of investment in road and equipment of steam roads, issue of 1914, Interstate Commerce Commission", plus similar costs of additions thereto and betterments thereof, minus the sum of the following items properly allocated thereto, if and to the extent that such items have been accumulated during the period of the license from earnings in excess of a fair return on such investment: (a) Unappropriated surplus, (b) aggregate credit balances of current depreciation accounts, and (c) aggregate appropriations of surplus or income held in amortization, sinking fund, or

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similar reserves, or expended for additions or betterments or used for the purposes for which such reserves were created. The term "cost" shall include, insofar as applicable, the elements thereof prescribed in said classification, but shall not include expenditures from funds obtained through donations by States, municipalities, individuals, or others, and said classification of investment of the Interstate Commerce Commission shall insofar as applicable be published and promulgated as a part of the rules and regulations of the Commission;

(14) "Commission" and "Commissioner" means the Federal Power Commission, and a member thereof, respectively;

(15) "State commission" means the regulatory body of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy to consumers within the State or municipality;

(16) "security" means any note, stock, treasury stock, bond, debenture, or other evidence of interest in or indebtedness of a corporation subject to the provisions of this chapter;

(17)(A) "small power production facility" means a facility which is an eligible solar, wind, waste, or geothermal facility, or a facility which—

(i) produces electric energy solely by the use, as a primary energy source, of biomass, waste, renewable resources, geothermal resources, or any combination thereof; and

(ii) has a power production capacity which, together with any other facilities located at the same site (as determined by the Commission), is not greater than 80 megawatts;

(B) "primary energy source" means the fuel or fuels used for the generation of electric energy, except that such term does not include, as determined under rules prescribed by the Commission, in consultation with the Secretary of Energy—

(i) the minimum amounts of fuel required for ignition, startup, testing, flame stabilization, and control uses, and

(ii) the minimum amounts of fuel required to alleviate or prevent—

(I) unanticipated equipment outages, and

(II) emergencies, directly affecting the public health, safety, or welfare, which would result from electric power outages;

(C) "qualifying small power production facility" means a small power production facility—

(i) which the Commission determines, by rule, meets such requirements (including requirements respecting fuel use,

fuel efficiency, and reliability) as the Commission may, by rule, prescribe; and

(ii) which is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

(D) "qualifying small power producer" means the owner or operator of a qualifying small power production facility;

(E) "eligible solar, wind, waste or geothermal facility" means a facility which produces electric energy solely by the use, as a primary energy source, of solar energy, wind energy, waste resources or geothermal resources; but only if—

(i) either of the following is submitted to the Commission not later than December 31, 1994:

(I) an application for certification of the facility as a qualifying small power production facility; or

(II) notice that the facility meets the requirements for qualification; and

(ii) construction of such facility commences not later than December 31, 1999, or, if not, reasonable diligence is exercised toward the completion of such facility taking into account all factors relevant to construction of the facility.[1]

(18)(A) "cogeneration facility" means a facility which produces—

(i) electric energy; and

(ii) steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating, or cooling purposes;

(B) "qualifying cogeneration facility" means a cogeneration facility which—

(i) the Commission determines, by rule, meets such requirements (including requirements respecting minimum size, fuel use, and fuel efficiency) as the Commission may, by rule, prescribe; and

(ii) is owned by a person not primarily engaged in the generation or sale of electric power (other than electric power solely from cogeneration facilities or small power production facilities);

(C) "qualifying cogenerator" means the owner or operator of a qualifying cogeneration facility;

(19) "Federal power marketing agency" means any agency or instrumentality of the United States (other than the Tennessee Valley Authority) which sells electric energy;

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News, p. 4

(20) "evidentiary hearings" and "evidentiary proceeding" mean a proceeding conducted as provided in sections 554, 556, and 557 of Title 5;

(21) "State regulatory authority" has the same meaning as the term "State commission", except that in the case of an electric utility with respect to which the Tennessee Valley Authority has ratemaking authority (as defined in section 2602 of this title), such term means the Tennessee Valley Authority;

(22) "electric utility" means any person or State agency (including any municipality) which sells electric energy; such term includes the Tennessee Valley Authority, but does not include any Federal power marketing agency.[1]

(23) **Transmitting utility.**—The term "transmitting utility" means any electric utility, qualifying cogeneration facility, qualifying small power production facility, or Federal power marketing agency which owns or operates electric power transmission facilities which are used for the sale of electric energy at wholesale[1].

(24) **Wholesale transmission services.**—The term "wholesale transmission services" means the transmission of electric energy sold, or to be sold, at wholesale in interstate commerce.[2]

(25) **Exempt wholesale generator.**—The term "exempt wholesale generator" shall have the meaning provided by section 79z–5a of Title 15.

(June 10, 1920, c. 285, § 3, 41 Stat. 1063; Aug. 26, 1935, c. 687, Title II, § 201, 49 Stat. 838; Nov. 9, 1978, Pub.L. 95–617, Title II, § 201, 92 Stat. 3134; June 30, 1980, Pub.L. 96–294, Title VI, § 643(a)(1), 94 Stat. 770; Nov. 15, 1990, Pub.L. 101–575, § 3, 104 Stat. 2834; May 17, 1991, Pub.L. 102–46, 105 Stat. 249; Oct. 24, 1992, Pub.L. 102–486, Title VII, § 726, 106 Stat. 2921.)

[1] So in original. The period probably should be a semicolon.

[2] So in original. The period probably should be "; and"

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report No. 95–141 and House Report No. 95–543, see 1978 U.S. Code Cong. and Adm. News, p. 7660.

1980 Acts. Senate Report Nos. 96–166 and 96–387, House Report No. 96–165, and House Conference Report No. 96–1104, see 1980 U.S. Code Cong. and Adm. News, p. 1743.

1990 Acts. House Report No. 101–885, see 1990 U.S. Code Cong. and Adm. News, p. 4026.

1991 Acts. Senate Report No. 102–11, see 1991 U.S. Code Cong. and Adm. News, p. 123.

1992 Acts. House Report No. 102–474(Parts I–IX), House Conference Report No. 102–1018, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

References in Text

Public land laws, referred to in pars. (1), (2), are classified generally to Title 43, Public Lands.

comply with safety regulations governing such plants unless sanction is either unwarranted in law or without justification in fact. Bluestone Energy Design, Inc. v. F.E.R.C., C.A.D.C.1996, 74 F.3d 128, 316 U.S.App.D.C. 27.

SUBCHAPTER II—REGULATION OF ELECTRIC UTILITY COMPANIES ENGAGED IN INTERSTATE COMMERCE

§ 824. Declaration of policy; application of subchapter

(a) Federal regulation of transmission and sale of electric energy

It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that Federal regulation of matters relating to generation to the extent provided in this subchapter and subchapter III of this chapter and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.

(b) Use or sale of electric energy in interstate commerce

(1) The provisions of this subchapter shall apply to the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce, but except as provided in paragraph (2) shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a State line. The Commission shall have jurisdiction over all facilities for such transmission or sale of electric energy, but shall not have jurisdiction, except as specifically provided in this subchapter and subchapter III of this chapter, over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.

(2) The provisions of sections 824i, 824j, and 824k of this title shall apply to the entities described in such provisions, and such entities shall be subject to the jurisdiction of the Commission for purposes of carrying out such provisions and for purposes of applying the enforcement authorities of this chapter with respect to such provisions. Compliance with any order of the Commission under the provisions of section 824i or 824j of this title, shall not make an electric utility or other entity subject to the jurisdiction of the Commission for any purposes other than the purposes specified in the preceding sentence.

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(c) Electric energy in interstate commerce

For the purpose of this subchapter, electric energy shall be held to be transmitted in interstate commerce if transmitted from a State and consumed at any point outside thereof; but only insofar as such transmission takes place within the United States.

(d) "Sale of electric energy at wholesale" defined

The term "sale of electric energy at wholesale" when used in this subchapter, means a sale of electric energy to any person for resale.

(e) "Public utility" defined

The term "public utility" when used in this subchapter and subchapter III of this chapter means any person who owns or operates facilities subject to the jurisdiction of the Commission under this subchapter (other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title).

(f) United States, State, political subdivision of a State, or agency or instrumentality thereof exempt

No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.

(g) Books and records

(1) Upon written order of a State commission, a State commission may examine the books, accounts, memoranda, contracts, and records of—

(A) an electric utility company subject to its regulatory authority under State law,

(B) any exempt wholesale generator selling energy at wholesale to such electric utility, and

(C) any electric utility company, or holding company thereof, which is an associate company or affiliate of an exempt wholesale generator which sells electric energy to an electric utility company referred to in subparagraph (A),

wherever located, if such examination is required for the effective discharge of the State commission's regulatory responsibilities affecting the provision of electric service.

(2) Where a State commission issues an order pursuant to paragraph (1), the State commission shall not publicly disclose trade secrets or sensitive commercial information.

(3) Any United States district court located in the State in which the State commission referred to in paragraph (1) is located shall have jurisdiction to enforce compliance with this subsection.

(4) Nothing in this section shall—

(A) preempt applicable State law concerning the provision of records and other information; or

(B) in any way limit rights to obtain records and other information under Federal law, contracts, or otherwise.

(5) As used in this subsection the terms "affiliate", "associate company", "electric utility company", "holding company", "subsidiary company", and "exempt wholesale generator" shall have the same meaning as when used in the Public Utility Holding Company Act of 1935 [15 U.S.C.A. § 79 et seq.].

(June 10, 1920, c. 285, § 201, as added Aug. 26, 1935, c. 687, Title II, § 213, 49 Stat. 847, and amended Nov. 9, 1978, Pub.L. 95-617, Title II, § 204(b), 92 Stat. 3140; Oct. 24, 1992, Pub.L. 102-486, Title VII, § 714, 106 Stat. 2911.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report No. 95-141 and House Report No. 95-543, see 1978 U.S. Code Cong. and Adm. News, p. 7660.

1992 Acts. House Report No. 102-474(Parts I-IX), House Conference Report No. 102-1018, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

References in Text

The Public Utility Holding Company Act of 1935, referred to in subsec. (g)(5), is Act Aug. 26, 1935, c. 687, Title I, 49 Stat. 838, as amended, which is classified generally to chapter 2C (section 79 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 79 of Title 15 and Tables.

Amendments

1992 Amendments. Subsec. (g). Pub.L. 102-486, § 714. added subsec. (g).

1978 Amendments. Subsec. (b). Pub.L. 95-617, § 204(b)(1), designated existing provisions as par. (1) and, in par. (1) as so designated, inserted "except as provided in paragraph (2)" following "in interstate commerce, but" and added par. (2).

Subsec. (e). Pub.L. 95-617, § 204(b)(2), inserted "(other than facilities subject to such jurisdiction solely by reason of section 824i, 824j, or 824k of this title)" following "under this subchapter".

Transfer of Functions

The Federal Power Commission was terminated and its functions with regard to the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress under this subchapter were transferred to the Federal Energy Regulatory Commission by sections 7172(a)(1)(B) and 7293 of Title 42, The Public Health and Welfare.

All executive and administrative functions of the Federal Power Commission were, with certain reservations, transferred to the Chairman of such Commission, with authority vested in him to authorize their performance by any officer, employee, or administrative unit under his jurisdiction, by Reorg. Plan No. 9 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report No. 95-141 and House Report No. 95-543, see 1978 U.S. Code Cong. and Adm. News, p. 7660.

1980 Acts. Senate Report Nos. 96-166 and 96-387, House Report No. 96-165, and House Conference Report No. 96-1104, see 1980 U.S. Code Cong. and Adm. News, p. 1743.

References in Text

The Commission, referred to in subsecs. (a) to (d) and (e)(2), means the Federal Energy Regulatory Commission. See section 2602(3) of this title.

Amendments

1980 Amendments. Subsec. (a)(1). Pub.L. 96-294 added applicability to geothermal power producers.

Study and Report to Congressional Committees on Application of Provisions Relating to Cogeneration, Small Power Production and Interconnection Authority

For provisions requiring the Federal Energy Regulatory Commission to conduct a study and report to Congress on whether the benefits of this section and section 824a-3 of this title should be applied to hydroelectric power facilities utilizing new dams or diversions, within the meaning of section 824a-3 of this title, see section 8(d) of Pub.L. 99-495, set out as a note under section 824a-3 of this title.

LIBRARY REFERENCES

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Electricity ⚷11(1).
Key Number System Topic No. 145.

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P.U.R.P.A. and the evolving regulation of cogeneration—A guide for prospective cogenerators focusing on the greater Detroit resource recovery facility. John E. Mogk and Frederick J. Lepley, Jr., 35 Wayne L.Rev. 1051 (1989).

Transforming the energy system: California's plan to develop cogeneration. Comment, 2 High Tech.L.J. 91 (1987).

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Natural and Marine Resources, 24 Fed Proc L Ed §§ 56:320, 56:324.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 824j. Wheeling authority

(a) Transmission service by any electric utility; notice, hearing and findings by Commission

Any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale, may apply to the Commission for an order under this subsection requiring a transmitting utility to provide transmission services (including any enlargement of transmission capacity necessary to provide such services) to the applicant. Upon receipt of such application, after public notice and notice to each affected State regulatory authority, each affected electric utility, and each affected Federal power marketing agency,

d after affording an opportunity for an evidentiary hearing, the mmission may issue such order if it finds that such order meets requirements of section 824k of this title, and would otherwise be the public interest. No order may be issued under this subsection less the applicant has made a request for transmission services to transmitting utility that would be the subject of such order at ast 60 days prior to its filing of an application for such order.

) Reliability of electric service

No order may be issued under this section or section 824i of this le if, after giving consideration to consistently applied regional or ational reliability standards, guidelines, or criteria, the Commission nds that such order would unreasonably impair the continued liability of electric systems affected by the order.

c) Replacement of electric energy

(1) Repealed. Pub.L. 102–486, Title VII, § 721(4)(A), Oct. 24, 992, 106 Stat. 2915

(2) No order may be issued under subsection (a) or (b) of this ction which requires the transmitting utility subject to the order to ansmit, during any period, an amount of electric energy which places any amount of electric energy—

(A) required to be provided to such applicant pursuant to a contract during such period, or

(B) currently provided to the applicant by the utility subject to the order pursuant to a rate schedule on file during such period with the Commission: *Provided,* That nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination of modification of an existing rate schedule: *Provided,* That such order shall not become effective until termination of such rate schedule or the modification becomes effective.

(d) Termination or modification of order; notice, hearing and findings of Commission; contents of order; inclusion in order of terms and conditions agreed upon by parties

(1) Any transmitting utility ordered under subsection (a) or (b) of this section to provide transmission services may apply to the Commission for an order permitting such transmitting utility to cease providing all, or any portion of, such services. After public notice, notice to each affected State regulatory authority, each affected Federal power marketing agency, each affected transmitting utility, and each affected electric utility, and after an opportunity for an evidentiary hearing, the Commission shall issue an order terminating or modifying the order issued under subsection (a) or (b) of this

section, if the electric utility providing such transmission services ha demonstrated, and the Commission has found, that—

(A) due to changed circumstances, the requirements applicable, under this section and section 824k of this title, to th issuance of an order under subsection (a) or (b) of this section are no longer met, or [2]

(B) any transmission capacity of the utility providing transmission services under such order which was, at the time such order was issued, in excess of the capacity necessary to serve its own customers is no longer in excess of the capacity necessary for such purposes, or

(C) the ordered transmission services require enlargement of transmission capacity and the transmitting utility subject to the order has failed, after making a good faith effort, to obtain the necessary approvals or property rights under applicable Federal, State, and local laws.

No order shall be issued under this subsection pursuant to a finding under subparagraph (A) unless the Commission finds that such order is in the public interest.

(2) Any order issued under this subsection terminating or modifying an order issued under subsection (a) or (b) of this section shall—

(A) provide for any appropriate compensation, and

(B) provide the affected electric utilities adequate opportunity and time to—

(i) make suitable alternative arrangements for any transmission services terminated or modified, and

(ii) insure that the interests of ratepayers of such utilities are adequately protected.

(3) No order may be issued under this subsection terminating or modifying any order issued under subsection (a) or (b) of this section if the order under subsection (a) or (b) of this section includes terms and conditions agreed upon by the parties which—

(A) fix a period during which transmission services are to be provided under the order under subsection (a) or (b) of this section, or

(B) otherwise provide procedures or methods for terminating or modifying such order (including, if appropriate, the return of the transmission capacity when necessary to take into account an increase, after the issuance of such order, in the needs of the transmitting utility subject to such order for transmission capacity).

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dm. News, p. 2496.

1992 Acts. Hou
102-474(Parts I-IX),
report No. 102-101
President, see 1992
dm. News, p. 1953.

References in Text

The Commission,
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Amendments

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(e) "Facilities" defined

As used in this section, the term "facilities" means only facilities used for the generation or transmission of electric energy.

(June 10, 1920, c. 285, § 211, as added Nov. 9, 1978, Pub.L. 95–617, Title II, § 203, 92 Stat. 3136, and amended June 30, 1980, Pub.L. 96–294, Title VI, § 643(a)(3), 94 Stat. 770; Oct. 16, 1986, Pub.L. 99–495, § 15, 100 Stat. 1257; Oct. 24, 1992, Pub.L. 102–486, Title VII, § 721, 106 Stat. 2915.)

[1] So in original. Probably should be "or".

[2] So in original. The word "or" probably should not appear.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report No. 95–141 and House Report No. 95–543, see 1978 U.S. Code Cong. and Adm. News, p. 7660.

1980 Acts. Senate Report Nos. 96–166 and 96–387, House Report No. 96–165, and House Conference Report No. 96–1104, see 1980 U.S. Code Cong. and Adm. News, p. 1743.

1986 Acts. House Report No. 99–507 and House Conference Report No. 99–934, see 1986 U.S. Code Cong. and Adm. News, p. 2496.

1992 Acts. House Report No. 102–474(Parts I–IX), House Conference Report No. 102–1018, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

References in Text

The Commission, referred to in subsecs. (a), (b), (c)(2)(B) and (d)(1), means the Federal Energy Regulatory Commission. See section 2602(3) of this title.

Amendments

1992 Amendments. Subsec. (a). Pub.L. 102–486, § 721(1), (2), substituted provisions authorizing electric utility, Federal power marketing agency, or other person generating electric energy for sale or resale to apply to Commission, for provisions authorizing electric utility, geothermal power producer, or Federal power marketing agency to apply to Commission, substituted provisions authorizing issuance if order meets section 824k requirements and is in public interest for provisions authorizing issuance if order is in public interest, would conserve energy, promote efficient use of resources and improve reliability of system, and if order meets section 824k requirements, and added provision conditioning issuance of order on making of request for services at least 60 days prior to filing of application.

Subsec. (b). Pub.L. 102–486, § 721(3), substituted provisions prohibiting issuance of order where it would unreasonably impair reliability of affected systems, for provisions relating to transmission service by sellers of electricity for resale.

Subsec. (c). Pub.L. 102–486, § 721(4), in par. (2) substituted "which requires the transmitting" for "which requires the electric" and struck out pars. (1), (3), and (4), which prohibited issuance of order unless it reasonably preserves competitive relationships, where it is inconsistent with State law, and where it provides energy directly to consumer.

Subsec. (d)(1). Pub.L. 102–486, § 721(5)(A), (B), substituted "transmitting" for "electric" after "Any" and "such" and inserted "each affected transmitting utility," before "and each affected electric utility,".

Subsec. (d)(1)(C). Pub.L. 102–486, § 721(5)(D), added subpar. (C).

Subsec. (d)(3)(B). Pub.L. 102–486, § 721(5)(C), substituted "transmitting" for "electric".

1986 Amendments. Subsec. (c)(2)(B). Pub.L. 99–495, § 15, added provisions that nothing in this subparagraph shall prevent an application for an order hereunder to be filed prior to termination or modification of an existing rate schedule, provided that such order shall not become effective until termination of such rate schedule or the modification becomes effective.

1980 Amendments. Subsec. (a). Pub.L. 96–294 added applicability to geothermal power producers.

Effective and Applicability Provisions

1986 Acts. Amendment by Pub.L. 99–495 to take effect with respect to each license, permit or exemption issued under this chapter after Oct. 16, 1986, see section 18 of Pub.L. 99–495, set out as a note under section 797 of this title.

Local authority

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any state or local government relating to environmental protection of siting of facilities, see section 731 of Pub.L. 102–486, set out as a note under section 79 of Title 15, Commerce and Trade.

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WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

Notes of Decisions

Jurisdiction 3
Power pooling 2
Prerequisites to order 1

1. Prerequisites to order

Prerequisites of this chapter to order by Commission requiring wheeling applied to order expanding voluntary commitment to wheel. New York State Elec. & Gas Corp. v. Federal Energy Regulatory Commission, C.A.2 1980, 638 F.2d 388, certiorari denied 102 S.Ct. 105, 454 U.S. 821, 70 L.Ed.2d 93.

2. Power pooling

Given the voluntary nature of power pooling under this chapter and Congress' particular determinations with respect to wheeling, the Commission did not err by failing to order mid-continent area power pool participants to wheel electric power to nongenerating electric systems. Central Iowa Power Co-op. v. Federal Energy Regulatory Commission, C.A.D.C.1979, 606 F.2d 1156, 196 U.S.App.D.C. 249.

3. Jurisdiction

Regardless of whether one considered exceptions to Bradley rule for applying a change in law to a pending case or this section and section 824i of this title, that authorize Federal Energy Regulatory Commission to order wheeling and power interconnects and that was enacted after institution of action by electric cooperative complaining that failure of defendant utilities to wheel power and to effect power interconnects violated antitrust laws, the suit was to be heard in district court rather than transferred to the agency since the Commission was lacking in primary jurisdiction. Sunflower Elec. Co-op., Inc. v. Kansas Power and Light Co., C.A.10 (Kan.) 1979, 603 F.2d 791.

824k. Orders

(a) Rates, charges, t services

An order under se ing utility subject ervices at rates, cl ecovery by such ut he transmission se ng, but not limitec erifiable and ecor enefits to the trai ervice, and the co Such rates, charge omically efficient hall be just and referential. Rates ervices provided p hall ensure that, t ng the wholesale tr provision of such s order and not from and transmission c

(b) Repealed. Pul 106 Stat. 291

(c) Issuance of pr conditions o final order;

(1) Before issui subsection (a) or (b issue a proposed c proposed intercon and conditions unc the apportionment reimbursement rea shall not be review such parties to agr if the Commission ment of the purpc tions agreed to by Commission.

(2) (A) If the pa time set by the

§ 824k. Orders requiring interconnection or wheeling

(a) Rates, charges, terms, and conditions for wholesale transmission services

An order under section 824j of this title shall require the transmitting utility subject to the order to provide wholesale transmission services at rates, charges, terms, and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services, including, but not limited to, an appropriate share, if any, of legitimate, verifiable and economic costs, including taking into account any benefits to the transmission system of providing the transmission service, and the costs of any enlargement of transmission facilities. Such rates, charges, terms, and conditions shall promote the economically efficient transmission and generation of electricity and shall be just and reasonable, and not unduly discriminatory or preferential. Rates, charges, terms, and conditions for transmission services provided pursuant to an order under section 824j of this title shall ensure that, to the extent practicable, costs incurred in providing the wholesale transmission services, and properly allocable to the provision of such services, are recovered from the applicant for such order and not from a transmitting utility's existing wholesale, retail, and transmission customers.

(b) Repealed. Pub.L. 102–486, Title VII, §722(1), Oct. 24, 1992, 106 Stat. 2916

(c) Issuance of proposed order; agreement by parties to terms and conditions of order; approval by Commission; inclusion in final order; failure to agree

(1) Before issuing an order under section 824i of this title or subsection (a) or (b) of section 824j of this title, the Commission shall issue a proposed order and set a reasonable time for parties to the proposed interconnection or transmission order to agree to terms and conditions under which such order is to be carried out, including the apportionment of costs between them and the compensation or reimbursement reasonably due to any of them. Such proposed order shall not be reviewable or enforceable in any court. The time set for such parties to agree to such terms and conditions may be shortened if the Commission determines that delay would jeopardize the attainment of the purposes of any proposed order. Any terms and conditions agreed to by the parties shall be subject to the approval of the Commission.

(2) (A) If the parties agree as provided in paragraph (1) within the time set by the Commission and the Commission approves such

agreement, the terms and conditions shall be included in the final order. In the case of an order under section 824i of this title, if the parties fail to agree within the time set by the Commission or if the Commission does not approve any such agreement, the Commission shall prescribe such terms and conditions and include such terms and conditions in the final order.

(B) In the case of any order applied for under section 824j of this title, if the parties fail to agree within the time set by the Commission, the Commission shall prescribe such terms and conditions in the final order.

(d) Statement of reasons for denial

If the Commission does not issue any order applied for under section 824i or 824j of this title, the Commission shall, by order, deny such application and state the reasons for such denial.

(e) Savings provisions

(1) No provision of section 824i, 824j, 824m of this title, or this section shall be treated as requiring any person to utilize the authority of any such section in lieu of any other authority of law. Except as provided in section 824i, 824j, 824m of this title, or this section, such sections shall not be construed as limiting or impairing any authority of the Commission under any other provision of law.

(2) Sections 824i, 824j, 824*l*, 824m of this title, and this section, shall not be construed to modify, impair, or supersede the antitrust laws. For purposes of this section, the term "antitrust laws" has the meaning given in subsection (a) of the first sentence of section 12 of Title 15, except that such term includes section 45 of Title 15 to the extent that such section relates to unfair methods of competition.

(f) Effective date of order; hearing; notice; review

(1) No order under section 824i or 824j of this title requiring the Tennessee Valley Authority (hereinafter in this subsection referred to as the "TVA") to take any action shall take effect for 60 days following the date of issuance of the order. Within 60 days following the issuance by the Commission of any order under section 824i or of section 824j of this title requiring the TVA to enter into any contract for the sale or delivery of power, the Commission may on its own motion initiate, or upon petition of any aggrieved person shall initiate, an evidentiary hearing to determine whether or not such sale or delivery would result in violation of the third sentence of section 15d(a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831n–4), hereinafter in this subsection referred to as the TVA Act [16 U.S.C.A. § 831 et seq.]

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(2) Upon initiation of any evidentiary hearing under paragraph (1), the Commission shall give notice thereof to any applicant who applied for and obtained the order from the Commission, to any electric utility or other entity subject to such order, and to the public, and shall promptly make the determination referred to in paragraph (1). Upon initiation of such hearing, the Commission shall stay the effectiveness of the order under section 824i or 824j of this title until whichever of the following dates is applicable—

(A) the date on which there is a final determination (including any judicial review thereof under paragraph (3)) that no such violation would result from such order, or

(B) the date on which a specific authorization of the Congress (within the meaning of the third sentence of section 15d(a) of the TVA Act [16 U.S.C.A. § 831n–4(a)]) takes effect.

(3) Any determination under paragraph (1) shall be reviewable only in the appropriate court of the United States upon petition filed by any aggrieved person or municipality within 60 days after such determination, and such court shall have jurisdiction to grant appropriate relief. Any applicant who applied for and obtained the order under section 824i or 824j of this title, and any electric utility or other entity subject to such order shall have the right to intervene in any such proceeding in such court. Except for review by such court (and any appeal or other review by an appellate court of the United States), no court shall have jurisdiction to consider any action brought by any person to enjoin the carrying out of any order of the Commission under section 824i or section 824j of this title requiring the TVA to take any action on the grounds that such action requires a specific authorization of the Congress pursuant to the third sentence of section 15d(a) of the TVA Act [16 U.S.C.A. § 831n–4(a)].

(g) Prohibition on orders inconsistent with retail marketing areas

No order may be issued under this chapter which is inconsistent with any State law which governs the retail marketing areas of electric utilities.

(h) Prohibition on mandatory retail wheeling and sham wholesale transactions

No order issued under this chapter shall be conditioned upon or require the transmission of electric energy:

(1) directly to an ultimate consumer, or

(2) to, or for the benefit of, an entity if such electric energy would be sold by such entity directly to an ultimate consumer, unless:

(A) such entity is a Federal power marketing agency; the Tennessee Valley Authority; a State or any political subdivision of a State (or an agency, authority, or instrumentality of a State or a political subdivision); a corporation or association that has ever received a loan for the purposes of providing electric service from the Administrator of the Rural Electrification Administration under the Rural Electrification Act of 1936 [7 U.S.C.A. § 901 et seq.]; a person having an obligation arising under State or local law (exclusive of an obligation arising solely from a contract entered into by such person) to provide electric service to the public; or any corporation or association which is wholly owned, directly or indirectly, by any one or more of the foregoing; and

(B) such entity was providing electric service to such ultimate consumer on October 24, 1992, or would utilize transmission or distribution facilities that it owns or controls to deliver all such electric energy to such electric consumer.

Nothing in this subsection shall affect any authority of any State or local government under State law concerning the transmission of electric energy directly to an ultimate consumer.

(i) Laws applicable to Federal Columbia River Transmission System

(1) The Commission shall have authority pursuant to section 824i of this title, section 824j of this title, this section, and section 824*l* of this title to (A) order the Administrator of the Bonneville Power Administration to provide transmission service and (B) establish the terms and conditions of such service. In applying such sections to the Federal Columbia River Transmission System, the Commission shall assure that—

(i) the provisions of otherwise applicable Federal laws shall continue in full force and effect and shall continue to be applicable to the system; and

(ii) the rates for the transmission of electric power on the system shall be governed only by such otherwise applicable provisions of law and not by any provision of section 824i of this title, section 824j of this title, this section, or section 824*l* of this title, except that no rate for the transmission of power on the system shall be unjust, unreasonable, or unduly discriminatory or preferential, as determined by the Commission.

(2) Notwithstanding any other provision of this chapter with respect to the procedures for the determination of terms and conditions for transmission service—

(A) when the Administrator of the Bonneville Power Administration either (i) in response to a written request for specific transmission service terms and conditions does not offer the requested terms and conditions, or (ii) proposes to establish terms and conditions of general applicability for transmission service on the Federal Columbia River Transmission System, then the Administrator may provide opportunity for a hearing and, in so doing, shall—

(I) give notice in the Federal Register and state in such notice the written explanation of the reasons why the specific terms and conditions for transmission services are not being offered or are being proposed;

(II) adhere to the procedural requirements of paragraphs (1) through (3) of section 839e(i) of this title, except that the hearing officer shall, unless the hearing officer becomes unavailable to the agency, make a recommended decision to the Administrator that states the hearing officer's findings and conclusions, and the reasons or basis thereof, on all material issues of fact, law, or discretion presented on the record; and

(III) make a determination, setting forth the reasons for reaching any findings and conclusions which may differ from those of the hearing officer, based on the hearing record, consideration of the hearing officer's recommended decision, section 824j of this title and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section; and

(B) if application is made to the Commission under section 824j of this title for transmission service under terms and conditions different than those offered by the Administrator, or following the denial of a request for transmission service by the Administrator, and such application is filed within 60 days of the Administrator's final determination and in accordance with Commission procedures, the Commission shall—

(i) in the event the Administrator has conducted a hearing as herein provided for (I) accord parties to the Administrator's hearing the opportunity to offer for the Commission record materials excluded by the Administrator from the hearing record, (II) accord such parties the opportunity to submit for the Commission record comments on appropriate terms and conditions, (III) afford those parties the opportunity for a hearing if and to the extent that the Commission finds the Administrator's hearing record to be inadequate to support a decision by the Commission, and (IV) establish terms and conditions for or deny transmission service based

on the Administrator's hearing record, the Commission record, section 824j of this title and this section, as amended by the Energy Policy Act of 1992, and the provisions of law as preserved in this section, or

(ii) in the event the Administrator has not conducted a hearing as herein provided for, determine whether to issue an order for transmission service in accordance with section 824j of this title and this section, including providing the opportunity for a hearing.

(3) Notwithstanding those provisions of section 825*l*(b) of this title which designate the court in which review may be obtained, any party to a proceeding concerning transmission service sought to be furnished by the Administrator of the Bonneville Power Administration seeking review of an order issued by the Commission in such proceeding shall obtain a review of such order in the United States Court of Appeals for the Pacific Northwest, as that region is defined by section 839a(14) of this title.

(4) To the extent the Administrator of the Bonneville Power Administration cannot be required under section 824j of this title, as a result of the Administrator's other statutory mandates, either to (A) provide transmission service to an applicant which the Commission would otherwise order, or (B) provide such service under rates, terms, and conditions which the Commission would otherwise require, the applicant shall not be required to provide similar transmission services to the Administrator or to provide such services under similar rates, terms, and conditions.

(5) The Commission shall not issue any order under section 824i of this title, section 824j of this title, this section, or section 824*l* of this title requiring the Administrator of the Bonneville Power Administration to provide transmission service if such an order would impair the Administrator's ability to provide such transmission service to the Administrator's power and transmission customers in the Pacific Northwest, as that region is defined in section 839a(14) of this title, as is needed to assure adequate and reliable service to loads in that region.

(j) Equitability within territory restricted electric systems

With respect to an electric utility which is prohibited by Federal law from being a source of power supply, either directly or through a distributor of its electric energy, outside an area set forth in such law, no order issued under section 824j of this title may require such electric utility (or a distributor of such electric utility) to provide transmission services to another entity if the electric energy to be transmitted will be consumed within the area set forth in such

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Federal law, unless the order is in furtherance of a sale of electric energy to that electric utility: Provided, however, That the foregoing provision shall not apply to any area served at retail by an electric transmission system which was such a distributor on October 24, 1992, and which before October 1, 1991, gave its notice of termination under its power supply contract with such electric utility.

(k) ERCOT utilities

(1) Rates

Any order under section 824j of this title requiring provision of transmission services in whole or in part within ERCOT shall provide that any ERCOT utility which is not a public utility and the transmission facilities of which are actually used for such transmission service is entitled to receive compensation based, insofar as practicable and consistent with subsection (a) of this section, on the transmission ratemaking methodology used by the Public Utility Commission of Texas.

(2) Definitions

For purposes of this subsection—

(A) the term "ERCOT" means the Electric Reliability Council of Texas; and

(B) the term "ERCOT utility" means a transmitting utility which is a member of ERCOT.

(June 10, 1920, c. 285, § 212, as added Nov. 9, 1978, Pub.L. 95-617, Title II, § 204(a), 92 Stat. 3138, and amended Oct. 24, 1992, Pub.L. 102-486, Title VII, § 722, 106 Stat. 2916.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Acts. Senate Report No. 95-141 and House Report No. 95-543, see 1978 U.S. Code Cong. and Adm. News, p. 7660.

1992 Acts. House Report No. 102-474(Parts I-IX), House Conference Report No. 102-1018, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

References in Text

The Commission, referred to in subsecs. (c), (d) and (f), means the Federal Energy Regulatory Commission. See section 2602(3) of this title.

The TVA Act, referred to in subsec. (f)(1), means Act May 18, 1933, c. 32, 48 Stat. 58, as amended, known as the Tennessee Valley Authority Act of 1933, which is classified generally to chapter 12A (section 831 et seq.) of this title. For complete classification of this Act to the Code, see section 831 of this title and Tables volume.

The Rural Electrification Act of 1936, referred to in subsec. (h)(2)(A), is Act May 20, 1936, c. 432, 49 Stat. 1363, as amended, which is classified generally to chapter 31 (section 901 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see section 901 of Title 7 and Tables.

The Energy Policy Act of 1992, referred to in subsec. (i)(2)(A)(III), (B)(i), is Pub.L. 102-486, Title VII, Oct. 24, 1992, 106 Stat. 2776. For classification of this Act to the Code, see Short Title note set out under section 13201 of Title 42, The Public Health and Welfare and Tables.

Amendments

1992 Amendments. Subsecs. (a), (b). Pub.L. 102–486, § 722(1), added subsec. (a) and struck out former subsecs. (a) and (b), which set forth conditions for issuance of section 824i or 824j orders, and required demonstration of ability to reimburse party subject to order, respectively.

Subsec. (e). Pub.L. 102–486, § 722(2), substituted provisions setting forth savings provisions for provisions relating to utilization of wheeling authority in lieu of other authority and limitation of Commission authority.

Subsecs. (g)–(k). Pub.L. 102–486, § 722(3), added subsecs. (g) through (k).

Local authority

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any state or local government relating to environmental protection of siting of facilities, see section 731 of Pub.L. 102–486, set out as a note under section 79 of Title 15, Commerce and Trade.

LIBRARY REFERENCES

Administrative Law

Small power production, see 18 CFR § 292.101 et seq.

American Digest System

Electricity ⟹11.
Key Number System Topic No. 145.

Encyclopedias

Electricity, see C.J.S. § 24.

Law Review and Journal Commentaries

Choice between markets and central planning in regulating the U.S. electricity industry. Bernard S. Black and Richard J. Pierce, Jr., 93 Colum.L.Rev. 1339 (1993).

Texts and Treatises

Natural and Marine Resources, 24 Fed Proc L Ed §§ 56:332, 56:333, 56:335, 56:336.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 824*l*. Information requirements

(a) Requests for wholesale transmission services

Whenever any electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale makes a good faith request to a transmitting utility to provide wholesale transmission services and requests specific rates and charges, and other terms and conditions, unless the transmitting utility agrees to provide such services at rates, charges, terms and conditions acceptable to such person, the transmitting utility shall, within 60 days of its receipt of the request, or other mutually agreed upon period, provide such person with a detailed written explanation, with specific reference to the facts and circumstances of the request, stating (1) the transmitting utility's basis for the proposed rates, charges, terms and conditions for such services, and (2) its analysis of any physical or other constraints affecting the provision of such services.

(b) Transmission capacity and constraints

Not later than 1 year after the October 24, 1992, the Commission shall promulgate a rule requiring that information be submitted annually to the Commission by transmitting utilities which is adequate to inform potential transmission customers, State regulatory authorities, and the public of potentially available transmission capacity and known constraints.

(June 10, 1920, c. 285, § 213, as added Oct. 24, 1992, Pub.L. 102–486, Title VII, § 723, 106 Stat. 2919.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1992 Acts. House Report No. 102–474(Parts I–IX), House Conference Report No. 102–1018, and Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

Local authority

Nothing in this section to be construed as affecting or intending to affect, or in any way to interfere with, authority of any state or local government relating to environmental protection of siting of facilities, see section 731 of Pub.L. 102–486, set out as a note under section 79 of Title 15, Commerce and Trade.

LIBRARY REFERENCES

American Digest System

Electricity ⚷2.1, 11.3(1).
Key Number System Topic No. 145.

Encyclopedias

Electricity, see C.J.S. §§ 10, 30.
Industrial Co-operative Societies, see C.J.S. §§ 2 to 13, 15, 17 to 19.

WESTLAW ELECTRONIC RESEARCH

See WESTLAW guide following the Explanation pages of this volume.

§ 824m. Sales by exempt wholesale generators

No rate or charge received by an exempt wholesale generator for the sale of electric energy shall be lawful under section 824d of this title if, after notice and opportunity for hearing, the Commission finds that such rate or charge results from the receipt of any undue preference or advantage from an electric utility which is an associate company or an affiliate of the exempt wholesale generator. For purposes of this section, the terms "associate company" and "affiliate" shall have the same meaning as provided in section 79b(a) of Title 15.

(June 10, 1920, c. 285, § 214, as added Oct. 24, 1992, Pub.L. 102–486, Title VII, § 724, 106 Stat. 2920.)

Pulliam, Edward

From: Pulliam, Edward
Sent: Monday, April 09, 2001 5:33 PM
To: Roger Seifert (E-mail); 'TMeeks@wapa.gov'; Cooke, Lot; Kirkpatrick, Loy; Terry, Tracy
Subject: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

Following is a draft response to the request from Michael Whatley for an analysis of the ENRON-inspired draft. It is assembled from your comments.

Please review and provide me with comments on this draft response by 3:00 p.m. Tuesday, April 10, 20001.

Thanks for all your help.

Ted

Michael,

You asked me to provide for a review of the draft "Electricity Information Disclosure, Efficiency and Accountability Act" and an analysis concerning its possible effect on the Department and on energy industries.

I have recieved comments on the draft bill from other parts of General Counsel, the Policy Office, and the Power Marketing Administrations in preparation for the following:

Bill Summary

The bill would require FERC to issue a rule requiring that each system operator establish an information system that provides all users of the bulk-power system, State regulatory authorities, and the public access to bulk-power system operating data.

This data would be provided to users of the bulk-power system on an instantaneous basis and updated hourly to reflect changes to the data. It would be provided to all entities on a real time basis.

A "system operator" is defined, generally, as an entity that operates facilities and control systems necessary for operating all or part of an interconnected transmission grid.

The data a system operator is to provide includes all transmission line and generation facility data in its possession that is relevant to maintaining reliability of the interconnected transmission grid. This data includes information on transmission line capacity and on the supply and demand for electricity. FERC may determine not to disclose information because of its "commercially sensitive nature." The bill also contains separate provisions for market bid data.

Background

FERC has authority now to order facilities under its jurisdiction to make this type of information widely available. The Power Marketing Administrations, although not legally under FERC jurisdiction, have pledged to comply with FERC regulations.

After conducting public hearings considering the issue of providing operating data, in March 2000, FERC approved, in part, CAISO Tariff Amendment No. 25, which provided for publication of individual bid data with a six-month delay. The Commission rejected a proposal to waive notice requirements and allow publication of data sets with as little as a one-month lag, subject to approval by the ISO Board. FERC stated that the "proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data. The approval of the ISO's Board of Governors does not make one-month old bid information any less sensitive."

In past orders, the Commission has rejected complaints that disclosure after six months will:

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* undermine the bidders' expectation of confidentiality in PX markets, discouraging participation
* cause suppliers to raise bid levels in excess of true costs to avoid disclosure of information
* facilitate exercise of market power by sellers or reduce competition
* allow use of "cost based bid data" combined with sophisticated methods for estimating fuel costs to allow construction of highly accurate models of a generator's heat rate, operating parameters and other confidential cost information.

The Commission has found that the commercial sensitivity of bid data decreases over time. The Commission does not require that the names of individual bidders be disclosed, but does require that the bid data be posted in a way that permits analysts to track each individual bidder's bids over time. Such data must be made available to every market participant.

Analysis

o On the effect on DOE: The bill probably would not apply to DOE or particularly to DOE's Power Marketing Administrations. Section 201(f) of the Federal Power Act excludes a Federal agency from the part of the Federal Power Act that the bill amends unless it is referred to specifically. Neither the bill's definitions nor any other part of the bill makes specific reference to a PMA or any other Federal agency (other than FERC).

The PMAs, however, have pledged to comply with FERC rules, which would include rules under the amendment. In addition, the bill may have been intended to cover the PMAs with transmission lines. (If so, the bill should be amended to make it specifically applicable to the PMAs.)

Several items should be considered in determining whether PMAs should be included. as a system operator

- In order to comply with the information provision requirements of the bill, PMAs would need to spend considerable funds both to set up a capability to provide the information sought in the time period sought (including software, hardware, and manpower) and to maintain that capability. Particularly expensive would be the development of software that could provide the required information and screen out confidential information on a real time basis. These costs either would be passed on to consumers or would require funds to be taken from other purposes, such as making improvements to transmission infrastructure and making payments on financial obligations to the Federal Government.

- Although expensive, the bill likely would not improve the reliability of the system. If reliability data additional to that provided now by NERC is necessary, it should be provided by NERC. NERC is in a better position to make timely changes of reliability requirements than is Congress through legislation. NERC also includes Canadian entities, which significantly effect reliability in the United States.

o Effect on energy industries:

This proposed legislation deals with a number of complex issues related to information disclosure.

On the one hand, if more information is made available to market participants on a real-time basis, it will improve transparency and market efficiency to a great extent. On the other hand, market participants could use much of this information to exercise market power.

The proposal directs FERC to conduct a rulemaking to determine what information should be released and when. Since the issues are complex, and data selected to be released on a real-time basis should be considered carefully, this seems to be the best way to handle the issue. It will allow all participants (including system operators) to make their case.

However, the language in the legislation does not appear to go far enough to guard against potential market power abuses resulting from the broad information disclosure requirements proposed. It states that the data should be made available on a real-time basis "unless the Commission...determines that such information shall remain confidential due to its commercially sensitive nature." Although the term "commercially sensitive" is broad, it generally applies to information that might harm individual firms. This might not provide adequate protection for the ISO or consumers. The legislation should include language along the following lines: "unless the Commission...determines that the information shall remain confidential due to its commercially sensitive nature, or because the information could facilitate anti-competitive behavior by market participants."

In addition, it may be difficult to determine what data is "commercially sensitive." Scheduling data, absent pricing data, for example, does allow others to analyze and understand the market strategy of other marketing entities.

Additional Comments

o New section 213(c)(3) on "MARKET BID DATA" seems vague. It is unclear whether this provision applies only to aggregate data, or individual bids and offers.

o The legislation requires system operators to post data but does not require users of the bulk-power system to provide the data to be posted. Because users likely will be reluctant to supply sensitive information that another entity will screen for possible release, the bill should provide that the users provide the data. It also should require them to provide it in the format specified by the system operator.

o The legislation makes security coordinators subject to mandatory disclosure of system operations information. The security coordinator is a likely source of comprehensive transmission system operating information. However, the practical ability of the legislation to compel disclosure from the security coordinator may be limited. The confidentiality of much transmission system information receives strong protections in the Pacific Northwest Security Coordinator Agreement, for example. That agreement also conditionally permits the release of such information when compelled by law. However, any party may withdraw from the agreement on 30 days notice. Many parties may withdraw upon enactment of the proposed legislation.

o Questions of liability for erroneous data dissemination are unaddressed.

o The legislation should specify that the cost associated with this information will be passed on to the bulk-power system users.

o It is unclear what is meant by the requirement, in the definition of "user of the bulk-power system," that a user comply with uniform reliability standards in section 215. The Federal Power Act does not contain a section 215.

Pulliam, Edward

From: Cooke, Lot
Sent: Tuesday, April 10, 2001 8:42 AM
To: Pulliam, Edward
Subject: RE: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

Ted, looks okay to me. I would point out that the definitions provisions of the bill amend Part I of the FPA, not Part II, which contains the provision exempting U.S. agencies. So a case could still be made that the PMAs are included under the current language. Thanks, Lot.

----Original Message----
From: Pulliam, Edward
Sent: Monday, April 09, 2001 5:33 PM
To: Roger Seifert (E-mail); 'TMeeks@wapa.gov'; Cooke, Lot; Kirkpatrick, Loy; Terry, Tracy
Subject: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

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Ted

Michael,

You asked me to provide for a review of the draft "Electricity Information Disclosure, Efficiency and Accountability Act" and an analysis concerning its possible effect on the Department and on energy industries.

I have recieved comments on the draft bill from other parts of General Counsel, the Policy Office, and the Power Marketing Administrations in preparation for the following:

Bill Summary

The bill would require FERC to issue a rule requiring that each system operator establish an information system that provides all users of the bulk-power system, State regulatory authorities, and the public access to bulk-power system operating data.

This data would be provided to users of the bulk-power system on an instantaneous basis and updated hourly to reflect changes to the data. It would be provided to all entities on a real time basis.

A "system operator" is defined, generally, as an entity that operates facilities and control systems necessary for operating all or part of an interconnected transmission grid.

The data a system operator is to provide includes all transmission line and generation facility data in its possession that is relevant to maintaining reliability of the interconnected transmission grid. This data includes information on transmission line capacity and on the supply and demand for electricity. FERC may determine not to disclose information because of its "commercially sensitive nature." The bill also contains separate provisions for market bid data.

Background

FERC has authority now to order facilities under its jurisdiction to make this type of information widely available. The Power Marketing Administrations, although not legally under FERC jurisdiction, have pledged to comply with FERC

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Pulliam, Edward

From: Seifert, Roger - KN-DC [reseifert@bpa.gov]
Sent: Tuesday, April 10, 2001 2:22 PM
To: Pulliam, Edward
Cc: Stier, Jeffrey K - KN-DC; Morgado, Nicole K - KN-DC
Subject: "Enron/" Draft Bill

Here are two brief comments on your draft from yesterday.

After I talked to you this morning, Nicole and I talked to Randy Roach and several other staff members about this issue. We are trying to get the key staff involved in reviewing this bill and helping draft some comments that would be a Bonneville view. I believe from a policy standpoint we would want FERC to continue to have the flexibility to address these issues and balance timeliness of data release with the need to avoid potential market power. If enacted, this bill would cost the Federal Columbia River Power System more scarce borrowing authority and also expense money and our customers would have to be charged more in rates to recover those costs--for what appears to be no apparent benefit to those ratepayers. Such costs may well be substantial. We would like to take the discussion time to get this right and hope their is not a need to move too quick.

In Steve's second comment below, I think I would say, "The PMA's, however, are generally not subject to FERC jurisdiction. The bill may have been technically intended to cover the PMA's with transmission lines. Technically, the bill does not do that without a specifically applicable reference." I would not in any way imply that we might want to be covered.

We will get you additional input as soon as we can.. We are also getting our marketing staff involved in the review.

> -----Original Message-----
> From: Larson, Stephen R - LT-7
> Sent: Tuesday, April 10, 2001 1:36 PM
> To: Seifert, Roger - KN-DC
> Subject:
>
> I arrived late this morning because of a dentist appointment. I got your
> voice mail. Here is how I would change the two references to PMAs
> pledging to comply with FERC regulations:
>
>
> FERC has authority now to order facilities under its jurisdiction to make
> this type of information widely available. The Power Marketing
> Administrations, although not legally under FERC jurisdiction, have
> voluntarily complied with other open access and Standards of Conduct
> regulations under Orders 888 and 889.
>
> * * *
>
> The PMAs, however, are not generally subject to FERC jurisdiction. The
> bill may have been
> intended to cover the PMAs with transmission lines. (If so, the bill
> should
> be amended to make it specifically applicable to the PMAs.)
>

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Pulliam, Edward

From: Terry, Tracy
Sent: Tuesday, April 10, 2001 4:16 PM
To: Pulliam, Edward
Cc: Conti, John; Anderson, Margot
Subject: RE: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

Ted - Per our earlier conversation, here is some additional information on current information disclosure requirements in FERC Order 888 and Order 2000. I hope this is helpful. Please give me a call if you have any questions or would like to talk further about these issues.

Tracy
6-3383

Current FERC Information Disclosure Requirements

In Order 888, FERC required transmission-owning utilities to make information regarding the available capacity on transmission lines available to the market on a real-time basis through what it termed "Open Access Same-time Information Systems", or OASIS. FERC ordered certain minimum requirements for OASIS, but generally allowed utilities significant flexibility in designing these systems. Lack of standards and transparency for determining available transmission capacity has been a consistent complaint of independent power producers, who argue that the lack of reliable information puts them at a disadvantage relative to utilities that own and operate both transmission and generation.

As a result, FERC has implemented an OASIS Phase II rulemaking that would further define standards and information requirements regarding transmission system operations. As with current OASIS systems, much of this information must be made available on a real-time basis in order to facilitate wholesale power trading.

FERC is also in the process of implementing Order 2000, which would require all transmission-owning utilities under its jurisdiction to form regional transmission organizations (RTOs) that would be responsible for the day-to-day operations of the bulk power grid. FERC's minimum functions for RTOs, such as managing congestion, providing ancillary services, and maintaining OASIS boards, will require generators and utilities to provide RTOs with a significant amount of information regarding physical operations in real-time.

As a result of these orders, it is likely that information disclosure requirements as envisioned in the legislation will place only a limited reporting burdens on energy companies since much of this information is already or will soon be provided to transmission operators. Reporting burdens will fall primarily on RTOs as they seek ways to make the information publicly available on an "instantaneous basis." The difficulty and cost of this task will depend critically on level of detail the RTO must provide and how frequently it must update OASIS systems in order to meet the "instantaneous" requirement contained in the bill. For example, updated information on generation is, in some cases, is collected by transmission operators every 3 seconds. Will an RTO be required to post this new data every minute, five minutes, ten minutes, hour, etc.?

Although transmission operators or RTOs will likely be the entity required to make the data publicly available, these organizations will generally be funded through transmission or other user fees paid by bulk power system users. As such, the costs of any such information disclosure requirements will ultimately fall upon industry participants.

-----Original Message-----
From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 8:56 AM
To: Terry, Tracy
Subject: FW: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

In connection with this review, could you (or maybe someone else in your office) be more precise about the bill's effect on energy industries--such as electricity generators, transmitters, and marketers and natural gas providers? Maybe the effects are not that great.

-----Original Message-----
From: Pulliam, Edward

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The ISO proposes to publish individual bid data after a six-month delay. Also, the proposal would authorize the ISO to publish data sets developed in conjunction with a published ISO Market Surveillance Committee (MSC) report, with as little as a one-month lag, subject to the approval of the ISO Board of Governors.

The proposed tariff revision provides that the ISO will not reveal the specific resource or the name of the bidding Scheduling Coordinator but that data will be released in a manner that allows the bidding behavior of individual, unidentified sources and Scheduling Coordinators to be tracked over time. The ISO plans to begin releasing the bid information for the period starting on the first trading day after the instant application was filed, *i.e.*, January 28, 2000, subject to the six-month delay described above. The ISO would not begin to publish the bid information until the later of: (1) the date six months after January 27, 2000; or (2) the date on which the software is implemented that will enable the publication of the bid information. The information released on that date and thereafter would include the bid information collected for the 60-day period after January 27, 2000. The release of bid data for that period would be subject to the six-month delay.

Dynegy, Williams, and Southern all protest the release of bid information with a one-month delay even if approved by the ISO Board of Governors. Dynegy and Williams also oppose the release of bid information at any time. Dynegy and Southern assert that the ISO should release comparable information, such as decision-making behind the ISO's out-of-market calls and RMR unit dispatch. Williams also points out an inconsistency in the ISO's proposed tariff language regarding its intent to publish data with as little as a one-month lag.

The ISO answers that the Commission has previously mandated that bid data should be posted in a way that allows tracking each individual bidder's bids over time and has established that six months is a sufficient delay for the release of bid data to protect the commercial sensitivity of the information. The ISO also points out that the Commission has recognized that an ISO is not a market participant and therefore is not required to release its information on dispatch requirements, and further states that the ISO provides a wealth of information on its Home Page and OASIS site. The ISO states that its proposal to release information with as little as one month delay is designed to minimize objections by market participants when the ISO or the MSC releases a report that includes an analysis of market data less than six months old. Finally, the ISO commits to correct in a compliance filing the inconsistent language identified by Williams.

We find that the proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data. The approval of the ISO's Board of Governors does not make one-month old bid information any less sensitive. The Commission has previously found that a six month delay is sufficient to protect the interests of bidders.[7] Accordingly, we will accept the ISO's proposal, except for the proposal to release bid information with as little as a one-month delay on the approval the Board of Governors. The ISO is directed to file revised tariff sheets eliminating this provision. We will grant waiver of the 60-day notice requirement so that the ISO may release bid data, after a six-month delay, for the period beginning on trading day January 28, 2000.

FTR Implementation

The ISO states that, while preparing to implement FTRs, it has discovered three revisions necessary to conform its FTR provisions to Commission requirements and to existing settlement policies. The ISO states that the proposed revisions are necessary to facilitate the implementation of FTRs. First, reference to the clearing account in Section 9.4.2.7 will be removed because a separate account for FTR auction proceeds has already been established and the clearing account is not appropriate for FTR purposes. Second, the ISO proposes to amend the tariff to include FTR holders among the entities that are entitled to credits or debits of usage charge revenues. Finally, consistent with prior Commission direction, a revision to specify that FTRs which are resold in secondary markets are subject to the same tariff terms and conditions applicable to FTRs acquired in the ISO auction is proposed.[8]

Metropolitan objects to other changes included in the "clean" ISO tariff sheets which were submitted in a compliance filing in Docket No. ER99-4545-003 and which had not yet been approved by the Commission. Metropolitan requests that the Commission either direct the ISO to make changes to these tariff sheets for the changes that Metropolitan proposed in Docket No. ER99-4545-003 or, in the alternative, clarify that the tariff sheets here are not effective pending further action by the Commission. Cities/M-S-R and Modesto take

[7] See *PJM Interconnection, L.L.C.*, 88 FERC [illegible], at pp. 61,854-55 (1999), in which the Commission reaffirmed that bid information must be made public after 6 months.

[8] See *California Independent System Operator Corp.*, 89 FERC ¶ 61,153, at p. 61,436 (1999), *reh'g pending* (November 10, 1999 Order).

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Pulliam, Edward

From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 8:56 AM
To: Terry, Tracy
Subject: FW: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

In connection with this review, could you (or maybe someone else in your office) be more precise about the bill's effect on energy industries--such as electricity generators, transmitters, and marketers and natural gas providers? Maybe the effects are not that great.

---Original Message---
From: Pulliam, Edward
Sent: Monday, April 09, 2001 5:33 PM
To: Roger Seifert (E-mail); 'TMeeks@wapa.gov'; Cooke, Lot; Kirkpatrick, Loy; Terry, Tracy
Subject: Draft "Electricity Information Disclosure, Efficiency and Accountability Act"

Following is a draft response to the request from Michael Whatley for an analysis of the ENRON-inspired draft. It is assembled from your comments.

Please review and provide me with comments on this draft response by 3:00 p.m. Tuesday, April 10, 20001.

Thanks for all your help.

Ted

Michael,

You asked me to provide for a review of the draft "Electricity Information Disclosure, Efficiency and Accountability Act" and an analysis concerning its possible effect on the Department and on energy industries.

I have recieved comments on the draft bill from other parts of General Counsel, the Policy Office, and the Power Marketing Administrations in preparation for the following:

Bill Summary

The bill would require FERC to issue a rule requiring that each system operator establish an information system that provides all users of the bulk-power system, State regulatory authorities, and the public access to bulk-power system operating data.

This data would be provided to users of the bulk-power system on an instantaneous basis and updated hourly to reflect changes to the data. It would be provided to all entities on a real time basis.

A "system operator" is defined, generally, as an entity that operates facilities and control systems necessary for operating all or part of an interconnected transmission grid.

The data a system operator is to provide includes all transmission line and generation facility data in its possession that is relevant to maintaining reliability of the interconnected transmission grid. This data includes information on transmission line capacity and on the supply and demand for electricity. FERC may determine not to disclose information because of its "commercially sensitive nature." The bill also contains separate provisions for market bid data.

Background

FERC has authority now to order facilities under its jurisdiction to make this type of information widely available. The Power Marketing Administrations, although not legally under FERC jurisdiction, have pledged to comply with FERC regulations.

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After conducting public hearings considering the issue of providing operating data, in March 2000, FERC approved, in part, CAISO Tariff Amendment No. 25, which provided for publication of individual bid data with a six-month delay. The Commission rejected a proposal to waive notice requirements and allow publication of data sets with as little as a one-month lag, subject to approval by the ISO Board. FERC stated that the "proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data. The approval of the ISO's Board of

In past orders, the Commission has rejected complaints that disclosure after six months will:

* undermine the bidders' expectation of confidentiality in PX markets, discouraging participation
* cause suppliers to raise bid levels in excess of true costs to avoid disclosure of information
* facilitate exercise of market power by sellers or reduce competition
* allow use of "cost based bid data" combined with sophisticated methods for estimating fuel costs to allow construction of highly accurate models of a generator's heat rate, operating parameters and other confidential cost information.

The Commission has found that the commercial sensitivity of bid data decreases over time. The Commission does not require that the names of individual bidders be disclosed, but does require that the bid data be posted in a way that permits analysts to track each individual bidder's bids over time. Such data must be made available to every market participant.

Analysis

o On the effect on DOE: The bill probably would not apply to DOE or particularly to DOE's Power Marketing Administrations. Section 201(f) of the Federal Power Act excludes a Federal agency from the part of the Federal Power Act that the bill amends unless it is referred to specifically. Neither the bill's definitions nor any other part of the bill makes specific reference to a PMA or any other Federal agency (other than FERC).

The PMAs, however, have pledged to comply with FERC rules, which would include rules under the amendment. In addition, the bill may have been intended to cover the PMAs with transmission lines. (If so, the bill should be amended to make it specifically applicable to the PMAs.)

Several items should be considered in determining whether PMAs should be included.

- In order to comply with the information provision requirements of the bill, PMAs would need to spend considerable funds both to set up a capability to provide the information sought in the time period sought (including software, hardware, and manpower) and to maintain that capability. Particularly expensive would be the development of software that could provide the required information and screen out confidential information on a real time basis. These costs either would be passed on to consumers or would require funds to be taken from other purposes, such as making improvements to transmission infrastructure and making payments on financial obligations to the Federal Government.

- Although expensive, the bill likely would not improve the reliability of the system. If reliability data additional to that provided now by NERC is necessary, it should be provided by NERC. NERC is in a better position to make timely changes of reliability requirements than is Congress through legislation. NERC also includes Canadian entities, which significantly effect reliability in the United States.

o Effect on energy industries:

This proposed legislation deals with a number of complex issues related to information disclosure.

On the one hand, if more information is made available to market participants on a real-time basis, it will improve transparency and market efficiency to a great extent. On the other hand, market participants could use much of this information to exercise market power.

The proposal directs FERC to conduct a rulemaking to determine what information should be released and when. Since the issues are complex, and data selected to be released on a real-time basis should be considered carefully, this seems to be the best way to handle the issue. It will allow all participants (including system operators) to make their case.

However, the language in the legislation does not appear to go far enough to guard against potential market power abuses resulting from the broad information disclosure requirements proposed. It states that the data should be made available on a real-time basis "unless the Commission...determines that such information shall remain confidential due to

its commercially sensitive nature." Although the term "commercially sensitive" is broad, it generally applies to information that might harm individual firms. This might not provide adequate protection for the ISO or consumers. The legislation should include language along the following lines: "unless the Commission...determines that the information shall remain confidential due to its commercially sensitive nature, or because the information could facilitate anti-competitive behavior by market participants."

~~In addition, it may be difficult to determine what data is "commercially sensitive." Scheduling data, absent pricing data, for~~ example, does allow others to analyze and understand the market strategy of other marketing entities.

Additional Comments

o New section 213(c)(3) on "MARKET BID DATA" seems vague. It is unclear whether this provision applies only to aggregate data, or individual bids and offers.

o The legislation requires system operators to post data but does not require users of the bulk-power system to provide the data to be posted. Because users likely will be reluctant to supply sensitive information that another entity will screen for possible release, the bill should provide that the users provide the data. It also should require them to provide it in the format specified by the system operator.

o The legislation makes security coordinators subject to mandatory disclosure of system operations information. The security coordinator is a likely source of comprehensive transmission system operating information. However, the practical ability of the legislation to compel disclosure from the security coordinator may be limited. The confidentiality of much transmission system information receives strong protections in the Pacific Northwest Security Coordinator Agreement, for example. That agreement also conditionally permits the release of such information when compelled by law. However, any party may withdraw from the agreement on 30 days notice. Many parties may withdraw upon enactment of the proposed legislation.

o Questions of liability for erroneous data dissemination are unaddressed.

o The legislation should specify that the cost associated with this information will be passed on to the bulk-power system users.

o It is unclear what is meant by the requirement, in the definition of "user of the bulk-power system," that a user comply with uniform reliability standards in section 215. The Federal Power Act does not contain a section 215.

Pulliam, Edward

From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 4:36 PM
To: Terry, Tracy
Subject: RE: Draft Bill

Thanks for your help.

-----Original Message-----
From: Terry, Tracy
Sent: Tuesday, April 10, 2001 4:35 PM
To: Pulliam, Edward
Subject: RE: Draft Bill

Looks good!

-----Original Message-----
From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 4:35 PM
To: Terry, Tracy
Subject: Draft Bill

Your comments were great. I have incorporated them as follows: Is this OK?

Bill Summary

Under the bill, FERC would require system operators to provide operating data on the bulk-power system to all users of the bulk-power system, State regulatory authorities, and the public .

A "system operator" is defined, generally, as an entity that operates facilities and control systems necessary for operating all or part of an interconnected transmission grid.

A system operator would provide transmission line and generation facility data in its possession and relevant to the reliability of the interconnected transmission grid. This data includes transmission line capacity and electricity supply and demand information. FERC could list some information that a system operator would keep confidential because of its "commercially sensitive nature." The bill also contains separate provisions for market bid data.

The data would be provided to some entities on an instantaneous basis and updated hourly to reflect changes. It would be provided to all entities on a real time basis.

Background

FERC now has authority to order facilities under its jurisdiction to make this type of information widely available.

In Order 888, FERC required transmission-owning utilities to make information regarding the available capacity on transmission lines available to the market on a real-time basis through what it termed "Open Access Same-time Information Systems", or OASIS. FERC ordered certain minimum requirements for OASIS, but generally allowed utilities significant flexibility in designing these systems. Lack of standards and transparency for determining available transmission capacity has been a consistent complaint of independent power producers, who argue that the lack of reliable information puts them at a disadvantage relative to utilities that own and operate both transmission and generation.

As a result, FERC has implemented an OASIS Phase II rulemaking that would further define standards and information requirements regarding transmission system operations. As with current OASIS systems, much of this information must be made available on a real-time basis in order to facilitate wholesale power trading.

FERC is also in the process of implementing Order 2000, which would require all transmission-owning utilities under its jurisdiction to form regional transmission organizations (RTOs) that would be responsible for the day-to-day operations of the bulk power grid. FERC's minimum functions for RTOs, such as managing congestion,

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providing ancillary services, and maintaining OASIS boards, will require generators and utilities to provide RTOs with a significant amount of information regarding physical operations in real-time.

In March, 2000, after conducting public hearings in connection with CAISO Tariff Amendment No. 25, FERC provided for publication of individual bid data with a six-month delay. FERC rejected a proposal to allow publication of data with as little as a one-month lag, subject to approval by the ISO Board.. FERC stated that the "proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data. The approval of the ISO's Board of Governors does not make one-month old bid information any less sensitive."

In past orders, the Commission rejected complaints that disclosure after six months would:

* undermine the bidders' expectation of confidentiality in PX markets, discouraging participation
* cause suppliers to raise bid levels in excess of true costs to avoid disclosure of information
* facilitate exercise of market power by sellers or reduce competition
* allow use of "cost based bid data" combined with sophisticated methods for estimating fuel costs to allow construction of highly accurate models of a generator's heat rate, operating parameters and other confidential cost information.

FERC has found that the commercial sensitivity of bid data decreases over time. FERC does not require that the names of individual bidders be disclosed, but does require that the bid data be posted in a way that permits analysts to track each individual bidder's bids over time. Such data must be made available to every market participant.

Analysis

o *Effect on energy industries*:

As a result of the FERC orders, it is likely that information disclosure requirements as envisioned in the legislation will place only limited reporting burdens on energy companies. Much of this information is already or will soon be provided to transmission operators. Reporting burdens will fall primarily on RTOs as they seek ways to make the information publicly available on an "instantaneous basis." The difficulty and cost of this task will depend critically on level of detail the RTO must provide and how frequently it must update OASIS systems in order to meet the "instantaneous" requirement contained in the bill. For example, updated information on generation is, in some cases, is collected by transmission operators every 3 seconds. Will an RTO be required to post this new data every minute, five minutes, ten minutes, hour, etc.?

Although transmission operators or RTOs will likely be the entity required to make the data publicly available, these organizations will generally be funded through transmission or other user fees paid by bulk power system users. As such, the costs of any such information disclosure requirements will ultimately fall upon industry participants.

This proposed legislation deals with a number of other complex issues related to information disclosure.

On the one hand, if more information is made available to market participants on a real-time basis, it will improve transparency and market efficiency to a great extent. On the other hand, market participants could use much of this information to exercise market power.

The proposal directs FERC to conduct a rulemaking to determine what information should be released and when. Since the issues are complex, and data selected to be released on a real-time basis should be considered carefully, this seems to be the best way to handle the issue. It will allow all participants (including system operators) to make their case. It should be noted that during consideration of the FERC order in CAISO Tariff Amendment No.25 mentioned earlier, Dynergy, Williams, and Southern protested release of bid information with a one-month delay and Dynergy and Williams opposed release of bid information at any time.

The language in the legislation, however, does not appear to go far enough to guard against potential market power abuses resulting from the broad information disclosure requirements proposed. It states that the data should be made available on a real-time basis "unless the Commission...determines that such information shall remain confidential due to its commercially sensitive nature." Although the term "commercially sensitive" is broad, it generally applies to information that might harm individual firms. This might not provide adequate protection for the ISO or consumers. The legislation should include language along the following lines: "unless the Commission...determines that the information shall remain confidential due to its commercially sensitive nature, or because the information could facilitate anti-competitive behavior by market participants."

In addition, it may be difficult to determine what data is "commercially sensitive." Scheduling data, absent pricing data, for example, does allow others to analyze and understand the market strategy of other marketing entities.

o *Effect on DOE*:

The bill may not apply to DOE or to DOE's Power Marketing Administrations. Section 201(f) of the Federal Power Act excludes a Federal agency from the part of the Federal Power Act that the bill amends unless it is referred to specifically. Neither the bill's definitions nor any other part of the bill makes specific reference to a PMA or any other Federal agency (other than FERC).

However, the bill may have been intended to cover the PMAs with transmission lines. If so, the bill should be amended to make it specifically applicable to the PMAs.

Several items should be considered in determining whether PMAs should be included.

- In order to comply with the information provision requirements of the bill, PMAs would need to spend considerable funds both to set up a capability to provide the information sought in the time period sought (including software, hardware, and manpower) and to maintain that capability. Particularly expensive would be the development of software that could provide the required information and screen out confidential information on a real time basis. These costs either would be passed on to consumers or would require funds to be taken from other purposes, such as making improvements to transmission infrastructure and making payments on financial obligations to the Federal Government.

- Although expensive, the bill likely would not improve the reliability of the system. If reliability data additional to that provided now by NERC is necessary, it should be provided by NERC. NERC is in a better position to make timely changes of reliability requirements than is Congress through legislation. NERC also includes Canadian entities, which significantly effect reliability in the United States.

Additional Comments

o New section 213(c)(3) on "MARKET BID DATA" seems vague. It is unclear whether this provision applies only to aggregate data, or individual bids and offers.

o The legislation requires system operators to post data but does not require users of the bulk-power system to provide the data to be posted. Because users likely will be reluctant to supply sensitive information that another entity will screen for possible release, consideration should be given to requiring the users provide the data and specifying the format for the information.

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o Questions of liability for erroneous data dissemination are unaddressed.

o The legislation might specify that the cost associated with this information will be passed on to the bulk-power system users.

o It is unclear what is meant by the requirement, in the definition of "user of the bulk-power system," that a user comply with uniform reliability standards in section 215. The Federal Power Act does not contain a section 215.

Pulliam, Edward

From: Pulliam, Edward
To: Whatley, Michael

Michael,

You asked me for a review of the draft "Electricity Information Disclosure, Efficiency and Accountability Act," possibly prepared by ENRON, and an analysis of its possible effect on DOE and energy industries.

In preparing the following, I have recieved informal comments on the draft bill from parts of General Counsel, the Policy Office, and the Power Marketing Administrations: Before taking a formal position on the legislation, we should ask for formal comments.

Bill Summary

Under the bill, FERC would require system operators to provide operating data on the bulk-power system to all users of the bulk-power system, State regulatory authorities, and the public .

A "system operator" is defined, generally, as an entity that operates facilities and control systems necessary for operating all or part of an interconnected transmission grid.

A system operator would provide transmission line and generation facility data in its possession and relevant to the reliability of the interconnected transmission grid. This data includes transmission line capacity and electricity supply and demand information. FERC could list some information that a system operator would keep confidential because of its "commercially sensitive nature." The bill also contains separate provisions for market bid data.

The data would be provided to some entities on an instantaneous basis and updated hourly to reflect changes. It would be provided to all entities on a real time basis.

Background

FERC now has authority to order facilities under its jurisdiction to make this type of information widely available.

In Order 888, FERC required transmission-owning utilities to make information regarding the available capacity on transmission lines available to the market on a real-time basis through what it termed "Open Access Same-time Information Systems", or OASIS. FERC ordered certain minimum requirements for OASIS, but generally allowed utilities significant flexibility in designing these systems. Lack of standards and transparency for determining available transmission capacity has been a consistent complaint of independent power producers, who argue that the lack of reliable information puts them at a disadvantage relative to utilities that own and operate both transmission and generation.

As a result, FERC has implemented an OASIS Phase II rulemaking that would further define standards and information requirements regarding transmission system operations. As with current OASIS systems, much of this information must be made available on a real-time basis in order to facilitate wholesale power trading.

FERC is also in the process of implementing Order 2000, which would require all transmission-owning utilities under its jurisdiction to form regional transmission organizations (RTOs) that would be responsible for the day-to-day operations of the bulk power grid. FERC's minimum functions for RTOs, such as managing congestion, providing ancillary services, and maintaining OASIS boards, will require generators and utilities to provide RTOs with a significant amount of information regarding physical operations in real-time.

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178.

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Analysis

o *Effect on energy industries*:

As a result of the FERC orders, it is likely that information disclosure requirements as envisioned in the legislation will place only limited reporting burdens on energy companies. Much of this information is already or will soon be provided to transmission operators. Reporting burdens will fall primarily on RTOs as they seek ways to make the information publicly available on an "instantaneous basis." The difficulty and cost of this task will depend critically on level of detail the RTO must provide and how frequently it must update OASIS systems in order to meet the "instantaneous" requirement contained in the bill. For example, updated information on generation is, in some cases, is collected by transmission operators every 3 seconds. Will an RTO be required to post this new data every minute, five minutes, ten minutes, hour, etc.?

Although transmission operators or RTOs will likely be the entity required to make the data publicly available, these organizations will generally be funded through transmission or other user fees paid by bulk power system users. As such, the costs of any such information disclosure requirements will ultimately fall upon industry participants.

This proposed legislation deals with a number of other complex issues related to information disclosure.

On the one hand, if more information is made available to market participants on a real-time basis, it will improve transparency and market efficiency to a great extent. On the other hand, market participants could use much of this information to exercise market power.

The proposal directs FERC to conduct a rulemaking to determine what information should be released and when. Since the issues are complex, and data selected to be released on a real-time basis should be considered carefully, this seems to be the best way to handle the issue. It will allow all participants (including system operators) to make their case. It should be noted that during consideration of the FERC order in CAISO Tariff Amendment No.25 mentioned earlier, Dynergy, Williams, and Southern protested release of bid information with a one-month delay and Dynergy and Williams opposed release of bid information at any time.

The language in the legislation, however, does not appear to go far enough to guard against potential market power abuses resulting from the broad information disclosure requirements proposed. It states that the data should be made available on a real-time basis "unless the Commission...determines that such information shall remain confidential due to its commercially sensitive nature." Although the term "commercially sensitive" is broad, it generally applies to information that might harm individual firms. This might not provide adequate protection for the ISO or consumers. The legislation should include language along the following lines: "unless the Commission...determines that the information shall remain confidential due to its commercially sensitive nature, or because the information could facilitate anti-competitive behavior by market participants."

In addition, it may be difficult to determine what data is "commercially sensitive." Scheduling data, absent pricing data, for example, does allow others to analyze and understand the market strategy of other marketing entities.

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However, the bill may have been intended to cover the PMAs with transmission lines as systems operators. If so, the bill should be amended to make it specifically applicable to the PMAs.

In considering whether PMAs should be included:

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- If reliability data in addition to that provided now by NERC is necessary, it should be provided by NERC. NERC is in a better position to make timely changes of reliability requirements than is Congress through legislation. NERC also includes Canadian entities, which significantly effect reliability in the United States.

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o Questions of liability for erroneous data dissemination are unaddressed.

o The legislation might specify that the cost associated with this information will be passed on to the bulk-power system users.

o It is unclear what is meant by the requirement, in the definition of "user of the bulk-power system," that a user comply with uniform reliability standards in section 215. The Federal Power Act does not contain a section 215.

To cover these costs, PMAs would need to expend more scarce borrowing authority and expense funds in the (congressional appropriation) for the other PMA's. Also, the PMA's would have to ~~change their customers more~~ increase rates to their customers to recover these costs all at a time when rates are increasing significantly for other

Pulliam, Edward

From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 4:36 PM
To: Terry, Tracy
Subject: RE: Draft Bill

Thanks for your help.

---Original Message---
From: Terry, Tracy
Sent: Tuesday, April 10, 2001 4:35 PM
To: Pulliam, Edward
Subject: RE: Draft Bill

Looks good!

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From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 4:35 PM
To: Terry, Tracy
Subject: Draft Bill

Your comments were great. I have incorporated them as follows: Is this OK?

Bill Summary

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A "system operator" is defined, generally, as an entity that operates facilities and control systems necessary for operating all or part of an interconnected transmission grid.

A system operator would provide transmission line and generation facility data in its possession and relevant to the reliability of the interconnected transmission grid. This data includes transmission line capacity and electricity supply and demand information. FERC could list some information that a system operator would keep confidential because of its "commercially sensitive nature." The bill also contains separate provisions for market bid data.

The data would be provided to some entities on an instantaneous basis and updated hourly to reflect changes. It would be provided to all entities on a real time basis.

Background

FERC now has authority to order facilities under its jurisdiction to make this type of information widely available.

In Order 888, FERC required transmission-owning utilities to make information regarding the available capacity on transmission lines available to the market on a real-time basis through what it termed "Open Access Same-time Information Systems", or OASIS. FERC ordered certain minimum requirements for OASIS, but generally allowed utilities significant flexibility in designing these systems. Lack of standards and transparency for determining available transmission capacity has been a consistent complaint of independent power producers, who argue that the lack of reliable information puts them at a disadvantage relative to utilities that own and operate both transmission and generation.

As a result, FERC has implemented an OASIS Phase II rulemaking that would further define standards and information requirements regarding transmission system operations. As with current OASIS systems, much of this information must be made available on a real-time basis in order to facilitate wholesale power trading.

FERC is also in the process of implementing Order 2000, which would require all transmission-owning utilities under its jurisdiction to form regional transmission organizations (RTOs) that would be responsible for the day-to-day operations of the bulk power grid. FERC's minimum functions for RTOs, such as managing congestion,

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providing ancillary services, and maintaining OASIS boards, will require generators and utilities to provide RTOs with a significant amount of information regarding physical operations in real-time.

In March, 2000, after conducting public hearings in connection with CAISO Tariff Amendment No. 25, FERC provided for publication of individual bid data with a six-month delay. FERC rejected a proposal to allow publication of data with as little as a one-month lag, subject to approval by the ISO Board. FERC stated that the "proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data. The approval of the ISO's Board of Governors does not make one-month old bid information any less sensitive."

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o *Effect on energy industries*:

As a result of the FERC orders, it is likely that information disclosure requirements as envisioned in the legislation will place only limited reporting burdens on energy companies. Much of this information is already or will soon be provided to transmission operators. Reporting burdens will fall primarily on RTOs as they seek ways to make the information publicly available on an "instantaneous basis." The difficulty and cost of this task will depend critically on level of detail the RTO must provide and how frequently it must update OASIS systems in order to meet the "instantaneous" requirement contained in the bill. For example, updated information on generation is, in some cases, is collected by transmission operators every 3 seconds. Will an RTO be required to post this new data every minute, five minutes, ten minutes, hour, etc.?

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On the one hand, if more information is made available to market participants on a real-time basis, it will improve transparency and market efficiency to a great extent. On the other hand, market participants could use much of this information to exercise market power.

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However, the bill may have been intended to cover the PMAs with transmission lines. If so, the bill should be amended to make it specifically applicable to the PMAs.

Several items should be considered in determining whether PMAs should be included.

- In order to comply with the information provision requirements of the bill, PMAs would need to spend considerable funds both to set up a capability to provide the information sought in the time period sought (including software, hardware, and manpower) and to maintain that capability. Particularly expensive would be the development of software that could provide the required information and screen out confidential information on a real time basis. These costs either would be passed on to consumers or would require funds to be taken from other purposes, such as making improvements to transmission infrastructure and making payments on financial obligations to the Federal Government.

- Although expensive, the bill likely would not improve the reliability of the system. If reliability data additional to that provided now by NERC is necessary, it should be provided by NERC. NERC is in a better position to make timely changes of reliability requirements than is Congress through legislation. NERC also includes Canadian entities, which significantly effect reliability in the United States.

Additional Comments

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Pulliam, Edward Final

From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 5:36 PM
To: Whatley, Michael
Subject: RE: Electricity Information Disclosure Act

Michael,

You asked me for a review of the draft "Electricity Information Disclosure, Efficiency and Accountability Act" (ENRON bill?) and an analysis of its possible effect on DOE and energy industries.

In preparing the following, I have received informal comments on the draft bill from parts of General Counsel, the Policy Office, and the Power Marketing Administrations. Before taking a formal position on the draft, we should ask for formal comments from these offices.

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Under the bill, FERC would require system operators to provide operating data on the bulk-power system to all users of the bulk-power system, State regulatory authorities, and the public.

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In March, 2000, after conducting public hearings in connection with CAISO Tariff Amendment No. 25, FERC provided for publication of individual bid data with a six-month delay. FERC rejected a proposal to allow publication of data with as little as a one-month lag, subject to approval by the ISO Board. FERC stated that the "proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data. The approval of the

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In considering whether PMAs should be included:

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Pulliam, Edward

From: Whatley, Michael
Sent: Tuesday, May 08, 2001 9:45 PM
To: Pulliam, Edward
Subject: Enron Bill Analysis

I recall that you provided me with an analysis of a bill referred to as the "Enron Bill". I believe that it was forwarded to DOE by Senator Wyden. Is there any way that you could forward that analysis to me again? We expect that the Secretary will be asked about it on Thursday.

Thanks.

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Pulliam, Edward

From: Pulliam, Edward
Sent: Wednesday, May 09, 2001 9:17 AM
To: Whatley, Michael
Subject: FW: RE: Electricity Information Disclosure Act

Michael, I believe this is what you were looking for. If not, let me know. Ted

—Original Message—
From: Pulliam, Edward
Sent: Tuesday, April 10, 2001 5:36 PM
To: Whatley, Michael
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o New section 213(c)(3) on "MARKET BID DATA" seems vague. It is unclear whether this provision applies only to aggregate data, or individual bids and offers.

o The legislation requires system operators to post data but does not require users of the bulk-power system to provide the data to be posted. Because users likely will be reluctant to supply sensitive information that another entity will screen for possible release, consideration should be given to requiring the users provide the data and specifying the format for the information.

o The legislation makes security coordinators subject to mandatory disclosure of system operations information. The security coordinator is a likely source of comprehensive transmission system operating information. However, the practical ability of the legislation to compel disclosure from the security coordinator may be limited. The confidentiality of much transmission system information receives strong protections in the Pacific Northwest Security Coordinator Agreement, for example. That agreement also conditionally permits the release of such information when compelled by law. However, any party may withdraw from the agreement on 30 days notice. Many parties may withdraw upon enactment of the proposed legislation.

o Questions of liability for erroneous data dissemination are unaddressed.

o The legislation might specify that the cost associated with this information will be passed on to the bulk-power system users.

o It is unclear what is meant by the requirement, in the definition of "user of the bulk-power system," that a user comply with uniform reliability standards in section 215. The Federal Power Act does not contain a section 215.

In view of the above, we have determined, therefore, that Exemption 4 authorizes the withholding of the above-described software and other material associated with it.

Discretionary disclosure of this information would not be in the public interest. Exemption 4 protects information implicating private commercial interests that would not ordinarily be subject to discretionary Freedom of Information Act disclosure. Discretionary disclosure of the software is not to be made because the reasonably expected consequence of disclosure would be harmful to an important interest protected by the exemption, i.e., the impairment of the Government's ability to obtain high quality and necessary information in the future at no cost. In addition, the Trade Secrets Act, 18 U.S.C. § 1905, a criminal statute effectively prohibiting the unauthorized disclosure of all data protected by Exemption 4, prohibits discretionary release of this information since no other law authorizes its release.

We are also of the opinion that Exemption 5 applies to the case. Once the copyright is in the hands of or is owned by the Government, the software and other material would be authorized to be withheld from a FOIA requester by Exemption 5 of the FOIA, 5 U.S.C. 552 § (b)(5) and 10 C.F.R. § 1004.10(b)(5). Exemption 5 protects "inter-agency or intra-agency memoranda or letters which would not be available by law to a party...in litigation with the agency." Exemption 5 has been construed to exempt those documents normally privileged in the civil discovery context, such as the privilege for the Government's commercial data or information. As stated above, the agency hopes to license the software in exchange for revisions and updates. Providing the software to the requester at this time would endanger the consummation of a license agreement with potential licensees. In such a situation, withholding of information from a FOIA requester is authorized by Exemption 5 since release would place the government in a position where it could not accomplish its objective to obtain free updates. For the same reason, discretionary release of this software and other material at this time would not be in the public interest since that would expose the Government to the risks described above. After the consummation of a license agreement with a licensee or licensees, the information requested here would then be available from the licensee or licensees.

Accordingly, we are not releasing this information.

Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the Denying Official with respect to the portions of this determination which constitute a denial of your request.

Pursuant to 10 C.F.R. § 1004.8, you may appeal those portions of this determination constituting a denial of your request by submitting a written appeal to the Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, within 30 calendar days of receipt of this determination. The written appeal, including the envelope, must clearly indicate that a Freedom of Information appeal is being made, and the appeal must contain all the elements required by

CALIFORNIA ISO

California Independent
System Operator

Terry M. Winter
President and Chief Executive Officer

February 2, 2001

Paul Detwiler
Department of Energy
Room A-245
1000 Independence Ave SW
Washington DC 20585

Dear Mr. Detwiler

Pursuant to the orders issued by the Secretary, United States Department of Energy (DOE) under Section 202 (c) of the Federal Power Act on December 14, 20, and 27, 2000 and on January 5, 11, 7 and 23, 2001, the California ISO certified on several occasions that it has been unable to acquire, in the forward markets, adequate supplies of electricity to meet forecasted system demand.

You have requested that the California ISO provide a preliminary assessment in terms of energy deliveries and costs incurred during those days when the California ISO certified emergency conditions under the DOE order. Although it is extremely difficult to quantify the exact MWh and dollars associated with energy deliveries associated with the DOE order, we believe the DOE order played a significant part in our avoiding severe electric blackouts. It is also important to point out that the DOE order has been equally effective and essential to providing the needed natural gas to power generating facilities.

Attached is a list of the net amounts of energy that CAISO arranged from suppliers outside of our electrical boundaries along with the associated costs. Again, it is not clear how much of the energy was made available exclusively due to the DOE order.

The order issued by the DOE has indeed saved California from more blackouts since Dec 14, 2000.

Please call Ziad Alaywan at 916-351-2140 if you have any questions.

Sincerely,

Terry M. Winter

Terry M. Winter
President & Chief Executive Officer

attachment

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DOE Certification Days

Date	Total MWh For Date	Total Dollar For Date
2/1/01	65,615	$24,216,928
1/31/01	34,578	$17,100,506
1/30/01	26,917	$18,609,757
1/29/01	23,222	$18,443,015
1/28/01	13,315	$13,120,850
1/27/01	9,344	$12,381,630
1/26/01	27,793	$19,221,080
1/25/01	29,613	$18,522,655
1/24/01	25,989	$16,634,968
1/23/01	34,511	$21,235,301
1/22/01	28,574	$16,107,045
1/21/01	16,686	$8,057,890
1/20/01	32,689	$12,902,480
1/19/01	48,814	$18,693,143
1/18/01	43,772	$17,883,136
1/17/01	26,806	$14,260,601
1/16/01	12,408	$5,802,225
1/12/01	19,548	$8,643,645
1/9/01	3,240	$1,617,344
1/2/01	45,090	$8,057,200
12/28/00	34,577	$10,771,750
12/27/00	40,086	$11,590,450
12/26/00	40,635	$13,810,900
12/25/00	9,521	$7,839,150
12/24/00	12,677	$9,643,250
12/23/00	21,836	$16,660,200
12/22/00	27,535	$12,612,509
12/21/00	27,187	$14,141,395
12/20/00	37,025	$18,435,050

184

Prepared by: E. O'Neill

2/2/01

DOCUMENT CONTAINS PROPRIETARY INFORMATION

ATTACHMENT 'A' CAISO Forecasted Excess Energy for FPA Certification for January 26, 2001

(b)(4)

*updated for 1/25/01

* Trinity = 63 MWh, 4 hours total of 252/ Shasta = 76 MWh, 3 hours total of 228 MW, Folsom = 45 MWh, 3 hours total of 135 MW, New Melones = 130 MW total

A.

CALIFORNIA ISO

California Independent
System Operator

January 26, 2001

Paul Carrier
Department of Energy
Office of Energy Emergencies
1000 Independence Avenue SW (PO-21)
Washington, DC 20585
Email: paul.carrier@hq.doe.gov

Subject: Documentation for Emergency Order issued for January 25, 2001

Dear Mr. Carrier,

The following information is provided in response to your letter to Terry Winter dated January 23, 2001.

Attachment A is the California ISO forecasted excess energy which is based on the faxed responses from targeted entities north of Path 15. This energy may not include all the units committed in the Out-of-Market Energy transactions (Attachment B).

Attachment B is the Out-of-Market Energy deliveries procured in real time during each hour of the day. Details of service denials are footnoted at the bottom of the spreadsheet.

Attachment C is the California ISO Control Area Qualifying Facility (QF) Generator output. This document provides the QFs participation as a result of the emergency order.

We would like to work with you to resolve any outstanding questions you may have regarding the provided information.

Jim Detmers
Managing Director of Operations
California ISO
151 Blue Ravine Road
Folsom, California 95630

185

ATTACHMENT B
"DOE EXCESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

DOES NOT CONTAIN CDWR

1/25/2001 OOM

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ATTACHMENT B
"DOE EXCESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

DOES NOT CONTAIN CDWR

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ATTACHMENT B
"DOE EXCESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

DOES NOT CONTAIN CDWR

			MWH			Comments with energy commitments
						[redacted]

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ATTACHMENT B
"DOE EXCESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

DOES NOT CONTAIN CDWR

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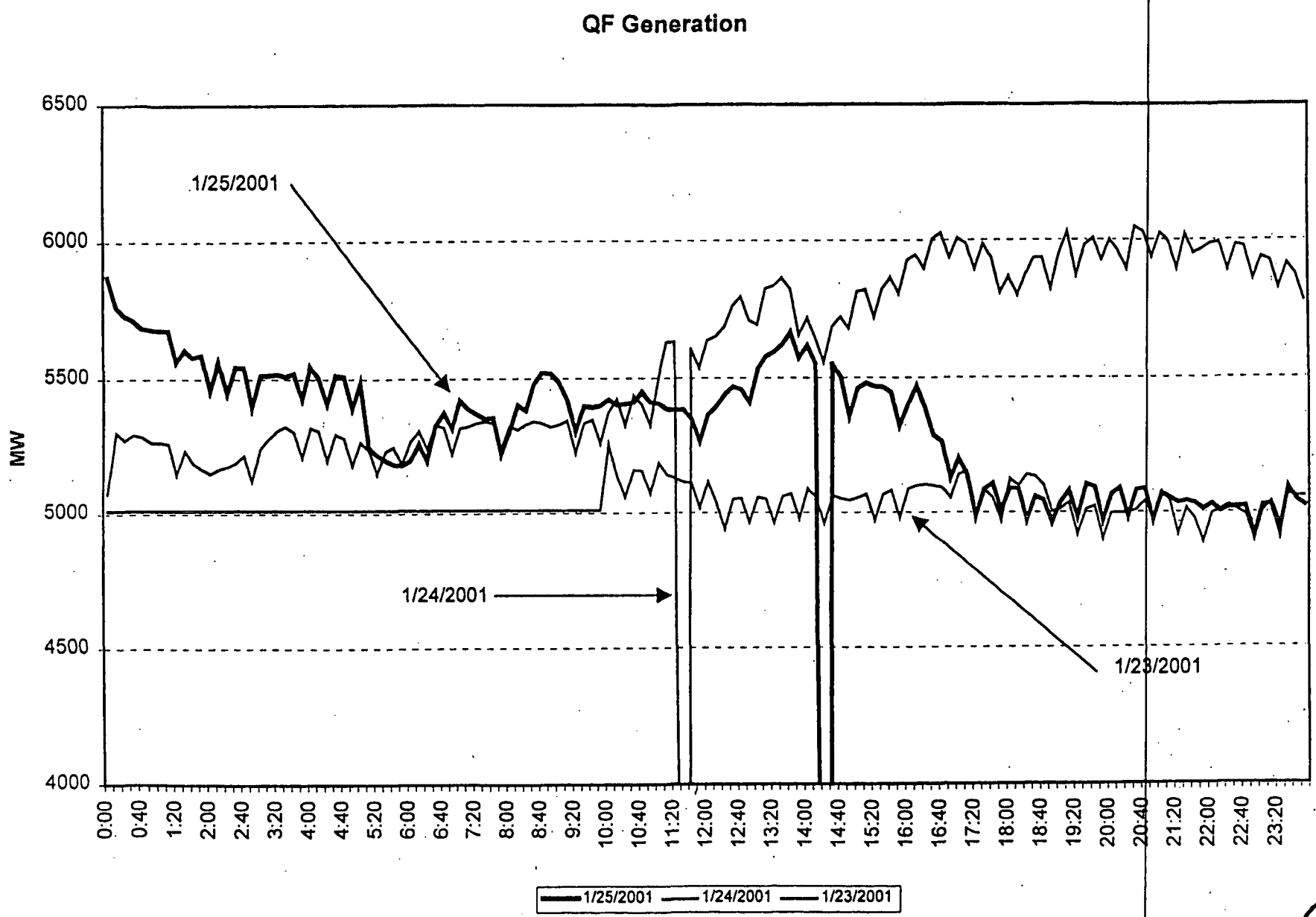
ATTACHMENT C. CAISO CONTROL AREA QF GENERATOR OUTPUT

DOCUMENT CONTAINS PROPRIETARY INFORMATION



C.

CALIFORNIA ISO

California Independent
System Operator

January 27, 2001

Paul Carrier
Department of Energy
Office of Energy Emergencies
1000 Independence Avenue SW (PO-21)
Washington, DC 20585
Email: paul.carrier@hq.doe.gov

Subject: Documentation for Emergency Order issued for January 26, 2001

Dear Mr. Carrier,

The following information is provided in response to your letter to Terry Winter dated January 23, 2001.

Attachment A is the California ISO forecasted excess energy which is based on the faxed responses from targeted entities north of Path 15. This energy may not include all the units committed in the Out-of-Market Energy transactions (Attachment B).

Attachment B is the Out-of-Market Energy deliveries procured in real time during each hour of the day. Details of service denials are footnoted at the bottom of the spreadsheet.

Attachment C is the California ISO Control Area Qualifying Facility (QF) Generator output. This document provides the QFs participation as a result of the emergency order.

We would like to work with you to resolve any outstanding questions you may have regarding the provided information.

Jim Detmers
Managing Director of Operations
California ISO
151 Blue Ravine Road
Folsom, California 95630

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DOCUMENT CONTAINS PROPRIETARY INFORMATION

ATTACHMENT 'A' CAISO Forecasted Excess Energy for FPA Certification for January 26, 2001

*updated for 1/26/01

* SVP only has 50 hours left

ATTACHMENT B
"DOE EXCESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

DOES NOT CONTAIN CDWR

1/25/2001 OCM

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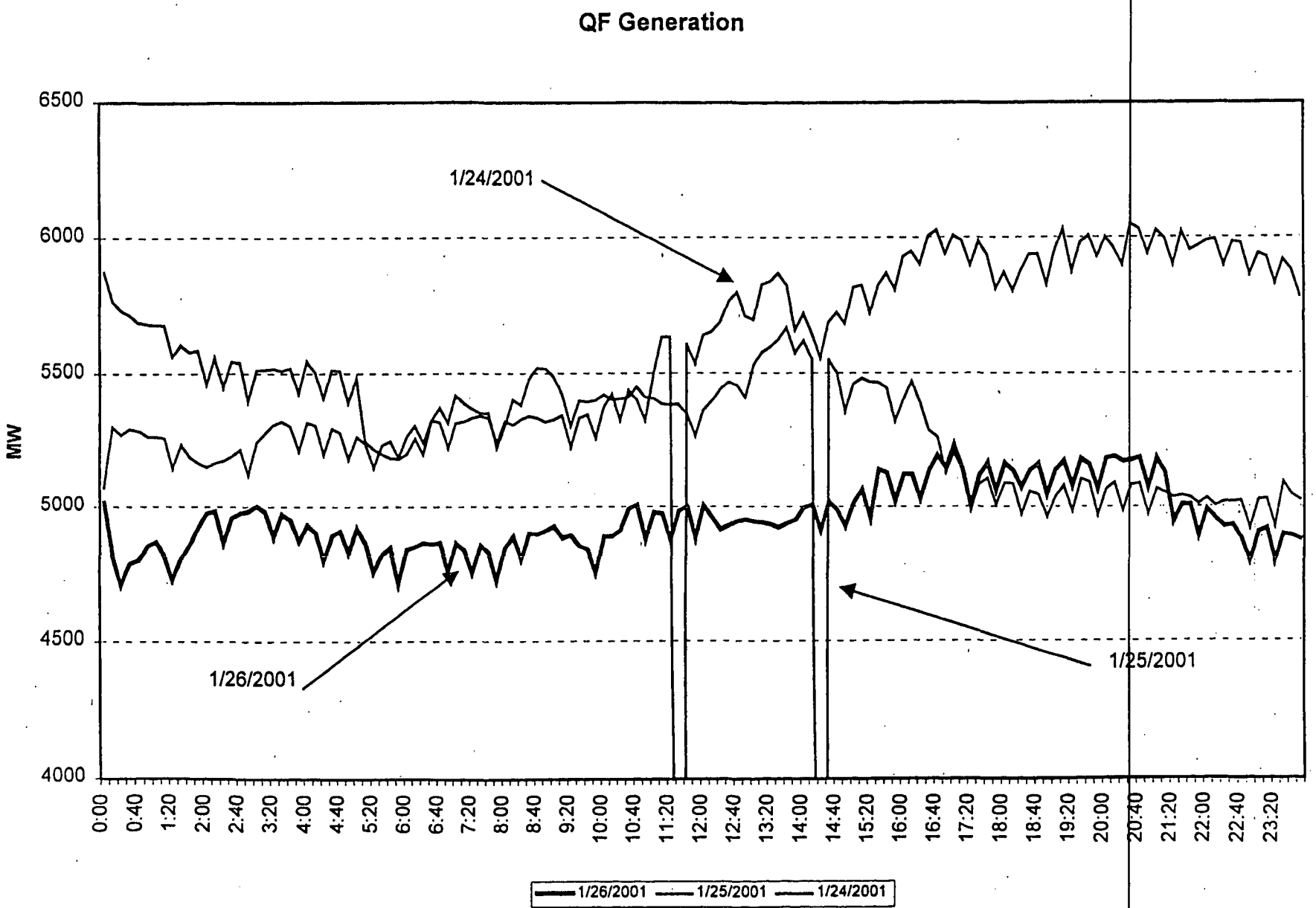
SUMMIT
[redacted]
COI
NOS
LUGO/VCTVL
PV
MEMOTIE

$899,225.00

ATTACHMENT C. CAISO CONTROL AREA QF GENERATOR OUTPUT

DOCUMENT CONTAINS PROPRIETARY INFORMATION



CALIFORNIA ISO

California Independent
System Operator

January 28, 2001

Paul Carrier
Department of Energy
Office of Energy Emergencies
1000 Independence Avenue SW (PO-21)
Washington, DC 20585
Email: paul.carrier@hq.doe.gov

Subject: Documentation for Emergency Order issued for January 27, 2001

Dear Mr. Carrier,

The following information is provided in response to your letter to Terry Winter dated January 23, 2001.

Attachment A is the California ISO forecasted excess energy which is based on the faxed responses from targeted entities north of Path 15. This energy may not include all the units committed in the Out-of-Market Energy transactions (Attachment B).

Attachment B is the Out-of-Market Energy deliveries procured in real time during each hour of the day. Details of service denials are footnoted at the bottom of the spreadsheet.

Attachment C is the California ISO Control Area Qualifying Facility (QF) Generator output. This document provides the QFs participation as a result of the emergency order.

We would like to work with you to resolve any outstanding questions you may have regarding the provided information.

Jim Detmers
Managing Director of Operations
California ISO
151 Blue Ravine Road
Folsom, California 95630

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DOCUMENT CONTAINS PROPRIETARY INFORMATION

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ATTACHMENT 'A' CAISO Forecasted Excess Energy for FPA Certification for January 27, 2001

*updated for 1/27/01

* OWID = 100 MWh FOR 10 hours, YCWA = 0, Ralston = 120 MWh for HE 1-5, HE 11-18 and HE 21-24, French Meadows = 0, and Tri Dam = 67.5 MWh for all hours.

A.

ATTACHMENT B
"DOE EXCESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

DOES NOT CONTAIN CDWR

1/27/2001 DOM

MWH

Comments with energy commitments

(b)(4)

LUGO/VICTVL
PV
MIRAGE
MEMOTIE

B

DOCUMENT CONTAINS PROPRIETARY INFORMATION

CONTAINS CDWR

ATTACHMENT B
"DOE BACESS" AND
OUT-OF-MARKET
DELIVERIES

DOCUMENT CONTAINS PROPRIETARY INFORMATION

CONTAINS CDWR

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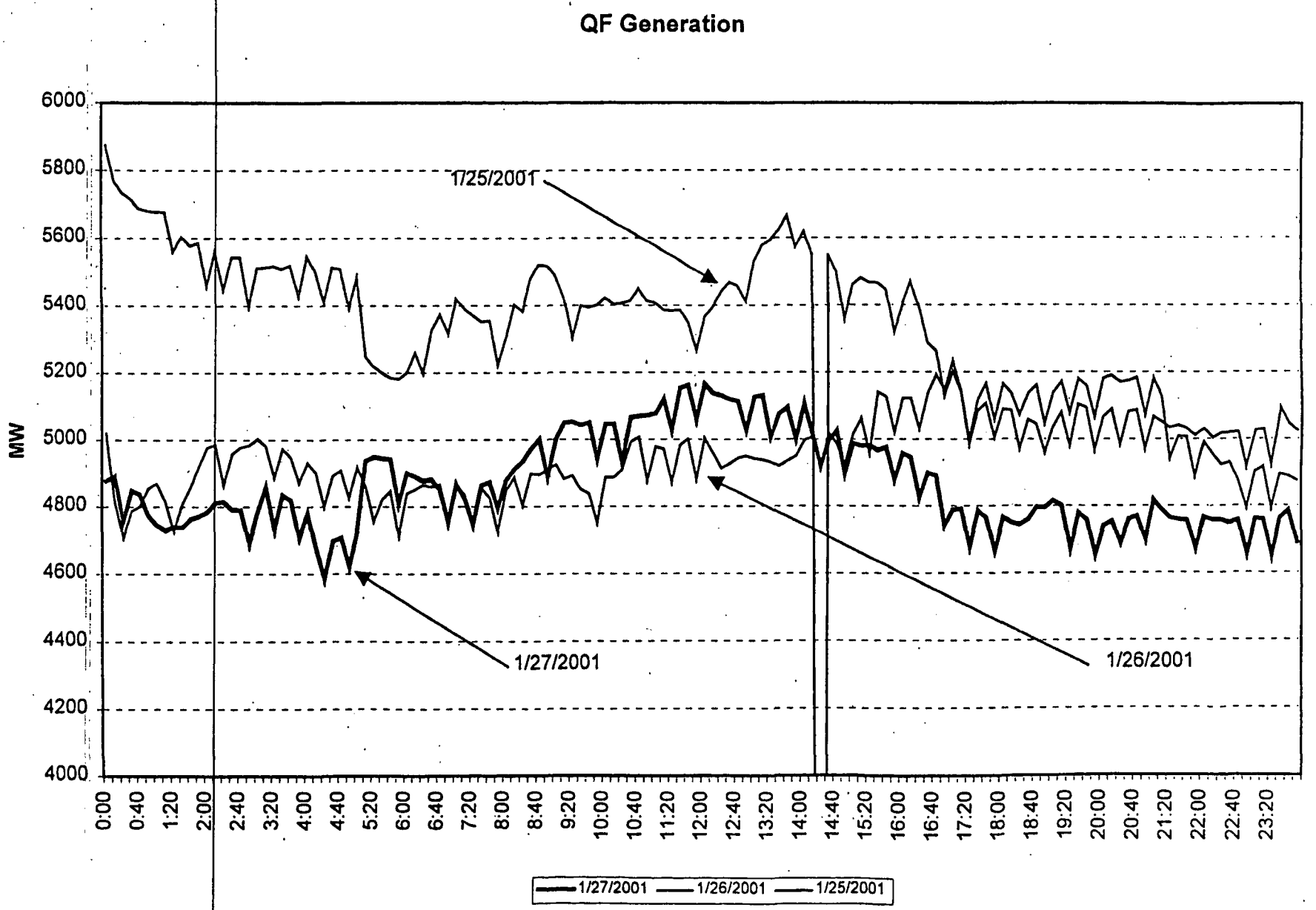
$12,381,630.00

ATTACHMENT C. CAISO CONTROL AREA QF GENERATOR OUTPUT

DOCUMENT CONTAINS PROPRIETARY INFORMATION



C

Certification of the California Independent System Operator January 26, 2001 for January 27, 2001

Pursuant to the Orders issued by the Secretary, United States Department of Energy under Section 202(c) of the Federal Power Act on December 14, 20, and 27, 2000, and on January 5, 11, 17, and 23, 2001, [hereinafter "DOE Orders"] the California Independent System Operator (ISO) certifies that it has been unable to acquire in the forward markets adequate supplies of electricity to meet forecasted system demand, with conditions particularly severe with respect to demand in the North of Path 15 sector of California, and that it has, or reasonably anticipates, "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375.

A signed copy of this certification was submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, via email and fax, today at 6:00 p.m. (Pacific Standard Time). The entities listed in the Attachment A to the December 14, 2000 DOE Order will be provided copies of the signed certification via email and fax, at the same time it is provided to DOE. In accordance with the January 11, 2001 DOE Order, the ISO certifies that it has implemented the conservation measures specified for Stage One and Stage Two Emergencies under the ISO Tariff (excluding the curtailment of interruptible customers). A description of such measures is contained in the attached *Analysis of Load Forecast, Resource Availability, and Transmission System Conditions that Call for Certification.*

All entities subject to this Certification are required to provide the ISO by 11:59 p.m. today (Pacific Standard Time) their total resources, total firm commitments, and hourly excess capacity for each hour of day (HE03 through HE24) for Saturday, January 27, 2001. The hourly amounts of available Energy should be reported, by facsimile, to the ISO's Real Time Operations at 1-916-351-2268. To the extent feasible, the

ISO will allocate its needs among the entities in Northern and Southern California and in the Northwest and Southwest subject to the ISO's request in proportion to each entity's available excess power.

The Analysis of Load Level, Resource Availability and Conditions report accompanying this Certification describes ISO's assessment of the conditions requiring the use of the authority under the Order, including forecasted Load levels, the forecasted amount of available resources, identification of the specific additional resources requested, and an explanation of how these resources can satisfy the ISO's request via market bids (i.e., bids in either the ISO's Hour Ahead Ancillary Service markets or the Real Time Imbalance Energy Market). System conditions may change and resources not currently available may become available prior to peak periods tomorrow that may mitigate or alleviate the current emergency. Under such circumstances, however, implementation of the Order would still be necessary given the depletion of hydroelectric resources in California and the Pacific Northwest; resources that must be replaced with thermal resources in order for the ISO to reliably operate the transmission grid and mitigate or avoid firm load curtailments in subsequent days.

Signed

Terry M. Winter
President & Chief Executive Officer
California Independent System Operator
January 26, 2001 (time: 6:00p.m. PST)

SUMMARY

1. (b)(4)

Certification of the California Independent System Operator January 27, 2001 for January 28, 2001

Pursuant to the Orders issued by the Secretary, United States Department of Energy under Section 202(c) of the Federal Power Act on December 14, 20, and 27, 2000, and on January 5, 11, 17, and 23, 2001, [hereinafter "DOE Orders"] the California Independent System Operator (ISO) certifies that it has been unable to acquire in the forward markets adequate supplies of electricity to meet forecasted system demand, with conditions particularly severe with respect to demand in the North of Path 15 sector of California, and that it has, or reasonably anticipates, "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375.

A signed copy of this certification was submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, via email and fax, today at 5:00 p.m. (Pacific Standard Time). The entities listed in the Attachment A to the December 14, 2000 DOE Order will be provided copies of the signed certification via email and fax, at the same time it is provided to DOE. In accordance with the January 11, 2001 DOE Order, the ISO certifies that it has implemented the conservation measures specified for Stage One and Stage Two Emergencies under the ISO Tariff (excluding the curtailment of interruptible customers). A description of such measures is contained in the attached *Analysis of Load Forecast, Resource Availability, and Transmission System Conditions that Call for Certification.*

All entities subject to this Certification are required to provide the ISO by 11:00 p.m. today (Pacific Standard Time) their total resources, total firm commitments, and hourly excess capacity for each hour of day (HE01 through HE24) for Sunday, January 28, 2001. The hourly amounts of available Energy should be reported, by facsimile, to the ISO's Real Time Operations at 1-916-351-2268. To the extent feasible, the

ISO will allocate its needs among the entities in Northern and Southern California and in the Northwest and Southwest subject to the ISO's request in proportion to each entity's available excess power.

The Analysis of Load Level, Resource Availability and Conditions report accompanying this Certification describes ISO's assessment of the conditions requiring the use of the authority under the Order, including forecasted Load levels, the forecasted amount of available resources, identification of the specific additional resources requested, and an explanation of how these resources can satisfy the ISO's request via market bids (i.e., bids in either the ISO's Hour Ahead Ancillary Service markets or the Real Time Imbalance Energy Market). System conditions may change and resources not currently available may become available prior to peak periods tomorrow that may mitigate or alleviate the current emergency. Under such circumstances, however, implementation of the Order would still be necessary given the depletion of hydroelectric resources in California and the Pacific Northwest; resources that must be replaced with thermal resources in order for the ISO to reliably operate the transmission grid and mitigate or avoid firm load curtailments in subsequent days.

Signed

Terry M. Winter

Terry M. Winter
President & Chief Executive Officer
California Independent System Operator
January 27, 2001 (time: 5:00p.m. PST)

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Certification of the California Independent System Operator
January 28, 2001 for January 29, 2001

Pursuant to the Orders issued by the Secretary, United States Department of Energy under Section 202(c) of the Federal Power Act on December 14, 20, and 27, 2000, and on January 5, 11, 17, and 23, 2001, [hereinafter "DOE Orders"] the California Independent System Operator (ISO) certifies that it has been unable to acquire in the forward markets adequate supplies of electricity to meet forecasted system demand, with conditions particularly severe with respect to demand in the North of Path 15 sector of California, and that it has, or reasonably anticipates, "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375.

A signed copy of this certification was submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, via email and fax, today at 4:00 p.m. (Pacific Standard Time). The entities listed in the Attachment A to the December 14, 2000 DOE Order will be provided copies of the signed certification via email and fax, at the same time it is provided to DOE. In accordance with the January 11, 2001 DOE Order, the ISO certifies that it has implemented the conservation measures specified for Stage One and Stage Two Emergencies under the ISO Tariff (excluding the curtailment of interruptible customers). A description of such measures is contained in the attached *Analysis of Load Forecast, Resource Availability, and Transmission System Conditions that Call for Certification.*

All entities subject to this Certification are required to provide the ISO by 10:00 p.m. today (Pacific Standard Time) their total resources, total firm commitments, and hourly excess capacity for each hour of day (HE01 through HE24) for Monday, January 29, 2001. The hourly amounts of available Energy should be reported, by facsimile, to the ISO's Real Time Operations at 1-916-351-2268. To the extent feasible, the

ISO will allocate its needs among the entities in Northern and Southern California and in the Northwest and Southwest subject to the ISO's request in proportion to each entity's available excess power.

The Analysis of Load Level, Resource Availability and Conditions report accompanying this Certification describes ISO's assessment of the conditions requiring the use of the authority under the Order, including forecasted Load levels, the forecasted amount of available resources, identification of the specific additional resources requested, and an explanation of how these resources can satisfy the ISO's request via market bids (i.e., bids in either the ISO's Hour Ahead Ancillary Service markets or the Real Time Imbalance Energy Market). System conditions may change and resources not currently available may become available prior to peak periods tomorrow that may mitigate or alleviate the current emergency. Under such circumstances, however, implementation of the Order would still be necessary given the depletion of hydroelectric resources in California and the Pacific Northwest; resources that must be replaced with thermal resources in order for the ISO to reliably operate the transmission grid and mitigate or avoid firm load curtailments in subsequent days.

Signed

Terry M. Winter
President & Chief Executive Officer
California Independent System Operator
January 28, 2001 (time: 4:00p.m. PST)

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Certification of the California Independent System Operator January 28, 2001 for January 29, 2001

Pursuant to the Orders issued by the Secretary, United States Department of Energy under Section 202(c) of the Federal Power Act on December 14, 20, and 27, 2000, and on January 5, 11, 17, and 23, 2001, [hereinafter "DOE Orders"] the California Independent System Operator (ISO) certifies that it has been unable to acquire in the forward markets adequate supplies of electricity to meet forecasted system demand, with conditions particularly severe with respect to demand in the North of Path 15 sector of California, and that it has, or reasonably anticipates, "inadequate fuel or energy supply" as defined in 10 C.F.R. § 205.375.

A signed copy of this certification was submitted to Paul Carrier, Department of Energy, Office of Energy Emergencies, via email and fax, today at 4:00 p.m. (Pacific Standard Time). The entities listed in the Attachment A to the December 14, 2000 DOE Order will be provided copies of the signed certification via email and fax, at the same time it is provided to DOE. In accordance with the January 11, 2001 DOE Order, the ISO certifies that it has implemented the conservation measures specified for Stage One and Stage Two Emergencies under the ISO Tariff (excluding the curtailment of interruptible customers). A description of such measures is contained in the attached *Analysis of Load Forecast, Resource Availability, and Transmission System Conditions that Call for Certification.*

All entities subject to this Certification are required to provide the ISO by 10:00 p.m. today (Pacific Standard Time) their total resources, total firm commitments, and hourly excess capacity for each hour of day (HE01 through HE24) for Monday, January 29, 2001. The hourly amounts of available Energy should be reported, by facsimile, to the ISO's Real Time Operations at 1-916-351-2268. To the extent feasible, the

ISO will allocate its needs among the entities in Northern and Southern California and in the Northwest and Southwest subject to the ISO's request in proportion to each entity's available excess power.

The Analysis of Load Level, Resource Availability and Conditions report accompanying this Certification describes ISO's assessment of the conditions requiring the use of the authority under the Order, including forecasted Load levels, the forecasted amount of available resources, identification of the specific additional resources requested, and an explanation of how these resources can satisfy the ISO's request via market bids (i.e., bids in either the ISO's Hour Ahead Ancillary Service markets or the Real Time Imbalance Energy Market). System conditions may change and resources not currently available may become available prior to peak periods tomorrow that may mitigate or alleviate the current emergency. Under such circumstances, however, implementation of the Order would still be necessary given the depletion of hydroelectric resources in California and the Pacific Northwest; resources that must be replaced with thermal resources in order for the ISO to reliably operate the transmission grid and mitigate or avoid firm load curtailments in subsequent days.

Signed

Terry M. Winter
President & Chief Executive Officer
California Independent System Operator
January 28, 2001 (time: 4:00p.m. PST)

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Redaction -- market sensitive information

(b)(4)

Department of Energy
Washington, DC 20585

Temporary Emergency Natural Gas Purchase and Sale Order

By Memorandum dated January 19, 2001, the President authorized and directed me to exercise authorities under the Natural Gas Policy Act of 1978, 15 U.S.C. 3361 through 3364, and the Defense Production Act of 1950, 50 U.S.C. App. 2061 et seq., to assure the continued availability of natural gas to high-priority uses in the central and northern regions of California. The President found and declared, pursuant to title III of the Natural Gas Policy Act of 1978 and section 607 of the Public Utility Regulatory Policies Act of 1978, 15 U.S.C. 717z, that a natural gas supply emergency exists in those regions. He found that this emergency endangers continued supply of natural gas to high-priority uses, including the generation of electric power. He further found that natural gas supplies within those regions of California are scarce, critical and essential within the meaning of the Defense Production Act of 1950, and that assuring natural gas supplies to those regions of California is necessary and appropriate to maximize domestic energy supplies and to promote the national defense. A copy of the President's Memorandum to me is attached (Attachment A). Section 304 of the Natural Gas Policy Act, 15 U.S.C. 3364, and sections 705 and 706 of the Defense Production Act, 50 U.S.C. App. 2155 and 2166, may be relied on as appropriate to ensure compliance with this Order regarding the natural gas supply emergency in California. Based on the President's Memorandum and the authorities previously vested in the Secretary of Energy, I take the following actions:

ORDER

Pursuant to section 302 of the Natural Gas Policy Act of 1978 and sections 101(a) and (c) of the Defense Production Act of 1950, it is hereby ordered that:

1. Pacific Gas and Electric Company (PG&E) is authorized to make emergency purchases of natural gas from the suppliers listed on Attachment B to this Order to meet the high-priority uses on its system as that term is defined in title III of the Natural Gas Policy Act of 1978 and in the President's Memorandum.

2. The suppliers listed in Attachment B to this Order are directed to sell natural gas to PG&E under terms consistent with any contractual arrangements in existence between PG&E and the suppliers listed in Attachment B (including arrangements between PG&E and suppliers' affiliates) at any time within the past 30 days, but subject to the conditions that (a) no accelerated payment, prepayment or other extraordinary payment terms may be imposed or invoked by any supplier, and (b) no termination by any supplier shall be permitted during the term of this Order without the agreement of the parties or the approval of the Secretary.

3. If any supplier listed in Attachment B and PG&E fail to agree on the terms of their contractual arrangement for the purchase, sale, and delivery of natural gas under this Order, the Secretary will set the terms of such an arrangement.

Printed with soy ink on recycled paper

4. Natural gas supplies purchased by PG&E pursuant to this Order may be used only for sale by PG&E for high-priority uses, including the generation of electric power, and cannot be sold by PG&E into the wholesale market.

5. Both PG&E and the suppliers listed in Attachment B shall report weekly to me the prices and volumes of any natural gas delivered, transported, or contracted for under this Order during the previous week.

6. This Order is effective immediately and expires at 3:00 a.m., EST, January 24, 2001.

Issued in Washington, D.C., on January 19, 2001.

Bill Richardson

Bill Richardson
Secretary of Energy

Attachments

ATTACHMENT A

THE WHITE HOUSE

WASHINGTON

January 19, 2001

MEMORANDUM FOR THE SECRETARY OF ENERGY

SUBJECT: Electric Energy Shortage in California

There is a current electric energy shortage in California that also threatens the continued availability of natural gas to consumers in the central and northern regions of California. Continuity of supply in those regions of California is dependent on the continued ability of the natural gas distributor in those regions to acquire and transport natural gas to all consumers throughout those regions.

Therefore I find and declare, pursuant to title III of the Natural Gas Policy Act of 1978 (15 U.S.C. 3361 through 3364) and section 607 of the Public Utility Regulatory Policies Act of 1978 (15 U.S.C. 717z), that a natural gas supply emergency exists in those regions, and that exercise of the emergency authorities there provided for is reasonably necessary to assist in meeting natural gas requirements for high priority uses. I find that this emergency endangers continued supply of natural gas for high priority uses, which I determine under the Natural Gas Policy Act to include use for generating electricity. I also find that natural gas supplies within those regions of California are scarce, critical, and essential within the meaning of the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*), and that assuring maintenance of natural gas supplies to those regions of California cannot reasonably be accomplished without use of these authorities and is necessary and appropriate to maximize domestic energy supplies (including electricity) and to promote the national defense.

Accordingly, you are authorized and directed as follows:

1. To exercise all the authorities previously delegated to the Secretary of Energy, without consultation with or prior approval of any other officer, to act in accordance with the findings herein pursuant to title III of the Natural Gas Policy Act of 1978 and section 607 of the Public Utility Regulatory Policies Act of 1978;

2. To exercise as to continuity of supplies of natural gas to the central and northern regions of California all authorities under the Defense Production Act of 1950, in accordance with the findings of scarcity, essentiality, and criticality made herein, pursuant to Executive Order 11790, as continued in force by Executive Order 12919, without the prior approval of any other officer, notwithstanding any procedural provisions generally specified in regulations that ordinarily would govern the Secretary of Energy's invocation of the authorities under the Defense Production Act of 1950, including in particular those under section 101(c) thereof (50 U.S.C. App. 2071(c)).

You are authorized and directed to publish this memorandum in the Federal Register.

William J. Clinton

ATTACHMENT B

Pacific Gas and Electric Company
Gas Procurement
NATURAL GAS SUPPLIERS

Counterparty	Address	City	State	Zip	Contact Names	Fax #'s
ADONIS ENERGY CORPORATION	6565 Hollister, #1220	HOUSTON	TX	77040	MIKE NEWSOME	713 460-9066
AEP ENERGY SERVICES, INC	5555 SAN FELIPE, SUITE 2000	HOUSTON	TX	77056	DAVE DUNN	614 324-4591
ALTRADE TRANSACTION, L.L.C.	1221 LARMAR STREET, SUITE 950	HOUSTON	TX	77010	DAVID HANSON	713 844-7699
AVISTA CORPORATION	210 W. NORTH RIVER DRIVE, #610	SPOKANE	WA	99220-3727	ROBER GRUBER	509 495-8766
BP ENERGY COMPANY	P.O. BOX 3092, WL3	HOUSTON	TX	77253-3092	JAMES TAYLOR	281 366-4932
CALPINE FUELS CORPORATION	6700 KOLL CENTER PARKWAY #200	PLEASANTON	CA	94566	BRAD BARNDS	925 600-8925
COAST ENERGY GROUP, A DIV CORNERSTONE PROP.	1600 HIGHWAY 6, SUITE 400	SUGARLAND	TX	77478	BRICE DILLE	281 565-4200
COASTAL MERCHANT ENERGY, L.P.	FIVE GREENWAY PLAZA	HOUSTON	TX	77046-0502	DAVID ARLEDGE	713 877-7305
COOK INLET ENERGY SUPPLY, L.L.C.	10100 SANTA MONICA BLVD., SUITE 2550	LOS ANGELES	CA	90067	GREG CRAIG	310 557-1176
CORAL ENERGY RESOURCES L.P.	2 HOUSTON CENTER, 909 FANNIE ST., SUITE 700	HOUSTON	TX	77010	STEVE WIDNER	713 767-5455
DUKE ENERGY TRADING AND MRKTG LLC	4 TRIAD CENTER, SUITE 1000	SALT LAKE CITY	UT	84180	SCOT ALLEN	801 531-5470
DYNEGY MARKETING & TRADE	1000 LOUISIANA, SUITE 5800	HOUSTON	TX	77002	CHUCK WATSON	713 507-6888
EL PASO MERCHANT ENERGY - GAS, L.P.	P.O. Box 2511	HOUSTON	TX	77252-2511	WILLIAM WISE	713 420-6030
ENRON NORTH AMERICA CORP.	P.O. BOX 4428	HOUSTON	TX	77252-4428	JEFF SKILLING	713 646-8381
KEYSPAN ENERGY	100 EAST OLD COUNTRY ROAD	HICKSVILLE	NY	11801	CHARLES A. DAVERIO	516 545-5467
ICC ENERGY CORPORATION	302 N. MARKET ST., SUITE 500	DALLAS	TX	75202-1846	KARL BUTLER	214 744-2206
J. ARON & COMPANY	85 BROAD STREET, 5TH FLOOR	NEW YORK	NY	10004	HENRY PAULSON	212 902-0633
ONEOK ENERGY MKTG. & TRADING CO., L.P.	P.O. BOX 2405	TULSA	OK	74102-2405	PATRICK McDONIE	918 585-9254
PG&E ENERGY TRADING CORPORATION	1100 LOUISIANA, SUITE 1000	HOUSTON	TX	77002	SARA BARPOULIS	301 280-6375
RELIANT ENERGY SERVICES, INC.	P.O. BOX 4455	HOUSTON	TX	77210-4455	STEVE LEDBETTER	713 207-3169
SEMPRA ENERGY TRADING CORP.	58 COMMERCE	STAMFORD	CT	06902	DON FELSINGER	619 696-4811
SOUTHERN COMPANY ENERGY MARKETING L.P.	1155 Perimeter Center West, Suite 130	ATLANTA	GA	30338-5416	A. WILLIAM DAHLBERG	404 506-0455
TEXACO NATURAL GAS	1111 BAGDY ST.	HOUSTON	TX	77002-0200	GARY UNDERWOOD	713 752-7841
TXU ENERGY TRADING COMPANY	1717 MAIN STREET, SUITE 2000	DALLAS	TX	75201	EARL NYE	215 812-7077
WESTERN GAS RESOURCES, INC.	12200 NORTH PECOS STREET	DENVER	CO	80234-3439	BRIAN JEFFRIES	303 457-9748
WILD GOOSE STORAGE INC.	2780 WEST LIBERTY RD.	GRIDLEY	CA	95948	RICK DANIEL	403 266-8180
WILLIAMS ENERGY MKTG & TRADING CO.	ONE WILLIAMS CENTER, 19TH FL., DEPT. 558	TULSA	OK	74172	KEITH BAILEY	918 573-3905

1/16/2001

ATTACHMENT B

Pacific Gas and Electric Company
Gas Procurement
NATURAL GAS SUPPLIERS

Counterparty	Address	City	State	Zip	Contact Names	Fax #'s
ADONIS ENERGY CORPORATION	6565 Hollister, #1220	HOUSTON	TX	77040	MIKE NEWSOME	713 460-9066
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ALTRADE TRANSACTION, L.L.C.	1221 LARMAR STREET, SUITE 950	HOUSTON	TX	77010	DAVID HANSON	713 844-7699
AVISTA CORPORATION	210 W. NORTH RIVER DRIVE, #610	SPOKANE	WA	99220-3727	ROBER GRUBER	509 495-8766
BP ENERGY COMPANY	P.O. BOX 3092, WL3	HOUSTON	TX	77253-3092	JAMES TAYLOR	281 366-4932
CALPINE FUELS CORPORATION	6700 KOLL CENTER PARKWAY #200	PLEASANTON	CA	94566	BRAD BARNDS	925 600-8925
COAST ENERGY GROUP, A DIV CORNERSTONE PROP.	1600 HIGHWAY 6, SUITE 400	SUGARLAND	TX	77478	BRICE DILLE	281 565-4200
COASTAL MERCHANT ENERGY, L.P.	FIVE GREENWAY PLAZA	HOUSTON	TX	77046-0502	DAVID ARLEDGE	713 877-7305
COOK INLET ENERGY SUPPLY, L.L.C.	10100 SANTA MONICA BLVD., SUITE 2550	LOS ANGELES	CA	90067	GREG CRAIG	310 557-1176
CORAL ENERGY RESOURCES L.P.	2 HOUSTON CENTER, 909 FANNIE ST., SUITE 700	HOUSTON	TX	77010	STEVE WIDNER	713 767-5455
DUKE ENERGY TRADING AND MRKTG LLC	4 TRIAD CENTER, SUITE 1000	SALT LAKE CITY	UT	84180	SCOT ALLEN	801 531-5470
DYNEGY MARKETING & TRADE	1000 LOUISIANA, SUITE 5800	HOUSTON	TX	77002	CHUCK WATSON	713 507-6888
EL PASO MERCHANT ENERGY - GAS, L.P.	P.O. Box 2511	HOUSTON	TX	77252-2511	WILLIAM WISE	713 420-6030
ENRON NORTH AMERICA CORP.	P.O. BOX 4428	HOUSTON	TX	77252-4428	JEFF SKILLING	713 646-8381
KEYSPAN ENERGY	100 EAST OLD COUNTRY ROAD	HICKSVILLE	NY	11801	CHARLES A. DAVERIO	516 545-5467
ICC ENERGY CORPORATION	302 N. MARKET ST., SUITE 500	DALLAS	TX	75202-1846	KARL BUTLER	214 744-2206
J. ARON & COMPANY	85 BROAD STREET, 5TH FLOOR	NEW YORK	NY	10004	HENRY PAULSON	212 902-0633
ONEOK ENERGY MKTG. & TRADING CO., L.P.	P.O. BOX 2405	TULSA	OK	74102-2405	PATRICK McDONIE	918 585-9254
PG&E ENERGY TRADING CORPORATION	1100 LOUISIANA, SUITE 1000	HOUSTON	TX	77002	SARA BARPOULIS	301 280-6375
RELIANT ENERGY SERVICES, INC.	P.O. BOX 4455	HOUSTON	TX	77210-4455	STEVE LEDBETTER	713 207-3169
SEMPRA ENERGY TRADING CORP.	58 COMMERCE	STAMFORD	CT	06902	DON FELSINGER	619 696-4611
SOUTHERN COMPANY ENERGY MARKETING L.P.	1155 Perimeter Center West, Suite 130	ATLANTA	GA	30338-5416	A. WILLIAM DAHLBERG	404 506-0455
TEXACO NATURAL GAS	1111 BAGDY ST.	HOUSTON	TX	77002-0200	GARY UNDERWOOD	713 752-7841
TXU ENERGY TRADING COMPANY	1717 MAIN STREET, SUITE 2000	DALLAS	TX	75201	EARL NYE	215 812-7077
WESTERN GAS RESOURCES, INC.	12200 NORTH PECOS STREET	DENVER	CO	80234-3439	BRIAN JEFFRIES	303 457-9748
WILD GOOSE STORAGE INC.	2780 WEST LIBERTY RD.	GRIDLEY	CA	95948	RICK DANIEL	403 266-8180
WILLIAMS ENERGY MKTG & TRADING. CO.	ONE WILLIAMS CENTER, 19TH FL., DEPT. 558	TULSA	OK	74172	KEITH BAILEY	918 573-3905

1/16/2001

UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY

EMERGENCY REQUEST BY RELIANT ENERGY SERVICES, INC. AND RELIANT CALIFORNIA GENERATORS FOR EXPEDITED ACTION ON REHEARING REGARDING ORDER PURSUANT TO SECTION 202(c) OF THE FEDERAL POWER ACT DATED JANUARY 11, 2001

The failure of the Department of Energy ("Department") to include credit support as an integral component of its emergency order requiring sales of power to near insolvent utilities in California is threatening a massive shift of costs from California ratepayers to generators and suppliers both inside and outside of California. The effect of the Department's action is to force those generators inside and outside of California to subsidize the California ratepayers. Unless the State of California provides the necessary credit to support sales under the emergency order, the Department's action threatens not only to harm the financial viability of the generators and suppliers, but could result in the United States incurring a multi-billion dollar liability for a taking of property under the Fifth Amendment to the U.S. Constitution.

On January 6, 2001, Reliant Energy Services, Inc. ("RES") and its affiliates owning power generation facilities in California -- Reliant Energy Coolwater, LLC ("Coolwater"), Reliant Energy Ellwood, LLC ("Ellwood"), Reliant Energy Etiwanda, LLC ("Etiwanda"), Reliant Energy Mandalay, LLC ("Mandalay") and Reliant Energy Ormond Beach, LLC ("Ormond Beach") (collectively, "Reliant California Generators") -- filed with the Department a Request for Modification of Order Pursuant to Section 202(c) of the Federal Power Act dated

December 14, 2000.[1] The Department treated the Request for Modification as a request for rehearing, and on January 17, 2001, issued an Order ("Rehearing Order") granting rehearing of the Emergency Order. In the Rehearing Order, the Department provided a 30 day comment period regarding the issues raised by the Request for Modification. Because the Reliant California Generators may be forced to incur substantial losses as a result of the Emergency Order before the Department takes final action on rehearing, RES and the Reliant California Generators file this emergency request that the Department expedite the schedule for issuing a decision on rehearing of the Emergency Order.

Under the Emergency Order, RES is required to sell electricity "that is available in excess of electricity needed by [RES] to render service to its firm customers" to the California Independent System Operator ("ISO") for resale to, among other companies, Southern California Edison Company ("SCE") and Pacific Gas & Electric Company ("PG&E").[2] In their Request for Modification, RES and the Reliant California Generators explained that SCE and PG&E had formally admitted that they would not have sufficient funds to pay for electricity that they must buy to serve their load, which would include any electricity provided pursuant to the Emergency Order. RES and the Reliant California Generators explained that the Emergency Order is therefore legally deficient because it fails to include any provisions regarding credit or assurance

[1] The December 14 Order was extended on three occasions until January 11, 2001. On January 11, 2001, the December 14 Order expired, and the Secretary of the Department ("Secretary") issued a new Order Pursuant to Section 202(c) of the Federal Power Act dated January 11, 2001. On January 17, 2001, the Secretary issued an Order amending the January 11 Order to extend it until January 24, 2001. On January 23, 2001, the Secretary issued another Order amending the January 11 Order to extend it until February 7, 2001. The January 11 Order, as amended, presents the same issues as the December 14 Order with respect to the Request for Modification. Accordingly, the December 14 Order, as amended, and the January 11 Order, as amended, are referred to herein collectively as the "Emergency Order."

[2] Emergency Order at 3, ¶ B. RES does not generate any electricity itself, but markets and distributes the electricity generated by the Reliant California Generators.

of payment for electricity supplied under its terms. Accordingly, RES and the Reliant California Generators requested that the Emergency Order be modified to provide some reasonable form of security to sellers that they will be paid for any sales of electricity made pursuant to the Emergency Order.

Since the Request for Modification was filed, the financial conditions of SCE and PG&E have deteriorated further. On January 2, 2001, SCE defaulted on payments to certain qualifying facilities. On January 16, 2001, SCE announced that it would not make payment to the California Power Exchange ("PX") for amounts due that day. See SEC Form 8-K filed by Edison International on January 16, 2001. On January 16, 2001, the Federal Energy Regulatory Commission extended the date on which SCE could make payment to the PX until January 18, 2001. On January 18, 2001, SCE defaulted on its payment to the PX. On January 19, 2001, PG&E defaulted on a $33 million debt payment as well, and has previously stated publicly that it is also facing a severe cash shortfall. See The Energy Daily, January 19, 2001; "Emergency Request of Pacific Gas and Electric Company for Rehearing of December 15, 2000 Order," San Diego Gas & Electric Co., Docket Nos. EL00-95-000 (filed Dec. 20, 2000) ("PG&E Emergency Request") at 3, 8, 11-13; Declaration of Peter A. Darbee in Support of Emergency Rehearing Request of Pacific Gas and Electric Company, attached as Appendix A to PG&E Emergency Request, at 3-10. In addition, credit agencies have lowered the credit ratings of SCE and PG&E to low "junk" status.

For the reasons set forth herein, it is absolutely critical that the Department expedite its action on rehearing of the Emergency Order. First, expedited consideration is necessary to limit the severe financial injury that the Emergency Order could inflict upon RES and the Reliant California Generators by requiring sales of electricity to SCE and PG&E when it is undisputed that they cannot pay for it. The California legislature recently appropriated $400 million for the

California Department of Water Resources ("DWR") to purchase electricity to meet the needs of PG&E and SCE, including purchases on behalf of the ISO for balancing energy to meet the changing load requirements of those utilities. However, that amount may only be sufficient to purchase electricity for 7 to 10 days. After that funding runs out, unless additional funding is appropriated or security for payment required, sellers such as RES and the Reliant California Generators, who incur substantial costs in purchasing natural gas to produce electricity, will not receive any compensation if forced to sell under the Emergency Order. As a result, sellers will suffer severe financial harm, including potential damage to their own credit ratings and increased costs of capital.

Second, if the Reliant California Generators are forced to sell under the Emergency Order after the DWR funding is exhausted, without any provision requiring security for payment, the Reliant California Generators will be placed in the position of being compelled to generate and provide electricity without compensation. That action would constitute a taking of property under the Fifth Amendment to the U.S. Constitution. Ultimately, if the Department continues to compel the parties to sell electricity without compensation pursuant to the Emergency Order, the U.S. government will be required to pay just compensation for the takings effected by the Emergency Order. That amount could easily be in the billions of dollars.

Finally, an expedited decision on rehearing of the Emergency Order would help to lower wholesale prices and increase the supply of electricity in California. Currently, sellers who are forced to sell electricity to the ISO must require prices high enough to compensate for the substantial risk that they will not be paid. Indeed, one reason that supply available to California markets is low is because risk-averse sellers have refused to sell to such markets, including to the ISO. Thus, modification of the Emergency Order to provide a guaranty of payment may result in lower wholesale prices and a greater supply of electricity in California.

Accordingly, RES and the Reliant California Generators respectfully request that the Department issue an order expediting its action on rehearing of the Emergency Order to require that comments of interested persons shall be due within five days of today, and the Department shall issue a decision on rehearing no later than February 5, 2001.

Dated: January 26, 2001

Respectfully submitted,

Randolph Q. McManus
BAKER BOTTS L.L.P.
The Warner
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2400
(202) 639-7700

Attorney for
Reliant Energy Services, Inc. and the Reliant California Generators

CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served by first-class mail on the parties named in the attached list on this 26th day of January, 2001.

American Electric Power Services
5555 San Felipe, Ste. 2000
Houston, TX 77056

Aquila Power Corporation
10750 E 350 Highway
Kansas City, MO 64138

Arizona Public Service Company
400 North Fifth Street
Phoenix, AZ 85005

Automated Power Exchange, Inc.
5201 Great America Parkway, Suite 522
Santa Clara, CA 95054

Avista Energy
201 W. North River Dr., Ste. 610
Spokane, WA 99201

Bonneville Power Administration
P.O. Box 3621
Portland, OR 97208-3621

California Dept. of Water Resources
3310 El Camino Ave, Ste. 300
Sacramento, CA 95821

California Polar Brokers, LLC
150 Spear Street, Ste. 725
San Francisco, CA 94105

H

Cargill-Alliant, LLC
12700 Whitewater Drive
Minnetonka, MN 55344

Citizens Power Sales
160 Federal Street
Boston, MA 02110

City of Anaheim
201 S. Anaheim Blvd., Ste. 802
Anaheim, CA 92805

City of Azusa
729 No. Azusa Ave.
Azusa, CA 91702

City of Banning
99 East Ramsey Ave.
Banning, CA 92220

City of Burbank, Public Service Department
164 West Magolia Blvd.
Burbank, CA 91502

City of Pasadena
45 E. Glenarm Ste.
Pasadena, CA 91105

City of Riverside
3900 Main Street
Riverside, CA 92522

City of Seattle, City Light Department
700 5th Avenue, Ste. 330
Seattle, WA 98104

City of Shasta Lake
Post Office Box 777
Shasta Lake CA 96019-0777

City of Vernon
4305 Santa Fe Avenue
Vernon, CA 90058

Colorado River Storage Project (CRSP)
1800 S. Rio Grand Avenue
Montorse, CO 81401

Constellation Power Source
111 Market Place, Suite 500
Baltimore, MD 21202

Coral Power, L.L.C.
4320 La Jolla Village Drive, Ste. 250
San Diego, CA 92122

Duke Energy Trading & Marketing, L.L.C.
4 Triad Center, Ste. 1000
Salt Lake City, UT 84180

Dynegy Power Marketing Inc.
(formerly Electric Clearinghouse)
1000 Louisiana, Ste. 5800
Houston, TX 77002-5006

Edison Mission Marketing & Trading, Inc.
18101 Von Karmen, Ste. 1700
Irvine, CA 92612

Edison Source
13191 Crossroads Parkway N.
City of Industry, CA 91746

El Paso Electric Company
123 W. Mills
El Paso, TX 79901

El Paso Merchant Energy
1001 Louisiana
Houston, TX 77002

Enron Energy Services
P.O. Box 1188
Houston, TX 77251-1188

Enron Power Marketing, Inc.
121 S.W. Salmon Street
3WTC-0306
Portland, OR 97204

FPL Energy Power Marketing, Inc.
11770 US Highway One
South Tower, 4th Floor
North Palm Beach, FL 33408

Grant County Public Utility District
30 C Street SW
Ephrata, WA 98823

Hafslund Energy Trading
101 Elliot Ave.,
Seattle, WA 98119

Idaho Power Company
1221 West Idaho Street
Boise, ID 83707

Illinova Energy Partners, Inc.
1420 Kenningston Road, Ste. 305
Oak Brook, IL 60523

Koch Energy Trading, Inc.
20 E. Greenway Plaza (P.O. Box 1478)
Houston, TX 77046

LA Department of Water & Power
111 North Hope Street
Los Angeles, CA 90012

LG & E Energy Marketing, Inc.
220 West Main Street
Louisville, KY 40202

Merchant Energy Group of the Americas
(MEGA)
151 West Street, Ste. 300
Annapolis, MD 21401

Mieco, Inc.
301 East Ocean Blvd., Ste. 1100
Long Beach, CA 90802-4832

Modesto Irrigation District
1231 11th Street
Modesto, CA 95354

Nevada Power Company
P.O. Box 230, MX #20
Attn: Energy Accounting
Las Vegas, NV 89151

New Energy Inc.
535 Boylston St.
Boston, MA 02116

Northern California Power Agency
180 Cirby Way
Roseville, CA 95678

PacifiCorp
9951 SE Ankeny
Portland, OR 97216

PacifiCorp Power Marketing, Inc.
830 NE Holladay Street, Suite 200
Portland, OR 97232

PECO
2004 Renaissance Blvd.
King of Prussia, PA 19406

PG & E
77 Beale Street, Bldg. 23A
San Francisco, CA 94105

PG & E Energy Trading
7500 Georgetown Road, 14th Floor
Bethesda, MD 20814

Portland General Electric Company
121 SE Salmon Street
Portland, OR 97204

Power Resource Managers, LLC
2100 112th Avenue NE, Ste. 100
Bellevue, WA 98004-2911

PP&L Montana
45 Basin Creek Road
Butte, MT 59701

Public Service Company of Colorado
(New Century Energies)
1099 18th Street, Suite 3000
Denver, CO 80202

Public Service Company of New Mexico
Alvarado Square, MS-EP11
Albuquerque, NM 87158

Public Utility District No. 1 of Douglas County
1151 Valley Mall Parkway, E.
Wenatchee, WA 98802

Puget Sound Energy
411 108th Avenue NE
Bellevue, WA 98009

Reliant Energy Services
P.O. Box 4455
Houston, TX 77210-4455

Sacramento Municipal Utilities District
6308 S Street, P.O. Box 15830
Sacramento CA 95852-1830

Salt River Project
P.O. Box 52025
Phoenix, AZ 85072-2025

San Diego Gas & Electric
101 Ash Street
San Diego, CA 92101

Sempra Energy Trading
58 Commerce Road
Stamford, CT 06902

Sierra Pacific Power Co.
6100 Neil Road
P.O. Box 10100
Reno, NV 89520-0004

Silicon Valley Power (City of Santa Clara)
1500 Warburton Ave.
Santa Clara, CA 95050

Southern California Edison
2244 Walnut Grove Avenue
Rosemead, CA 91770

Southern Company Energy Marketing
900 Ashwood Parkway, Ste. 490
Atlanta, GA 30338-4780

Strategic Energy Ltd.
2 Gateway Center
Pittsburgh, PA 15222

Tacoma City Light
3628 South 35th Street
Tacoma, WA 98409

Tucson Electric Power
220 W. Sixth, P.O. Box 711
Tuscan, AZ 85702

Washington Water Power
P.O. Box 3727
Spokane, WA 99220

Western Area Lower Colorado
P.O. Box 6457
Phoenix, AZ 85005-6457

Western Area Power Administration (WAPA)
114 Parkshore Drive
Folsom, CA 95630

Williams Energy Marketing and Trading
One Williams Center
Energy Resource Center
Tulsa, OK 74172

Honorable David P. Boergers, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Public Utilities Commission of the State of California
Commission's Docket Office
505 Van Ness Avenue
San Francisco, CA 94102

California ISO
P.O. Box 639014
Folsom, CA 95630-9014

Western Systems Coordinating Council
University of Utah, Research Park
540 Arapeen Drive, Suite 203
Salt Lake City, Utah 84108-1288

California Power Exchange
1000 S. Freemont Ave. Bldg., A9 West
Alhambra, CA 91803

Arizona Electric Power Cooperative
P.O. Box 670
Benson, Arizona 85602

City of Glendale
613 E. Broadway
Glendale, CA 91206-4391

AO 440 (Rev. 10/93) Summons in a Civil Action

United States District Court

for the DISTRICT OF COLUMBIA

PORTLAND GENERAL ELECTRIC COMPANY
and
CITY OF EUGENE, OREGON, acting by and through the EUGENE WATER AND ELECTRIC BOARD

V.

UNITED STATES OF AMERICA and the UNITED STATES DEPARTMENT OF ENERGY, individually and as successor to the UNITED STATES ATOMIC ENERGY COMMISSION, and the ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

SUMMONS IN A CIVIL CASE

CASE NUMBER 1:98CV02552

JUDGE: William B. Bryant

DECK TYPE: Civil General

DATE STAMP: 10/22/98

TO: (Name and address of defendant)

UNITED STATES DEPARTMENT OF ENERGY
Marc Johnston
Deputy General Counsel, Litigation
Forrestal Building
1000 Independence Avenue, S.W.
Washington, D.C. 20585

YOU ARE HEREBY SUMMONED and required to serve upon PLAINTIFF'S ATTORNEY (name and address)

MICHAEL J. HENKE
JOHN D. TAURMAN
Vinson & Elkins L.L.P.
The Willard Office Building, Suite 700
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008

an answer to the complaint which is herewith served upon you, within ~~twenty (20)~~ 60 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You must also file your answer with the Clerk of this Court within a reasonable period of time after service.

NANCY MAYER-WHITTINGTON
CLERK

OCT 22 1998
DATE

(BY) DEPUTY CLERK

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IN THE UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation 121 S.W. Salmon Street Portland, Oregon 97204	
and	
CITY OF EUGENE, OREGON, acting by and through the EUGENE WATER AND ELECTRIC BOARD, a municipal corporation of the State of Oregon 500 E. Fourth Avenue Eugene, Oregon 97440	
Plaintiffs,	CASE NUMBER 1:98CV02552
v.	JUDGE: William B. Bryant
	DECK TYPE: Civil General
UNITED STATES OF AMERICA and the UNITED STATES DEPARTMENT OF ENERG individually and as successor to the UNITED STATES ATOMIC ENERGY COMMISSION, and the ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,	DATE STAMP: 10/22/98
Defendants.	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, Portland General Electric Company ("PGE") and the City of Eugene, Oregon, acting by and through the Eugene Water and Electric Board ("EWEB"), by and through their attorneys, for their Complaint against Defendants, the United States of America ("United States") and the United States Department of Energy ("DOE"), individually and as successor to the United States Atomic Energy Commission ("AEC") and the Energy Research and Development Administration ("ERDA"), allege as follows:

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PRELIMINARY STATEMENT

1. This is an action for a declaratory judgment that Sections 1801 and 1802 of the Atomic Energy Act, as amended by the Energy Policy Act of 1992 ("EPACT"), 42 U.S.C. §§ 2297g, 2297g-1, and certain regulations promulgated thereunder (hereinafter, the "Special Assessment Statutes"), which require Plaintiffs to pay millions of dollars for Defendants' use in cleaning up uranium enrichment facilities owned and operated by the Defendants, are invalid because such statutes: (1) constitute an unlawful taking of Plaintiffs' vested property rights protected by the Takings Clause of the Fifth Amendment to the United States Constitution; (2) violate Plaintiffs' substantive due process rights, protected by the Fifth Amendment to the United States Constitution because they are excessively retroactive, harsh and oppressive; and (3) unlawfully impair Plaintiffs' rights and waive and excuse Defendants' obligations under numerous contracts that were fully performed many years ago.

2. Plaintiffs also seek an injunction preventing the Defendants from taking any and all steps in accordance with or in furtherance of the Special Assessment Statutes, including but not limited to attempting to collect any further special assessments from the Plaintiffs.

3. Plaintiffs jointly owned and operated a nuclear reactor for the purpose of generating and supplying electricity for residential and commercial use in various states of the United States.

4. Nuclear power reactors are fueled principally by uranium. For uranium to serve usefully as a source of energy in Plaintiff's' nuclear reactors, it must be "enriched" by increasing its concentration of the isotope U-235.

5. For the better part of the last half century, Defendants, acting in a commercial capacity, have been the principal suppliers of uranium enrichment services. Indeed, until the late 1970s and early 1980s, Defendants were the only source of such services.

6. In view of Defendants' dominant role, Plaintiffs purchased the uranium enrichment services necessary to power their nuclear reactors and generate electricity for their customers from the Defendants.

7. Defendants provided enrichment services to Plaintiffs pursuant to a series of standard form contracts prepared by Defendants. These contracts, among other things, contained certain provisions governing the prices Defendants agreed to charge for their services. Although the precise wording of these pricing provisions changed somewhat over the years, each provided that the prices Plaintiffs were to pay, and did pay, for Defendants' uranium enrichment services would be based upon the prices in effect at the time Defendants delivered enriched uranium to Plaintiffs. One of the contracts also provided that any such price would not exceed a certain amount.

8. Plaintiffs understood that the prices they paid for Defendants' enrichment services had been established in accordance with the terms of their contracts and reasonably relied upon those terms in deciding whether to purchase enrichment services from Defendants, in rendering their own performance under the contracts, and in establishing the prices that they, in turn, would charge to their customers for nuclear power generated electricity.

9. Throughout the period of time in which Defendants provided uranium enrichment services to Plaintiffs, Defendants were required, by statute, to set their prices at a level sufficient to permit Defendants to recover all costs associated with the operation of their uranium enrichment plants and the provision of enrichment services. See, e.g., 28 U.S.C. § 2201v (1970). Plaintiffs understood that the prices they paid for Defendants' enrichment services included all costs Defendants were required by law to include in their prices and reasonably relied upon the defendants' representations that their prices were set in accordance with the applicable law. One such cost which

Plaintiffs understood to be included in the Defendants' prices was the cost of decontaminating and decommissioning Defendants' uranium enrichment plants.

10. Decontamination and decommissioning ("D&D") refer to the process of removing a nuclear facility from service at the end of its useful life and reducing the remaining radioactivity at the site to acceptable levels. The process generally involves cleaning the structures and equipment in the plant, closing or removing the facility, and then restoring the site to a condition prescribed by applicable environmental standards. D&D is necessary because throughout the period of time in which Defendants operated their facilities principally for defense purposes (the 1950s and 1960s), such facilities became contaminated with radioactive and other wastes.

11. Although Defendants enjoyed a near monopoly over the uranium enrichment business during the 1960s and 1970s, by the mid-1980s that began to change. Several foreign suppliers emerged, creating stiff competition for enrichment services. Upon information and belief, in order to preserve their market share and ward off foreign competitors, Defendants revamped their standard form contracts and actively marketed enrichment services to Plaintiffs and others at so-called "incentive prices." Many domestic utilities, which were already parties to existing contracts with Defendants, terminated those contracts at Defendants' urging, and entered into new contracts with Defendants which contained these more favorable terms.

12. At or about the same time, during the early and mid-1980s, new studies emerged, some of which were commissioned by Defendants, estimating that the total cost of D&D could reach several billion dollars. Notwithstanding these estimates, Defendants continued to represent that their prices included all of their costs, including the costs of D&D, as required by law.

13. By 1991, faced with a looming financial crisis, Defendants turned to Congress for help. In 1992, Congress responded by enacting EPACT, sweeping legislation designed to restore

Defendants' private, commercial enrichment business to financial health. But Congress did so at Plaintiffs' expense and in violation of the Takings and Due Process Clauses of the Fifth Amendment, by shifting Defendants' D&D liabilities to a limited class of Defendants' customers -- certain domestic utilities that had purchased Defendants' uranium enrichment services during the past 40 years.

14. Congress chose to effectuate this bail-out scheme by imposing a "special assessment" upon "domestic utilities" that purchased uranium enrichment services from the Defendants prior to October 1992, in the amount of $150 million per year for a period of 15 years, for a total of $2.25 billion. See 42 U.S.C. §§ 2297g-1(c)-(e). The amount payable by each domestic utility, in turn, is based upon the number of separative work units ("SWUs") each utility purchased from Defendants, and thus is directly linked to the amount of enrichment services each utility purchased from Defendants prior to October 24, 1992. See 42 U.S.C. § 2297g-1. SWU was the standard measure of enrichment services provided by Defendants to the Plaintiffs under the terms of their contracts.

15. Because the special assessment is linked directly to the quantity of enrichment services purchased by Plaintiffs over the years, the Special Assessment Statutes increase retroactively, by a remarkable 10-20 percent, the prices that Plaintiffs paid for Defendants' services pursuant to contracts that were performed, in some instances, more than 25 years ago. In addition, by imposing such severely retroactive liability upon Plaintiffs and other "domestic utilities," a limited class of persons that could not have anticipated such a liability, such Statutes unfairly deprive Plaintiffs of the substantial amounts they are required to pay. To date, Plaintiffs have paid $10,920,105.96 in special assessments and, if Defendants are not enjoined, will be required to pay approximately $15 million more.

16. The Special Assessment Statutes should be declared invalid and Plaintiffs should be relieved from liability thereunder because such statutes deprive Plaintiffs of vested property rights in violation of the Takings and Due Process Clauses of the Fifth Amendment to the United States Constitution. The liability imposed upon Plaintiffs under the Special Assessment Statutes is unfair, arbitrary and irrational; therefore, the Special Assessment Statutes should be set aside.

17. In reliance upon the terms and conditions of their contracts as well as upon applicable law, which required Defendants to cover all costs in their prices, Plaintiffs paid for and received uranium enrichment services from Defendants. By reason of these contracts and their performance thereunder, Plaintiffs acquired vested property rights protected by the Fifth Amendment that the Defendants may not abrogate through legislation unilaterally altering the essential, agreed-upon pricing terms of those contracts and imposing severe retroactive liability upon a limited class of persons having control of or responsibility for the activities that gave rise to Defendants' D&D costs.

18. Whether viewed as imposing a tax or not, the Special Assessment Statutes are unduly harsh and oppressive and unreasonably retroactive in further violation of Plaintiffs' Fifth Amendment due process rights. The special assessment is imposed on an exceedingly and inappropriately narrow base -- certain domestic utilities that purchased Defendants' uranium enrichment services, and only to the extent of their purchases. Domestic utilities are not responsible for the contamination or other activities that necessitate the D&D costs. Rather, the uranium enrichment facilities were owned and operated solely by the Defendants and were substantially contaminated as a result of the Defendants' defense, rather than civilian, operations. Moreover, the transactions on which the special assessments are levied date back nearly 40 years. Had Plaintiffs known of the eventual imposition of a substantial retroactive monetary assessment on their purchases from the Defendants, Plaintiffs could

have, and would have, taken other action, such as terminating their contracts with Defendants in whole or in part or purchasing enrichment services elsewhere.

19. Finally, to prevent Defendants from reaping any further benefit from this invalid and constitutionally infirm legislation, Plaintiffs are entitled to an injunction preventing Defendants from collecting any additional so-called "special assessments" from Plaintiffs, and from taking any other or further steps toward enforcing these unlawful Special Assessment Statutes.

PARTIES

20. Plaintiff PGE is an Oregon corporation with its registered office and principal place of business in Portland, Oregon. PGE owns 67.5 percent of and operated a nuclear generating plant known as the Trojan Nuclear Power Plant ("Trojan") near Rainier, Oregon. Trojan began commercial operation in 1975 and was formally shut down in January 1993.

21. Plaintiff EWEB is an Oregon municipal utility corporation with its principal place of business in Eugene, Oregon. EWEB is a 30 percent owner of Trojan, has been responsible for 30 percent of all costs of operation at Trojan, and has reimbursed PGE for such costs pursuant to the Operating Agreement.

22. Pacificorp ("Pacific") owns 2.5 percent of Trojan and has assigned all of its rights for this case to PGE. Pacific has been responsible for 2.5 percent of all costs of operation of Trojan, and has reimbursed PGE for such costs pursuant to the Operating Agreement.

23. Since PGE, EWEB and Pacific have paid and are jointly responsible according to their respective ownership shares for all costs and expenses described herein, unless otherwise noted, they will be jointly referred to as "Plaintiffs."

24. Defendant United States, at all times relevant hereto, was engaged in the business of owning and operating facilities that produced enriched uranium and in the sale of uranium

enrichment services to third parties, including Plaintiffs. United States is a sovereign entity that is obligated to honor the terms of its contracts, and is subject to the requirements of applicable law, including the Fifth Amendment to the United States Constitution.

25. Defendant DOE was the administrative agency previously responsible for operation of the United States' uranium enrichment facilities. Between 1977 and 1993, DOE was engaged in the sale of uranium enrichment services to third parties, including Plaintiffs, pursuant to standard form contracts promulgated by DOE.

26. Defendant ERDA, prior to the creation of the DOE, was the administrative agency responsible for operation of the United States' uranium enrichment facilities. Between 1975 and 1977, ERDA was engaged in the sale of uranium enrichment services to third parties, pursuant to standard form contracts promulgated by ERDA.

27. Defendant AEC, prior to the creation of ERDA and DOE, was the administrative agency responsible for operation of the United States' uranium enrichment facilities. Between the late 1950s and 1974, the AEC was engaged in the sale of uranium enrichment services to third parties, including Plaintiffs, pursuant to standard form contracts promulgated by AEC.

28. At all times relevant hereto, in their dealings with Plaintiffs, Defendants acted in a private, commercial capacity rather than in a sovereign capacity.

JURISDICTION AND VENUE

29. This Court has jurisdiction over this action pursuant to 28 U.S.C §§ 1331, 1337, 1361, and 2201-2202 and under the Administrative Procedure Act, 5 U.S.C. §§ 701 and 702.

30. Venue lies in this district pursuant to 28 U.S.C. § 1391(e).

FACTS

A. The Defendants' Uranium Enrichment Program

31. Since the 1940s, uranium enrichment in the United States has been performed nearly exclusively by Defendant, United States, acting through various government agencies. The first uranium enrichment plant began operation in 1945 in Oak Ridge, Tennessee. Two others were subsequently constructed during the 1950s: one in Paducah, Kentucky, and the other in Portsmouth, Ohio.

32. These uranium enrichment processing facilities were originally constructed and operated by the Defendants for national defense purposes. On information and belief, between 1945 and 1970, approximately 96 percent of the enriched uranium produced by the Defendants was used for national defense purposes. The remaining 4 percent was used for civilian purposes pursuant to lease agreements, because private ownership of enriched uranium was prohibited.

33. In 1964, Congress gave private entities the right to own enriched uranium and, in 1969, authorized the AEC to sell its uranium enrichment services to private parties. As a result, the Defendants began marketing their services to both domestic and foreign nuclear utilities. Until the late 1970s, however, Defendants were the only suppliers of uranium enrichment services in the western world. On information and belief, during some years in the 1970s and 1980s, gross revenues from Defendants' sales of enriched uranium approached $2 billion.

34. At all times, Defendants were the sole and exclusive owners and operators of these enrichment processing facilities. At no time did Plaintiffs or any other domestic utility share in the ownership or operation of these facilities, or exercise any control whatsoever over the manner in which these facilities were operated or the manner in which Defendants performed their enrichment services and managed their enrichment business.

35. Upon information and belief, during the period 1945-1969, when these facilities were dedicated to and used almost exclusively for national defense, the buildings, equipment and property at and surrounding these facilities became contaminated with uranium, its by-products and other hazardous materials. Although Defendants continued to provide enrichment services on a commercial basis after 1969, little, if any, additional contamination occurred.

36. At all times, the Defendants conducted their uranium enrichment enterprise for civilian nuclear power reactors as a commercial business venture. Although domestic utilities were significant customers, Defendants also sold services to foreign utilities. On information and belief, foreign sales accounted for approximately 25 percent of the Defendants' uranium enrichment market.

B. Defendants' Uranium Enrichment Service Contracts

37. Private parties, such as Plaintiffs, wishing to utilize the Defendants' enrichment services were required to enter into standard form contracts promulgated by Defendants.

38. With their essential monopoly over enrichment services, the Defendants were in a position to, and did, exercise control over the terms of the contracts and the unit price to be paid for enrichment services. Plaintiffs were in no position to, and did not, negotiate with Defendants over the price.

39. Defendants utilized various forms of uranium enrichment contracts over the years. From 1967 through 1972, the Defendants' contracts were known as "requirements contracts"; from 1973 through 1983, they were called "fixed commitment contracts"; and beginning in 1984, they were called "utility services contracts" (hereinafter collectively referred to as "Fixed Price Contracts"). Certain domestic utilities also acquired rights and corresponding obligations as third party beneficiaries by reason of their purchase of enriched uranium from other domestic utilities that,

in turn, purchased uranium enrichment services from Defendants pursuant to various Fixed Price Contracts.

40. On or about May 31, 1972, PGE, on behalf of Plaintiffs, entered into a contract with the United States, acting through the AEC (the "1972 Contract"), a copy of which is attached hereto as Exhibit 1.

41. On or about September 26, 1979, PGE, on behalf of Plaintiffs, entered into a contract with the United States, acting through the DOE (the "1979 Contract"), a copy of which is attached hereto as Exhibit 2.

42. On or about November 17, 1980, PGE, on behalf of Plaintiffs, entered into a contract with the United States, acting through the DOE (the "1980 Contract"), a copy of which is attached hereto as Exhibit 3.

43. On or about February 5, 1982, PGE, on behalf of Plaintiffs, entered into a Supplemental Agreement to the 1972 Contract (Exhibit 1) with the United States, acting through the DOE, a copy of which is attached hereto as Exhibit 4. This agreement did not modify the pricing terms of the underlying contract.

44. On or about October 1, 1984, PGE, on behalf of Plaintiffs, entered into a Supplemental Agreement of Settlement with the United States, acting through the DOE, a copy of which is attached hereto as Exhibit 5. The Supplement Agreement of Settlement terminated the three prior contracts between the parties. It also explicitly provided that all Plaintiffs' obligations under the prior contracts were concluded by reason of the terminations.

45. Each of the contracts entered into between PGE, on behalf of Plaintiffs, and Defendants, prior to 1984 (Exhibits 1, 2, and 3 hereto), provides that in return for the uranium enrichment service to be provided by the government, Plaintiffs would pay the government a price

determined in accordance with the "established Commission pricing policy" in effect at the time such services were rendered.

46. The term "established Commission pricing policy" is defined in the contracts. By way of example, the 1972 Contract defines "established Commission pricing policy" in pertinent part as "any applicable price or charge in effect at the time of performance of any services under this agreement." See Exhibit 1, Article I(9). This basic definition limiting changes to prices in effect at the time of performance was in effect in all of Plaintiffs' contracts with Defendant and caused the prices charged by Defendants for their enrichment services to become "fixed" upon the date of delivery of enriched uranium to Plaintiffs.

47. On or about October 1, 1984, PGE, on behalf of Plaintiffs, entered into a contract with the United States, acting through the DOE (the "1984 Contract"), a copy of which, together with seven modifications, is attached hereto as Exhibit 6. This contract defined the terms "established DOE pricing policy" as "any policy established by DOE that is applicable to prices or charges in effect at the time of performance of any services under this contract; provided, however, that for purposes of this definition, any enrichment services performed by DOE shall be deemed to have been performed on the date of delivery of related enriched uranium to the customer." While some of the terms of the 1984 Contract differed from the earlier contracts, the pricing provisions were essentially similar to the earlier contracts, including, without limitation, that the prices were subject to a ceiling charge pursuant to Article IV. Furthermore, Article IV, paragraph 3 of the 1984 Contract provided that while DOE might, during the term of the contract, either increase or decrease its charge for enrichment services, it could not exceed the ceiling charge without ten (10) years' advance written notice to Plaintiffs.

48. The 1984 Contract was terminated by Modification No. 7 entitled "Supplemental Agreement of Settlement," on April 19, 1993 following the permanent shutdown in January 1993 of the Trojan Nuclear Plant. See Exhibit 6. The Supplemental Agreement of Settlement explicitly provided that all Plaintiffs' obligations under the contract were concluded by reason of its termination.

49. Each of Defendant's contracts with Plaintiffs also contained clauses providing that there was to be no amendment to such contracts without the mutual agreement of both parties. See, e.g., Exhibit 6 at Article XI. In addition, each of Defendants' contracts with Plaintiffs contained termination provisions allowing Plaintiffs to terminate their contracts with Defendants, in whole or in part, upon written notice of termination and payment of a termination charge. See, e.g., Exhibit 6 at Article X, ¶¶ 2-3.

50. Plaintiffs relied upon the pricing, amendments and termination provisions contained in Defendants' Fixed Price Contracts in deciding whether to purchase Defendants' services and in performing their respective obligations under such Contracts. Accordingly, these provisions were essential and material terms of Defendants' Fixed Price Contracts.

C. Defendants' Pricing Policy

51. In fixing the prices of their enrichment services, Defendants had the statutory authority and obligation to include in such prices all costs and expenses relating to the operation of their uranium enrichment facilities, and Plaintiffs reasonably believed and relied upon Defendants' representations that they did so.

52. Between 1964 and 1970, the Private Ownership Act of 1964 required Defendants to establish prices so as to provide "reasonable compensation to the Government." Uranium

enrichment criteria, published by the AEC in 1964, provided that Defendants' prices had been set so as to allow Defendants to "recover [the] full costs of separative work." (Emphasis added.)

53. In 1970, at a time when significant sales to commercial utilities were being made, Congress enacted a statute requiring that the prices charged by Defendants for their enrichment services "shall be on a basis of recovery of the Government's costs over a reasonable period of time . . . ." 42 U.S.C. § 2201v (1970). According to the AEC's own 1973 uranium enrichment criteria, the Defendants' prices included, among other things, "electric power and all other costs, direct and indirect, of operating the enrichment plants. . . ." Uranium Enrichment Services Criteria, published by Atomic Energy Comm'n, dated January 23, 1973, at 7. (Emphasis added.) Several years later, in 1986, the DOE's pricing criteria provided that the Defendants' prices were based on "all" the Defendants' costs of operating its uranium enrichment facilities. Uranium Enrichment Services Criteria, 51 Fed. Reg. 27132 (1986) (codified at 10 C.F.R. § 762.5 (1987)).

54. Plaintiffs, in purchasing enrichment services from Defendants, relied upon such statutes and understood that Defendants would price their services in accordance with the law. Thus, Plaintiffs understood that the prices they paid for Defendants' enrichment services included the D&D costs. Had Plaintiffs known that the prices they were required to pay did not include D&D costs and that they would be forced to pay additional sums to Defendants on account of Defendants' failure to include D&D costs in their prices or to calculate their costs in a manner sufficient to cover D&D, Plaintiffs could have, and would have, taken other action such as terminating their contracts with Defendants in whole or in part or purchasing uranium enrichment services elsewhere.

55. Moreover, Defendants' pricing policy was expressly incorporated in Defendants' Fixed Price Contracts and provided the basis upon which the prices of Defendants' services were calculated. Plaintiffs relied upon Defendants' pricing policy in deciding whether to purchase

Defendants' services and in performing their obligations under their Fixed Price Contracts; the Defendants' pricing policy was thus an essential and material term of those Contracts.

D. Early Recognition of the Need to Price for D&D Costs

56. Upon information and belief, at all times relevant hereto, the Defendants were aware or should have been aware that they would be required to decontaminate and decommission their uranium enrichment facilities and should price their services accordingly. Indeed, this was an obligation well understood by operators of nuclear facilities throughout the industry.

57. In the early 1960s, when the Defendants' uranium enrichment services were dedicated to and being used almost exclusively for defense purposes, the AEC was reviewing the magnitude of expected decommissioning costs for commercial nuclear power plants. In addition, many nuclear facilities, including several operated by Defendants, were decommissioned in the 1950s and 1960s. See NUREG-0586, Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities, published by the Nuclear Regulatory Comm'n (Aug. 1988), at Tables 1.5-1 and 1.5-2 (citing 10 nuclear facilities decommissioned before 1970).

58. Beginning in fiscal year 1966, the prices Defendants charged for their uranium enrichment services included a "margin for contingencies" which ranged from 10 percent to 15 percent of the total price charged by Defendants per separative work unit or "SWU." Upon information and belief, this cost "add-on" was intended to compensate the Defendants for any additional costs that might be incurred which could not be foreseen at the time or, even if foreseen, might exceed Defendants' then-current cost projections.

E. The Advent of Competition in the 1980s

59. By the late 1970s and early 1980s, foreign suppliers of uranium enrichment services emerged, threatening Defendants' monopoly power and creating significant competition for

Defendants. As a result of the price competition that arose, a number of utilities stopped purchasing enrichment services from Defendants and/or took advantage of their contractual right to terminate part or all of their contracts in order to purchase enrichment services from lower-cost suppliers. Consequently, on information and belief, Defendants' share of the uranium enrichment market declined substantially, from nearly 100 percent in the 1960s and 1970s, to below 50 percent in 1983.

60. In response to this serious market crisis and with full knowledge of their D&D liabilities, Defendants revised their standard form service contracts and offered strong price incentives to induce Plaintiffs to remain long-term customers. Thus, in January 1984, DOE introduced its "Utility Services Contract" which included lower prices and more flexible terms than its prior contracts. The new Utility Services Contract, which Plaintiffs signed in October 1984, provided explicitly that in response "to the changing needs of its customers"

> DOE intends to serve as a reliable long term supplier of uranium enrichment services at predictable prices while providing the most competitive prices possible through technological innovation; and . . . .

See Exhibit 6 at 1. (Emphasis added.)

61. In 1985 and 1986, the Defendants also offered "incentive prices" substantially below the standard SWU prices in order to attract additional purchases from customers. Notwithstanding these incentive prices, Defendants represented to Plaintiffs, and Plaintiffs understood, that such prices were inclusive of all of the Defendants' costs, including the cost of disposal of waste generated during the enrichment process and all other D&D costs.

62. In addition, Defendants represented to Plaintiffs, and Plaintiffs understood, that the prices being charged for Defendants' uranium enrichment services were firm and final and adequate to cover all projected costs. Defendants also represented to Plaintiffs, and Plaintiffs understood, that future costs could be paid out of revenues generated by the contract prices in effect at the time.

63. In reliance on the representations and understandings set out in paragraphs 61 and 62, above, Plaintiffs increased their purchases of enrichment services from Defendants.

64. Beginning in Fiscal Year 1988, Defendants included an explicit allowance for D&D costs in their SWU prices. As DOE informed Congress in 1990:

> DOE has recognized and recovered environmental costs and D&D in FY 1988, FY 1989, and FY 1990 through its enrichment prices and DOE will recover all future environmental and D&D costs through future enrichment prices.

Dep't of Energy's Uranium Enrichment Program: Hearing before the Subcomm. on Energy Research and Development of the Senate Comm. on Energy and Natural Resources, 101st Cong. § 133 (May 1, 1990). DOE further stated that "[b]eginning in FY 1991 SWU charges will also recover $50 million each year to cover the commercial [utility] share of future D&D activities for all three [uranium enrichment] sites." Id. at 139.

65. Thus, prior to the passage of EPACT in 1992, the Defendants collected D&D costs as part of their SWU prices and were recovering D&D costs on a going-forward basis as an explicit element of their SWU charges.

F. Defendants React to the Crisis

66. Notwithstanding Defendants' marketing efforts set out above, by 1992, Defendants' share of the uranium enrichment services market had shrunk to 40 percent and was continuing to dwindle. See Subcomm. Markup of the Nat'l Energy Security, Envtl. Mitigation, and Competitiveness Research Act of 1992 before the Comm. on Science, Space, and Tech., Subcomm. on Energy 102d Cong. § 404 (March 19, 1992). As a result, Defendants lobbied Congress to enact legislation overhauling their uranium enrichment business by turning it over to a private corporation that Defendants believed would make such business more efficient and competitive. Potential Contribution of Mining and Energy Extractive Industries to the Administration's Nat'l Energy Policy:

Oversight Hearing before the Subcomm. on Mining and Natural Resources of the Comm. on Interior and Insular Affairs, 101st Cong. § 50 (February 22, 1990) (statement of Michael R. McElwrath, Acting Assistant Secretary for Fossil Energy, U.S. Dep't of Energy). Such corporation, created by statute as the United States Enrichment Corp. ("USEC"), is now known as USEC, Inc.

67. Defendants also determined that they could increase revenues from the eventual sale of USEC by relieving the purchaser of an important cost component and shifting that cost to the Defendants' former customers:

> A Government corporation, with a clearly defined mission to operate as a commercial enterprise on a profitable and efficient basis, will provide the enrichment program with the businesslike structure and flexibility that is crucial to the survival of the program. In addition, any legislation for revitalizing the enrichment enterprise should also address other issues which affect the program, such as the decontamination and decommissioning of the enrichment plants.

H.R. Rep. No. 102-474, Part 2, at 77, reprinted in 1992 U.S.C.C.A.N., 102d Cong. §§ 2064, 2084. (Emphasis added.)

68. When the EPACT legislation was initially introduced in the House of Representatives, it proposed to amend the Atomic Energy Act to create a D&D Fund which was to be supported by (1) lease payments by USEC for use of Defendants' existing uranium enrichment plants; (2) contributions received from past purchasers that were foreign companies and/or governments; and (3) payments by USEC equal to 2.5 percent of its gross revenue. Only if these three sources were insufficient would any "special assessment" be made. H.R. Rep. No. 102-474, pt. 1, at 143 (1992).

69. The final House bill called for funding from a special assessment on past domestic purchasers of enrichment services from the Defendants (without limitation as to amount) and from appropriations. H.R. 776, 102d Cong. § 1101 (1992) (as passed by the House of Representatives,

May 27, 1992). The Senate bill also established a D&D fund, though it was to be supported entirely by deposits from USEC based on future sales. S. 2166, 102d Cong. § 10103(b) (1992) (as passed by the Senate, Feb. 19, 1992).

70. Defendants, however, expressed concern that the planned privatization of USEC would be undermined if USEC were burdened "with such heavy financial liabilities, including all profits, basically being diverted into a clean-up fund." Comprehensive National Energy Policy Act: Hearing before the Comm. on Ways and Means, 102d Cong. § 82 (April 28, 1992) (statement of Linda G. Stuntz, Acting Deputy Secretary, U.S. Dep't of Energy). It was Defendants' position that, if a special assessment were not enacted to relieve USEC of this financial liability, USEC would be unable to "attract confidence from the private sector and ultimately be privatized." Id. Thus, the special assessment was designed as a means to shift a substantial portion of the D&D obligation from the Defendants, where it belongs, to Defendants' former Fixed-Price Contract customers, domestic nuclear power utilities.

71. Defendants' plan to privatize USEC has recently come to fruition. In July 1998, USEC completed an initial public offering which generated in excess of $1.4 billion, a feat made possible in large measure by the shifting of Defendants' substantial D&D liability to domestic utilities rather than USEC.

G. The Special Assessment Statutes

72. The key mechanism ultimately adopted by Congress to improve the financial performance of the Defendants' uranium enrichment business and to maximize its long-term value to Defendants was to relieve Defendants of a substantial portion of their D&D liabilities and to force the domestic utility industry to absorb that share of the cost. This unlawful shifting of liability was accomplished in two steps.

73. First, under EPACT, Congress transferred Defendants' uranium enrichment business to USEC, a newly created entity owned by the U.S. government, and authorized USEC to develop a plan for the ultimate sale of the uranium enrichment business to private investors. See 42 U.S.C. §§ 2297b, 2297d, et seq. To attract private investors to USEC, EPACT further provided that Defendants' D&D liabilities were not to be transferred to USEC, but were to be retained by Defendant DOE. See 42 U.S.C. § 2297c-5(a).

74. Second, to avoid saddling DOE with Defendants' enormous D&D liabilities, Congress created the "Uranium Enrichment Decontamination and Decommissioning Fund" ("D&D Fund"), which it earmarked for the discharge of Defendants' D&D liabilities. 42 U.S.C. § 2297g. Contributions to the D&D Fund were to come from two sources: general appropriations and a special assessment on "domestic utilities." See 42 U.S.C. § 2297g-1. The Statutes define "domestic utility" as any utility in the United States that purchased SWUs from the Defendants between 1945 and October 23, 1992. See 10 C.F.R. §§ 766.2-766.3. The assessment is to be levied upon "domestic utilities" in the amount of $150 million each year for a period of 15 years, from 1993 through 2007, for a total amount of $2.25 billion. See 42 U.S.C. § 2297g-1.

75. Each utility's share of this special assessment is directly linked to the quantity of its past purchases of enrichment services as it is based on the total number of SWUs each utility purchased prior to October 24, 1992.

76. The Special Assessment Statutes also provide that a domestic utility is considered a "purchaser" of Defendants' enrichment services if "the SWU was produced by DOE but purchased by the domestic utility from another source." See 10 C.F.R. § 766.101. Thus, each domestic utility's annual special assessment is based on the total number of SWUs the utility purchased, both directly from the Defendants and indirectly from the Defendants via third parties, prior to October of 1992.

See 42 U.S.C. § 2297g-1(c). (Approximately 85 percent of all SWUs purchased by domestic utilities were purchased directly from Defendants.)

77. Under EPACT foreign utilities were exempted from the special assessment and have no obligation to contribute to the D&D Fund. Thus, Defendants' foreign customers have no obligation to contribute anything to the D&D fund, notwithstanding that they historically accounted for approximately one-quarter of Defendants' enrichment service sales. Indeed, no other beneficiary of Defendants' enrichment services other than certain domestic utilities is required to pay the special assessment.

78. By reason of this legislative scheme, Defendants succeeded in restructuring their uranium enrichment business and shifting their outstanding D&D liabilities to Plaintiffs and other domestic utilities, thereby significantly enhancing the value Defendants realized in selling USEC to private investors.

79. As of the date of this Complaint, Defendants have billed, and Plaintiffs have paid, six special assessments (the last two under protest), for a total of $10,920,105.96. Copies of the six invoices for the special assessments imposed by the Defendants and paid by the Plaintiffs are attached hereto as Exhibits 7-12. If permitted to continue throughout its anticipated life, the special assessments will exact from Plaintiffs approximately $15 million more, bringing total payments to nearly $25 million over and above the contract prices Plaintiffs previously paid Defendants. If D&D costs exceed the Defendants' estimates, Plaintiffs' overall special assessment liability would be even greater.

80. By letter dated July 6, 1996, a copy of which is attached as Exhibit 13, PGE requested reimbursement of the first four assessments. By letter dated September 6, 1996, a copy of which is attached as Exhibit 14, DOE denied the request for reimbursement.

COUNT I

(Declaratory Judgment – Unconstitutional Taking)

81. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 80 above.

82. The Takings Clause of the Fifth Amendment to the United States Constitution provides that no private property shall be taken for public use, without just compensation.

83. Plaintiffs reasonably relied upon the fixed price nature of their Fixed Price Contracts to determine the total cost of acquiring uranium enrichment services from Defendants and reasonably understood that the prices specified in such contracts, and actually paid by Plaintiffs pursuant to such contracts, constituted the entire price of the services Plaintiffs purchased from Defendants.

84. In establishing their prices, Defendants were well aware that there would be substantial costs associated with decontaminating and decommissioning their enrichment facilities at the end of their useful lives. Knowing that they would be required to pay substantial costs for these activities in due course, Defendants were required to set their prices at levels sufficient to meet all of their current and projected costs of providing uranium enrichment services, including costs associated with decontaminating and decommissioning enrichment facilities.

85. In view of the statutory directive to Defendants that their contracts were to cover all costs associated with the enrichment services and the explicit language in the contracts, Plaintiffs did not foresee and could not reasonably have foreseen the enactment of the Special Assessment Statutes which, in effect, directly and retroactively increased the costs of their prior purchases of enriched uranium from Defendants and imposed severe retroactive liability upon a limited class of persons that had no control of or responsibility for the activities that gave rise to Defendants' D&D costs.

86. If Plaintiffs had been able to foresee the enactment of EPACT and the Defendants' plan to exact from Plaintiffs a "special assessment" to offset Defendants' D&D liabilities, Plaintiffs could and would have acted to avoid these added costs. For example, Plaintiffs could have opted to enter into contracts with a supplier of uranium enrichment services other than Defendants, restructured their transactions, or terminated part or all of their existing contracts with Defendants upon payment of a termination fee.

87. Moreover, the special assessment is imposed on a limited class -- i.e., certain domestic utilities that purchased Defendants' uranium enrichment services prior to October 1992 and only to the extent of their purchases. Neither foreign utilities nor any other beneficiaries of Defendants' uranium enrichment services are required to pay any assessment to the D&D Fund.

88. The assessment also is levied on domestic utilities notwithstanding that they have no responsibility for the contamination of Defendants' facilities. Such facilities were constructed and operated solely by Defendants and substantially contaminated by Defendants during the period in which such facilities were devoted to Defendants' weapons program.

89. In addition, the D&D activities which Defendants are required to undertake will benefit all citizens, not just Plaintiffs. The cost burden imposed upon Plaintiffs by the Special Assessment Statutes is therefore grossly disproportionate to any benefit Plaintiffs, alone, have derived or will derive from the expenditure of monies paid to the D&D Fund.

90. Plaintiffs have a vested property interest in the economic benefits represented by the various contracts they entered into with the Defendants and have fully performed. The liability imposed upon Plaintiffs under the Special Assessment Statutes infringes upon these vested property interests by retroactively increasing the prices Plaintiffs paid for Defendants' services pursuant to the Fixed Price Contracts that were fully performed. The Special Assessment Statutes also violate

Plaintiffs' property interests by imposing severe retroactive liability upon a limited class of persons that had no control of or responsibility for the activities that gave rise to Defendants' D&D costs, thus depriving Plaintiffs of the amounts they are required to pay to the D&D Fund.

91. The Special Assessment Statutes violate the Takings Clause because they have a substantial economic impact on Plaintiffs and deprive Plaintiffs of the amounts they must pay to the D&D Fund. The liability imposed upon Plaintiffs under the Special Assessment Statutes is substantially disproportionate to Plaintiffs' conduct.

92. The Special Assessment Statutes also interfere with Plaintiffs' reasonable investment-backed expectations by divesting Plaintiffs of property and imposing upon Plaintiffs liability they could never have anticipated, based upon transactions that were complete as much as 25 years earlier. The length of the period of retroactivity is unduly harsh, oppressive and unfair and goes well beyond the short and limited periods of retroactivity that the courts have previously permitted.

93. The nature of the Defendants' action also implicates fundamental principles of fairness underlying the Takings Clause. The Special Assessment Statutes single out Plaintiffs -- domestic utilities -- to bear a substantial burden based on conduct far in the past and unrelated to any responsibility that Plaintiffs, domestic utilities, might have for the activities giving rise to the D&D costs.

94. In light of the severely retroactive nature of the Special Assessment Statutes, and their imposition of liability upon a limited class of persons that did not and could not have reasonably anticipated a liability so substantially disproportionate to their experience, such statutes constitute a taking of Plaintiffs' vested property interests without just compensation, in violation of Plaintiffs' rights under the Fifth Amendment to the United States Constitution.

95. For these reasons, Plaintiffs are entitled to judgment declaring that the Special Assessment Statutes violate the Takings Clause of the Fifth Amendment and that Plaintiffs, therefore, have no further obligation to pay such assessments.

COUNT II

(Declaratory Judgment – Violation of Due Process)

96. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 95 above.

97. The Due Process Clause of the Fifth Amendment to the United States Constitution provides that no person "shall be deprived of life, liberty, or property, without due process of law."

98. The liability imposed upon Plaintiffs pursuant to the Special Assessment Statutes significantly alters the legal consequences of fixed price transactions with the government that were concluded long ago; the statutes are thus arbitrary and irrational. Both on their face and as applied to Plaintiffs, such statutes violate Plaintiffs' Fifth Amendment rights to due process.

99. Plaintiffs reasonably relied to their detriment on the Defendants' representations that the prices they were required to pay, and did pay, for enrichment services were set in accordance with the law and included all D&D costs. Plaintiffs had vested and cognizable contract rights to receive the uranium enrichment services from the Defendants at the prices specified in the contracts, and the Special Assessment Statutes abrogate those vested rights.

100. In addition, the Special Assessment Statutes impose severely retroactive liability upon Plaintiffs based upon transactions that were complete as much as 25 years earlier. The length of the period of retroactivity is unduly harsh and oppressive and goes well beyond the short and limited period of retroactivity courts have previously permitted.

101. The Special Assessment Statutes also violate Plaintiffs' due process rights because the assessment unfairly targets an exceedingly narrow base -- i.e., certain domestic utilities that purchased Defendants' uranium enrichment services prior to October 1992 and only to the extent of their purchases. The assessment, moreover, is levied on domestic utilities notwithstanding that they have no responsibility for the contamination of Defendants' facilities. Such facilities were constructed and operated solely by Defendants and substantially contaminated by Defendants during the period in which the facilities were devoted to Defendants' weapons program.

102. Finally, the D&D activities which Defendants are required to undertake will benefit all citizens, not just Plaintiffs. The heavy financial burden imposed upon Plaintiffs by the Special Assessment Statutes is thus grossly disproportionate to any benefit that Plaintiffs, alone, have derived or will derive from the expenditure of monies paid to the D&D Fund.

103. Even if viewed as imposing a tax, the Special Assessment Statutes are unfairly and improperly retroactive, imposing so harsh and oppressive a burden as to constitute a denial of due process.

104. Moreover, the fees collected are not general revenues, but rather, are paid into the D&D Fund, a special fund designed to defray a significant portion of Defendants' D&D liabilities.

105. For these reasons, Plaintiffs are entitled to judgment declaring that the Special Assessment Statutes violate the Due Process Clause of the Fifth Amendment and that Plaintiffs, therefore, have no obligation to pay the special assessments imposed by such Statutes.

COUNT III

(Declaratory Judgment -- Impairment of Fixed Price Contracts)

106. Plaintiffs reallege and incorporate herein all allegations contained in paragraphs 1 through 105 above.

107. Between 1972 and 1984, Plaintiffs entered into a series of standard form Fixed Price Contracts with Defendants, pursuant to which Defendants agreed to provide uranium enrichment services to Plaintiffs for fixed prices -- the prices in effect at the time the Defendants delivered enriched uranium to Plaintiffs. See Exhibits 1-3. In one instance the contract specified that the prices for Defendants' uranium enrichment services would not exceed a specified "ceiling charge" absent agreement of the parties and advance notice to the Plaintiffs. See Exhibit 6.

108. The Fixed Price Contracts further provided that no amendments to the Contracts could be made without the mutual agreement of the parties and did not permit the Defendants to modify unilaterally the prices of their uranium enrichment services, particularly once their services had been delivered to and paid for by Plaintiffs.

109. Plaintiffs fulfilled all of their obligations under these Fixed Price Contracts by duly making payment for all uranium enrichment services they received from Defendants in accordance with the pricing provisions contained in the contracts. These pricing provisions were never amended in accordance with the terms of the contracts.

110. The Special Assessment Statutes require Plaintiffs now to pay Defendants additional sums for enrichment services for which Plaintiffs have already paid the full price. The Special Assessment Statutes thus violate the terms of the Fixed Price Contracts between Plaintiffs and Defendants because they unilaterally and retroactively increase the prices Plaintiffs were contractually obligated to pay, and did pay, for uranium enrichment services.

111. For these reasons, Plaintiffs are entitled to a judicial declaration that the Special Assessment Statutes unlawfully impair Plaintiffs' rights and waive and excuse Defendants' obligations under the Fixed Price Contracts and that Plaintiffs, therefore, have no further obligation to pay such assessments.

COUNT IV

(Declaratory Judgment -- Impairment of the Supplemental Agreements of Settlement)

112. Plaintiffs reallege and incorporate herein all allegations contained in paragraphs 1 through 111 above.

113. Under the express terms of the Supplemental Agreements of Settlement, Plaintiffs were relieved of any and all obligations under their contracts with Defendant, including any obligation to pay additional sums for the enrichment services provided by Defendants. See Exhibits 5 and 6, at Modification No. 7.

114. In reliance upon such provisions, Plaintiffs agreed to release Defendants from liability under their Fixed Price Contracts.

115. Notwithstanding the express terms of the Supplemental Agreements of Settlement, the Special Assessment Statutes require Plaintiffs to pay Defendants additional sums for enrichment services for which Plaintiffs have already paid the full price. The Special Assessment Statutes thus violate the terms of the Supplemental Agreements of Settlement.

116. For these reasons, Plaintiffs are entitled to a judicial declaration that the Special Assessment Statutes unlawfully waive and excuse Defendants' obligations and impair Plaintiffs' rights under the Supplemental Agreements of Settlement and that Plaintiffs, therefore, have no further obligation to pay any such assessments.

COUNT V

(Injunctive Relief)

117. Plaintiffs reallege and incorporate the allegations contained in paragraphs 1 through 116 above.

118. Pursuant to the Special Assessments Statutes, Defendants have assessed and Plaintiffs have paid to date, $10,920,105.96. If these statutes are permitted to stand, Plaintiffs will be required to pay approximately $15 million more in the future, in total nearly $25 million over and above the prices Plaintiffs have already paid pursuant to their contracts.

119. The Defendants' enforcement of the unlawful Special Assessment Statutes, therefore, is causing Plaintiffs unusual hardship and irreparable injury and damage for which there is no adequate remedy at law.

~~120. Defendants have expressed their intent to continue to seek annual payments from~~ Plaintiffs in each of the remaining years for which EPACT provides for such special assessments. Unless enjoined and restrained, Defendants will continue to enforce the Special Assessment Statutes, which will cause Plaintiffs great hardship and expense.

121. For these reasons, Plaintiffs are entitled to an injunction restraining Defendants from collecting any further assessments and from taking any and all action in seeking to enforce the Special Assessment Statutes.

PRAYER FOR RELIEF

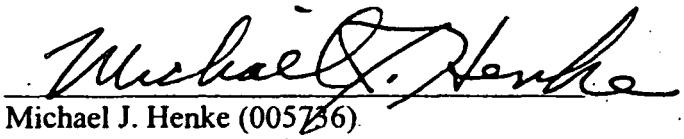
WHEREFORE, Plaintiffs pray that judgment be entered in their favor and that the Court:

(a) issue a declaratory judgment that the Special Assessment Statutes (i) violate the Takings Clause of the Fifth Amendment to the United States Constitution; (ii) violate the Due Process Clause of the Fifth Amendment to the United States Constitution; (iii) unlawfully impair Plaintiffs' rights and waive and excuse Defendants' obligations under the Fixed Price Contracts; (iv) unlawfully impair Plaintiffs' rights and waive and excuse Defendants' obligations under the Supplemental Agreements of Settlement; and (v) that, by reason of the foregoing, Plaintiffs are not obligated to pay any further special assessments;

(b) issue an injunction prohibiting Defendants from collecting future special assessments and from taking any and all action to enforce the Special Assessment Statutes; and

(c) order such other relief as the Court deems just and proper.

Respectfully submitted,



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Dated: October 22, 1998

IN THE UNITED STATED DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PORTLAND GENERAL ELECTRIC COMPANY (an Oregon corporation) and the CITY OF EUGENE, OREGON, acting by and through the EUGENE WATER AND ELECTRIC BOARD, a municipal corporation of the State of Oregon,	)
Plaintiffs,	CASE NUMBER 1:98CV02552
v.	JUDGE: William B. Bryant
	DECK TYPE: Civil General
UNITED STATES OF AMERICA and the UNITED STATES DEPARTMENT OF ENERG individually and as successor to the UNITED STATES ATOMIC ENERGY COMMISSION, and the ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION,	DATE STAMP: 10/22/98
Defendants.	)

CERTIFICATE PURSUANT TO LOCAL RULE 109

Pursuant to local Rule 109, counsel for Plaintiffs in the captioned case certifies that Enron Corporation is the ultimate parent company of Plaintiff Portland General Electric Company. Enron has outstanding securities in the hands of the public. There is attached the most recent available list of Enron Corporation subsidiaries and affiliates. Although most of the subsidiaries are 100 percent owned by Enron, some may have outstanding securities in the hands of the public.

Respectfully submitted,

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Counsel for Plaintiffs

Dated: October 22, 1998

ENRON CORP.
AND SUBSIDIARY COMPANIES
10/19/98

THE DATA HEREIN IS PROPRIETARY INFORMATION INTENDED FOR INTERNAL USE ONLY AND MAY BE DISTRIBUTED TO THIRD PARTIES ONLY WITH THE EXPRESS CONSENT OF THE CORPORATE SECRETARY, GENERAL COUNSEL OR THEIR DESIGNEES, OF THE APPLICABLE COMPANY.

*NOTE: (i) Limited partnerships are listed under their general partner only if all partnership interests are owned by Enron entities; or, under their Enron majority general or limited partner if there are outside partnership interests**. Please refer to corporate data sheets for information on other partnership interests; (ii) Companies whose stock is owned by more than one Enron subsidiary are listed under the majority ownership parent; (iii) limited liability companies are listed under the Enron manager member or, if none, the largest member.*

*** Except Enron Power Honduras S.de R.L. de C.V. which is listed under its limited partner as its general partner Enron Honduras S.A., is not yet formed.*

Divisions

Enron Capital Management (div of Enron Corp.)
Enron Clean Fuels (div of Enron Ventures Corp.)
Enron Clean Fuels Company (div EGLI)
Enron Clean Fuels Marketing Company (div of EGLI)
Enron Energy (div. of ECT)
Enron Petrochemicals Company, (div of EGLI)
Enron Power Northwest Co. (div. EPMI)
Enron Power Oregon Co. (div EPMI)
Enron Power Pacific Co. (div EPMI)
Enron Power Trading and Transmission (div EPMI)
Enron Power Trading and Transmission (div ECT)
Enron Power Washington Co., (div of EPMI)
Enron Transport and Storage (div of NNG)
Enron Transport and Storage (div of TW)
EOC Human Resources Division (div of EOSC)
EOC Legal Group Division (div of EOSC)
Finance & Accounting Division (div of EOSC)
Global Division (div of EOSC)
Gulf Coast Operations (div of EOC)
Houston Oil Pipeline Division (div of HPL)
NNG International (div of NNG)
Operations Technical Support Division (div of EOSC)
OTS Division (div of EOSC)
Shared Services Division (div of Enron Corp)

Subsidiary Companies and Limited Partnerships:

Atlantic Commercial Finance, Inc.	100.00
Atlantic Commercial Finance B.V. i.l.	100.00
Atlantic India Holdings Ltd.	100.00
Bijupira-Salema Development Company Ltd.	100.00
BR-VT Holdings Ltd.	100.00
Enron Vietnam BR Investments Ltd.	100.00
B-Share China Holdings Ltd.	100.00
Compressor Projects Finance Ltd.	100.00
EDC Atlantic Ltd.	100.00
EI Venezuela Holdings Ltd.	100.00
EI Venezuela Investments Ltd.	100.00
EI Venezuela Development Ltd.	99.00
Hanover/Enron Venezuela Ltd.	40.00
Hanover/Enron Venezuela Ltd. - Venezuela branch	N/A
Electricidad Enron de Venezuela Holdings Ltd.	100.00
Electricidad Enron de Venezuela Ltd.	100.00
Electricidad Enron de Venezuela I Ltd.	100.00
Enron Agua Colombia Holdings Ltd.	100.00
Enron Agua Colombia Investments Ltd.	100.00
Enron Agua Colombia Ltd.	99.00
Enron Agua Panama Holdings Ltd.	100.00
Enron Agua Panama Investments Ltd.	100.00
Enron Agua Philippines Holdings Ltd.	100.00
Enron Agua Philippines Investments Ltd.	100.00
Enron Agua Philippines Ltd.	99.00
Enron Algeria Power Ltd.	100.00
Enron Argentina Development Ltd.	100.00
Cordex Americas 1997, L.L.C.	50.00
Enron Benin Power Ltd.	100.00
Enron Brazil Light Holdings Ltd.	100.00
Enron Brazil Light Ltd.	100.00
Enron Brazil Northeast Development Ltd.	100.00
Enron Brazil Power Holdings I Ltd.	100.00
Enron Brazil Power Investments I Ltd.	100.00
GasOcidente do Mato Grosso Ltda.	62.50
Enron Brazil Power Holdings II Ltd.	100.00
ESAE - Empresa Sul Americana de Energia Ltda.	99.00
Enron Brazil Power Investments II Ltd.	100.00
Enron Brazil Power Holdings III Ltd.	100.00
EBE - Empresa Brasileira de Energia Ltda.	99.00
Enron Brazil Power Investments III Ltd.	100.00
Enron Brazil Power Holdings IV Ltd.	100.00
Enron Brazil Power Investments IV Ltd.	100.00
Enron Brazil Power Holdings V Ltd.	100.00
Enron Brazil Power Investments V Ltd.	100.00
EPC - Empresa Paranaense Comercializadora Ltda.	99.00
Terraco Participacoes Ltda.	99.00
ELEKTRO - Eletricadade e Servicos S.A.	89.99
Enron Brazil Power Holdings VI Ltd.	100.00
Enron Brazil Power Investments VI Ltd.	100.00
Enron Gas do Brasil Ltda.	99.00

Enron Brazil Power Holdings VII Ltd.	100.00
Enron Brazil Power Investments VII Ltd.	100.00
EPB ※ Energia Pan Brasil Ltda.	99.00
Enron Brazil Power Holdings IX Ltd.	100.00
Enron Brazil Power Investments IX Ltd.	100.00
Enron Brazil Power Holdings X Ltd.	100.00
Enron Brazil Power Investments X Ltd.	100.00
Enron Brazil Power Holdings XI Ltd.	100.00
Enron Brazil Power Investments XI Ltd.	100.00
Enron Brazil Power Holdings XII Ltd.	100.00
Enron Brazil Power Investments XII Ltd.	100.00
Enron Brazil Power Holdings XIII Ltd.	100.00
Enron Brazil Power Investments XIII Ltd.	100.00
Enron Caribe Holdings Ltd.	100.00
Enron Caribe Ltd.	100.00
Enron Caribe IV Holdings Ltd.	100.00
Enron Caribe IV Ltd.	100.00
Enron Caribe V Holdings Ltd.	100.00
Enron Caribe V Ltd.	100.00
Enron Caribe VI Holdings Ltd.	100.00
Enron Caribe VI Ltd.	100.00
Empresa Energetica Corinto Ltd.	50.00
Enron Caribe VII Holdings Ltd.	100.00
Enron Caribe VII Ltd.	100.00
Enron Changjiang Utilities Holdings Ltd.	100.00
Enron Chaoyang Water Holdings Ltd.	100.00
Enron Colombia Energy B.V.	100.00
Enron Power Colombia C.V.	99.00
Enron Colombia Holdings Ltd.	100.00
ACCROSERV SRL	47.50
Enron Colombia Ventures Ltd.	100.00
Enron Colombia Inc.	100.00
Enron Colombia Inc. - Colombia Branch	N/A
Enron Colombia Investments Ltd.	100.00
Enron Colombia Transportation B.V.	100.00
Enron Colombia Transportation B.V. Colombia Branch	N/A
Enron Cote d'Ivoire Pipelines Ltd.	100.00
Enron Development Shanghai Ltd.	100.00
Enron Development Spain Ltd.	100.00
Enron do Brazil Holdings Ltd.	100.00
EPE - Empresa Produtora de Energia Ltda.	78.00
Enron do Brazil Investments Ltd.	100.00
Enron DRI Development Holdings Ltd.	100.00
Enron DRI Development Ltd.	100.00
Enron Electric Brazil Holdings Ltd.	100.00
Enron Electric Brazil Ltd.	100.00
Enron Electrica de Venezuela Holdings Ltd.	100.00
Enron Electrica de Venezuela I Ltd.	100.00
Enron Electrica de Venezuela Ltd.	100.00
Enron Energy Marketing Colombia Ltd.	100.00
Enron EPI Ltd.	100.00
Enron ERE Holdings Ltd.	100.00
Enron Entre Rios Expansion Ltd.	99.00
Enron ERE Investments Ltd.	100.00

Enron Europe Operations (Advisor) Ltd.	100.00
Enron Europe Operations (Supervisor) Ltd.	100.00
Enron Fiji Power Ltd.	100.00
Enron Gas de Venezuela Ltd.	100.00
Enron Ghana Holdings Ltd.	100.00
Enron Ghana Investments Ltd.	100.00
Enron Ghana Ltd.	99.00
Enron Global Pakistan Ltd.	100.00
Enron Global Mauritius Company, L.L.C.	100.00
Enron Mauritius Pakistan Company, L.L.C.	100.00
Enron Guinea Development Ltd.	100.00
Enron Hainan Fertilizer Ltd.	100.00
Enron Haripur Holdings B.V.	100.00
Enron India Energy Ltd.	100.00
Enron India Power Ltd.	100.00
Enron MHC Tamil Nadu Company	100.00
Enron Industrial de Venezuela Ltd.	100.00
ACCROVEN SRL	49.25
Enron International Argentina Transmission Ltd.	100.00
Enron International Argentina Transmission Investment Ltd.	100.00
Enron International Australia Ltd.	100.00
Enron International B.V.	100.00
Enron International C.V.	0.10
Enron International Bach Ho Ltd.	100.00
Enron International Bahia Ltd.	100.00
Enron International Bahia Holdings Ltd.	100.00
EBD - Empresa Brasileira Distribuidora Ltda.	99.00
Enron International Bangladesh Ltd.	100.00
Enron International Bolivia Holdings Ltd.	100.00
Enron International Bolivia Investments Ltd.	100.00
GasOriente Boliviano S.A.	98.40
Enron International Brazil 1997 Ltd.	100.00
Borgogna Participacoes e Empreendimentos Ltda.	99.00
Ementhal Participacoes e Empreendimentos Ltda.	99.00
Riogas, S.A.	25.00
Giverny Participacoes e Empreendimentos Ltda.	99.00
RGS Participacoes Ltda.	99.00
Enron International Brazil Gas Holdings Ltd.	100.00
GEC Participacoes Ltda.	99.00
Companhia Estadual de Gas do Rio de Janeiro - CEG	25.38
Enron International Brazil Investments 1997 Ltd.	100.00
Global Petroleum & Gas Industry Limited	100.00
Dutogas Participacoes S.A.	100.00
Gas Participacoes S.A.	100.00
Companhia de Gas de Bahia S.A.	41.50
Companhia Pernambucana de Gas S.A.	41.50
Gas de Alagoas S.A.	41.50
Empresa Sergipana de Gas S.A.	41.50
Companhia Paraibana de Gas S.A.	41.50
Companhia de Gas de Santa Catarina S.A.	41.00
Dutopar Participacoes Ltda	99.00
Companhia Paranaense de Gas S.A.	24.50
Enron International Capital Inc.	100.00
Enron International Capital Management Ltd.	100.00

Enron International Central America Holdings Ltd.	100.00
Enron International Central America Ltd.	100.00
Enron International Chengdu Holdings Ltd.	100.00
Enron International Chengdu Water Ltd.	100.00
Enron International China CP Ltd.	100.00
China Pipeline Holdings Ltd.	80.00
Enron International China Gas Ltd.	100.00
Enron International China Ltd.	100.00
Enron International China Pipeline Ltd.	100.00
Enron International CMI Ltd.	100.00
Enron MHC India Development Ltd.	100.00
Enron India Private Limited	100.00
Enron International CR Holdings Ltd.	100.00
Enron International CR Ltd.	100.00
Enron International Haripur Ltd.	100.00
Enron International India Ltd.	100.00
Enron Central India Ventures Ltd. *(intended)*	100.00
Enron Distribution Ventures MHC Ltd.	100.00
Enron India CFH Ltd. *(intended)*	100.00
Enron India Regional Development Ltd. *(intended)*	100.00
Enron International MHC Gas Distribution Ltd.	100.00
Enron International MHC Kannur Ltd.	100.00
Enron International Coastal India Operations Ltd. *(intended)*	100.00
Enron International Eastern India Operations Ltd. *(intended)*	100.00
Enron International Northern India Operations Ltd. *(intended)*	100.00
Enron International Southern India Operations Ltd. *(intended)*	100.00
Enron International Western India Operations Ltd. *(intended)*	100.00
Enron Renovation and Modernization MHC Ltd.	100.00
Enron Subcontinental Ventures Ltd. *(intended)*	100.00
Enron International India Renewable Energy Ltd.	100.00
Enron International Latin America Ltd.	100.00
Enron International Latin America Investments Ltd.	100.00
Enron International Mauritius Ltd.	100.00
Enron International Mongolia Investments Ltd.	100.00
Enron International Mongolia Ltd.	100.00
Enron International Nepal Ltd.	100.00
Enron International Peru Holdings Ltd.	100.00
Enron International Peru Ltd.	100.00
Enron International Rio Investments 1997 Ltd.	100.00
Enron International Sichuan Hydroelectric Ltd.	100.00
Enron Vietnam Power II Ltd.	100.00
Enron International South Australia Development Ltd.	100.00
Enron International Thailand NSM Ltd.	100.00
Enron International Thai-Lao Holdings Ltd.	100.00
Enron International Uganda Ltd.	100.00
Enron International Zambia Holdings Ltd.	100.00
Enron International Zambia Investments Ltd.	100.00
Enron LNG Atlantic Holdings Ltd.	100.00
Enron LNG Atlantic Investments Ltd.	100.00
Enron LNG Atlantic Ltd.	99.00
Enron LNG Holdings Ltd.	100.00
Enron LNG Investments Ltd.	100.00

Enron LNG Services Ltd.	99.00
Enron LNG Power (Atlantic) Ltd.	100.00
EcoElectrica Holdings, Ltd.	50.00
EcoElectrica, Ltd.	100.00
EcoElectrica L.P.	1.00
Penuelas Holdings, Ltd.	50.00
Penuelas, Ltd.	100.00
Buenergia Enron de Puerto Rico Ltd.	100.00
Buenergia Ltd.	100.00
Buenergia B.V.	100.00
LNG Power I, L.L.C.	1.00
LNG Power II, L.L.C.	100.00
LNG Power III, L.L.C.	25.00
Buenergia Gas & Power Ltd.	100.00
Enron Magyar Development B.V.	100.00
Enron Mariana Holdings Corp.	100.00
Enron Mariana Power L.L.C.	100.00
~~Enron Mendoza Water Investments Ltd.~~	~~100.00~~
Enron Paysandu Holdings Ltd.	100.00
Enron Paysandu Development Ltd.	100.00
Enron Philippines Hydroelectric Holdings Ltd.	100.00
Enron Philippines Hydroelectric Power Ltd.	100.00
Enron Polska B.V.	100.00
Enron Reserve 4 B.V.	100.00
Enpak Power (Private) Company	100.00
Enron Reserve 6 B.V.	100.00
Enron Development International C.V.	0.10
Enron Reserve 7 B.V.	100.00
Enron (Bolivia) C.V.	1.00
Enron Reserve 8 B.V.	100.00
Enron Caribe C.V.	1.00
Enron Power I C.V.	1.00
Enron Power Honduras S. de R.L. de C.V.**	99.00
Enron Reserve 9 B.V.	100.00
Enron Power II C.V.	1.00
Enron Reserve I B.V.	100.00
Smith/Enron Cogeneracion Internacional, S.A.	50.00
Smith/Enron Cogeneration Limited Partnership	1.00
Smith/Enron O&M Limited Partnership	1.00
Enron Reserve II B.V.	100.00
Offshore Power Operations C.V.	0.10
Enron Servicios Energeticos Holdings Ltd.	100.00
Enron Servicios Energeticos Ltd.	100.00
Enron Soc Trang Power Holdings Ltd.	100.00
Enron Soc Trang Power Ltd.	100.00
Enron Sumatra Gas B.V.	100.00
Enron Suzhou Water Holdings Ltd.	100.00
Enron Transportadora de Bolivia Ltd.	100.00
Enron Transportadora (Bolivia) S.A.	100.00
Enron Transportadora Holdings Ltd.	100.00
TR Investments (Bolivia) B.V.	50.00
TR Holdings (Bolivia) C.V.	50.00
Enron UAE Ltd.	100.00
Enron Venezuela Services Holdings Ltd.	100.00

Enron Venezuela Services I Ltd.	100.00
Enron Venezuela Services, Inc.	100.00
Enron Venezuela Services Investments Ltd.	100.00
Enron Venezuela Services Ltd.	100.00
Enron VenSteel Ltd.	100.00
Enron Water Argentina Holdings Ltd.	100.00
Enron Water Argentina Ltd.	100.00
Enron Water Buenos Aires Holdings Ltd.	100.00
Enron Water Buenos Aires Ltd.	100.00
Enron Water Chile Holdings Ltd.	100.00
Enron Water Chile Ltd.	100.00
Enron Water China Holdings Ltd.	100.00
Enron Water China Investments Ltd.	100.00
Enron Water Projects Holdings Ltd.	100.00
Enron Water Projects Ltd.	100.00
Enron Water Saigon Holding Co.	100.00
Enron Water Saigon Ltd.	100.00
Enron Water Vietnam Holdings Ltd.	100.00
Enron Water Vietnam Investments Ltd.	100.00
Enron Water Vietnam Ltd.	99.00
Enron Wenchang Holdings Company Ltd.	100.00
Enron Hainan Wenchang Company Ltd.	100.00
Hainan Holdings Ltd.	50.00
Enron Wenchang Investments Ltd.	100.00
Enron Reserve III B.V.	100.00
Enron Wenchang Power C.V.	1.00
Hainan Funding LLC	50.00
Hainan Meinan Power Services Company, Limited	100.00
Hainan Meinan Power Company CJV	1.00
Enron West Africa Pipeline Ltd.	100.00
India Electric Maintenance Ltd.	100.00
Luanda Power Holdings Ltd.	100.00
Luanda Power Company Ltd.	100.00
Mesquite Holdings B.V.	100.00
Enron Power Management B.V.	100.00
Enron Design C.V.	1.00
Enron Proje Yonetimi Limited Sirketi	95.00
Enron Turkey Energy B.V.	100.00
Enron Power Holdings C.V.	1.00
Trakya Elektrik Uretim ve Ticaret A.S.	50.00
Servicios Colombianos de Electricidad Ltd.	100.00
Southern Cone Gas Ltd.	100.00
Tekarioca Holdings Ltd.	100.00
Transborder Gas Services Ltd.	72.50
Travamark Two B.V.	100.00
Offshore Power Production C.V.	0.20
Enron Mauritius Company	100.00
Dabhol Power Company	100.00
Enron India Holdings Ltd.	100.00
DPC Holdings C.V.	Unknown
Belco Petroleum Corporation	100.00
Belo Horizonte Power Ltd.	100.00
Bolivia Holdings Ltd.	100.00
Brazil Power Investments Ltd.	100.00

East Java Funding Corp. B.V.	100.00
ECT Equity Corp.	80.00
EGP Fuels Company	100.00
EI Global Fuels Ltd.	100.00
Energy Caribbean Finance Company	100.00
Enpak Holdings Ltd.	100.00
Enpak Investments Ltd.	100.00
Enpak Power Company Ltd.	99.00
Enron Aguaven Holdings Ltd.	100.00
Enron Aguaven Investments Ltd.	100.00
Enron Agua Venezuela Ltd.	99.00
Enron Americas, Inc.	100.00
The Protane Corporation	100.00
Citadel Corporation Limited	100.00
Citadel Venezolana, S.A.	100.00
Interruptores Especializados Lara, S.A.	66.00
Enron Caribbean Holdings Ltd.	100.00
~~Enron (Barbados) International Business Corporation~~	~~100.00~~
I.G.L. Limited	100.00
Enron Holdings (St. Lucia) Limited	100.00
Industrial Gases Limited	100.00
Enron Americas Energy Services, Inc.	100.00
ProCaribe Division of The Protane Corporation	100.00
Progasco, Inc.	100.00
ProCaribe, Inc.	100.00
V. Holdings Industries, S.A.	100.00
Finven Financial Institution Limited	100.00
Industrias Ventane, S.A.	92.00
Duck Lake International A.V.V.	97.00
Industrial Larcada, S.A.	100.00
Industrias Electricas de Ventane Ltd.	100.00
Servicios Consolidados Ventane, S.A.	100.00
Servicios Vengas, S.A.	100.00
Transporte Mil Ruedas, S.A.	100.00
Vengas de Caracas, S.A.	100.00
Vengas de Occidente, S.A.	100.00
Vengas de Oriente, S.A.	100.00
Vengas del Centro, S.A.	100.00
Enron Americas Limited	100.00
Enron Argentina CHESA Holdings, Inc.	100.00
Enron Argentina Holding, Inc.	100.00
Enron Capital & Trade Resources Argentina S.A.	99.99
Enron Argentina Investments, Inc.	100.00
Enron CHESA Delaware Limited Liability Company	1.00
Enron CHESA Texas Limited Liability Company	1.00
Enron International Argentina Holdings Ltd.	80.00
Enron International Argentina Investments Ltd.	100.00
Compania Hidroelectrica Enron S.A.	99.99
Enron Comercializadora de Energia Argentina S.A.	99.00
Enron Argentina Ventures, Inc.	100.00
Enron Atlantic LNG Ltd.	100.00
Enron Border Holdings Ltd.	100.00
Enron Border Investments Ltd.	100.00
Enron SAM Border Ltd.	99.00

Enron BPAC Ltd.	100.00
En-Sonar Haripur Power Limited	100.00
Enron Brazil Services Ltd.	100.00
Enron Brazil Ltd.	100.00
Enron Servicos do Brasil Ltda.	99.00
Enron Capital & Trade Resources Corp.	100.00
Blue Moon Holdings, L.L.C.	50.00
Brownsville Power I, L.L.C.	100.00
Caledonia Power I, L.L.C.	100.00
Calvert City Power I, L.L.C.	100.00
Cusiana-Cupiagua Oil Securitization 1996 Ltd.	100.00
Cypress Acadian Exploration Corp.	100.00
Cypress Acadian Exploration Limited Partnership I	1.00
Cypress Acadian Exploration Limited Partnership II	1.00
Des Plaines Green Land Development L.L.C.	100.00
Doyle I, L.L.C.	100.00
ECT Brazil Marketing Ltd.	100.00
~~ECT Cayman Reserve 5 Ltd.~~	~~100.00~~
Enron Distribuidora de Petroleo e Derivados Ltda.	99.00
ECT Cayman Reserve 6 Ltd.	100.00
ECT Cayman Reserve 8 Ltd.	100.00
ECT Cayman Reserve 9 Ltd.	100.00
ECT Coal Company No. 1, L.L.C.	100.00
ECT Eocene Enterprises, Inc.	100.00
ECT Eocene Enterprises II, Inc.	100.00
ECT Eocene Enterprises III, Inc.	100.00
ECT Europe Finance, Inc.	100.00
ECT Funding L.L.C.	100.00
ECT Development and Funding	50.00
European Commercial Finance S.a.r.l.	100.00
ECT International L.L.C.	100.00
ECT Investing Corp.	100.00
ECT Investing Partners, L.P.	Pending
ECT Diversified Investments, L.L.C.	100.00
ECT Investments Holding Corp.	100.00
ECT Investments Inc.	100.00
ECT Overseas Holding Corp.	100.00
Enron Capital & Trade Resources Korea Corp.	100.00
Enron Capital & Trade Resources Korea Corp. - Korean branch	N/A
ECT Puerto Rico Ltd.	100.00
ECT Securities GP Corp.	100.00
ECT Securities Limited Partnership	1.00
ECT Strategic Value Corp.	100.00
ECT Sierra Water Conservation, Inc.	100.00
ECT Thailand Investments, Inc.	100.00
EGS Hydrocarbons Corp.	100.00
EGS New Ventures Corp.	100.00
LGMI, Inc.	100.00
LRCI, Inc.	100.00
Louisiana Gas Marketing Company	100.00
Louisiana Gas Pipeline Company Limited Partnership	99.00
Louisiana Resources Company	100.00
Louisiana Resources Pipeline Company Limited Partnership	99.00
Enron Administrative Services Corp.	100.00

Enron Cactus III Corp.	100.00
Cactus Hydrocarbon III Limited Partnership	1.00
Enron Cantarell Holdings B.V.	100.00
Enron Capital & Trade Global Resources Corp.	100.00
Enron Capital & Trade Resources Canada Corp.	100.00
Enron Capital & Trade Resources - Europe B.V.	100.00
Enron Capital and Trade Resources Espana, S.L.	100.00
Enron Capital & Trade Resources - Romania B.V.	100.00
EnronEnergo Holdings Ltd.	100.00
Enron Europe Finance B.V.	100.00
Enron Hungary Power Station Development Kft.	100.00
Enron LPG Italy S.R.L	100.00
Enron Miskolc Power Development Kft.	100.00
Enron Netherlands B.V.	100.00
Jertovec Management & Finance B.V.	100.00
Elektrana Jertovec d.o.o.	100.00
Korstens Sp. z o.o.	100.00
Enron Capital & Trade Resources International Corp.	100.00
Enron Capital & Trade Europe Finance L.L.C.	100.00
Enron Capital & Trade Resources International Corp. - Singapore Branch	N/A
Enron CASH Company No. 6, L.L.C.	100.00
Enron Europe Finance & Trading Limited	100.00
Enron Finland Energy Oy	100.00
Enron Nordic Energy - Swedish branch of ECTRIC	N/A
Enron Nordic Energy - Norwegian branch of ECTRIC	N/A
Enron Capital & Trade Resources Mexico Holdings B.V.	100.00
Enron Mexico I B.V.	100.00
Enron Mexico II B.V.	100.00
Enron Mexico III B.V.	100.00
Enron Mexico IV B.V.	100.00
Enron CASH Company No. 1	100.00
Enron CASH Company No. 2	100.00
Enron CASH Company No. 5	100.00
Enron Cushing Oil Marketing, Inc.	100.00
Enron Finance Corp.	100.00
Enron Hydrocarbons Marketing Corp.	100.00
Enron Reserve Acquisition Corp.	100.00
Hogan Exploration L.L.C.	20.00
Enron GasBank, Inc.	100.00
Enron Global de Guatemala, S.A.	100.00
Enron Mexico Corp.	100.00
Enron Mexico Holdings I Ltd.	100.00
Enron Mexico Holdings I L.L.C.	100.00
Energia Operaciones de Mexico, S. de R.L. de C.V.	99.97
Enron Servicios de Mexico, S. de R.L. de C.V.	99.97
Enron Mexico Holdings II L.L.C.	100.00
Enron Mexico Holdings 2 Ltd.	100.00
Enron Mexico Holdings III L.L.C.	100.00
Enron Mexico Holdings IV L.L.C.	100.00
Enron Mexico Holdings 3 Ltd.	100.00
Enron Mexico Holdings 4 Ltd.	100.00
Enron Mexico Holdings 5 Ltd.	100.00
Enron Mexico Holdings 6 Ltd.	100.00

Enron Minority Development Corp.	100.00
Cook Inlet Energy Supply, Limited Partnership	30.00
Enron Natural Gas Marketing Corp.	100.00
Enron Power Investments, Inc.	100.00
Enron Power Investments Limited	100.00
Enron Power Marketing, Inc.	100.00
O.L.S. Power Limited Partnership	49.00
Enron TDF Ltd.	100.00
Enron Capital Corp.(formerly JILP-G.P., Inc.)	100.00
Enron Capital Management Limited Partnership	1.00
Enron Capital Management L.L.C.	100.00
Joint Energy Development Investments Limited Partnership	50.00
Ameritex Ventures II, Ltd.	99.00
CGAS, Inc.	97.00
CGAS Exploration, Inc.	100.00
Eagle Mountain Energy Corporation	100.00
CGAS Investment Corp.	100.00
CGAS Services Corporation	100.00
CGAS Securities, Inc.	100.00
Clinton Nominee Corporation	100.00
Haulco, Inc.	100.00
LDC Securities, Inc.	100.00
Metertech, Inc.	100.00
Ohio Gasportation, Inc.	100.00
Gantry Corp.	100.00
Hughes-Rawls, L.L.C.	50.00
JEDI Capital L.L.C.	99.00
JEDI Hydrocarbon Finance I Limited Partnership	1.00
JEDI Hydrocarbon Finance Limited Partnership	1.00
JEDI Hydrocarbon Investments I Limited Partnership	1.00
JEDI Hydrocarbon Investments II Limited Partnership	1.00
JEDI Hydrocarbon Investments III, L.L.C.	100.00
JEDI-Lewis, L.L.C.	100.00
JEDI-Lewis Holdings, L.P.	?.00
JEDI SPV I, L.L.C.	100.00
Mariner Holdings, Inc.	100.00
Mariner Energy LLC	100.00
Mariner Energy, Inc.	100.00
Pinto Holdings B.V.	100.00
Sweetwater Gas Partners, L.P.	95.00
Enron Capital II Corp.	100.00
Enron Capital Management II Limited Partnership	1.00
Joint Energy Development Investments II Limited Partnership	1.00
Bonne Terre Exploration Company, L.L.C.	46.875
JEDI Capital II L.L.C.	100.00
JEDI II Sacramento Basin, L.L.C.	100.00
Juniper Energy L.P.	74.0625
Enron Capital III Corp.	100.00
Enron Capital IV Corp.	100.00
Enron Capital Management III Limited Partnership	1.00
Enron Capital North America Corp.	100.00
Enron Sacramento Basin, L.L.C.	100.00
Enron Services Company of Louisiana, L.L.C.	100.00
Enron Wholesale Generating Company, L.L.C.	100.00

FirstWorld Communications, Inc.	25.00
FirstWorld Anaheim	100.00
FirstWorld SoCal	100.00
FirstWorld Engineering	100.00
FirstWorld SGV	100.00
FirstWorld Orange Coast	100.00
Fulton Power I, L.L.C.	100.00
Heartland Steel, Inc.	27.00
HGK Enterprises GP, Inc.	100.00
HGK Enterprises LP, Inc.	100.00
JILP-L.P., Inc.	100.00
Kenobe, Inc.	100.00
EnSerCo, L.L.C.	1.00
Black Bay, L.L.C.	50.00
EB/GB, L.L.C.	90.00
EnSerCo, Inc.	100.00
Long Beach District Energy Facility, LLC	100.00
Louisiana Power Marketing Company, L.L.C.	100.00
New Albany Power, L.L.C.	100.00
OBI-1 Holdings, L.L.C.	100.00
Oilfield Business Investments-1, L.L.C.	100.00
Pittsburg District Energy Facility, LLC	100.00
Red Rock Energy, L.L.C.	50.00(?)
Richmond Power Holdings, Inc.	100.00
Risk Management & Trading Corp.	100.00
Weather Alert, Inc.	100.00
Enron Capital LLC	99.00
Enron Capital Resources, L.P.	99.00
Enron Capital Trust I	N/A
Enron Capital Trust II	N/A
Enron Caribe I Ltd.	100.00
Enron Caribe II Ltd.	100.00
Enron Caribe III Ltd.	100.00
Enron Caribe III Investments Ltd.	100.00
Enron Cayman Leasing Ltd.	100.00
Enron Property Management Corp.	100.00
Enron Leasing Partners, L.P.	1.00
Enron Cayman Reserve 6 Ltd.	100.00
Enron Ceska Republika Ltd.	100.00
Enron China Holdings Ltd.	100.00
Enron China Fuels Ltd.	100.00
Enron Lan Yan Limited	99.00
Enron China Power Holdings Ltd.	100.00
EnSing Power Pte Ltd.	50.00
Enron CI-GH Pipeline Ltd.	100.00
Enron Clean Electricity Ltd.	100.00
Enron Coal Company	100.00
Enron Coal Pipeline Company	100.00
Enron Communications Group, Inc.	100.00
Enron Communications, Inc.	100.00
Enron Brazil Communications Ltd.	100.00
FTV Communications LLC	33.33
Enron CPO Finance I, Inc.	100.00
Enron CPO Finance II, Inc.	100.00

Enron CPO Partners I, L.P.	1.00
Enron CPO Holdings, Inc.	100.00
Enron International CPO B.V.	100.00
Enron International CPO, L.P.	1.00
Enron International CPO, Inc.	100.00
Enron CPO Management Holdings I, Inc.	100.00
Enron CPO Management Holdings II, Inc.	100.00
Enron CPO Management, L.P.	1.00
Enron CPO Partners II, Inc.	100.00
Enron CPO Holdings Intermediate, L.P.	1.00
Enron CTS International, Inc.	100.00
Enron Development (Australia) Ltd.	100.00
Enron Development Belo Horizonte Ltd.	100.00
Enron Brazil Development C.V.	1.00
Enron Development Brazil Ltd.	100.00
Enron Electric Power Brazil C.V.	1.00
Enron Development (Costa Rica) Ltd.	100.00
Enron Development Funding Ltd.	100.00
Enron Development Management Ltd.	100.00
Enron Guam Piti Corporation	100.00
Enron Development Piti Holdings Corp.	100.00
Enron Development Piti L.L.C.	100.00
Enron Development (Philippines) Ltd.	100.00
Enron Development Turkey Ltd.	100.00
Enron Development Vietnam L.L.C.	99.00
Enron Dutch Holdings B.V.	100.00
Enron Ecuador Holdings Ltd.	100.00
Enron EES Acquisition I Corp.	100.00
Jon Pierce Incorporated	100.00
Pierce Mechanical, Inc.	100.00
Enron Egypt Power Ltd.	100.00
Enron Egypt Water Ltd.	100.00
Enron Electric (Bolivia) Ltd	100.00
Enron Energia de la Region del Cauca Holdings, Ltd.	100.00
Enron Energia de la Region del Cauca Investments, Ltd.	100.00
Enron Energia del Valle 1 Ltd.	50.25
Enron Energia del Valle 2 Ltd.	50.25
Enron Energia del Valle 3 Ltd.	50.25
Enron Energia del Valle 4 Ltd.	50.25
Enron Energia del Valle 5 Ltd.	50.25
Enron Energy Natal Ltd.	100.00
Enron Energy Natal Development Ltd.	100.00
Enron Energy of Peru Ltd.	100.00
Enron Energy Services, LLC	100.00
Enron Energy Services Operations, Inc.	100.00
Clinton Energy Management Services, Inc.	100.00
Enron Acquisition III Corp.	100.00
Enron Energy Services, Inc.	100.00
Enron Energy Services Capital Corp.	100.00
Enron Federal Solutions, Inc.	100.00
OmniComp, Inc.	100.00
The Bentley Company	100.00
Bentley Energy Services, Inc.	100.00
Engineering and Design Associates, Inc.	100.00

Enron Ennore Holdings Ltd.	100.00
Enron MHC Ennore Ltd.	100.00
Enron Epicycle Seven B.V.	100.00
Enron Water Israel Ltd.	100.00
Enron Equipment Company	100.00
Enron Equity Corp.	73.00
ECT Colombia Pipeline Holdings 1 Ltd.	100.00
ECT Colombia Pipeline Holdings 2 Ltd.	100.00
ECT Colombia Pipeline Holdings 3 Ltd. - Colombia Branch	N/A
Enron Colombia Marketing Holdings Ltd.	100.00
Gas Trade Servicios Investments 1 Ltda.	49.00
Gas Trade Servicios Investments 2 Ltda.	49.00
Gas Trade Servicios Investments 3 Ltda.	49.00
Gas Trade Servicios Investments 4 Ltda.	49.00
Gas Trade Servicios Investments 5 Ltda.	49.00
Gas Trade Servicios Ltda.	100.00
Enron Colombia Holdings de ECT Cayman Reserve 3 Ltd. & CIA, S.en C.	1.00
Enron Holding Company L.L.C.	72.00
Enron Global Power & Pipelines L.L.C.	52.00
EGPP Services Inc.	100.00
Enron Commercial Finance Ltd.	100.00
Enron Cayman Reserve 5 Ltd.	100.00
Enron Colombia Transportation Ltd.	100.00
Enron Colombia Investments Ltd Partnership	1.00
Enron Pipeline Colombia Limited Partnership	1.00
Enron Colombia Operations Limited Partnership	1.00
Enron Dominicana Holding Limited	100.00
Enron Dominicana Holding Limited Partnership	1.00
Enron Dominican Republic Ltd.	100.00
B-Share Holdings Ltd.	100.00
Enron Dominican Republic Operations Ltd.	100.00
Enron Pipeline Company - Argentina S.A.	100.00
Compania de Inversiones de Energia S.A.	25.00
Transportadora de Gas del Sur S.A.	70.00
Enron CIESA Holding L.L.C. Ltd.	51.00
EPCA CIESA Inversiones Limitada	99.00
Enron Power Philippines Corp.	100.00
Batangas Power Corp.	100.00
Subic Power Corp.	50.00
Puerto Quetzal Power Corp.	50.00
Electricidad del Pacifico, S.A.	100.00
Western Caribbean Finance L.P.	98.00
Enron International Energy (Asia) Pte. Ltd.	100.00
Enron Light Hydrocarbons France	100.00
Norelf Limited	50.00
Enron Europe L.L.C.	100.00
Enron Expat Services Inc.	100.00
OPC, Ltd.	100.00
Enron Foundation	100.00
Enron Hainan Ltd.	100.00
Enron Holding Equity Corp.	100.00
Enron Holdings, Ltd.	100.00

Enron Ecuador Ltd.	100.00
Enron Ecuadorian Pipeline	99.00
Enron Hrvatska Development B.V.	100.00
Enron International Argentina S.A.	99.00
Enron International Asset Management Corp.	100.00
Enron International Americas Corp.	100.00
EI Puerto Rico Operations Inc.	100.00
Enron Cuiaba Services L.L.C.	100.00
Enron Cuiaba Services L.L.C.	100.00
Enron Transredes Services L.L.C.	100.00
Enron International Europe Corp.	100.00
Enron JVM Sarlux Corp.	100.00
Enron International Asia Corp.	100.00
EI Guam Operations, L.L.C.	100.00
EI Indonesia Operations L.L.C.	100.00
EI Operations Holdings, L.L.C	100.00
~~EI Operations MHC Ltd. (*intended*)~~	~~100.00~~
Enron International Ennore Ltd.	100.00
Ennore Energy Company Ltd.	50.00
Enron International Equity Inc.	100.00
Enron Global Equity Ltd.	100.00
Enron International Equity Holding L.L.C.	50.00
Enron International Holdings Ltd.	100.00
Enron International Investments Ltd.	100.00
Enron International Development Ltd.	99.00
Enron International Holdings Corp.	45.00
Electricidad Enron de Guatemala, Sociedad Anonima	100.00
Enron Global Capital Co.	100.00
Enron Global Inc.	100.00
Enron International Development Services, Inc.	100.00
Enron Java Power Corp.	100.00
P.T. East Java Power Corp. (in formation)	50.10
Enron Mauritius Services Company Ltd.	100.00
Enron Pasuruan Power Corp.	100.00
Enron Pipeline Company - Colombia G.P. Inc.	100.00
Enron Pipeline Company - Colombia, Ltd.	1.00
India Power Ventures Inc.	100.00
Verdenergia Enron de Puerto Rico, Inc.	100.00
Enron International Inc.	100.00
Enron International Merchant Holdings Inc.	100.00
Enron Australia Energy Holdings Ltd.	100.00
Enron Australia Energy Investments LLC	100.00
Enron Australia Energy Pty Limited	100.00
Enron Australia Finance Holdings Ltd.	100.00
Enron Australia Finance Investments LLC	100.00
Enron Australia Finance Pty Limited	100.00
Enron Australia Holdings Ltd.	100.00
Enron Australia Investments LLC	100.00
Enron Australia Pty Limited	100.00
Enron International Philippines Holdings Ltd.	100.00
Enron International Philippines Investments Ltd.	100.00
Enron International (Philippines) Ltd.	100.00
Enron International Services Inc.	100.00

Enron International UK Water Ltd.	100.00
Enron Kalimantan Power Corp.	100.00
Enron Fuels Services Holding Ltd.	100.00
Enron Fuels Services India Ltd.	100.00
Enron International Pipegas MHC Ltd.	100.00
Enron MHC LNG India Ltd.	100.00
Metropolis Gas Company Private Limited	100.00
TDE Mauritius Ltd.	100.00
Enron LNG Middle East Ltd.	100.00
Enron Latvia Holdings	100.00
Enron Latvia Investments Ltd.	100.00
Enron Latvia Development Ltd.	99.00
Enron Latvia Limited	100.00
Baltic Energy Corporation	50.00
Enron Lawhill Capital Corp.	100.00
Enron Liquid Fuels, Inc.	100.00
Clyde River Inc.	99.00
~~Enron Liquids Holding Corp.~~	~~80.00~~
Enron Gas Liquids, Inc.	100.00
Enron Capital & Trade Resources Singapore Pte. Ltd.	100.00
Enron Gas Liquids Europe S.A.R.L.	100.00
Enron Gas Liquids Holding B.V.	100.00
Enron Gas Liquids B. V.	100.00
Enron Liquid Hydrocarbons Latin America Inc.	100.00
Halton International Limited	100.00
Enron Gas Liquids Far East, Ltd.	100.00
Mundogas (Storage) Inc.	100.00
Mundo Services Ltd.	100.00
Mundogas Trading Ltd.	100.00
Enron Louisiana Transportation Company	100.00
Enron Operations Corp.	100.00
Enron Gathering Company	100.00
Enron Gulf Coast Gathering Limited Partnership	Unknown
Enron Liquid Services Corp.	100.00
Enron Processing Properties, Inc.	100.00
Port Arthur Olefins, L.L.C.	50.00
Enron Permian Gathering Inc.	100.00
NBP Services Corporation	100.00
Enron Products Pipeline, Inc.	100.00
EOTT Energy Corp.	100.00
EOTT Canada Ltd.	100.00
EOTT Energy Canada Limited Partnership	N/A
EOTT Energy Operating Limited Partnership	N/A
EOTT Energy Partners, L.P.	N/A
EOTT Energy Pipeline Limited Partnership	N/A
Enron Management, Inc.	100.00
Enron Mexico Holdings Ltd.	100.00
Enron Mexico Investments Ltd.	100.00
Enron Mexico Development Ltd.	99.00
Enron Energia de Merida S.R.L. de C.V.	89.00
Enron Mexico Pipeline Holdings Ltd.	100.00
Enron Mexico Pipeline Investments Ltd.	100.00
Enron Mexico Pipeline Ltd.	99.00
Gasoductos Enron de Yucatan, S.R.L. de C.V.	99.00

Enron Middle East Development L.L.C	1.00
Enron Minerals Company	100.00
Enron Netherlands Holding B.V.	100.00
Enron Oil & Gas Company	80.00
EOG Expat Services, Inc.	100.00
ERSO, Inc.	100.00
Enron Oil & Gas - Callaghan, Inc.	100.00
Enron Oil & Gas - Carthage, Inc.	100.00
Enron Oil & Gas International, Inc.	100.00
EOGI - Algeria, Inc.	100.00
Enron Oil & Gas Algeria Ltd.	100.00
EOGI - Australia, Inc.	100.00
EOGI - China, Inc.	100.00
Enron Oil & Gas China International Ltd.	100.00
EOGI - China (Sichuan), Inc.	100.00
Enron Oil & Gas China Ltd.	100.00
EOGI - France, Inc.	100.00
Enron Exploration France S.A.	100.00
EOGI - India, Inc.	100.00
Enron Oil & Gas India Ltd	100.00
EOGI - Kazakhstan, Inc.	100.00
Enron Oil & Gas Kazakhstan Ltd.	100.00
EOGI - Kuwait, Inc.	100.00
Enron Oil & Gas Kuwait Ltd.	100.00
EOGI - Mozambique, Inc.	100.00
Enron Oil & Gas Mozambique Ltd.	100.00
EOGI - Qatar, Inc.	100.00
Enron Oil & Gas Qatar Ltd.	100.00
EOGI - Russia, Inc.	100.00
EOGI - Trinidad, Inc.	100.00
EOGI Trinidad Company	100.00
Enron Gas & Oil Trinidad Limited	100.00
Enron Oil & Gas Capital Management I, Ltd.	99.00
EOGI Company of Trinidad	100.00
OCC Investment Company Ltd.	100.00
Wilsyx International Finance B.V.	100.00
EOGI - Trinidad U(a) Block, Inc.	100.00
EOGI Trinidad - U(a) Block Company	100.00
Enron Gas & Oil Trinidad - U(a) Block Limited	99.00
EOGI - United Kingdom, Inc.	100.00
EOGI United Kingdom Company B.V.	100.00
Enron Oil U.K. Limited	100.00
EOGI - Uzbekistan, Inc.	100.00
Enron Oil & Gas Uzbekistan Ltd.	100.00
EOGI - Venezuela (Guarico), Inc.	100.00
EOGI - Venezuela, Inc.	100.00
EOGI Venezuela Company	100.00
Enron Oil & Gas Venezuela Ltd.	100.00
Administradora del Golfo de Paria Este, S.A.	58.50
Gulf of Paria East Operating Company	100.00
Enron Oil & Gas Bangladesh Ltd.	100.00
Enron Oil & Gas Jordan Ltd.	100.00
Enron Oil & Gas Venezuela - Guarico Ltd.	100.00
Enron Oil & Gas Investments, Inc.	100.00

Enron Oil & Gas Marketing, Inc.	100.00
Enron Oil & Gas Property Management, Inc.	100.00
Enron Oil & Gas Acquisitions L.P.	1.00
EOG - Canada, Inc.	100.00
EOG Company of Canada	100.00
EOG Canada Company Ltd.	100.00
Enron Oil Canada Ltd.	100.00
Nilo Operating Company	100.00
Enron Oman Investments Ltd.	100.00
Enron Operating Services Corp.	100.00
Enron Oregon Services, Inc.	100.00
Enron California Municipal Services, Inc.	100.00
Enron Convergent Systems, Inc.	100.00
Enron MicroClimates, Inc.	100.00
Enron Oregon Marketing, Inc.	100.00
$S1^3$ L.L.C.	50.00
Enron Overthrust Pipeline Company	100.00
Enron Papua New Guinea Ltd.	100.00
EP InterOil Ltd.	40.00
InterOil Pty Limited	100.00
Enron Pipeline Company	100.00
Black Marlin Pipeline Company	100.00
Enron Joliet Pipeline Company	100.00
Enron Operations Services Corp.	100.00
Enron Preferred Capital Corp.	100.00
Northern Natural Gas Company	100.00
Transwestern Gathering Company	100.00
Transwestern Pipeline Company	100.00
Enron Power Corp.	100.00
Enron Development Corp.	100.00
Enron-Citizens of Panama, S.A.	100.00
Enron Reserve Holdings	100.00
Enron LNG Development Corp.	100.00
Enron India Natural Gas, Inc.	100.00
Enron Transportation Services Ltd.	100.00
Enron Development Corp. - Colombia Branch	N/A
Centragas - Transportadora de Gas de la Region Central de Enron Development & Cia, S.C.A.	1.00
Enron Development Corp. - UK Branch	N/A
Enron Europe Limited (new)	100.00
Bretton Holdings (One) Limited	100.00
SBI 3 Limited	100.00
ECT Spain Limited	100.00
ECT Espana Limited	100.00
Enron Capital & Trade Resources Limited (new)	100.00
Enron Direct Limited	100.00
Enron Engineering Services	99.00
Enron Europe Construction Limited	100.00
Enron Europe Liquids Processing	99.00
Enron Europe Operations Limited	100.00
Enron Pakistan Operating Company(Private) Limited	99.00
Enron Europe Power	100.00
Enron Europe Power 1 Limited	100.00
Enron Europe Power 2 Limited	100.00

Enron Europe Power Holdings Limited	100.00
Enron Europe (Sites) Holdings Limited	100.00
Enron Europe (Sites) No. 2 Limited	100.00
Rassau Power Limited	100.00
Enron Gas Construction Limited	99.00
Enron Gas & Petrochemicals Trading Limited	100.00
Enron Petrochemicals B.V.	100.00
Enron Gas Processing (U.K.) Limited	100.00
Enron Guc Santrallari Isletme Limited Sirketi	99.00
Enron KP1 Limited	100.00
Enron KP2 Limited	100.00
Enron Power (Europe) Limited	100.00
Bretton Power	50.00
IPG Power Limited	100.00
Enrici Power Marketing Limited	100.00
Sutton Bridge (Generation) Limited	100.00
Enron Power Construction Limited	100.00
Enron Gas Processing (Europe) Limited	100.00
Enron Power Operations Limited	100.00
Enron Power Operations Teesside	75.00
Enron Power Trading Limited	100.00
Enron SB 2	Unknown
Enron SB Limited	75.00
Sutton Bridge Power	100.00
Sutton Bridge Financing Limited	100.00
Enron SB Operations & Maintenance Limited	99.00
Enron Shareblock Limited	100.00
Tech-Board Limited	100.00
Falco UPG, Limited	100.00
UPG Falco Limited	100.00
Flotilla Power Limited	100.00
Flotilla Power (UK) Limited	100.00
Kent Power Limited	100.00
Teesside Gas Processing Limited	100.00
Teesside Gas Transportation Limited	100.00
Teesside Power Holdings Limited	85.00
Teesside Power Limited	50.00
Wallerscote Operations & Maintenance Limited	99.00
Wallerscote Power Operations Limited	100.00
Trenron Limited	99.80
Enron Power Corp. - U.S.	100.00
Combined Cycle Design Company	100.00
East Java Construction Company	100.00
Enron Equipment Installation Company	100.00
Enron Equipment Procurement Company	100.00
Enron/CNF Equipment Joint Venture	50.00
Enron Export Sales Ltd.	100.00
Enron Fuels International, Inc.	100.00
Enron Milford Operating Company	100.00
Enron Onshore Procurement Company	100.00
Enron Power I (Puerto Rico), Inc.	100.00
Enron/CNF Power Construction Partnership	50.00
Enron Power Construction Company	100.00
Enron Power Construction (Brasil) Ltda.	50.00

Gemma Power Partners - Dighton JV	66.667
Parsons/Gemma Power Partners - Dighton JV	50.00
LINGTEC Constructors L.P.	1.00
Enron Power Oil Supply Corp.	100.00
Enron Power Philippine Operating Corp.	100.00
Enron-Richmond Power Corp.	100.00
Richmond Power Enterprise L.P.	100.00
Equipment Specification Company	100.00
Power Design Company	100.00
Power Equipment Supply Company	100.00
Premier Power Constructors Company	100.00
Superior Construction Company	100.00
Enron Power Enterprise Corp.	100.00
Enron Power Holdings B.V.	100.00
Enron Power Holdings GmbH	100.00
Enron Energie GmbH	100.00
Kraftwerk Bitterfeld GmbH	50.00
Enron Power Operating Company	100.00
Enron Subic Power Corp.	99.00
Milford Power Associates, Inc.	100.00
Enron Power Israel Ltd.	100.00
Enron Power Jordan Ltd.	100.00
Enron Preferred Funding, L.P.	Unknown
Enron Preferred Funding II, L.P.	Unknown
Enron Property Company	100.00
Access Real Estate Advisors, Inc.	100.00
Enron Property & Services Corp.	100.00
Enron Qatar Holdings Ltd.	100.00
Enron Qatar Investments Ltd.	100.00
Enron Qatar Ltd.	99.00
Enron Qatar LNG Marketing Ltd.	99.00
Enron Renewable Energy Corp.	100.00
Enron Solar Energy, Inc.	100.00
Amoco/Enron Solar Partnership (General Partnership)	50.00
Amoco/Enron Solar Power Development International, Inc.	100.00
Amoco/Enron Solar Power Development Global, Inc.	100.00
Amoco Enron Solar Mauritius, Inc.	99.00
Indo-Star Energy *(stock ownership in process)*	100.00
Enron Wind Corp.	100.00
Enron Wind Domestic Holding Corp.	100.00
Enron Wind Development Corp.	100.00
Enron Wind Cabazon LLC	100.00
Cabazon Power Partners LLC	100.00
Enron Wind Lake Benton II LLC	100.00
Lake Benton Power Partners II LLC	100.00
Enron Wind Palm Springs LLC	100.00
Palm Springs Power Partners LLC	100.00
Enron Wind Storm Lake I LLC	100.00
Storm Lake Power Partners I LLC	100.00
Enron Wind Storm Lake II LLC	100.00
Storm Lake Power Partners II LLC	100.00
Indian Mesa Power Partners I LLC	100.00

Indian Mesa Power Partners I LP	1.00
Indian Mesa Power Partners II LLC	100.00
Oklahoma Power Partners LLC	100.00
Rocky Mountain Power Partners LLC	100.00
Texas Panhandle Power Partners I LLC	100.00
Texas Panhandle Power Partners I LP	1.00
Zond Cabazon Development Corporation	100.00
Cabazon Wind Developers	50.00
Zond Iowa Development Corporation	100.00
Midwest Wind Developers	50.00
Zond Maine Development Corporation	100.00
Zond Minnesota Development Corporation	100.00
Zond Lake Benton LLC	100.00
Lake Benton Power Partners L.L.C.	100.00
Zond Palm Springs Development Corporation	100.00
Palm Springs Wind Developers	50.00
Enron Wind Systems, Inc.	100.00
Enron Wind Overseas Development Limited	100.00
Mesa Wind Developers	50.00
Painted Hills Wind Developers	50.00
Triveni Zond Private Limited	50.00
Zond Mesa-VGIV Corporation	100.00
Zond Construction Corporation	100.00
Mesa Construction Company	50.00
Zond Construction Corporation II	100.00
Mesa Construction Company II	50.00
Zond Pacific, Inc.	100.00
Zond Windsystems Management Corporation	100.00
Zond Panaero Windsystem Partners I	0.50
Zond Windsystems Management Corporation II	100.00
Zond Panaero Windsystem Partners II	0.50
Zond Windsystems Management Corporation III	100.00
Zond Windsystem Partners Ltd. Series 85-A	1.00
Sagebrush Partner Seventeen, Inc.	100.00
Zond Windsystems Management Corporation IV	100.00
Zond Windsystem Partners Ltd. Series 85-B	1.00
Sagebrush Partner Eighteen, Inc.	100.00
Zond Windsystems Management Corporation V	100.00
Zond Windsystem Partners Ltd. Series 85-C	1.00
Zond Windsystems Operating Corporation	100.00
ZWHC LLC	50.00
Sagebrush Partner Twenty, Inc.	100.00
Enron Wind Corp. Holdings B.V.	100.00
Enron Wind Holding GmbH	100.00
Tacke Windenergie GmbH	100.00
Tacke Service GmbH	100.00
Enron Wind International Holding Corp.	100.00
Enron Wind Cayman Holding Corp.	100.00
Mynydd Eleri Limited	99.00
Zond Cayman Corporation	100.00
Zond Honduras LLC	99.00

Zond Power Partners of Chandras LLC	99.00
Zond Power Partners of Honduras LLC	99.00
Honduras Power Partners, S. de R.L. de C.V.	50.00
Zond Power Partners of Megali Vrissi LLC	99.00
Zond Power Partners of Mynydd Gorddu LLC	99.00
Mynydd Gorddu Investment Company LLC	50.00
Zond Power Partners of Owenreagh LLC	99.00
Owenreagh Power Partners	5.50
Enron Wind Development Holdings B.V.	100.00
Enron Wind Hellas Holdings B.V.	100.00
Enron Wind Hellas S.A. - Operations and Maintenance Services	100.00
Enron Wind Hellas S.A. - Construction Management Services	100.00
Enron Wind Expat Corp.	100.00
Eoloelectrica Zond de Honduras, S.A. de C.V.	75.00
Fuerza Eolica, S.A. de C.V.	49.00
Zond Chile S.A.	99.00
Zond de Espana Parques Eolicos, S.L.	100.00
Interwind Aeolian Energy Corporations S.A.(IWECO, S.A.)	78.00
Iweco Megali Vrissi, S.A.	98.00
Aeolos, S.A.	98.00
X2Y2 Corporation	81.00
Zond Energy Systems, Inc.	100.00
Zond Constructors, Inc.	100.00
Zond Constructors II, Inc.	100.00
Zond Minnesota Construction Company LLC	99.00
Mynydd Gorddu Maintenance Ltd.	100.00
Parco Eolico Faeto s.r.l.	50.00
Zond Ireland Ltd.	100.00
Zond International Sales Corporation	100.00
Zond Maintenance Corporation	100.00
Zond Victory Garden Phase IV Maintenance Corporation	100.00
EREC Nepal Development Company Ltd.	100.00
Enron Russia Development, Inc.	100.00
Enron Saudi Energy Ltd.	100.00
Enron Servicios de Electricidad Holdings Ltd.	100.00
Enron Servicios de Electricidad Colombia Ltd.	99.00
Enron Servicios de Electricidad Investments Ltd.	100.00
Enron Servicios de Energia, S.A.	100.00
Enron Sichuan Holdings Ltd.	100.00
Enron Sichuan Investments Ltd.	100.00
Enron Sichuan Ltd.	99.00
Enron Southern Africa Holdings	100.00
Enron Southern Africa Investments	100.00
Enron Southern Africa Development Ltd.	99.00
Enron S. A. Holdings Ltd.	100.00
Enron South Africa Ltd.	99.00
Enron S. A. Investments Ltd.	100.00
Enron Sports Corp.	100.00
Enron Storage Company	100.00
Napoleonville Storage Company Limited Partnership	1.00
Enron Taiwan Cogen Holdings Ltd.	100.00

Enron Taiwan Cogen Investments Ltd.	100.00
Enron Thai Holdings Ltd.	100.00
Enron Thailand Ltd.	99.00
Enron Trailblazer Pipeline Company	100.00
Enron Transition Company, Inc.	100.00
Enron Transportadora Uruguay Ltd.	100.00
Enron Pipeline Uruguay Ltd.	51.00
Perez Enron Transportadora Ltd.	49.00
Enron Tunisia Holdings Ltd.	100.00
Enron Tunisia Investments Ltd.	100.00
Enron Tunisia Power Ltd.	99.00
Enron Venezuela Holdings Ltd.	100.00
Enron Venture Capital Company	100.00
Enron Ventures Corp.	100.00
Enron Methanol Company	100.00
Enron Nuclear Services Corp.	100.00
~~Enron Vietnam Holdings Ltd.~~	~~100.00~~
Enron Vietnam Investments Ltd.	100.00
Enron Vietnam Gas Ltd.	99.00
Enron Vietnam Power Ltd.	100.00
Enron Ba Ria Power Company Ltd.	100.00
Vung Tau Power Ltd.	100.00
Enron Washington, Inc.	100.00
Enron Water (Holding) L.L.C.	100.00
Azurix Corp.	100.00
Azurix Kuwait Ltd.	100.00
Azurix Ltd.	100.00
Enron Water (Europe) PLC	100.00
Enron Brazil Power Holdings VIII Ltd.	100.00
Enron Brazil Power Investments VIII Ltd.	100.00
SCE - Sociedade Carioca de Energia Ltda.	99.00
SPE ※ Sociedade Paulista de Energia Ltda.	99.00
Enron West Africa Power Ltd.	100.00
Enron-Mex Services Ltd.	100.00
Fujian Holdings Ltd.	100.00
Fujian Investments Ltd.	100.00
Enron Clean Electricity II Ltd.	99.00
Gulf Company Ltd.	100.00
Hainan Funding Ltd.	100.00
Houston Pipe Line Company	100.00
Citrus Corp.	50.00
Citrus Energy Services, Inc.	100.00
Citrus Trading Corp.	100.00
Citrus Marketing, Inc.	100.00
Florida Gas Transmission Company	100.00
Border Gas, Inc.	3.33
Coal Properties Corporation	100.00
Enron Engineering & Construction Company	100.00
Enron Advisory Services, Inc.	100.00
National Energy Production Corporation	100.00
NEPCO International Services, Inc.	100.00
Thai Nepco Co., Ltd.	100.00
Operational Energy Corp.	100.00
Pakistan Construction Services, Inc.	100.00

Enron Industrial Natural Gas Company	100.00
Enron Interstate Pipeline Company	100.00
Enron Texoma Gas Company	100.00
Houston Compression Company, L.P.	.001
Houston Pipe Line Marketing Company	100.00
HPL Resources Company	100.00
Intratex Gas Company	100.00
Little Piper, L.L.C.	100.00
Main Piper, L.P.	.001
Middle Piper, L.L.C.	100.00
MidTexas Pipeline Company (Joint Venture)	50.00
Panhandle Gas Company	100.00
Riverside Farms Company	100.00
San Marco Pipeline Company	50.00
Transgulf Pipeline Company	100.00
International Energy Developments of Perú Corp.	100.00
International Energy Investments of Perú Corp.	100.00
~~International Energy Holdings of Perú Corp.~~	~~100.00~~
Multiva Holdings, Ltd.	100.00
Ilijan Power Corporation	100.00
Northern Plains Natural Gas Company	100.00
Northern Border Intermediate Limited Partnership	.50
Black Mesa Holdings, Inc.	97.50
Black Mesa Pipeline, Inc.	100.00
Black Mesa Pipeline Operations, L.L.C.	60.50
LNG Energy, L.L.C.	100.00
NBIL I, L.L.C.	.01
NBIL II, L.L.C	100.00
NBP Energy Pipelines, L.L.C.	100.00
Northern Border Pipeline Company	70.00
Williams Technologies, Inc.	100.00
Williams Technology Services, L.L.C.	35.00
Northern Border Partners, L.P.	.50
Northern Border Pipeline Corporation	100.00
Nowa Sarzyna Holding B.V.	100.00
Enron Poland Investment B.V.	100.00
Elektrocieplownia Nowa Sarzyna Sp. z o.o	100.00
Omicron Enterprises, Inc.	100.00
Artemis Associates, L.L.C.	51.00
Anjou Construction and Services Company	100.00
Enron Facility Services, Inc.	100.00
Limbach Holdings, Inc.	100.00
Affiliated Building Services, Inc. Holding Company	100.00
Affiliated Building Services, Inc.	100.00
Affiliated Building Services, Inc. Investment Company	100.00
Affiliated Building Services Pty. Ltd.	40.00
Limbach Constructors Incorporated (PA)	100.00
Limbach Constructors Incorporated (Del)	100.00
Harper Mechanical Corporation	100.00
Harper Mechanical Corporation Investment Company	100.00
Jovinole Associates	99.00
Mechanical Professional Services, Inc.	100.00
Limbach Company Holding Company	100.00
Limbach Company	100.00

Limbach Company Investment Company	100.00
Limbach Management Company, Inc.	100.00
The Linc Corporation Holding Company	100.00
The Linc Corporation	100.00
The Linc Company	100.00
The Linc Corporation Investment Company	100.00
EFG Holdings, Inc.	100.00
Williard, Inc.	100.00
Williard Inc. Investment Company	100.00
Williard Plumbing Company, L.P.	90.00
Optec, Inc.	100.00
Organizational Partner, Inc.	100.00
Pantanal Energetica Holdings Ltd.	100.00
Pantanal Energetica Investments Ltd.	100.00
Pantanal Energetica do Sul Holdings Ltd.	100.00
Pantanal Energetica do Sul Investments Ltd.	100.00
~~Portland General Electric Company~~	~~100.00~~
Portland General Transport Corp.	100.00
Salmon Springs Hospitality Group, Inc.	100.00
121 S.W. Salmon Street Corporation	100.00
World Trade Center Northwest Corporation	100.00
Portland Transition Company, Inc.	100.00
Portland General Holdings, Inc.	100.00
Columbia Willamette Development Company	100.00
Portland General Operations Company, Inc.	100.00
PGO Holding Company Ltd.	100.00
Portland General Property Holdings, Inc.	100.00
PGH Leasing, LLC	100.00
Seneca Leasing Partners, L.P. ***(LP interest only)***	95.00
Tule Hub Services Company	100.00
Prairie Hawk, Inc.	100.00
San Juan Gas Company, Inc.	100.00
Shelby Ltd.	100.00
Silkroad Holdings, Ltd.	100.00
Enron China Ltd.	100.00
Smith Street Land Company	100.00
Block 321 Partnership	99.00
Southern Brazil Electric Holdings Ltd.	100.00
Enron Sao Paulo Investments Ltd.	100.00
Enron Electric Sao Paulo C.V.	1.00
Southwest Brazil Electric Holdings Ltd.	100.00
Enron Mato Grosso do Sul Investments Ltd.	100.00
Enron Electric Mato Gross do Sul C.V.	1.00
Sports Financing Corp.	100.00
Sports Facilities, L.P.	50.00
Trailblazer SPV I, L.L.C.	100.00
Trailblazer SPV II, L.L.C.	100.00
Whitewing Associates, L.L.C.	53.00

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

PORTLAND GENERAL ELECTRIC COMPANY, et al., Plaintiffs,	)	
v.	)	No. 97-322C (Judge Turner)
THE UNITED STATES, Defendant.	)	

MEMORANDUM IN OPPOSITION TO STAY

Defendant United States of America, respectfully submits this memorandum in opposition to plaintiffs' motion to stay proceedings.

Having been allowed leave to amend their complaint, plaintiffs now seek to stay this action and prevent the United States from responding. In substance, plaintiffs' amended complaint seeks the very same relief denied in Yankee Atomic Electric Co. v. United States, 112 F.3d 1569 (Fed. Cir. 1997), cert. denied, 118 S. Ct. 2365 (1998), wherein the Court of Appeals for the Federal Circuit held that the special assessment under the Energy Policy Act of 1992 did not breach the parties' contract and did not violate the Constitution. Dissatisfied with that opinion, and under the distorted cover of an inapposite Supreme Court ruling, plaintiffs now seek district court relief, undoubtedly because this Court is bound by the Federal Circuit's opinion. Such blatant forum shopping is repugnant to the integrity of this Court and should not be allowed.

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have both amended their complaint and sought relief elsewhere. Review of plaintiffs' "new" allegations, however, reveals that they are based on the same "vested property right" litigated in Yankee Atomic.

Strikingly similar to its original complaint, plaintiffs' amended complaint alleges that the special assessment constitutes (1) a breach of contract; (2) a taking of property without just compensation; and (3) a denial of due process. (Am. Compl. ¶ 7.) With a slight shift in emphasis, plaintiffs' district court action seeks a declaratory judgment that the special assessment constitutes (1) an unlawful taking of vested property rights in violation of the Takings Clause of the Fifth Amendment; (2) a violation of substantive due process rights protected by the Fifth Amendment; and (3) an unlawful impairment of contract rights. (See Pls.' Mem., Exhibit A at ¶ 1.)

Although cloaked in slightly different constitutional verbiage, plaintiffs' district court action seeks nothing more than the relief previously denied in Yankee Atomic. As in Yankee Atomic, the "vested property right" in the district court action stems from plaintiffs' uranium enrichment contract with the United States. (Pls.' Mem., Exhibit A at ¶¶ 1, 81-116.) Thus, the district court action, at its core, is really no broader than the claims already presented to this Court.

Both actions seek to invalidate the Energy Policy Act's special assessment with the resulting return of money to plaintiffs. In fact, plaintiffs' amended complaint, as did their

original complaint, specifically challenges the underlying constitutional validity of the Act's special assessment. Under the circumstances of this case, this Court unquestionably has jurisdiction to decide plaintiffs' constitutional challenge to the special assessment. See e.g., 28 U.S.C. § 1491(a)(1) (Court of Claims has exclusive jurisdiction to render judgment on any claim for money damages founded either upon the Constitution, a statute, a regulation or an express or implied-in-fact contract).[1]

II. Plaintiffs' Desire For A More Favorable Forum Does Not Support Staying These Proceedings

In addressing a request for a stay this Court must assess and balance the competing interests of the parties. Adrienne Village v. United States, 25 Cl. Ct. 457, 459 (1992). In Adrienne Village, plaintiffs requested a stay of a Court of Federal Claims action while a similar action went forward in

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[1] See also Preseault v. Interstate Commerce Commission, et al., 494 U.S. 1, 12 (1990)) ("If there is a taking, the claim is 'founded upon the Constitution' and within the jurisdiction of the [Claims Court] to hear and determine"); Aerolineas Argentinas v. United States, 77 F.3d 1564, 1572-73 (Fed. Cir. 1996) (under the Tucker Act, the Court of Claims has jurisdiction over claims for an illegal exaction, which occurs under circumstances where the plaintiff has paid money over to the Government in contravention of the law); Marrero Land & Improvement Assoc., Ltd. v. United States, 26 Cl. Ct. 193 (Cl. Ct. 1992) (assuming argued, there is a valid taking claim, court would have jurisdiction to decide whether the taking violated the due process clause); Eastport Steamship Corp. v. United States, 372 F.2d 1002, 1007-08 (Ct. Cl. 1967) (Court of Claims has jurisdiction over cases where plaintiff seeks return of money paid over to the Government on the theory that the money was taken in contravention, inter alia, of the Constitution).

district court. As here, plaintiffs asserted a variety of unconvincing reasons why a district court opinion would be preferable. 25 Cl. Ct. at 459-62. These included at least two arguments similar to those put forth by plaintiffs in this case: (1) the district court action would have prospective effect while the Court of Federal Claims action would only affect past payments, and (2) that allowing both cases to proceed would likely result in inconsistent judgments. The court reasoned that its ruling regarding past payments would indeed have prospective significance and that any inconsistencies would have to be addressed at the appellate level, presumably by the Supreme Court. 25 Cl. Ct. at 460-61.

Similarly, any ruling by this Court regarding the Energy Policy Act's special assessment would have prospective significance. To date only this jurisdiction has addressed the validity of the Act's special assessment. Any future inconsistencies resulting from plaintiffs' attempt to obtain a more favorable ruling in district court would have to be addressed at the appellate level, presumably by the Supreme Court.

The court in Adrienne Village noted that the paramount interest at stake in plaintiffs' request for a stay was the identity of the forum that would first address the question of the proper interpretation of plaintiffs' contracts. 25 Cl. Ct. at 460. The state of the law revealed a clear split in the circuits such that plaintiffs would likely prevail before the

district court and lose before the Court of Federal Claims. Id. The court expressly held that plaintiffs' desire for a more favorable forum did not warrant a stay of proceedings. Id.

In this case, plaintiffs' paramount interest in seeking a stay is to control the identity of the forum addressing the allegations in its complaint. Plaintiffs, quite logically, fear the outcome of this case before this Court. The law of this Circuit apparently mandates dismissal of plaintiffs' amended complaint. The district court action at least provides plaintiffs the hope of a different outcome. As in Adrienne Village, however, plaintiffs' desire for a more favorable forum simply does not warrant staying these proceedings.

Contrary to plaintiffs' assertions, the cases cited in their motion do not support staying this action. Loveladies Harbor, Inc. v. United States, 27 F.3d 1545 (Fed. Cir. 1994), simply does not stand for the proposition that this case should be stayed in favor of a subsequently filed district court action. That case involved a pre-existing district court challenge to agency action under the Administrative Procedures Act, 5 U.S.C. § 554. There the resolution of the pre-existing district court action might moot the Claims Court action, if for example the agency action was rescinded. Similarly, Pennsylvania R.R. Co. v. United States, 363 U.S. 202 (1960), A-1 Cigarette Vending, Inc. v. United States, Nos. 97-848C, 98-208C (Fed. Cl. Apr. 21, 1998), and Aulston v. United States, 823 F.2d 510 (Fed. Cir. 1987), all involved pre-existing district court challenges to agency action.

In contrast, this case predates plaintiffs' recent district court filing and involves a challenge to a statutory requirement to pay money that is not dependent upon the validity of agency action.

Plaintiffs' request for a stay while they relitigate the same issues before a district court is contrary to two important principles: (1) the orderly and efficient administration of justice and (2) the uniformity of judicial determinations. See, e.g., Thaxton v. United States, 11 Cl. Ct. 181, 183 (1986) (discussing RUSCC 77(f)(2) requirement of filing a notice of related cases). While these principles seek to minimize the occurrence of inconsistent decisions, plaintiffs intentionally strive for an inconsistent decision in a different jurisdiction that may not feel itself bound by the Federal Circuit's holding in Yankee Atomic. Blatant forum shopping such as this is repugnant to the integrity of this Court and those persons seeking legal redress. See e.g., Thaxton v. United States, 11 Cl. Ct. at 183.

Plaintiffs' allegation that a stay would not harm the United States is disingenuous. While the totality of the assertions in plaintiffs' amended complaint and district court complaint may not have been decided by Yankee Atomic, the issues at the core of those new complaints have been resolved. Their resolution by the Federal Circuit supports a ruling in favor of the Government here and any attempt to undermine that logical application of law, by forum shopping or otherwise, is harmful to the United States. Moreover, plaintiffs' claim before this Court is entitled to

interest from the date it was submitted to a contracting officer. See 41 U.S.C. § 611. Delaying this action pending the district court's eventual resolution of its case unnecessarily adds time to this Court's required resolution of this matter and may well result in greater interest payments should the Court decide against the Government.

III. A Stay Would Needlessly Promote The Already Excessive Litigation Regarding The Energy Policy Act Assessments

Plaintiffs alternatively seek to stay this action pending the outcome of those cases currently before Judge Wiese. While this may seem logical, the Court should note that these actions were previously stayed pending the outcome of Yankee Atomic, which was also pending before Judge Wiese. After the United States successfully litigated Yankee Atomic all the way to the Supreme Court, rather than accept their fate, plantiffs simply amended their complaint to a superficially different theory of recovery based upon the inapposite case of Eastern Enterprises v. Apfel, 118 S. Ct. 2131 (1998). Rather than resolve this superficial amendment now as a matter of law, they again seek to stay their action pending the outcome of a case before Judge Wiese. No doubt, once the cases presently before Judge Wiese are resolved, plaintiffs will launch some other attack upon the monetary assessment. It appears they hope to be able to argue that the district court has found the assessment unconstitutional. A stay would unfairly allow plaintiffs to subsequently amend their complaint to some new theory in the hope

of successfully relitigating this matter once those cases before Judge Wiese are resolved.

Such continued litigation should particularly be curtailed where, as here, the validity of the Energy Policy Act assessments has been litigated several times before. Specifically, in addition to Yankee Atomic, challenges to the Energy Policy Act assessment have been resolved in Barseback Kraft AB v. United States, 36 Fed. Cl. 691 (1996), aff'd, 121 F.3d 1475 (Fed. Cir. 1997)(assessment not double recovery or overcharge in breach of contract); Centerior Service Co. v. United States, No. 95-103 (Fed. Cl. Dec. 17, 1997)(no breach of contract); North Atlantic Energy Service Corp. v. United States, No. 95-550C (Fed. Cl. Dec. 18, 1997) (same); and Florida Power & Light Company v. United States, 41 Fed. Cl. 477 (1998)(same). Accordingly, to prevent further needless litigation and to finally resolve these issues, the United States is opposed to staying this case.

CONCLUSION

For the foregoing reasons, defendant the United States of America respectfully requests that this Court deny plaintiffs' Motion to Stay Proceedings.

Respectfully submitted,

FRANK W. HUNGER
Assistant Attorney General

J. CHRISTOPHER KOHN
Director

SANDRA P. SPOONER
Deputy Director

THEODORE R. CARTER, III
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
Department of Justice
P.O. Box 875, Ben Franklin Station
Washington, D.C. 20044
Tele: (202) 307-3242
Attorneys for Defendant

November 17, 1998

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on this 17th day of November, 1998, I caused a copy of the foregoing **Memorandum in Opposition to Stay** to be placed in the United States mail (first-class mail, postage prepaid) addressed as follows:

Michael J. Henke
Vinson & Elkins L.L.P.
The Willard Office Building
1455 Pennsylvania Avenue, N.W.
Washington, DC 20004-1008

cc: Doug S.

ENRON

PORTLAND GENERAL CORPORATION

July 22, 1996

Mr. Robert Nordhaus
General Counsel
U.S. Department of Energy
Forrestal Building, Room 6A-245
1000 Independence Ave., SW
Washington, DC 20585

Dear Mr. Nordhaus:

Today we announce the merger of Portland General Corporation and Enron Corp. Attached is some background information on the companies and a description of the transaction, which is being made available to interested parties.

Executives from Portland General Corporation and Enron Corp. will hold a joint briefing to make general information available to Congressional staff as well as Department of Energy and Federal Energy Regulatory Commission staff. You are welcome to attend.

The briefing will begin at 3:00 p.m. Monday, July 22 in 2105 Rayburn House Office Building.

Sincerely,

Ken

Kenneth L. Lay
Enron Corp.
Chairman and Chief Executive Officer

Ken Harrison

Ken L. Harrison
Portland General Corporation
Chairman and Chief Executive Officer

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ENRON

PORTLAND GENERAL CORPORATION

FOR IMMEDIATE RELEASE

Contact for Enron:

Media: Carol Hensley
713-853-6498

Investors: Renita O'Connell
713-853-6021

Contact for Portland General:

Media: Carol Dillin
503-464-8536

Investors: Jo Smith
503-464-7120

ENRON AND PORTLAND GENERAL ANNOUNCE PRO-COMPETITIVE MERGER

TRANSACTION CREATES NATION'S LARGEST INTEGRATED NATURAL GAS AND ELECTRICITY COMPANY

Houston, TX and Portland, OR, July 22, 1996 -- Enron Corp. [NYSE: ENE] and Portland General Corporation [NYSE: PGN] today announced they have signed a definitive agreement to merge in a tax-free, stock-for-stock transaction resulting in a combined enterprise with an equity value of approximately $12.5 billion based upon Enron's closing stock price on Friday, July 19, 1996. Enron will issue approximately 51 million new common shares, valued at approximately $2.1 billion, to shareholders of Portland General in the transaction. Enron will consolidate Portland General's debt of approximately $1.1 billion and account for the transaction on a purchase accounting basis.

The proposed transaction, which has been approved by both companies' boards of directors, would unite Enron, the largest marketer of natural gas in North America and the largest independent marketer of wholesale electricity in North America, with Portland General, one of the most successful, low-cost electric utilities in one of the country's fastest growing regions. With ownership of more than 5,900 megawatts of electric generating capacity worldwide and more than 37,000 miles of natural gas pipeline, the combined company will be well-positioned to provide integrated energy solutions for wholesale and retail natural gas and electricity customers in North America and internationally.

Under the terms of the proposed merger, Portland General shareholders will be entitled to receive one share of Enron common stock for each share of Portland General common stock held by them. The agreement may be terminated by Enron if the average of the closing prices of Enron common stock during the 20 consecutive trading day period ending five trading days prior to the date of the shareholder meetings is more than $47.25 per share, and may be terminated by Portland General if the average of the closing prices of Enron common stock during such period is less than $36.25 per share. The agreement provides for termination fees payable to each party under certain other circumstances.

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"This proposed merger with Portland General represents an outstanding opportunity for us to create the leading energy company of the future in the North American energy markets," said Kenneth L. Lay, chairman and chief executive officer of Enron. "By combining the natural gas and electricity marketing and risk management expertise of Enron with the wholesale and retail electricity expertise of Portland General, along with its related assets and skilled employees, we are uniquely positioned to be the leader in the increasingly competitive natural gas and electricity marketplace. This strategic merger is expected to be accretive to Enron's earnings per share beginning in the first year after completion of the merger, and is thus consistent with our long-term compound annual earnings growth target of at least 15 percent.

"Portland General and Enron together will continue their strong traditions of active community involvement and support for a healthy environment," Lay continued. "Ken Harrison, upon completion of the transaction, will continue in his current role as chairman and CEO of Portland General and further strengthen Enron's senior management team by assuming the additional responsibilities of vice chairman of the combined company."

"This is a win-win transaction for Portland General's shareholders, customers and employees," said Ken L. Harrison, chairman and chief executive officer of Portland General. "Our shareholders will have the opportunity to participate in the continued earnings growth of one of the largest and most successful integrated energy companies in the world. Enron has demonstrated a superior track record of stock price appreciation and sustained dividend growth. Under a proposal to be filed with the Oregon Public Utility Commission (OPUC), which will continue to have regulatory jurisdiction over Portland General, our customers will receive significant benefits from new and revised pricing options. The Commission's approval of the application to be filed relating to the merger of Enron and Portland General may accelerate the timing of those benefits. We have also committed to price stability for Portland General customers through 1998."

Harrison continued, "The senior management team of Portland General will remain in place and Portland General will continue to be headquartered in Portland. Portland General will provide three board members for Enron's board of directors. Combining our complementary skill sets and experience in different sectors of the energy industry will enhance our success in the converging natural gas and electricity market of the future. I want to emphasize that this merger is about positioning our companies for competition in an open market, not cost cutting. As a result of this merger, our employees will have greater career opportunities both in North America and internationally. All union contracts will be honored. We are excited about joining forces with a partner recognized for its innovation in energy products and services worldwide."

"The deregulation of the electricity market in North America represents one of the most significant industry restructurings ever," said Lay. "Just as coal was the primary energy source of the 19th Century, and oil was the primary fuel of the 20th Century, we believe natural gas and electricity will converge as the primary sources of energy in North America and many other markets around the world for the 21st Century."

Lay continued, "Ten years ago, Enron successfully embarked on a new strategy to compete in the newly deregulating natural gas market in North America. Customer choice and competition in natural gas, at the wholesale level and more recently at the retail level, have been a great success for consumers and the American economy. By applying the experience gained in the natural gas market, Enron has become, in a very short period of time, the largest independent marketer of wholesale electricity in North America. As the move toward deregulation in the retail sector proliferates, Enron is poised to participate as a leader in the evolution toward a converged gas and electricity market, with more product choices and competitive prices for all customers, large and small, both wholesale and retail."

The two chairmen outlined several strategic reasons why the combination supports Enron's vision of becoming the world's leading energy company:

First, at the wholesale marketing, trading and supply level, we intend to be the provider of choice in energy products, principally natural gas and electricity. By combining Enron's collective marketing and risk management expertise with Portland General's physical delivery capabilities and asset operation experience, we will be able to strengthen our presence in the wholesale and retail markets.

Second, at the retail level, our vision encompasses being the leading national brand-name total energy provider. By combining our respective retail marketing expertise in natural gas, electricity and energy management, we will be able to provide a full range of energy products and specialty services to commercial, industrial and individual customers. Building on Portland General's extensive experience in automated metering, billing, auditing and other end-user customer service functions, we will be able to offer reliable, low-cost energy and energy management services to customers nationwide. In addition, Portland General has developed several non-regulated service and infrastructure investments which we believe have significant growth potential.

Third, we expect to be the most innovative and efficient manager of electric generation, transmission and distribution assets in the rapidly changing new marketplace. By leveraging the operating and engineering expertise of Portland General with Enron's worldwide asset base and experience, we will be able to expand domestic and international activities across multiple fuel lines including gas, oil, coal, hydro and renewables.

Both Enron and Portland General are recognized leaders and innovators in the energy marketplace. By combining their resources, the merged company will be solidly positioned to provide customized, reliable and low-cost products and services to customers, to provide a challenging and rewarding work environment for employees, and to continue to generate attractive returns for shareholders.

The merger is conditioned, among other things, upon the approvals of each company's shareholders and the completion of regulatory procedures at the Oregon Public Utility Commission (OPUC) and the Federal Energy Regulatory Commission (FERC). The companies are hopeful that the regulatory procedures can be completed in less than 12 months.

Smith Barney Inc. is serving as financial advisor and provided a financial opinion to Enron. Goldman, Sachs & Co. is serving as financial advisor and provided a fairness opinion to Portland General.

Portland General Corporation is an electric utility holding company. PGE serves more than 657,000 retail electricity customers in northwest Oregon, as well as wholesale electricity customers throughout the western United States.

Enron Corp., one of the world's largest integrated natural gas companies with approximately $13 billion in assets, operates the second largest natural gas transmission system in the world; is the largest purchaser and marketer of natural gas and the largest non-regulated marketer of electricity in North America; produces and markets natural gas liquids worldwide; owns 59 percent of Enron Oil & Gas Company, one of the largest independent (non-integrated) exploration and production companies in the United States; owns 59 percent of Enron Global Power & Pipelines L.L.C., which is owner and manager of operating power plants and natural gas pipelines around the world; and is one of the largest independent developers and producers of electricity in the world.

This press release includes forward looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. Although Enron believes that its expectations are based on reasonable assumptions, it can give no assurance that its goals will be achieved. Important factors that could cause actual results to differ materially from those in the forward looking statements herein include political developments in foreign countries, the pace of deregulation of retail natural gas and electricity markets in the United States, federal and state regulatory developments, the timing and extent of changes in commodity prices for oil, gas, electricity and interest rates, the extent of success in acquiring oil and gas properties and in discovering, developing and producing reserves, the timing and success of efforts to develop international power, pipeline and other infrastructure projects and conditions of the capital markets and equity markets during the periods covered by the forward looking statements.

# # #

There will be a press teleconference, with a question-and-answer period, today, July 22, 1996, at 8:00 AM PDT (10:00 AM CDT). To access the call, please call (800) 553-0326 fifteen minutes prior to the call, and ask to be connected to the Enron/Portland General teleconference. International callers are asked to call (303) 446-0284.

SATELLITE UPLINK FOR ENRON AND PORTLAND GENERAL B-ROLL:

Monday, July 22
09:00 - 09:30 EDT
Ku-band uplink & space segment for Galaxy K4-61 [11 Upper]
C-band uplink & space segment for Galaxy C6 Transponder 2

Monday, July 22
11:30 - 12:00 EDT
Ku-band uplink & space segment for Galaxy K4-61 [11 Upper]
C-band uplink & space segment for Galaxy C6 Transponder 2

If you have any technical questions or problems with the satellite feed for Enron and Portland General B-roll, please call Emy Nakase at (212) 627-5622

ENRON

PORTLAND GENERAL CORPORATION

ENRON CORP. AND PORTLAND GENERAL CORPORATION MERGER TRANSACTION SUMMARY

Financial Terms

- The merger will be a tax-free, stock-for-stock transaction resulting in a combined enterprise with an equity value of approximately $12.5 billion based upon Enron's closing stock price on Friday, July 19, 1996. Enron will issue approximately 51 million new common shares, valued at approximately $2.1 billion, to shareholders of Portland General in the transaction. Enron will consolidate Portland General's debt of approximately $1.1 billion and account for the transaction on a purchase accounting basis.

- Under the terms of the proposed merger, Portland General shareholders will be entitled to receive one share of Enron common stock for each share of Portland General common stock held by them. Portland General has 51.1 million shares outstanding.

- The agreement may be terminated by Enron if the average of the closing prices of Enron common stock during the 20 consecutive trading day period ending five trading days prior to the date of the shareholder meetings is more than $47.25 per share, and may be terminated by Portland General if the average of the closing prices of Enron common stock during such period is less than $36.25 per share. The agreement provides for termination fees payable to each party under certain other circumstances.

- The merger is expected to be accretive to Enron's earnings per share and cash flow beginning in the first year after the completion of the merger, and is thus consistent with Enron Corp.'s long-term compound annual earnings growth target of at least 15 percent.

- The merger is conditioned, among other things, upon the approvals of each company's shareholders and the completion of regulatory procedures at the Oregon Public Utility Commission (OPUC) and the Federal Energy Regulatory Commission (FERC). The companies are hopeful that the regulatory procedures can be completed in less than 12 months.

Management, Employees and Headquarters

- Kenneth L. Lay, Chairman and CEO of Enron Corp.

- Richard D. Kinder, President and COO of Enron Corp.

- Ken L. Harrison, Chairman, CEO and President of Portland General Corporation. Upon completion of the merger, he will become a Vice Chairman of Enron Corp.

- The senior management team of Portland General will remain in place. All union contracts will be honored.

- Enron Corp. will remain headquartered in Houston, Texas. Portland General will remain headquartered in Portland, Oregon.

B

Enron Corp.
Fact Sheet

Enron Corp. (NYSE: ENE) is one of the world's largest integrated natural gas companies with more than 60 years in the energy industry. The company, headquartered in Houston, Texas, has approximately $13 billion in assets and employs about 7,000 people worldwide.

With activities in four major business lines, Enron is well-positioned to meet the world's growing energy needs with abundant, clean-burning natural gas, electric power and other energy sources, including solar. Enron was ranked in *Fortune's* 1995 "America's Most Admired Companies" survey as the nation's most innovative company.

Enron Operations Corp. (EOC) operates Enron's worldwide natural gas transportation, gas liquids and clean fuels facilities. EOC operates the largest natural gas transmission system in the Western Hemisphere and the second largest system in the world, totaling more than 37,000 miles of pipeline. The company also operates one of the world's largest natural gas liquids operations.

In addition, Enron Engineering & Construction (EE&C) provides worldwide engineering and construction services to Enron, including its domestic pipeline and power projects, and third parties. EE&C is currently negotiating to provide those services for 30 projects valued at more than $15 billion. Currently, EE&C is working on a natural gas compressor station in Severnaya, Russia, a liquefied natural gas plant and regasification facility in Puerto Rico, and will serve as the turnkey contractor for a 478-megawatt power project in Turkey. EE&C successfully completed a 357-mile gas pipeline in Colombia, a 154-megawatt power plant in China, a 185-megawatt power project in the Dominican Republic, a 530 MMcf/d expansion on Florida Gas Transmission, and was the turnkey contractor for Enron's 1,875 megawatt Teesside Power Station, the largest natural gas combined cycle plant in the world.

Enron Capital & Trade Resources (ECT) is the largest purchaser and marketer of natural gas and the largest non-regulated marketer of wholesale electricity in North America. ECT also manages the world's largest portfolio of natural gas fixed-price and risk management contracts and offers innovative physical and financial energy products and services that provide reliable delivery at predictable prices.

ECT is the largest supplier of gas to the electric generation industry in North America and is participating in a number of pilot programs at the state level to market electricity to small businesses and residential customers.

ECT is among the leading entities arranging new capital for the North American energy industry, and, through affiliates, owns or has access to two intrastate pipelines and several storage facilities.

ECT is marketing gas and electricity in the United Kingdom and has offices in the Nordic Region, Germany and Eastern Europe. In South America's Southern Cone Region, ECT provides project financing and risk management services to its customers.

Enron International consists of Enron Development Corp. (EDC) and Enron Global Power & Pipelines (EPP). EDC is a leader in providing integrated energy solutions worldwide, especially to nations that are privatizing their energy infrastructure. EDC's competitive advantage is its integrated, market-led approach to the development of power plants, pipelines, liquefied natural gas and gas liquids facilities and other energy infrastructure. The value of all EDC projects in various bid or development stages is approximately $19 billion.

Enron also owns approximately 59 percent of EPP, which owns and manages operating natural gas pipelines and power facilities around the world and has a preferential right to buy certain power plants and natural gas pipelines completed by Enron through 2004. EPP intends to pursue the purchase of third party projects in more developed countries, including the U.S., that generate attractive returns.

Enron Oil & Gas Company (EOG) pursues low-cost, fast-track exploration and production opportunities worldwide, and is one of the leading independent E&P companies in the U.S. with an increasing presence in international markets. EOG's optimal use of technology, effective marketing strategies, and an asset redeployment program that includes both sales and acquisitions position the company to capitalize on its traditional strengths and pursue new opportunities in the global energy marketplace.

EOG is 59 percent owned by Enron. The company has proved reserves of approximately 3.6 trillion cubic feet of natural gas equivalent (includes crude oil, condensate and natural gas liquids converted to natural gas equivalents 1:6). The company's reserve base is 88 percent North American and 92 percent natural gas. EOG generates attractive returns on its invested capital through increased production, other marketing activities and a commitment to low costs.

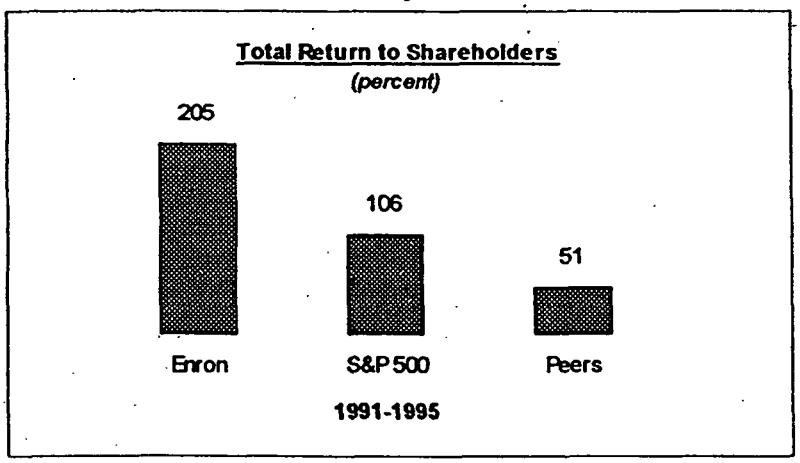
In 1995, EOG replaced 204% of natural gas equivalent production on an "all sources" basis including drilling additions, revisions and purchases net of divestments, excluding volumes added for deep Paleozoic formations. EOG also marked its eighth consecutive year in which drilling additions exceeded production.

Financial Highlights
(Dollars in Millions, Except for Share Amounts)

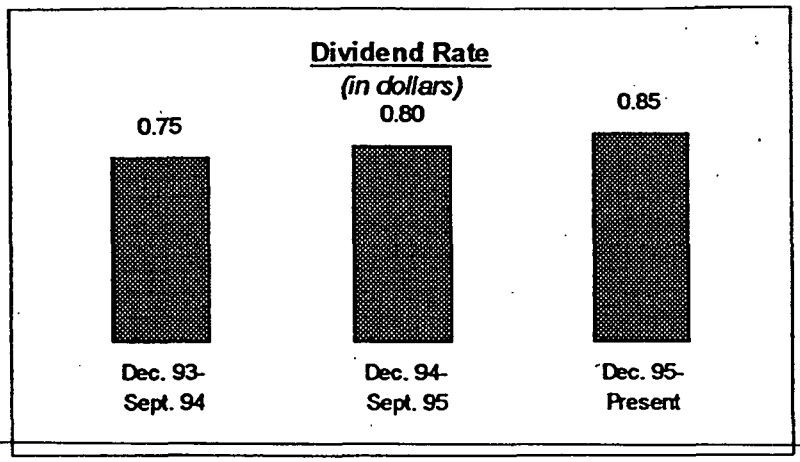
	6 Months Ended 6/30/96	1995	1994
Revenues	$6,015	$9,189	$8,984
Net Income	$329.5	$519.7	$453.4
Earnings per Common Share	$1.31	$2.07	$1.80
Dividends Paid per Common Share	$0.43	$0.81	$0.76
Total Assets	$13,051*	$13,239	$11,966
Other Key Statistics			
Return on Average Shareholders' Equity	**	17.2%	16.5%
Avg. Number of Common Shares Outstanding (MM)	245.2	243.7	243.4
Capital Expenditures	$117*	$777	$669

* As of 3/31/96
** Not Meaningful

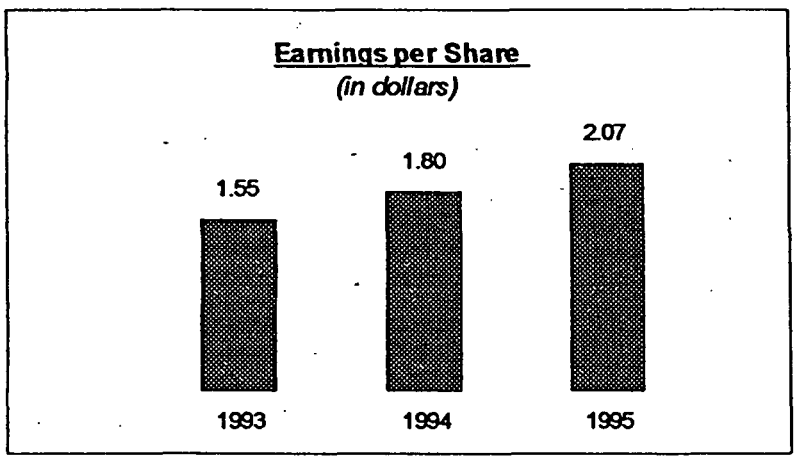
Total Return to Shareholders: For the five years ended 1995, Enron has posted a total return, including dividends, of 205 percent for shareholders compared to 106 percent for the S&P 500 and 51 percent for their peer group.



Dividend Rate: Enron increased its annual dividend for the fifth consecutive year, in 1995 by 6 percent to 85 cents per share.



Earnings Per Share: Enron's 1995 net income was $520 million, a 15 percent increase over 1994's net income of $453 million. The company has had eight consecutive years of at least 15 percent growth in earnings per share (excluding the 1989 gain on the offering of Enron Oil & Gas Company (EOG) and the 1993 statutory deferred tax increase).



Executive Leadership

Enron Corporate Officers

Kenneth L. Lay, Chairman and CEO
Richard D. Kinder, President and COO
John A. Urquhart, Vice Chairman
Edmund P. Segner, III Executive Vice President and Chief of Staff
James V. Derrick, Jr., Senior Vice President and General Counsel
Terence H. Thorn, Senior Vice President, Public Policy
Elizabeth A. Tilney, Senior Vice President, Corporate Marketing and Resources
Jack I. Tompkins, Senior Vice President and Chief Information, Administrative and Accounting Officer

Business Unit Officers

Rodney L. Gray, Chairman, President and CEO, Enron Global Power & Pipelines
Forrest E. Hoglund, Chairman, President and CEO, Enron Oil & Gas Company
Stanley C. Horton, Co-Chairman and CEO, Enron Operations Corp.
Rebecca P. Mark, Chairman and CEO, Enron Development Corp.
Lou L. Pai, President and COO, Enron Capital & Trade Resources
Jeffrey K. Skilling, Chairman and CEO, Enron Capital & Trade Resources
Joseph W. Sutton, President and COO, Enron Development Corp.
Thomas E. White, Co-Chairman and CEO, Enron Operations Corp.

Portland General Corporation
Fact Sheet

Portland General (NYSE: PGN) is an investor-owned utility with 107 years of experience in meeting the needs of its customers. Portland General Electric is the principal, wholly-owned subsidiary of Portland General Corporation. Headquartered in Portland, the company is the single largest provider of Oregon's electrical energy. For more than a quarter century, Portland General has also been a major seller of power and other energy services throughout the western United States and Canada. Portland General supplies electricity to 658,000 retail and wholesale customers throughout Oregon and the western United States.

Portland General has a diverse mix of low-cost generating resources including hydro power, coal and gas combustion. Key transmission resources, including ownership of a major portion of the Pacific Northwest Intertie, connect the company to electricity markets across the West, providing extensive flexibility for power trading and purchases.

The Company's energy products and services, include:

- Energy management
- Power quality
- Comprehensive maintenance services
- Utility infrastructure
- Risk and price management
- Power supply
- Environmental services
- Bulk power products and services
- Power supply services

The Company's service area includes one of the fastest growing economies in the nation. Portland is outpacing the national average in both population and economic growth. In 1996, 35 major new industrial facilities, including many high technology companies, were under construction. These projects represent over $7.5 billion in plant investment, more than 300 MWs of new demand and 6,700 new jobs. Last year, nearly 30 percent of the nation's high technology growth occurred within Portland General's service territory. Portland General assists these high-tech customers in finding the most comprehensive and effective energy solutions. Portland General's low energy prices and experience in delivering state-of-the-art power quality and reliability have been an important factor in the region's economic expansion and diversification.

Portland General has also developed innovative partnerships that span the entire country, ranging from installing metering equipment in Pittsburgh, PA, to providing innovative energy management services for 130 Fred Meyer retail stores in the Northwest.

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PORTLAND GENERAL CORPORATION AND ENRON CORP.
COMMUNITY LEADERSHIP

Under this merger, Portland General Corporation [PGC] and Enron Corp. will continue their strong traditions of active community involvement and support for a healthy environment. Portland General actively contributes to maintaining the high quality of life enjoyed in Oregon. Portland General's commitment to its community is demonstrated through its legislative involvement, employee and retiree volunteer efforts, and generous corporate philanthropic contributions. Enron shares with Portland General a philosophy of corporate responsibility making significant contributions in the communities in which it serves, with a primary focus on education, the environment, and health and welfare.

COMMUNITY IMPACT

Portland General

Portland General has incorporated a strong community resources program in all of its business and strategic plans. Every year PGC helps out hundreds of organizations with financial grants. The Company's educational programs help establish websites for the classroom, and provide instruction and materials on topics from electric safety to managing change.

The Company fosters a corporate environment that encourages employees at every level to involve themselves in a wide variety of business, charitable, civic and community organizations. Some 300 employees actively volunteer in schools as mentors and tutors. Over 800 employees regularly participate in activities ranging from Christmas parties for homeless children to assisting flood victims with food and relief supplies.

Within Portland and other communities, Portland General often assumes a leadership position on quality-of-life issues. The Company has supported measures for open spaces and parks in rapidly growing areas, balanced cultural and arts programs, improvements for jails and libraries, and improved state and local transportation networks and educational systems.

Enron Corp.

Enron and its employees are similarly active in community leadership and service. Recipients of major gifts paid out over several years include major universities, museums, and the United Way of the Texas Gulf Coast. Enron's largest gifts were to the University of Houston and the Nature Conservancy of Texas.

Enron encourages employees to participate in community service projects worldwide through its volunteer program, "Enron Envolved." Recently, 60 volunteers gave a much needed facelift to a home belonging to an elderly woman in Houston; in Omaha, employees share their business expertise with students in the Junior Achievement Program; and, plant engineers at the Teesside Power Station in England work with local high school students to advise them about career opportunities. Enron also donates office space in its Houston office to the Nature Conservancy and Teach for America.

E.

EDMUND P. SEGNER, III

Executive Vice President & Chief of Staff

Enron Corp.

Edmund P. Segner, III is executive vice president and chief of staff of Enron Corp. Prior to assuming his current position, he was senior vice president of investor, public and government relations at Enron. He joined the company in February, 1988 as vice president of public and investor relations. He serves as a director of Enron Global Power & Pipelines, and Enron Liquids Pipeline, LP., listed on the New York Stock Exchange as EPP and ENP, respectively.

Before joining Enron, Mr. Segner was assistant vice president for equity research at Drexel Burnham Lambert, Inc. Previously, he worked for eight years at United Energy Resources, Inc., and began his career in 1976 as a member of the audit staff of Touche Ross & Company.

Mr. Segner graduated cum laude from Rice University with a B.S. degree in civil engineering and received a M.A. degree in economics from the University of Houston. He is also a Certified Public Accountant.

Mr. Segner is a member of the Houston Society of Financial Analysts. He is Past Chairman of the Board of Community Partners, Treasurer of the Texas Nature Conservancy and on the advisory board of the Zoological Society of Houston. He also serves on the Rice University Fund Council and the board of the Rice University Center for Education.

April 1996

F

TERENCE H. THORN

Senior Vice President of Public Policy

Enron Corp.

Terence (Terry) H. Thorn is senior vice president of public policy and a member of the Management Committee for Enron Corp. Mr. Thorn is currently on assignment in Enron's marketing subsidiary, Enron Capital & Trade Resources (ECT), where he is formulating strategy for ECT's new retail electrical and natural gas businesses.

Previously, as Senior Vice President of Government Affairs and Public Policy, Mr. Thorn worked to support all lines of Enron business operations worldwide. He is also a former President and CEO of Transwestern Pipeline Company, an Enron interstate natural gas pipeline subsidiary.

Mr. Thorn is well known in the environmental community, where he has worked extensively on clean air and global climate change issues. He has participated in four trade missions with the Clinton administration; is the North American representative to the International Gas Union for Committee J (World Gas Prospects - Strategies and Economics); is a former chairman of the Pacific Coast Gas Association; and, serves on the boards of the Business Industry Political Action Committee and the George H. Hermann Society.

Mr. Thorn is chairman of the International Committee of the Business Council of Sustainable Development; serves as Enron's principal liaison on the President's Council for Sustainable Development; and, sits on the U.S. Commerce Department's Industry Sector Advisory Committee on Energy for Trade Policy Matters. He is also on the Advisory Committee of the Commission for Environmental Cooperation.

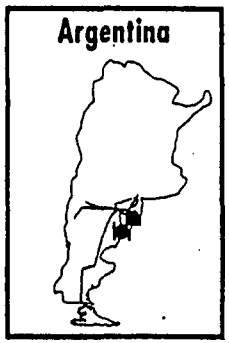
Mr. Thorn holds a bachelor's and master's degree in History and International Relations from the University of Maryland and currently resides in Houston, Texas, where he a member of the Greater Houston YMCA Board of Directors.

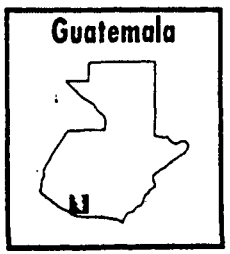
One of the largest integrated natural gas companies in the world, Enron Corp.'s four major business lines are active in natural gas transportation and marketing, electricity generation and marketing, providing financing for the energy industry, liquid fuels extraction and marketing, the development of power plant, pipeline and other energy infrastructure worldwide, and, oil and gas exploration and production. At year-end 1995, Enron had revenues of $9.2 billion and assets of $13.2 billion.

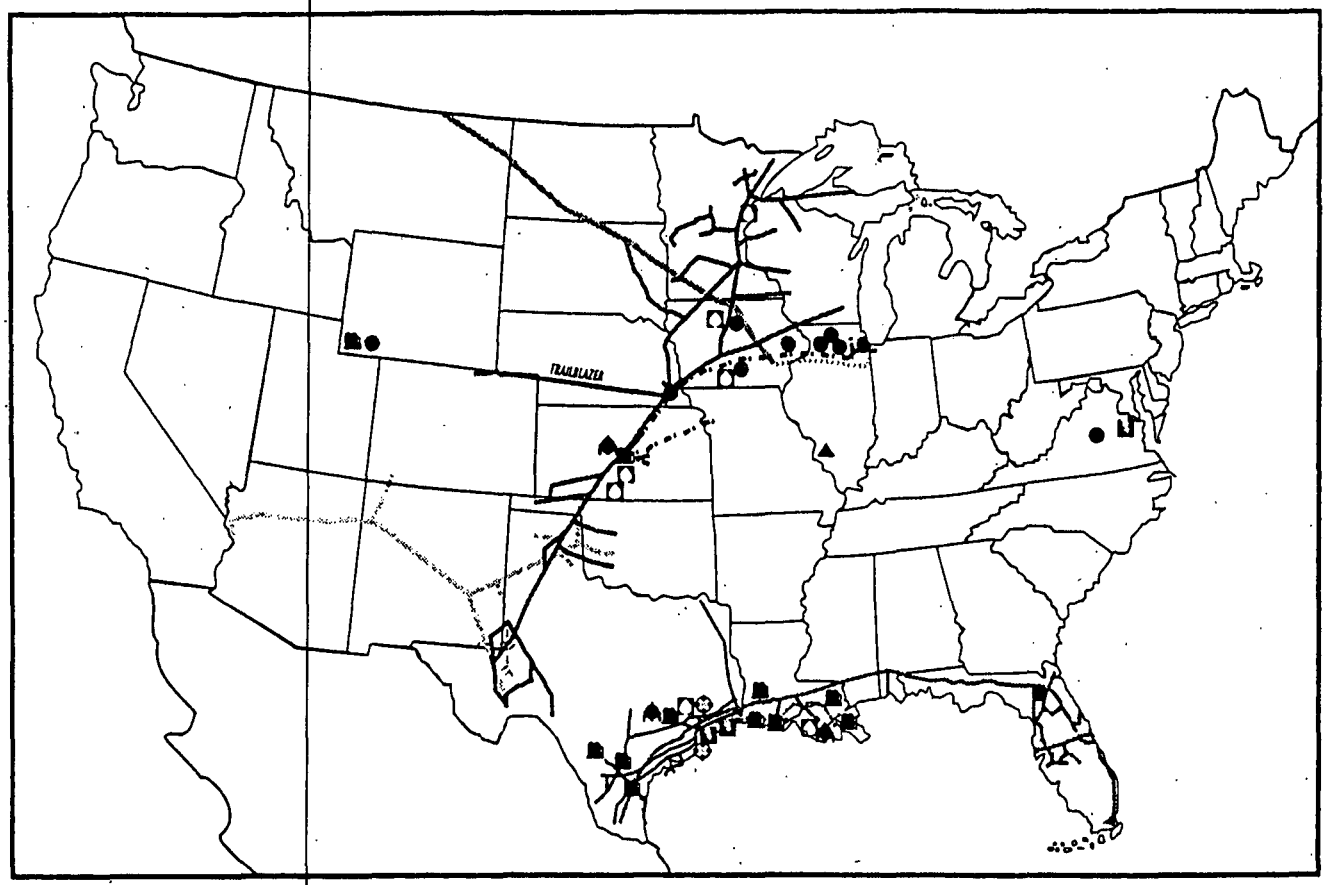
July 1996

G.

ENRON







POWER FACILITIES	11
PROCESSING PLANTS	13
NATURAL GAS STORAGE	7
LIQUIDS STORAGE	4
CLEAN FUELS	2
LIQUIDS TERMINALS	11
COAL LOADING	1

PIPELINES — INTERSTATE

- FGT FLORIDA GAS TRANSMISSION
- NBPL NORTHERN BORDER PIPELINE
- NBPL (PROPOSED EXTENSION)
- NNG NORTHERN NATURAL GAS
- TW TRANSWESTERN PIPELINE
- TW (PROPOSED EXTENSION)

PIPELINES — INTRASTATE

- HPL HOUSTON PIPE LINE
- LRC LOUISIANA RESOURCES

PIPELINES — INTERNATIONAL

- TGS TRANSPORTADORA DE GAS DEL SUR, S.A.
- CENTRAGAS, S.C.A.

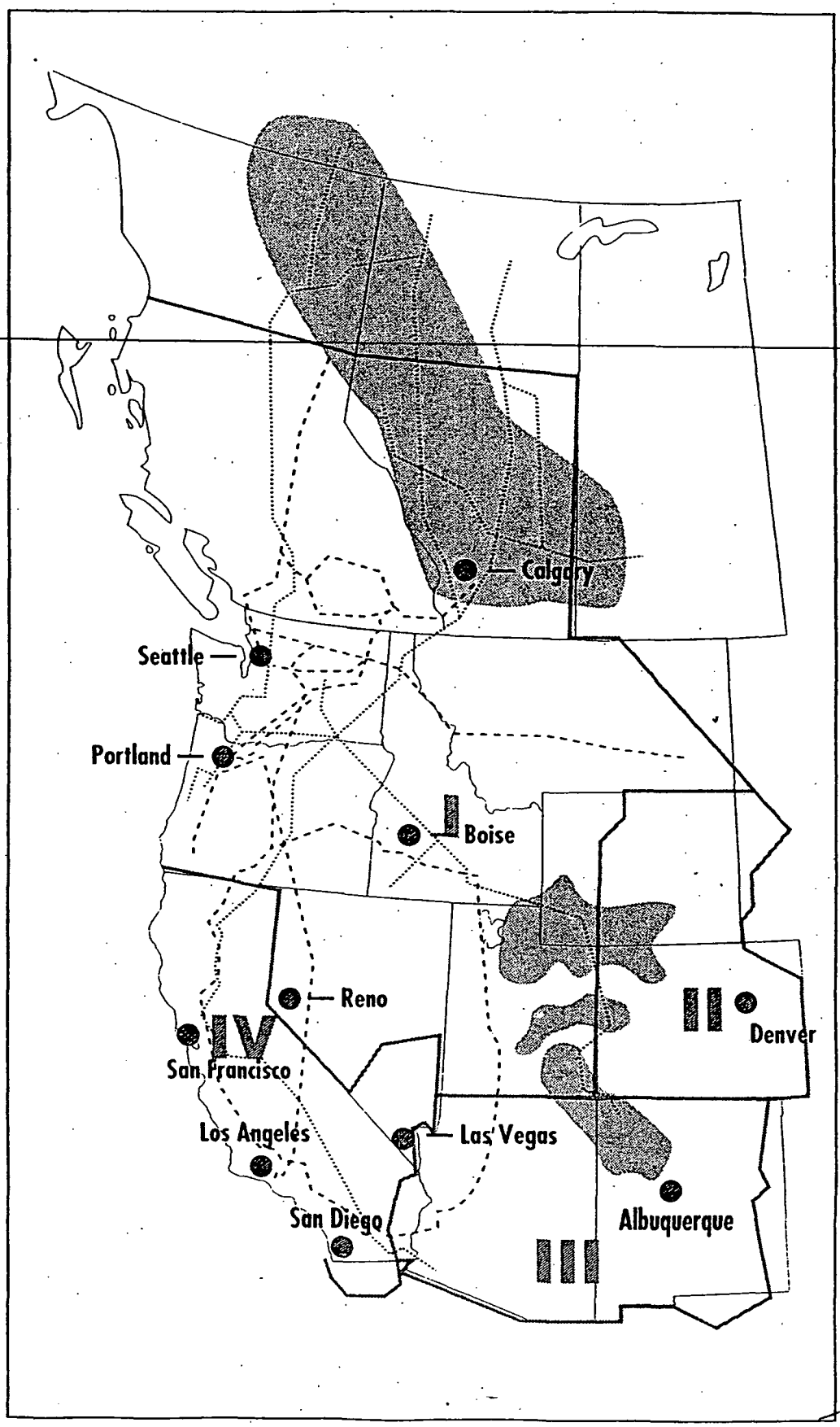
LIQUIDS PIPELINES

- NORTH SYSTEM*
- CENTRAL BASIN PIPELINE CO*
- CYPRESS PIPELINE*
- SIBON PIPELINE

* Enron Liquids Pipeline, L.P.

PORTLAND
GENERAL
CORPORATION

Portland General is strategically located in the fastest growing wholesale energy market in the country.



- Transmission Lines
- Pipelines
- Gas Producing Basins

Western Systems Coordinating Council

Power Area	Location
I	Northwest Power Pool
II	Rocky Mountain Power
III	Arizona - New Mexico
IV	California - S. Nevada

cc: Doug S.

ENRON CORP

Cynthia C. Sandherr
Director
Federal Government Affairs

750 17th Street, N. W., 4th Floor
Washington, D. C. 20006-4607
(202) 466-9143
Fax (202) 828-3372

June 18, 1996

Mr. Robert Nordhaus
General Counsel
U.S. Department of Energy
Room 6A-245, Forrestal Building
1000 Independence Avenue, SW
Washington, D.C. 20585

Dear Bob:

I thought the attached copy of Enron Corp. Chairman and Chief Executive Officer Kenneth L. Lay's testimony before the House Subcommittee on Energy and Power's May 15, 1996 oversight hearing on *Electricity Regulation: A Vision for the Future* would be of interest to you.

In his testimony, Dr. Lay discusses the tremendous impact that retail competition in the electric utility industry would have on the U.S. economy. Quite notably, he estimates that retail competition is the "sleeping giant" of consumer issues and that bringing retail competition to the electric utility industry could produce annual savings of between $60 - 80 billion per year for consumers and businesses–this represents the equivalent of one of the largest tax cuts in history.

Please call me if you have any questions or would like further information on this issue.

Sincerely,

Cynthia Sandherr

Testimony of Kenneth L. Lay
Chairman and CEO, Enron Corp.

on

Electricity Regulation: A Vision for the Future

before the

Committee on Commerce
Subcommittee on Energy & Power
U.S. House of Representatives

May 15, 1996

A.

Executive Summary **Kenneth L. Lay, CEO Enron**

- Federal action could lower electricity rates by 30 percent to 40 percent if customer choice in electricity is universalized. All customers would share in this benefit, particularly smaller ones who are unable to negotiate effectively with their monopoly supplier.

- The annual consumer savings of $60 billion to $80 billion would represent the equivalent of one of the largest tax cuts in history.

- The economic stimulus from competitively restructuring one of America's largest industries will mean increased household income, better jobs and improved international performance.

- Bringing electricity into the competitive world will unleash new discoveries -- new products, efficiencies, business synergies, and entrepreneurial success stories. It will unleash new industries and new jobs.

- The blueprint for the restructured industry already exists with the open-access wholesale market for electricity, where terms and conditions are in place and a multi-billion dollar service industry is already thriving.

- The experience with natural gas, where $330 billion (constant dollars) have been saved since 1985, is a model for electricity. In short, the lesson is that the market works.

- Over 100 power marketing companies have received their certificates from the Federal Energy Regulatory Commission and are poised to serve the tens of millions potential customers.

- A decision by Congress to "throw on the switch" with competition and customer choice will be the most momentous industry event since Thomas Edison and his colleagues flipped on the switch that inaugurated the electric industry just over a century ago.

My name is Kenneth L. Lay, chairman and chief executive officer of Enron Corp. in Houston. I appreciate the opportunity to share Enron's vision for the new electricity industry. Let me begin by describing my company.

Enron Corp.

Enron is a $13 billion in assets company headquartered in Houston, Texas with existing or planned operations in 30 countries. We operate the second largest gas transmission system in the world; are the largest purchaser and marketer of natural gas and the largest non-regulated marketer of electricity in North America; produce and market natural gas liquids worldwide; own 60 percent of Enron Oil & Gas Company, one of the largest independent (non-integrated) exploration and production companies in the United States; own 52 percent of Enron Global Power & Pipelines L.L.C., which is owner and manager of operating power plants and natural gas pipelines in emerging markets; and are one of the largest independent developers and producers of electricity in the world.

Enron is an entrepreneurial, free market company. We hold no monopoly franchises in any of our business lines. We must attract and retain customers by virtue of our product and price in competition with other providers, including even within our regulated interstate pipelines.

In the current "America's Most Admired Companies" issue of *Fortune* magazine (March 6, 1996), Enron Corp. was ranked number one in its industry group (pipelines), number one among all energy companies, and the most innovative company of all companies in all industries in the survey. Overall, Enron achieved a ranking in the top twenty-five. I mention all this, Mr. Chairman, because just ten years ago we were primarily a regulated company with over 80 percent of our net income coming from the mature natural gas transmission business. Yet, last year, businesses that did not exist at Enron in 1985 accounted for 40 percent of our $520 million net income. And, we anticipate that by the year-2000, forty percent of our expected over $1 billion of net income will be from businesses that did not exist five years ago, including the retail sale of electric power, the subject of our discussion today.

The changes that I envision in the electric power industry will require a great deal of innovation. But I submit that a new generation of competitors is up to the challenge.

Electric Power: A Sleeping Giant

Electric power is the sleeping giant of consumer issues. I don't know of any other public policy issue that will have such a far-reaching impact on American households and American businesses as bringing competition to the electric utility industry. Few people are aware of just how enormous the retail electricity market really is and how ripe this market is for competition and consumer savings.

Mr. Chairman, the retail electricity market is a $200 billion a year business.

That is larger than the telecommunications market. It is larger than the natural gas, credit card, cable, and on-line computer markets combined. Utilities account for 15 percent of all household spending, and electricity accounts for 40 percent of that amount.

The reason we are here is that we all know electric power distribution is also one of the last surviving monopolies in the United States. Our electricity system is a relic of an earlier age. And, although it served us well during an earlier age, it now creates a heavy and unnecessary tax burden on American ratepayers--which means virtually every American. It also is not providing the product innovation and customer service today's consumers need and want.

It is time to bring competition to the electric business and, in the process, cut electricity rates by 30 to 40 percent.

The vision I have in mind for this currently regulated, monopoly business will have a dramatic impact on every household and every business in America. It is based on the most important principles in our economy: consumer choice, innovation, and competition. But unless we make fundamental changes in the way electric power is bought and sold, the consumer will not have choice, there will be little innovation and

competition will not exist. This is bad public policy and we must not let it happen.

Natural Gas "Open Access" Model

I feel so strongly about the case for deregulating the electric power industry because of what we have gone through in the natural gas industry. More than a decade ago, some of us in the energy industry came to Congress to argue for "open access" competition for the interstate gas market. To some, it sounded like a far-fetched notion. I still remember some of the protests we heard back then: "Too risky." "Reliability will suffer." "Bad for consumers." "It won't work."

Well, we now have had over a decade of experience with open-access on natural gas pipelines. The evidence is in and those who opposed it have been proven wrong. Deregulation of the gas industry has been a great consumer success, exceeding virtually everyone's expectations. Let me just mention some of the gas industry highlights, even before complete open access has occurred on all local distribution systems, which, incidentally, has only just gotten underway over the past couple of years:

- 1995 natural gas prices, adjusted for inflation, have fallen by an average of 40 percent over the last eleven years.
- Residential prices have dropped by 28 percent; industrial and electric generation consumers have seen prices drop by 50 percent.
- Consumers have saved over $30 billion annually since 1985. That's a $3500 cumulative savings for every American household.
- Consumption of clean burning natural gas is 26 percent higher today than in 1985, reversing a 14 percent decline that occurred in the five years before open access was established.
- The reliability of the service is better than before open access, even during the abnormally cold winter we just went through.

- Innovation in the industry has been unprecedented, and costs have fallen as a result of more competition, better technology, and a stronger market.

To be sure, deregulation wasn't without a price: our stockholders had to absorb approximately one-third of the industry's billions of dollars in stranded costs. But over the last decade we grew as a company, because the competition forced us to become a better company, and the whole industry is stronger and healthier today than it was 10 years ago.

Competition forced all of us to become more efficient or we would not have survived. It forced us to become more innovative. It forced us to expand into new areas.

Above all, deregulation taught us that consumers want lower prices, they want new products and services and they want the ability to choose suppliers.

Bringing Change to the Electric Industry

I mention this recent history of the natural gas industry because it is very instructive about how we should reform the electric industry. Customer choice and competition in natural gas has been a true American success story. Isn't it time we applied the lessons learned from that experience to electric utilities?

At the very least, we should be telling consumers the truth about how much our antiquated regulatory system costs them. Enron estimates that the potential consumer savings from a competitive restructuring of the electric industry could be between $60 and $80 billion per year. Other estimates have been as high as $100 billion a year. We think these savings can be achieved by reforming both the retail and the wholesale side of the business. That way all consumer classes will benefit.

What I am describing is, in effect, equivalent to an across-the-board annual tax cut for Americans. Every household and business that pays electric utility rates could save 30 to 40 percent on their utility bills. And this is not a temporary "quick fix;" it is embedded for an open-ended future.

In other words, reform the electric power system, bring it into the modern age, end the monopoly of the utilities, and give American consumers the equivalent of one of the largest tax cuts in history.

Lower electricity costs will have profound effects across the economic spectrum. Lower electric bills for the military, post office, and other major government users will benefit taxpayers. American industry will become more profitable and become stronger competitors in the international marketplace. Consumers every month will have more discretionary dollars to spend in other directions or to save and invest, which will further strengthen the U.S. economy.

A variety of ancillary benefits will emerge. "Smart" appliances will be installed to take advantage of off-peak electricity pricing. Customer choice will allow the introduction of "green" energy options where environmentally preferred generation sources, such as natural gas or solar, can be selected. Improved customer service functions, such as returning downed power lines or generating stations to service, would have the market immediacy that is not present today.

But, let me guarantee one thing. You are going to hear arguments against reform of the electric industry. The threatened status quo is dead set against the ideas of real competition and real customer choice. Listen to their arguments: "service will deteriorate," "reliability will be put at risk," "untried," "too risky," "go slow."

As I've tried to demonstrate, these are not new arguments. We heard them over a decade ago when opponents tried to stop the deregulation of natural gas. I am sure you have heard them used more recently against bringing other industries into the competitive world as well.

Our argument is simple: let competition work for consumers--just as it has in every other part of our economy. The continued existence of a utility monopoly is simply no longer defensible. This is, after all, an industry which, by their own admission, has in recent years overspent by "about $200 billion"--billions which would be unrecoverable from consumers in a competitive market. We must subject this industry to the

same competitive forces which control costs and spur innovation in every other industry.

Getting From Here to There

There are no technical, economic, or logistical barriers preventing Americans from buying electricity for their homes and businesses in a competitive marketplace. The barriers are political and legal. It is our historic opportunity as citizens, business persons, and legislators to remove these barriers for the common good.

Federal legislation is needed to expedite retail competition for electricity. The Federal Energy Regulatory Commission (FERC) has done an excellent job of bringing wholesale markets into the competitive world. The rules have been set and the tariffs written. Customers, marketers, and utilities know the standards of conduct for nondiscriminatory access to the transmission grid, and every day the benefits of this model are being proven by a new generation of market participants.

Meanwhile, progress has been very slow at the state (retail) level where the lion's share of the market is concentrated. California began the debate in the spring of 1994, and around one-half of the states are evaluating retail access, yet we are still waiting for our first statewide retail customers out of the tens of millions of potential candidates. Imagine the frustration of a restaurant, for example, that was allowed to only serve the tour bus driver but not the passengers -- and at monopoly prices. With electricity, Enron and others are ready to beat the utility monopolist's prices and services today.

ECT: Fast-Forwarding Competition

Enron Capital & Trade Resources (ECT) is one of the new breed of entrepreneurial providers. We are applying a decade of experience with natural gas marketing to electricity. We made our first wholesale power transaction in June 1994; today we believe we are the third largest power marketer in the United States next only to Bonneville Power and the Tennessee Valley Authority, the two large federal government-owned

electric monopolies. We have nearly 150 professionals engaged in the buying and selling of electricity, and this number is expected to approach and eventually exceed our current natural gas marketing operation of some 1,000 people as the electric market opens. In the first quarter of this year, ECT more than tripled its previous quarter's volume -- a sign of a maturing market. Enron and over one hundred FERC-certificated power marketing companies across the country want to substitute "XYZ Citizen" and "XYZ Company" for "XYZ Utility" in our contracts. But, we need a federal solution.

Federal Involvement is Necessary

The national electric grid is an interconnected interstate system that cannot be boxed into state subdivisions. The unique properties of electrons makes this commodity particularly inappropriate to political subdivision.

The free market is a national system. The federal interest in free and open competition requires that jurisdiction over the terms and conditions of access to the customer be federal and not state. Therefore, we ask for Congressional action to give the FERC implementing authority to end the current market bifurcation, a bifurcation that is heavily weighted against consumers, and to universalize competition.

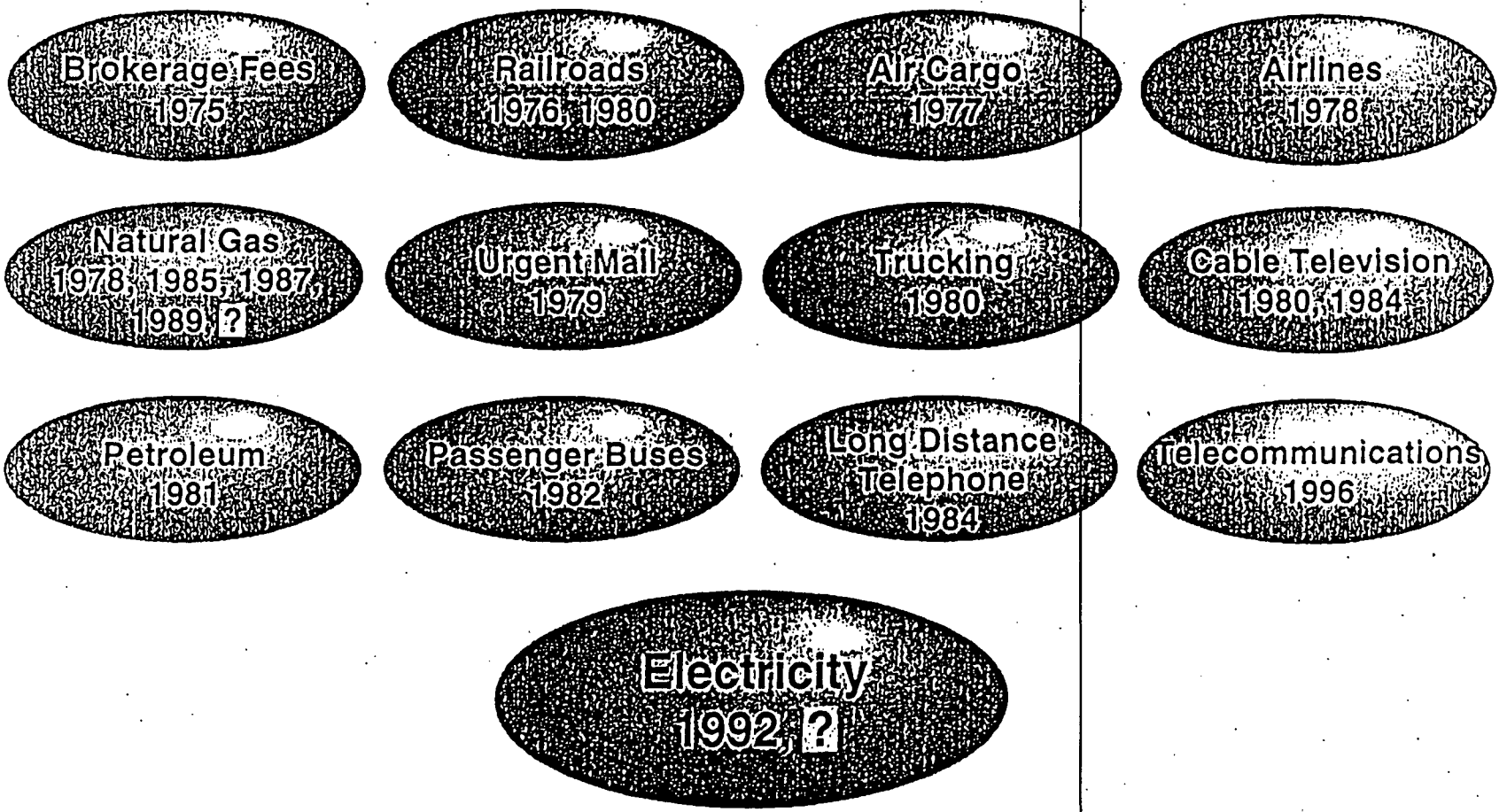
The states can and should have sovereignty over such important matters as determining stranded cost recovery, implementing universal service, and funding social programs such as energy efficiency and low-income ratepayer assistance. The states can and should have sovereignty over the economic regulation of the local distribution system. But, the federal government can and should have sovereignty over open access on those systems. This approach will give state and federal authorities the tools they need to protect consumers and implement state policy priorities while at the same time allowing everyone access to better service at lower prices.

Conclusion

The reasons for implementing national free-market reform are overwhelming. Consumers are ready. Industry providers are ready. Just as

Thomas Edison and his colleagues flipped on a switch at Pearl Street over a century ago to inaugurate the electric industry, it is time for Congress to flip on the switch for nondiscriminatory open-access competition to inaugurate customer choice in electricity. We will not only implement the economic equivalent of a major tax cut, we will unleash a new era of productivity and creativity in this very large and vital industry to lead America into the new millennium.

Deregulation in the Modern U.S. Economy



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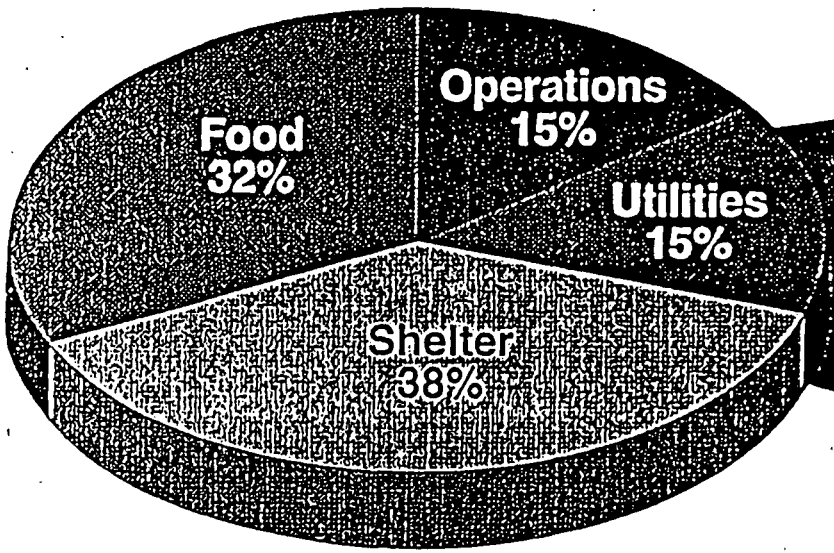
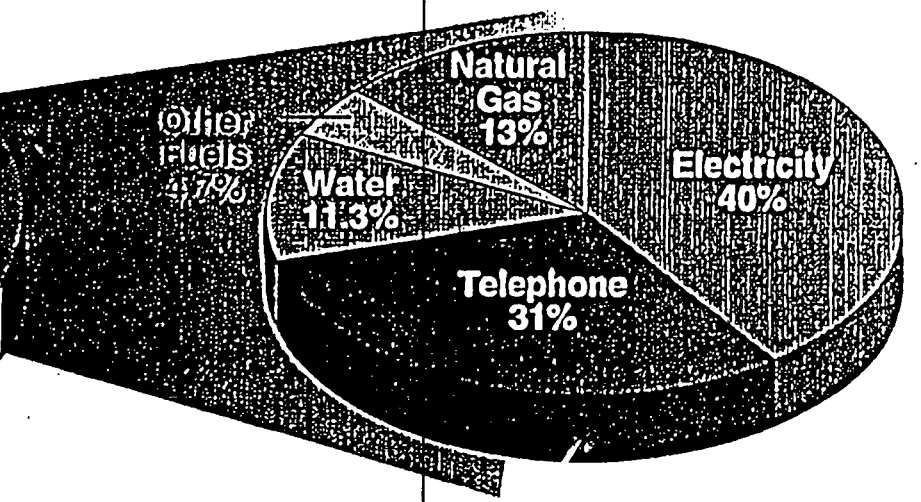
Importance of Market
Household Spending 1993

Breakdown of Household Spending



Breakdown of Utilities



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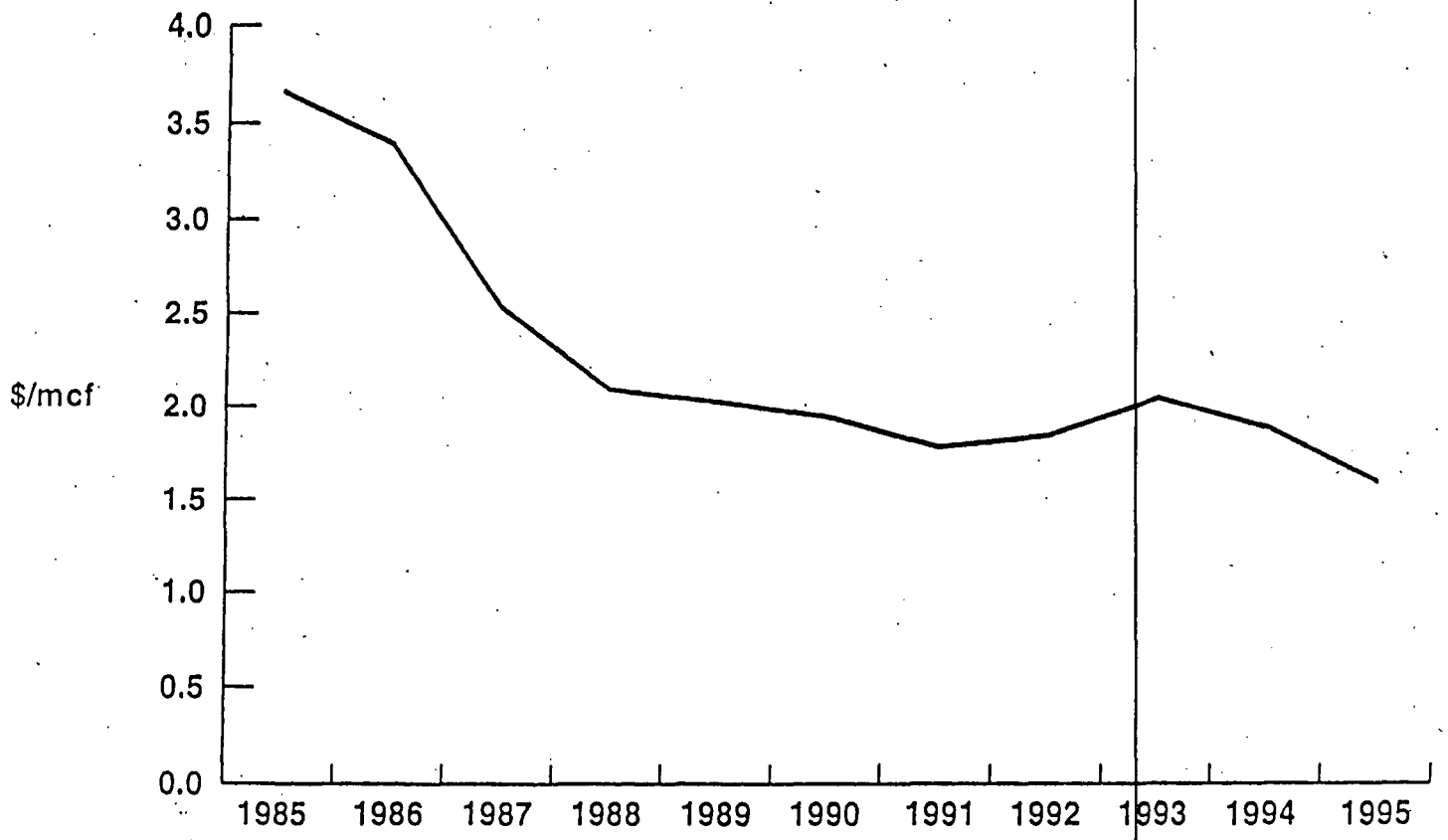
U.S. Wellhead Natural Gas Prices

1985 - 1994

(in Constant 1994 Dollars)



Source: Energy Information Administration

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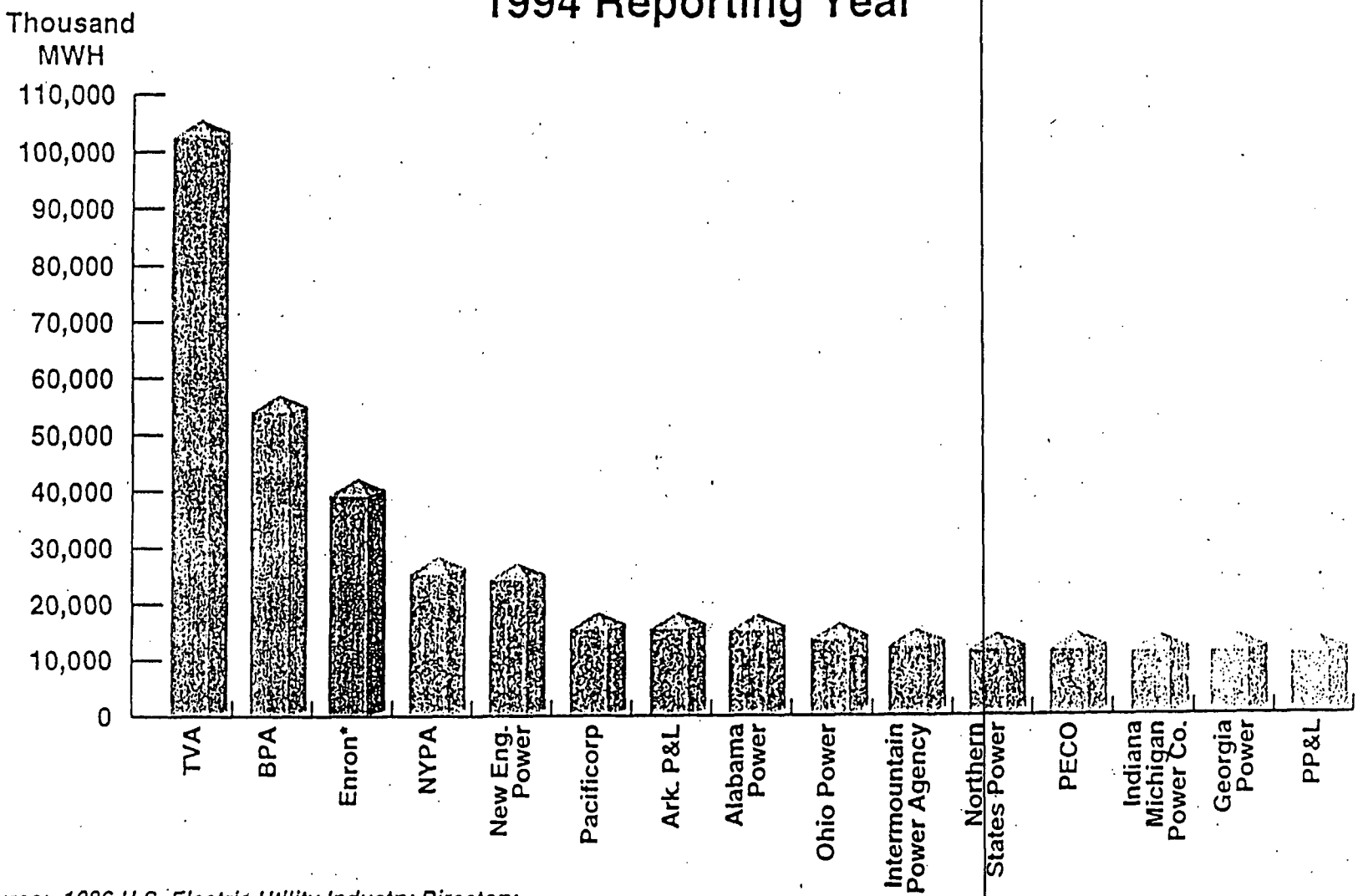
Wholesale Power Sales by Utilities

1994 Reporting Year



Source: 1996 U.S. Electric Utility Industry Directory
**January 1996 Volumes Annualized*

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7

U. S. Department of Energy

DOE NEVADA OPERATIONS OFFICE

OFFICE OF THE MANAGER

FACSIMILE TRANSMISSION ROUTING SHEET

TO: NAME: ROBERT R. NORDHAUS

LOCATION: GC-1

PHONE No.: 202-586-5966 **FAX No.:** 202-586-1499

FROM: NAME: TERRY A. VAETH & ROSE McKINNEY JAMES

LOCATION: DOE/NV, Las Vegas, Nevada

PHONE No.: (702) 295-3211 **FAX No.:** (702) 295-1876

SPECIAL INSTRUCTIONS:

Two Documents
I. Original Amoco/Enron LOI
II. CSTRR LOI which is being negotiated.

DATE: 12/11/96

TIME: 10:45 am

NUMBER OF PAGES _____ **(Excluding This Cover Sheet)**

I certify that this is an UNCLASSIFIED document, transmission is essential, and contains no weapons data.

(Approval Signature)

7A.5

EER CONSULTING
GEORGE J. STERZINGER
1616 P. ST., NW SUITE 410 EMAIL: STERZINGER@MSN.COM
WASHINGTON DC 20036 PHONE 202-939-3349 FAX 939-3487

MEMO

TO: AESPD/ JEFF GOLDEN

FROM: ROSE MCKINNEY JAMES

CC: CSTRR TEAM

DATE: NOV. 16,1996

RE: DRAFT LOI

DRAFT LETTER OF INTENT

This Letter of Intent (LOI) is made and entered into effective as of _____ (the Effective Date), by and among Amoco/Enron Solar Power Development (AESPD), with offices at 1400 Smith Street, Houston Texas, 77002, and the Corporation for Solar Technology and Renewable Resources (CSTRR) with offices at 6863 West Charleston Boulevard, Las Vegas, Nevada 89117.

RECITALS

WHEREAS AESPD is desirous of producing and selling electric capacity and energy from a solar energy based power plant (Solar Farm) using photovoltaic technology located at the NTS Solar Enterprise Zone (SEZ) site; and,

A.

WHEREAS CSTRR is a not-for-profit corporation whose primary purpose is facilitating the commercial development of technologies capable of generating electricity from solar energy; and,

WHEREAS CSTRR is prepared to offer various supports to AESPD in order to support the commercial development of the Solar Farm;

NOW THEREFORE the parties agree to negotiate in good faith to develop a set of definitive agreements which contain the following terms:

NTS Solar Power Project

1. AESPD will construct in southern Nevada, a solar electricity generating plant (Solar Farm) which delivers AC power, is rated at 10MW (AC peak) and utilizes state-of-the-art photovoltaic modules which have a mutually acceptable minimum module efficiency, and is properly qualified for central station use.
2. The energy output of the completed solar plant in a standard solar year is estimated to be ____ MW hours per year in the first full year. Estimated first year output of the completed plant, by month, and each years output thereafter, is included in Appendix 1.
3. AESPD shall be granted the rights to develop (Development Rights) for commercial use a 10 MW (AC Rating) Solar Farm.
4. The Development Rights include the following:

a. **Development Authority.** AESPD will have the right to construct, own, and operate a 10 MW (AC Rating) of electric capacity and energy from a Solar Farm at the mutually agreed to NTS location.

b. **Development Contract .** AESPD will sell the output from the Solar Farm under a fixed price and term contract provided by CSTRR.

c. **Development Plan.** AESPD will develop the Solar Farm according to the Plan outlined in paragraph 6(h) below.

d. **Land Acquisition.** CSTRR will assure that land is available at the NTS site at a location agreeable to AESPD. Should CSTRR and AESPD mutually agree to another SEZ site for the Solar Farm, CSTRR will render all reasonable assistance to AESPD to acquire land suitable to AESPD when formally requested in writing by AESPD.

6. CSTRR shall receive protections and considerations (Protections and Considerations) in exchange for the Development Rights.

7. The Protections and Considerations include the following:

a. **Direct Project Costs.** CSTRR direct costs associated with the development of this project will be considered part of the capital costs of the project and recovered from AESPD at the time of project financial closure.

b. **Participation.** CSTRR will receive at no cost an option to purchase up to 25% of the equity in the project at the project cost, or another mutually agreed to option for payback to CSTRR.

c. **Schedule.** Failure by AESPD to develop the project on the mutually agreed to Development Plan exposes CSTRR to the loss of tangible benefits granted to the developer, benefits which in the alternative could have awarded to another developer. As a result, failure to perform according to the Development Plan will cause damage to CSTRR, for which compensation which reflects the mutually agreed to value of the Development Rights granted to AESPD, will be paid to CSTRR;

~~CSTRR also reserves the right to transfer the Development Rights to other parties, at~~ CSTRR's discretion, in the event AESPD fails the project installation within a period of one year beyond that called for in the Development Plan.

d. **Technology Evaluation.** AESPD's specified photovoltaic equipment will be evaluated by a CSTRR Technical Group in order to validate initial installed capacity and yearly and monthly output under normal solar insolation conditions. In addition, a performance standard over time will be established which will be warranted by AESPD. In the event the performance under normal solar insolation deteriorates, AESPD will install units to return capacity and output to expected levels.

8. During the life of the project, CSTRR or a mutually agreed to third party will purchase the electric capacity and energy generated by AESPD's Solar Farm under the terms and conditions listed below.

a. **Quantity Purchased.** CSTRR or a mutually agreed to third party will purchase all electric capacity and energy generated by AESPD's Solar Farm.

b. **Purchase Price**

i) **Base Price.** AESPD agrees to sell electrical energy to CSTRR at a base price of $.055 per kilowatt hour in nominal US dollars for the calendar year in which the first installation comes on line.

ii) **Price Escalation.** The base price shall escalate at 3% per annum effective January 1st of each New Year. No other escalators or inflation adjustments will be applied to the new price other than this 3% escalator.

c. **Buyer Credit.** The buyer will be the US government, or some other entity with a AAA credit rating or a rating sufficiently sound to allow AESPD to satisfactorily complete project financing. If the credit rating of the buyer causes AESPD to be unable to complete project financing satisfactorily, AESPD reserves the right to renegotiate the Base Price.

d. **Term.** CSTRR will purchase all electric energy and capacity made available by the Solar Farm for a period of thirty years or for the maximum term both necessary for AESPD financing and obtainable on a firm basis by CSTRR.

e. **Financing.** CSTRR will assist AESPD in securing the qualified tax exempt industrial revenue bonds from the state of Nevada or other tax exempt financing mechanisms of equal value which offer an equivalent rate of approximately 6%. In order to meet the construction schedule in paragraph (h) below, any qualified funds must be identified no later than March 1, 1997.

f. **Environment.** CSTRR or the appropriate government entity will provide indemnification against any pre-existing environmental liabilities.

g. **Delivery Point and Interconnection Voltage.** The Delivery Point of electricity will be based on negotiations between AESPD and the ultimate purchaser. Should the

delivery point require the AESPD to build a substation and/or transmission lines the costs and base price implications can be negotiated in the final Power Purchase Agreement.

h. **Schedule of Capacity Installation.** The following schedule of capacity installation is subject to a definitive agreement being signed by no later than 31 December, 1996 and to financial closure being reached no later than 1 August, 1997. In the event these dates change, the Installation Milestone dates will slip an according period of time.

Current Year Capacity Addition	Cumulative Solar Farm Installation	Installation Milestone
5 MW	5 MW	December 31, 1998
5 MW	10 MW	December 31, 1999

i. **Payment Period.** The payment period will be monthly and payment in full will be due 15 days after the end of each month. Late payments will carry interest at prevailing U.S. 30 year Treasury Bond rates plus 400 basis points.

9. Consistent with the CSTRR mission, AESPD and CSTRR support the construction of a solar photovoltaic manufacturing facility within the CSTRR Solar Enterprise Zone. AESPD and CSTRR will commit to entering into negotiations for purposes of constructing said facility contingent upon the ability of CSTRR to identify at a minimum 20 MW's of marketing opportunity at terms and conditions mutually agreeable to AESPD and CSTRR.

10. **Confidentiality.** (As drafted.) The provisions of this Confidentiality agreement shall survive the termination of this Letter of Intent.

11. **Conditions Precedent.** (As drafted.)

12. All parties agree to work diligently towards a contract execution date of April 1, 1997 or sooner.

Amoco/Enron Solar
Power Development

ENRON CORP

Robert C. Kelly
Chief Executive Officer

1400 Smith Street
Houston, TX 77002
Tel: 713-853-7494
Fax: 713-646-8870

6 September, 1996

Rose McKinney-James
President & CEO
Corporation for Solar Technology and Renewable Resources
6863 W. Charleston Blvd.
Las Vegas, Nevada 89117

Terry Vaeth
Acting Managing Director
D.O.E. Nevada Operations Office
2753 S. Highland
Las Vegas, Nevada 89193

MARK-UP

Dear Ms. McKinney-James and Mr. Vaeth:

This Letter of Intent ("LOI") is made and entered into effective as of ~~1 September, 1996~~ (the "Effective Date"), by and among Amoco/Enron Solar Power Development ("AESPD"), with offices at 1400 Smith Street, Houston, Texas, 77002, the Corporation for Solar Technology and Renewable Resources ("CSTRR") with offices at 6863 West Charleston Boulevard, Las Vegas, Nevada 89117 ~~and the Nevada Test Site ("NTS") with offices at 2753 South Highland, Las Vegas, Nevada 89193~~.

RECITALS

WHEREAS AESPD is desirous of producing and selling electric capacity and energy from a solar energy based power plant ("Solar Farm") using photovoltaic technology located at the NTS ~~or other~~ Solar Enterprise Zone ("SEZ") site; and

WHEREAS CSTRR is desirous of promoting AESPD's development of a Solar Farm in the SEZ and the sale of electric capacity and energy ~~to the NTS~~; and

~~WHEREAS NTS is desirous of purchasing renewable energy from AESPD's~~ Solar Farm ~~located in~~ the SEZ;

NOW THEREFORE the parties agree to negotiate in good faith to develop a set of definitive agreements which contain the following terms:

Whereas CSTRR is prepared to offer various supports to AESPD in order to facilitate the commercial development of the Solar Farm,

B.

Ms. Rose McKinney James
Mr. Terry Vaeth
September 6, 1996
Page: 2

(3) CSTRR shall receive (CAPS) protections and considerations in exchange for the Development rights.

(4) The Protection + Considerations include the following:

NTS Solar Power Project

1. AESPD shall be granted the rights to develop ("Development Rights") for commercial use up to a 10 MW (~~DC~~ AC Rating) Solar Farm.

2. The Development Rights include the following:

   a. **Development Authority.** AESPD will have the right to construct, own, and operate, ~~and sell up to 10 MW (DC Rating)~~ of electric capacity and energy from a Solar Farm to the NTS. a 10MW (AC rating)

   ~~b. Development Contract.~~

   c. ~~b.~~ **Development Plan.** AESPD will develop the Solar Farm according to the Plan outlined in paragraph 6(h) below. Failure to achieve any milestone date within a one year grace period in the Development Plan will result in the termination of all Development Rights with respect to the capacity addition for which the milestone is missed. In the event of such termination, none of the parties shall have any further liability to the other parties with respect to the terminated development rights.

   d. ~~c.~~ **Land Acquisition.** The NTS will make land available for the Solar Farm at a location agreeable to AESPD at the NTS facility. Should the NTS, CSTRR, and AESPD mutually agree to another SEZ site for the Solar Farm, CSTRR will render all reasonable assistance to AESPD to acquire land suitable to AESPD when formally requested in writing by AESPD.

3. During the life of the project, ~~the NTS~~ CSTRR or a mutually agreeable 2nd party will purchase the electric capacity and energy generated by AESPD's Solar Farm under the terms and conditions listed below.

   a. **Quantity Purchased.** ~~NTS~~ CSTRR will purchase ~~or negotiate the purchase by a 2nd party~~ all electric capacity and energy generated by AESPD's Solar Farm, ~~up to but not to be provided plus does not exceed the capacity not exceeded~~

   b. **Purchase Price.**

      (i) ***Base Price.*** AESPD agrees to sell electrical energy to NTS at a base price of $.055 per kilowatt hour in ~~1994~~ U.S. dollars (~~net of any and all applicable local, state, or federal taxes.~~) ~~as of~~ for the calendar year in which the first installation comes on-line.

      (ii) ***Price Escalation.*** The base price shall escalate at 3% per annum effective 1 January of each new year. No other escalators or inflation adjustments will be applied to the new price other than this 3% escalator.

   c. **Buyer Credit.** The buyer will be the U.S. Government, or some other entity with a AAA credit rating. AESPD will also consider selling power to an entity with less than a AAA credit rating, but because AESPD's financing costs will be increased, AESPD's power price must also be increased.

d. **Term:** For every year capacity is installed at the Solar Farm, the NTS will purchase all electric capacity and energy made available by that year's cumulative added capacity for a period of ~~20~~ years.

e. **Financing.** CSTRR will assist AESPD in securing a minimum of $ 20 MM in tax-exempt industrial revenue bonds from the state of Nevada or other tax exempt financing mechanisms of equal value which offer an equivalent rate of approximately 6%. In order to meet the construction schedule in paragraph (h) below, these funds must be secured no later than 1 March, 1997.

f. **Environment.** The NTS or other appropriate government entity will provide indemnification against any pre-existing environmental liabilities.

g. **Delivery Point and Interconnection Voltage.** The Delivery Point of electricity to the NTS will be at the dead end structure(s) at 12kV in the Solar Farm's switchyard. Should the delivery point require the AESPD to build a substation and / or transmission lines the costs and electricity price implications can be negotiated in the final Power Purchase Agreement.

h. **Schedule of Capacity Installation.** The following schedule of capacity installation is subject to a definitive agreement being signed by all parties no later than 31 December, 1996 and to financial closure being reached no later than 1 August, 1997:

Current Year Capacity Addition	Cumulative Solar Farm Installation	Installation Milestone
5 MW	5 MW	December 31, 1998
5 MW	10 MW	December 31, 1999

i. **Payment Period.** The payment period will be monthly and payment in full will be due 15 days after the end of each month. Late payments will carry interest at prevailing U.S. 30-year Treasury Bond rates plus 400 basis points.

7. **Confidentiality.**

a. CSTRR, AESPD and NTS acknowledge that, pursuant to the objectives of this LOI, they may each wish to transmit to one another, and to receive from one another, information that the transmitting party may deem confidential and proprietary. Such information shall not be classified as "Confidential Information" and protected under this Paragraph unless (I) it is transmitted in a writing marked "Confidential" or "Proprietary", or (2) it is an oral disclosure that is reduced to writing, marked "Confidential" or "Proprietary", and transmitted to the recipient within one month.

TALKING POINTS

EXPORT AUTHORIZATIONS/PRESIDENTIAL PERMITS
Status/Response to Open Access Issue

Background/Pending FERC Action

•Enron Power Marketing Incorporated (EPMI) filed emergency application with FERC to permit bid for CFE contract to export electricity to Mexico after El Paso Electric Company (EPE) denied transmission. FERC determined authority over international part of line in US belonged to DOE under Federal Power Act (FPA) and Presidential permit authority. EPMI refiled with DOE.

•Secretary delegated to FERC authority to amend EPE's two Presidential permits for Diablo and Ascarate lines and/or EPE's electricity export authorization to effectuate open access for exports to Mexico for CFE contract.

•FERC accepted EPMI DOE filing as theirs and basically issued EPE show cause order in new proceeding (Docket No. EL97-8-000). EPE has agreed to comply with FERC condition to supply open access service consistent with Order 888 tariff to any CFE contract winner, and subject to FERC resolution of disputes--but only to extent of available firm capacity.

•Salt River Project apparently won CFE contract bid. As a State agency, it does not need export authorization under FPA. EPE agrees to provide transmission but claims insufficient capacity is available. FERC will not order access if no capacity is available, but will probably review capacity issue.

•Since EPMI did not win Mexican contract, FERC likely will not rush resolution of pending EPMI/EPE proceeding. The language and approach FERC uses in modifying the EPE permits and export authorization will necessarily impact on how DOE handles its pending cases and existing permits.

DOE Open Access Approach/Response

•DOE has the pending EPMI application, to the extent it deals with the EPMI export authorization, plus 9 other pending requests for authorization to export electricity to Mexico under FPA §202 involving the permitted EPE lines. Also pending are 11 requests to export to Canada. (See Attachment A)

•DOE open access approach will be to coordinate the Presidential permits and export authorizations, both pending and future. New language will be developed for the preamble and ordering sections of both to clarify the permit holder must provide comparable open access transmission to third parties, and the export authorizations will reflect the same.

•DOE is developing the necessary language, but it is contingent on language/approach FERC takes in EPMI/EPE proceeding to ensure consistency.

•DOE is also developing strategy for implementing open access policy over all international lines connecting to Mexico and to Canada. Canadian lines raise additional issue related to annual energy limits that have been established for some lines. DOE has already indicated to the public in an unrelated proceeding that it would deal with energy limits at a future time. (See Attachment B for Presidential permitted lines by region).

•DOE approach <u>after FERC action:</u> Issue public notice--possibly "show cause" order--to holders of Presidential permits for bulk power lines of DOE intention to amend the permits to require comparable open access under consistent terms, conditions, and principles to those filed at FERC in their Order 888 tariff. The open access principle would be incorporated into existing export authorizations as they come up for renewal or amendment rather than a blanket proceeding.

Open electricity import/export dockets on 11/22/96.

ACTIVITIES AT THE US BORDER WITH CANADA

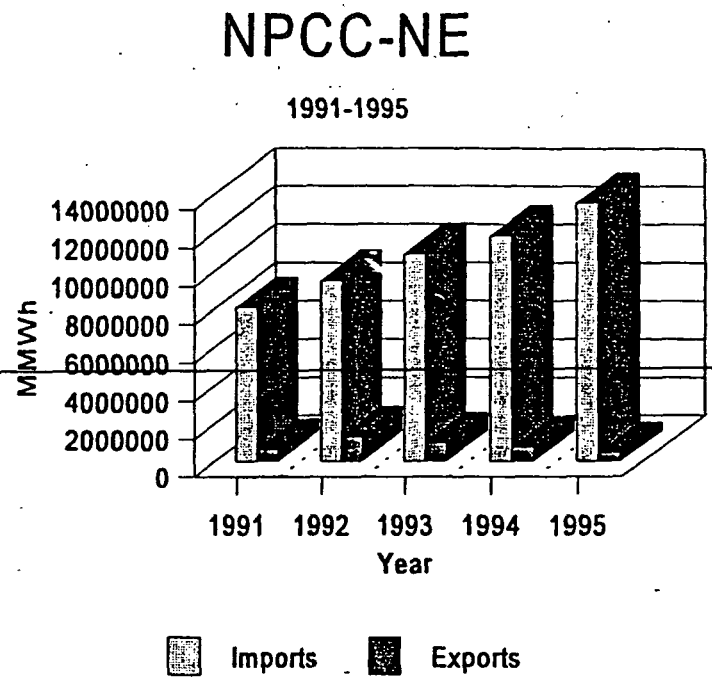
APPLICANT	ACTION	DOCKET	Comments Closed	Comments To Close
Calpine Energy	Export	EA-117	8/22	
Coastal Electric	Export	EA-133		12/9
Edison Source	Export	EA-120	9/20	
Electric Clearinghouse	Export	EA-122	10/18	
Federal Energy	Export	EA-126		12/9
Hill County Electric Coop	Permit	PP-118	9/4	
Hill County Electric Coop	Export	EA-118	9/4	
Northeast Utilities	Export	EA-111	4/1	
PECO Energy	Export	EA-123	10/17	
Sonat Power Marketing	Export	EA-131		12/9
Western Systems Power Pool	Amend EA	EA-98-D	Not to be noticed	

ACTIVITIES AT THE U.S. BORDER WITH MEXICO

Arizona Public Service	Export	EA-134		12/27
Coastal Electric	Export	EA-132		12/9
Edison Source	Export	EA-119	9/20	
Electric Clearinghouse	Export	EA-121	10/18	
Enron Power Marketing Co.	Amend EA	EA-102-A		12/9
Federal Energy Sales	Export	EA-125		12/9
Public Service of N. Mexico	Export	EA-124	10/14	
Quixx Corporation	Export	EA-127		12/9
Southwestern Pub. Svs.	Export	EA-128		12/9
Sonat Power Marketing	Export	EA-130		12/9

I. Northeast Power Coordinating Council (NPCC) - This region, divided into two parts, New England and New York, is the most heavily interconnected. It regularly accounts for almost 50 percent of total U.S. imports.

A. New England - From 1991-1995 eletricity imports showed a steady annual increse, reaching 13,572,573 MWh in 1995 (the highest one-year total for any region or sub-region over the last five years). Exports remained at relatively low levels, exceeding 1 million MWh only in 1992. On a net basis, this sub-region was a net importer averag ing almost 10 million MWh of net imports over the five-year period.

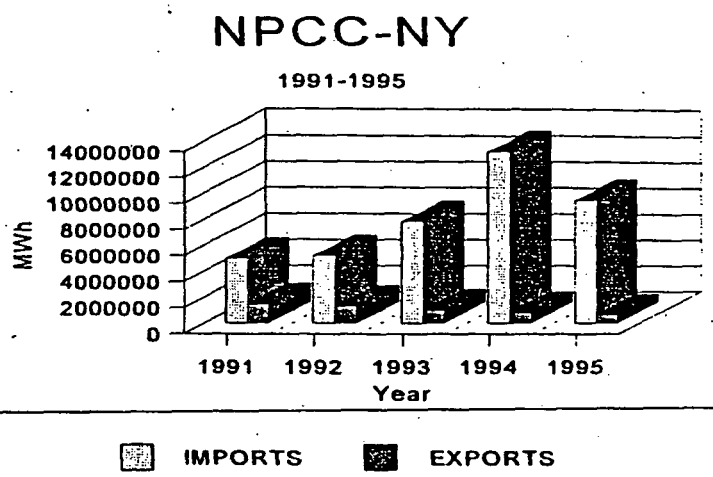


HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS

NPCC-NE - CANADA

PERMITEE	FE PERMIT NUMBER	EXPORT DOCKET NUMBER	DATE PERMIT SIGNED	DESCRIPTION OF LINES
Central Maine Power Company	PP-62		76-09-29	2-1/0 triplex cables 120-240 V Coburn Gore,ME
Citizens Utilities Company	PP-66	EA-66-B	79-06-21	1-120 KV Derby Line, Vermont
Citizens Utilities Company	PP-80	EA-80	83-08-05	1-25 KV Cannan, Vermont
				1-25 KV Norton, Vermont
Eastern Maine Electric Coop, Inc.	PP-20		53-05-27	1-6.9 KV Forest City, Maine
Eastern Maine Electric Coop, Inc.	PP-32	E-6853	59-02-05	1-69 KV Calais, Maine
Fairfield Energy Venture & Maine PS Co	PP-83EA			Trans. over facilities in PP-12 and PP-29
Fraser Paper Limited	PP-11	IT-5952	45-11-20	1-69 KV Madawaska, Maine
Joint Owners of the Highgate Project	PP-82		85-04-14	1-345 KV operating at 120 KV-Franklin, VT
Maine Electric Power Company	PP-43	E-7534	69-07-25	1-345 KV Houlton, Maine
Maine Public Service Company	PP-12	E-6751	48-01-03	1-69 KV Limestone, Maine
				1-69 KV Fort Fairfield, Maine
Maine Public Service Company	PP-29	E-6751	57-09-18	1-138 KV @ BM #62, Aroostock County, ME
				2-69 KV Madawaska, Maine
Maine Public Service Company	PP-81		84-09-21	1-7.2 KV River-de-Chute, Maine
New England Power Pool		EA-76-C		Authorized to use PP-76
Vermont Electric Cooperative	PP-69		80-10-09	5-4 KV Derby Line, Vermont
				1-48 KV Derby Line, Vermont
Vermont Electric Transmission Co.	PP-76		84-04-05	1-450 KV DC Norton, Vermont
				1-345 KV Sandy Pond to Milbury #3 Substa
				1-345 KV Milbury #3 to West Medway Substa

B. New York - In four of the last five years, electricity imports rose steadily, reaching 13,249,551 MWh in 1994 before declining in 1995. Electricity exports in this sub-region slowly declined over the five year period. In fact, exports in 1995 declined to 631,016 MWh, a level that was typical throughout most of the 1980's. On a net bases, the NPCC-NY sub-region averaged less than half the net exports over the last five years than it experienced throughout most of the 1980's.

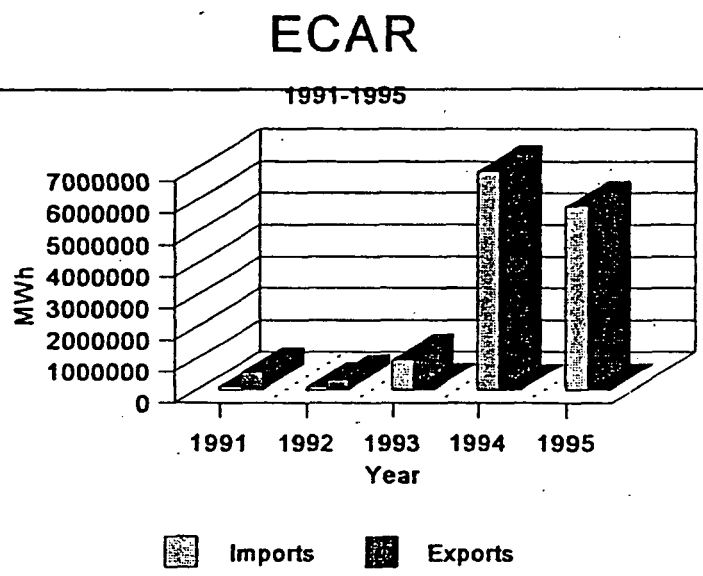


HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS

NPCC-NY - CANADA

PERMITEE	FE PERMIT NUMBER	EXPORT DOCKET NUMBER	DATE PERMIT SIGNED	DESCRIPTION OF LINES
Long Sault Incorporated	PP-24		55-06-26	2-115 KV Massena, New York
New York Power Authority	PP-25		55-09-26	2-230 KV Massena, New York
New York Power Authority	PP-30		58-02-28	1-230 KV Devil's Hole, New York
New York Power Authority	PP-56		74-09-13	1-765 KV Fort Covington, New York
New York Power Authority	PP-74		81-09-04	2-345 KV Niagara Falls, New York
Niagara Mohawk Power Corp.	PP-13	IT-6078	48-01-31	1-4.8 KV Hogansburg, New York
Niagara Mohawk Power Corp.		EA-24	56-01-24	Authorized to use PP-24
Niagara Mohawk Power Corp.	PP-31	E-6797	58-02-28	1-230 KV (3 phase) Devil's Hole, New York
				2-38 KV Buffalo, New York
				2-69 KV Queenstown, New York
				4-12 KV 3/c cables - Rainbow Br. New York
				1-12 KV 1/c cable - Rainbow Br. (never built)
				2-69 KV Devil's Hole, New York
Presley, E.T.	PP-54		73-03-16	1-4.8 KV (1 phase) Wellesley Island, NY

II. East Central Area Reliability Coordination Agreement (ECAR) - Imports for this lightly interconnected region were at record levels in 1994 and 1995, reaching 6,909,582 MWh and 5,798,944 MWh respectively. Exports over the five-year period returned to historic low levels after the unusual 1989 and 1990 periods where exports reached almost 11 million MWh in 1990. In 1991 and 1992 ECAR was a net exporter. From 1993-1995 the region was an overwhelming net importer.

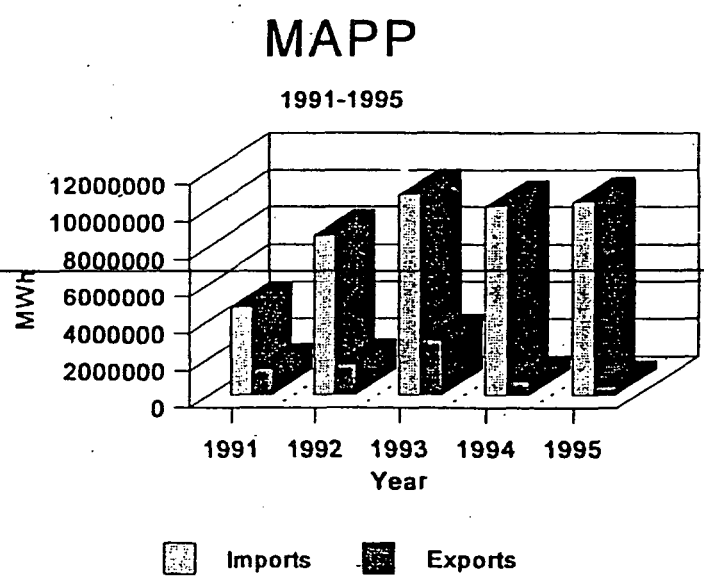


HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS

ECAR

PERMITEE	FE PERMIT NUMBER	EXPORT DOCKET NUMBER	DATE PERMIT SIGNED	DESCRIPTION OF LINES
Detroit Edison Company	PP-38	E-7206	66-03-01	1-345 KV St. Clair, Michigan
Detroit Edison Company	PP-21	E-7206	53-10-12	1-230 KV Marysville, Michigan 1-230 KV Detroit, Michigan
Detroit Edison Company	PP-58	EA-58-E	75-07-25	1-345 KV St. Clair, Michigan
St. Clair Tunnel Company	PP-99	EA-99	94-12-21	1-4.8 KV St, Clair, Michigan

III. Mid-Continent Area Power Pool (MAPP) - From 1993-1995 electricity imports into the MAPP region exceeded 10 million MWh for each year. These imports were the highest levels ever reached in the region. In fact, only once, in 1986, did imports approach 8 million MWh. In 1993 exports rose to 2,958,591 MWh, which was the second highest export level reached since 1988. In 1994 and 1995 the MAPP region was an overwhelming net importer, reaching all-time high net import levels.



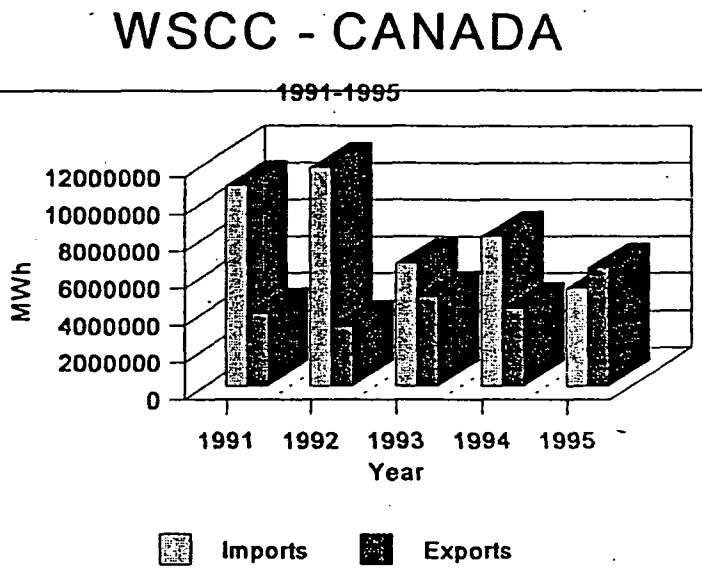
HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS

MAPP

PERMITEE	FE NUMBER	EXPORT PERMIT NUMBER	DATE DOCKET SIGNED	PERMIT DESCRIPTION OF LINES
Basin Electric Power Coop	PP-64	IE-78-5	79-11-30	1-230 KV Tioga, North Dakota
Boise Cascade Corp	PP-39	PP-39EA	66-11-07	1-6.6 KV International Falls, Minnesota
Minnesota Power & Light Company	PP-78	PP-78EA	82-09-30	1-115 KV International Falls, Minnesota
Minnkota Power Cooperative, Inc.	PP-61	E-9534	76-07-06	1-230 KV Roseau County, Minnesota
Minnkota Power Cooperative, Inc.	PP-70		80-10-10	1-12 KV Lake of the Woods County, Minnesota
North Central Electric Coop, Inc.	PP-67		79-06-27	1-12.5 KV u/g Dunseith, North Dakota
Northern Electric Cooperative Assoc.	PP-28	E-6670	56-12-12	3-7.2 KV Valley County, Montana
Northern Electric Cooperative Assoc.	PP-44	E-7465	69-07-02	1-12.4 KV St. Louis County, Minnesota
Northern Electric Cooperative Assoc.	PP-60	E-9554	76-07-12	2-14.4 KV St. Louis County, Minnesota
Northern States Power Company	PP-45-1	E-7482	69-09-19	1-230 KV Red River, North Dakota
Northern States Power Company	PP-63	EA-63-B	79-03-06	1-500 KV Roseau County, Minnesota
Roseau Electric Cooperative, Inc.	PP-42	E-8361	68-11-25	1-7.2 KV (1 phase) Roseau County, MN
Roseau Electric Cooperative, Inc.	PP-55	E-8361	74-05-09	1-25 KV (1 phase) Roseau County, MN

IV. Western Systems Coordinating Council (WSCC) - The WSCC is the largest geographic area of all the NERC regions. It is the only region that is both interconnected with Canada, on it's northern border, and with Mexico, on it's southern border.

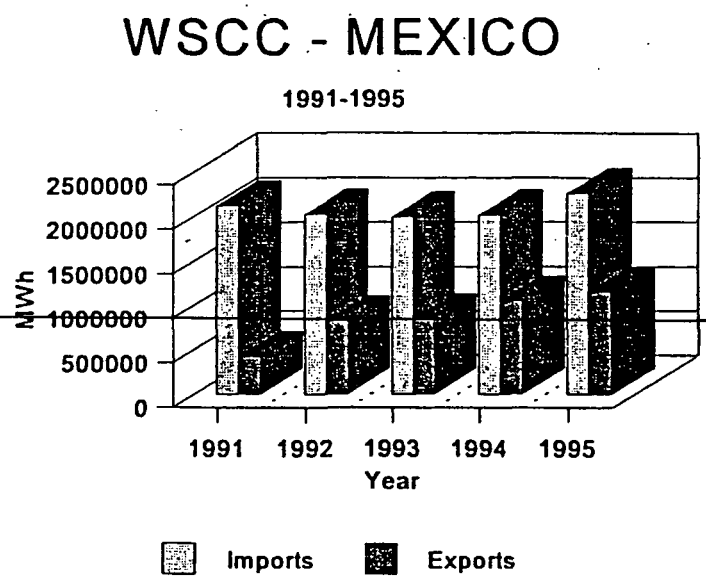
A. Canada - In 1991 and 1992 this sub-region had its third and forth highest levels of imports ever recorded. From 1993-1995 imports retuned to their historic amounts. Exports, in 1995, reached their highest level ever recorded (6,373,686 KWh). Also in 1995, for the first time, the WSCC-CANADA sub-region was a net exporter of electric energy.



HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS
WSCC - CANADA

PERMITEE	FE PERMIT NUMBER	EXPORT DOCKET NUMBER	DATE PERMIT SIGNED	DESCRIPTION OF LINES
Bonneville Power Administration	PP-10		45-10-27	2-500 KV Blaine, Washington
Bonneville Power Administration	PP-36		64-09-03	1-230 KV Nelway, British Columbia
Bonneville Power Administration	PP-46		70-08-29	1-230 KV Nelway, British Columbia
Glacier Electric Cooperative, Inc.	PP-18	EA-18-B	52-07-12	1-120/240 V Carway, Alberta 1-120/240 V Del Bonita, Alberta
Marias River Electric Coop, Inc.	PP-41	IT-6097	68-07-28	1-6.9 KV Sweet Grass, Montana
PUD #1 of Pend Oreille County, WA	PP-34		59-11-05	1-7.2 KV (1 phase) Pend Orielle County, WA
Portland General Electric		EA-97		Authorized to use PP-10, PP-34, PP-46
Puget Sound Power & Light Co.	PP-06-1		81-04-28	1-25 KV Pt. Roberts, Washington
San Diego G&E Company		EA-100		Authorized to use PP-10, PP-34, PP-46
Washington Water Power	PP-86		93-03-08	1-230KV Northport, WA
Western Systems Power Pool		EA-98		Authorized to use PP-10, PP-34, PP-46

B. Mexico - Imports remained at virtually the same level throughout the five-year period. Exports during the period rose steadily, reaching an all-time high of 1,154,421 MWh in 1995. On a net basis the WSCC-MEXICO sub-region remains a net importer. The overwhelming majority of electricity transactions between the U.S. and Mexico occur within this sub-region.



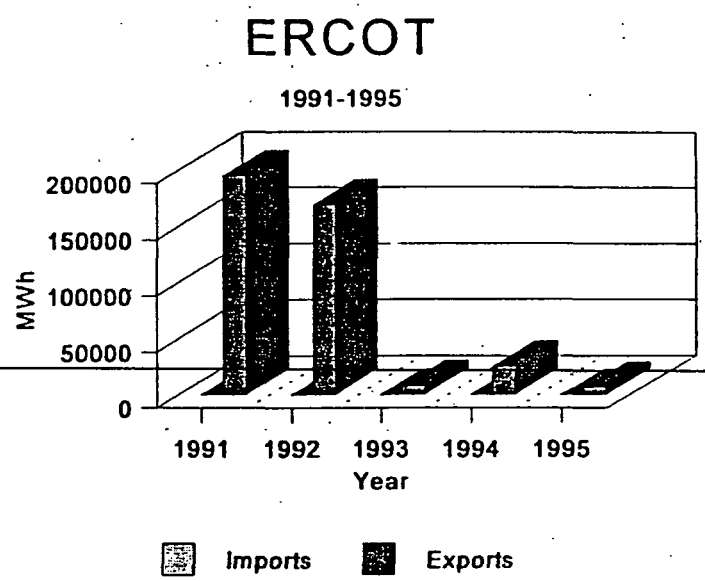
HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS

WSCC - MEXICO

PERMITEE	FE PERMIT NUMBER	EXPORT DOCKET NUMBER	DATE PERMIT SIGNED	DESCRIPTION OF LINES
Citizens Utilities Company	PP-16	E-6431	52-08-08	1-13 KV Nogales, Arizona
				1-2.3 KV Nogales, Arizona
Citizens Utilities Company	PP-40	E-7370	67-12-29	1-13.8 KV Lochiel, Arizona
El Paso Electric Company	PP-48	EA-48-1	70-09-30	1-115 KV El Paso, Texas (Ascarate)
El Paso Electric Company	PP-92		92-04-16	1-115 KV Diablo Substa., Sunland Park, NM
Imperial Irrigation District	PP-90		90-11-29	1-34.5 KV in Calexico, California
San Diego Gas & Electric Company	PP-49	E-7545	70-12-29	1-69 KV Tijuana, Mexico
				1-12 KV Tijuana, Mexico
				1-12 KV Tecate, Mexico
San Diego Gas & Electric Company	PP-68	PP-68EA	81-01-12	1-230 KV San Diego Co, CA (Miguel-Tiajuana)
San Diego Gas & Electric Company	PP-79	PP-79EA	83-12-20	2-230 KV Imperial Valley, CA
Southern California Edison Company	PP-79SC		56-04-06	1-161 KV Andrade, CA

V. Electric Reliability Council of Texas (ERCOT) - This region has a reletively large number of small lines interconnected with Mexico (no line exceeds 138KV). Thus historically, ERCOT, has had virtually no imports or exports.

Over the past five years, this was certainly true for imports. However, in 1991 and 1992 exports reached levels that were 3-4 times higher than anything ever previously recorded before returning, in 1993, to more normal amounts of MWh. This is the only region that is a consistant net exporter.



HOLDERS OF PRESIDENTIAL PERMITS AND EXPORT AUTHORIZATIONS

ERCOT

PERMITEE	FE PERMIT NUMBER	EXPORT DOCKET NUMBER	DATE PERMIT SIGNED	DESCRIPTION OF LINES
Central Power & Light Company	PP-94	EA-94A	92-06-18	1-69 KV Brownsville, TX 1-138 KV Brownsville, TX
Comision Federal de Electricidad	PP-03	E-6137	41-08-26	1-12.5 KV (3 phase) Presidio, Texas
Comision Federal de Electricidad	PP-51	E-7651	71-10-15	1-7.2 KV (1 phase) Redford, Texas
Comision Federal de Electricidad	PP-59	E-7972	76-04-16	1-12 KV Amistad Dam NW of Del Rio,TX
Comision Federal de Electricidad	PP-75	PP-75EA	82-08-13	1-7.2 KV Comstoc,Texas
Comision Federal de Electricidad Golfo Norte	PP-50		49-04-29	1-138 KV Eagle Pass, Texas
Comision Federal de Electricidad Golfo Norte	PP-57	IT-5025	75-01-24	1-138 KV Laredo, Texas
Comision Federal de Electricidad Golfo Norte	PP-94		92-06-18	Brownsville, Texas
Matamoros, S.A., Compania Electrica	PP-15	IT-5656	41-08-14	1-69 KV Brownsville, Texas
Rio Grande Electric Cooperative, Inc.	PP-33	E-6868	59-07-28	1-14.4/24.9 KV Health Crossing, Texas
Rio Grande Electric Cooperative, Inc.	PP-53	E-7688	73-01-16	1-14.4 KV Lajitas, Texas 1-14.4 KV Castolon, Texas 1-14.4 KV Candelaria, Texas
West Texas Utilities Company		EA-3-G	79-03-19	Authorized to use PP-3

ENRON

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UNITED STATES DEPARTMENT OF ENERGY

Office of Fossil Energy
Washington, D.C.

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RELEVANT DOCUMENTS

EL Paso (EPE) Export Authorization

Issued 4/16/92. ¶ (F) requires EPE to conduct "all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the DOE."

Arguably, actions by EPE are contrary to the principles of non-discrimination contained in the FPA, if they are able to block access for competitors to the cross-border trade. (See slip op. at 11-12). Thus, they are in violation of their existing export authorization. Also, could stretch language of "issued by DOE" to included FERC rules (888 Open Access Nondiscriminatory Transmission Service) and implied principle of Enron export authorization order--DOE did not expect transmission service would be denied, but, after negotiation between the affected utilities, provided in accordance with filed FERC open access tariffs .

¶ (E) allows that the "authorization herein granted may be modified from time to time or terminated by further order of the DOE." No hearing or notice is specifically required by the Order.

Enron Export Authorization

NOTE: "No person shall transmit any electric energy" language of 202(e) was interpreted by DOE to include marketers; basically last person to own the power in the US. DOE did not limit it to the traditional definition of a "transmitting utility."

Analysis Section of Order provides that "the issue of FERC jurisdiction and authority to order retail wheeling is not relevant or a part of this DOE proceeding. Also, the issue of DOE's authority to order transmission service is not relevant, because that is not being done in this proceeding."

Authorization was granted to export over permitted lines, including EPE lines.

¶ (F) provided that the "authorization may be modified from time to time or terminated by further order of DOE..." with no requirement for notice and comment.

NOTE: This approach was taken and accepted by GC after consultation with FERC staff who indicated that FERC would exercise its "interstate commerce" jurisdiction of 201(c) up to the border--and past the US substations. Our approach was to minimize the risk of litigation by EPE.

EPE Presidential Permits

hereto.

(5)

SC-129

Show Cause Order
El Paso Electric Company

TAB

1 Federal Power Act. Section 202(e)

2 DOE Organization Act. Section 402(f)

3 Executive Orders. 12038, 10485, 8202

4 Regulations. 10 CFR 205

5 Delegation Orders

6 El Paso export authorization. EA-48-I

7 El Paso Presidential Permit PP-48-3 (Ascarate)

8 El Paso Presidential Permit PP-92 (Diablo)

~~9. Policy Statement DRAFT, April 17, 1980~~

same meaning as when used in the Public Utility Holding Company Act of 1935.

(16 U.S.C. 824)

INTERCONNECTION AND COORDINATION OF FACILITIES; EMERGENCIES; TRANSMISSION TO FOREIGN COUNTRIES

SEC. 202. (a) For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts. Before establishing any such district and fixing or modifying the boundaries thereof the Commission shall give notice to the State commission of each State situated wholly or in part within such district, and shall afford each such State commission reasonable opportunity to present its views and recommendations, and shall receive and consider such views and recommendations.

(b) Whenever the Commission, upon application of any State commission or of any person engaged in the transmission or sale of electric energy, and after notice to each State commission and public utility affected and after opportunity for hearing, finds such action necessary or appropriate in the public interest it may by order direct a public utility (if the Commission finds that no undue burden will be placed upon such public utility thereby) to establish physical connection of its transmission facilities with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons: *Provided*, That the Commission shall have no authority to compel the enlargement of generating facilities for such purposes, nor to compel such public utility to sell or exchange energy when to do so would impair its ability to render adequate service to its customers. The Commission may prescribe the terms and conditions of the arrangement to be made between the persons affected by any such order, including the apportionment of cost between them and the compensation or reimbursement reasonably due to any of them.

(c) During the continuance of any war in which the United States is engaged, or whenever the Commission determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes, the Commission shall have authority, either upon its own motion or upon complaint, with or without notice, hearing, or report, to require by order such tem-

A.

porary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest. If the parties affected by such order fail to agree upon the terms of any arrangement between them in carrying out such order, the Commission, after hearing held either before or after such order takes effect, may prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party.

(d) During the continuance of any emergency requiring immediate action, any person engaged in the transmission or sale of electric energy and not otherwise subject to the jurisdiction of the Commission may make such temporary connections with any public utility subject to the jurisdiction of the Commission or may construct such temporary facilities for the transmission of electric energy in interstate commerce as may be necessary or appropriate to meet such emergency, and shall not become subject to the jurisdiction of the Commission by reason of such temporary connection or temporary construction: *Provided,* That such temporary connection shall be discontinued or such temporary construction removed or otherwise disposed of upon the termination of such emergency: *Provided further,* That upon approval of the Commission permanent connections for emergency use only may be made hereunder.

(e) After six months from the date on which this Part takes effect, no person shall transmit any electric energy from the United States to a foreign country without first having secured an order of the Commission authorizing it to do so. The Commission shall issue such order 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. The Commission may by its order grant such application in whole or in part, with such modifications and upon such terms and conditions as the Commission may find necessary or appropriate, and may from time to time, after opportunity for hearing and for good cause shown, make such supplemental orders in the premises as it may find necessary or appropriate.

(f) The ownership or operation of facilities for the transmission or sale at wholesale of electric energy which is (a) generated within a State and transmitted from that State across an international boundary and not thereafter transmitted into any other State, or (b) generated in a foreign country and transmitted across an international boundary into a State and not thereafter transmitted into any other State, shall not make a person a public utility subject to regulation as such under other provisions of this part. The State within which any such facilities are located may regulate any such transaction insofar as such State regulation does not conflict with the exercise of the Commission's powers under or relating to subsection 202(e).

(g) In order to insure continuity of service to customers of public utilities, the Commission shall require by rule, each public utility to—

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(16 U.S.C. 824a)

DISPOSITION

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(16 U.S.C. 824b)

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(1) report promptly to the Commission and any appropriate State regulatory authorities any anticipated shortage of electric energy or capacity which would affect such utility's capability of serving its wholesale customers,

(2) submit to the Commission, and to any appropriate State regulatory authority, and periodically revise, contingency plans respecting—

(A) shortages of electric energy or capacity, and

(B) circumstances which may result in such shortages, and

(3) accommodate any such shortages or circumstances in a manner which shall—

(A) give due consideration to the public health, safety, and welfare, and

(B) provide that all persons served directly or indirectly by such public utility will be treated, without undue prejudice or disadvantage.

(16 U.S.C. 824a)

DISPOSITION OF PROPERTY; CONSOLIDATION; PURCHASE OF SECURITIES

SEC. 203. (a) No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so. Upon application for such approval the Commission shall give reasonable notice in writing to the Governor and State commission of each of the States in which the physical property affected, or any part thereof, is situated, and to such other persons as it may deem advisable. After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same.

(b) The Commission may grant any application for an order under this section in whole or in part and upon such terms and conditions as it finds necessary or appropriate to secure the maintenance of adequate service and the coordination in the public interest of facilities subject to the jurisdiction of the Commission. The Commission may from time to time for good cause shown make such orders supplemental to any order made under this section as it may find necessary or appropriate.

(16 U.S.C. 824b)

ISSUANCE OF SECURITIES; ASSUMPTION OF LIABILITIES

SEC. 204. (a) No public utility shall issue any security, or assume any obligation or liability as guarantor, indorser, surety, or otherwise in respect of any security of another person, unless and until, and then only to the extent that, upon application by the public utility, the Commission by order authorized such issue or as-

(j) In each annual authorization and appropriation request under this Act,the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

Section 401(b), appearing in P.L. 95-91, August 4, 1977, read as follows until its amendment in P.L. 101-271, April 11, 1990:

(b) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

[¶ 1062]

Jurisdiction of the Commission

Sec. 402. (a)(1) There are hereby transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act;

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act, and the interconnection, under section 202(b), of such Act, of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act;

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act;

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act and Natural Gas Act.

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

~~(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the~~ Federal Power Act; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act.

(b) [Repealed.]

(c)(1) Pursuant to the procedures specified in section 404 and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 4(a) of the Emergency Petroleum Allocation Act of 1973 which is required by section 8 or 12 of such Act to be transmitted by the President to, and reviewed by, each House of Congress, under section 551 of the Energy Policy and Conservation Act.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 8 or 12 of the Emergency Petroleum Allocation Act of 1973, and section 551 of the Energy Policy and Conservation Act.

(d) The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

B

except that nothing in this subsection shall require that functions under sections 105 and 106 of the Energy Policy and Conservation Act shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 404 of this Act.

(f) No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 404, shall be final agency action within the meaning of section 704 of title 5, United States Code, and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to section 402.

.01 Section 402 (b), appearing in P.L. 95-91, August 4, 1977, read as follows until its repeal in P.L. 103-272, July 5, 1994:

(b) There are hereby transferred to, and vested, in the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.

[¶ 1063]

Initiation of Rulemaking Proceedings Before Commission

Sec. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Any function described in section 402 of this Act which relates to the establishment of rates and charges under the Federal Power Act or the Natural Gas Act, may be conducted by rulemaking procedures. Except as provided in subsection (d), the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

¶ 12,161 Executive Order 12038

Relating to Certain Functions Transferred to the Secretary of Energy by the Department of Energy Organization Act

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 USC 7101 *et seq.*), it is hereby ordered as follows:

[¶ 12,162]

~~SECTION 1. *Functions of the Federal Energy Administration.*~~ In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act, hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended, relating to Federal Regional Councils, is further amended by deleting "The Federal Energy Administration" in Section 1(a)(10) and substituting "The Department of Energy", and by deleting "The Deputy Administrator of the Federal Energy Administration" in Section 3(a)(10) and substituting "The Deputy Secretary of Energy".

(b) Executive Order No. 11790 of June 25, 1974, relating to the Federal Energy Administration Act of 1974, is amended by deleting "Administrator of the Federal Energy Administration" and "Administrator" wherever they appear in Sections 1 through 6 and substituting "Secretary of Energy" and "Secretary", respectively, and by deleting Section[s] 7 through 10.

(c) Executive Order No. 11912, as amended, relating to energy policy and conservation, and Proclamation No. 3279, as amended, relating to imports of petroleum and petroleum products, are further amended by deleting "Administrator of the Federal Energy Administration", "Federal Energy Administration", and "Administrator" (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting "Secretary of Energy", "Department of Energy", and "Secretary", respectively, and by deleting "and the Administrator of Energy Research and Development" in Section 1(b) of Executive Order No. 11912, as amended.

[¶ 12,163]

SEC. 2. *Functions of the Federal Power Commission.* In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act, the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting "Federal Power Commission" and "Commission" wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each "Secretary of Energy".

(b) Executive Order No. 11969 of February 2, 1977, relating to the administration of the Emergency Natural Gas Act of 1977, is hereby amended by deleting the second sentence in Section 1, by deleting "the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and" in Section 2, and by deleting "Chairman of the Federal Power Commission" and "Chairman" wherever those terms appear and substituting therefor "Secretary of Energy" and "Secretary", respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended, relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting "from each of the following Federal departments and agencies" and substituting therefor "to be appointed by the head of each of the following Executive agencies", by deleting "Federal Power Commission" and substituting therefor "Department of Energy", and by deleting "such member to be appointed by the head of each department or independent agency he represents".

[¶ 12,164]

SEC. 3. *Functions of the Secretary of the Interior.* In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act, the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting "Secretary of Energy" for "Secretary of the Interior", by adding "of the Interior" after "Secretary" in Sections 2 and 3, and by adding "and the Secretary of Energy," after "the Secretary of the Interior" wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting "Secretary of the Interior" and "Department of the Interior" wherever those terms ap-

pear and substituting therefor "Secretary of Energy" and "Department of Energy", respectively.

[¶ 12,165]

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration.*

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act, the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended; Executive Order No. 10899 of December 9, 1960; Executive Order No. 11057 of December 18, 1962; Executive Order No. 11477 of August 7, 1969; Executive Order No. 11752 of December 17, 1973; and Executive Order No. 11761 of January 17, 1974 are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93-438; 88 Stat. 1233), and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974.

(2) Executive Order No. 11652, as amended, relating to the classification of national security matters, is further amended by substituting "Department of Energy" for "Energy Research and Development Administration" in Sections 2(A), 7(A) and 8 and by deleting "Federal Power Commission" in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976, relating to export licensing policy for nuclear materials and equipment, is amended by substituting "the Secretary of Energy" for "the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator" in Section 1(b) and for the "Administrator" in Sections 2 and 3.

(4) Executive Order No. 11905, as amended, relating to foreign intelligence activities, is further amended by deleting "Energy Research and Development Administration", "Administrator of the Energy Research and Development Administration", and "ERDA" wherever those terms appear and substituting "Department of Energy", "Secretary of Energy", and "DOE" respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting "Department of Energy" for "Energy Research and Development Administration":

(i) Executive Order No. 11345, as amended, establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended, establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended, establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended, establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended, establishing the Mississippi River Basin Commission.

[¶ 12,166]

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions.*

(a) Executive Order No. 10480, as amended, is further amended by adding thereto the following new Sections:

"Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

"Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended.".

(b) Executive Order No. 11490, as amended, is further amended by adding thereto the following new section:

"Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.".

[¶ 12,167]

SEC. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act pursuant to the provisions of Section 901 thereof and Executive Order No. 12009

of September 13, 1977, and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

.01 43 F. R. 4957 (February 7, 1978).

[The next page is 12,171.]

power and natural gas facilities located on the borders of the United States

SOURCE: The provisions of Executive Order 10485 of Sept. 3, 1953, appear at 18 FR 5397, 3 CFR, 1949-1953 Comp., p. 970, unless otherwise noted.

WHEREAS section 202(e) of the Federal Power Act, as amended, 49 Stat. 847 (16 U.S.C. 824a(e)), requires any person desiring to transmit any electric energy from the United States to a foreign country to obtain an order of the Federal Power Commission [1] authorizing it to do so; and

WHEREAS section 3 of the Natural Gas Act, 52 Stat. 822 (15 U.S.C. 717b), requires any person desiring to export any natural gas from the United States to a foreign country or to import any natural gas from a foreign country to the United States to obtain an order from the Federal Power Commission authorizing it to do so; and

WHEREAS the proper conduct of the foreign relations of the United States requires that executive permission be obtained for the construction and maintenance at the borders of the United States of facilities for the exportation or importation of electric energy and natural gas; and

WHEREAS it is desirable to provide a systematic method in connection with the issuance and signing of permits for such purposes:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the armed forces of the United States, it is hereby ordered as follows:

SECTION 1. (a) The Secretary of Energy is hereby designated and empowered to perform the following-described functions:

(1) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country.

(2) To receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the exportation or importation of natural gas to or from a foreign country.

(3) Upon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon, to issue to the applicant, as appropriate, a permit for such construction, operation, maintenance, or connection. The Secretary of Energy shall have the power to attach to the issuance of the permit and to the exercise of the rights granted thereunder such conditions as the public interest may in its judgment require.

(b) In any case wherein the Secretary of Energy, the Secretary of State, and the Secretary of Defense cannot agree as to whether or not a permit should be issued, the Secretary of Energy shall submit to the President for approval or disapproval the application for a permit with the respective views of the Secretary of Energy, the Secretary of State and the Secretary of Defense.

[Sec. 1 amended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136]

SEC. 2. [Deleted]

[Sec. 2 deleted by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136]

SEC. 3. The Secretary of Energy is authorized to issue such rules and regulations, and to prescribe such procedures, as it may from time to time deem necessary or desirable for the exercise of the authority delegated to it by this order.

[Sec. 3 amended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136]

SEC. 4. All Presidential Permits heretofore issued pursuant to Executive Order No. 8202 of July 13, 1939, and in force at the time of the issuance of this order, and all permits issued hereunder, shall remain in full force and effect until modified or revoked by the President or by the Secretary of Energy.

[Sec. 4 amended by EO 12038 of Feb. 3, 1978, 43 FR 4957, 3 CFR, 1978 Comp., p. 136]

SEC. 5. Executive Order No. 8202 of July 13, 1939, is hereby revoked.

[1] EDITORIAL NOTE: The Federal Power Commission was terminated and its functions transferred to the Department of Energy by Pub. L. 95-91 (91 Stat. 565, 42 U.S.C. 7101 nt.), effective Oc 1, 1977.

by the act of August 24, 1912, c. 369, 37 Stat. 497, Executive Order No. 5886 of July 12, 1932, withdrawing public lands in Wyoming pending a resurvey, is hereby revoked as to the following-described township:

SIXTH PRINCIPAL MERIDIAN

T. 26 N., R. 116 W.

This order shall become effective upon the date of the official filing of the plat of the resurvey of the above-described township.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
July 11, 1939.

EXECUTIVE ORDER 8201

AMENDMENT OF EXECUTIVE ORDER NO. 7302 OF FEBRUARY 21, 1936, TRANSFERRING CERTAIN LANDS TO THE CONTROL AND JURISDICTION OF THE SECRETARY OF THE NAVY

VIRGIN ISLANDS

By virtue of the authority vested in me by the act of March 3, 1917, c. 171, 39 Stat. 1132, and the Second Deficiency Act, Fiscal Year 1931 (46 Stat. 1552, 1570), and as President of the United States, Executive Order No. 7302 of February 21, 1936, transferring certain lands in the Virgin Islands from the control and jurisdiction of the Secretary of the Interior to the control and jurisdiction of the Secretary of the Navy for use in the establishment, construction, and operation of aviation facilities, as amended by Executive Orders No. 7686 of August 5, 1937 [1], No. 7790 of January 12, 1938 [2], and No. 8103 of May 2, 1939, is hereby further amended by adding thereto the following:

"It is further ordered that the following tract of land embracing the east beach and bath house fronting on Lindbergh Bay, St. Thomas, Virgin Islands, more particularly described below by metes and bounds, be, and it is hereby, subject to valid existing rights, transferred from the control and jurisdiction of the Secretary of the Interior to the control and jurisdiction of the Secretary of the Navy for use in the establishment, construction and operation of aviation facilities at the Naval Air Station, St. Thomas, Virgin Islands.

"Beginning at a point marked '1' on Public Works Drawing No. 28, on file in the Navy Department, thence North 25°5' East, 210.06 feet to a point marked '2'; thence North 64° 55' West, 282.21 feet, to a point marked '3'; thence South 25°5' West 172.22 feet to a point marked '4'; thence along the shore line of Lindbergh Bay to the point of beginning."

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
July 11, 1939.

EXECUTIVE ORDER 8202

AUTHORIZING AND REQUESTING THE FEDERAL POWER COMMISSION TO PERFORM CERTAIN FUNCTIONS RELATING TO THE TRANSMISSION OF ELECTRIC ENERGY BETWEEN THE UNITED STATES AND FOREIGN COUNTRIES AND TO THE EXPORTATION AND IMPORTATION OF NATURAL GAS FROM AND INTO THE UNITED STATES

By virtue of the authority vested in me as President of the United States, and as an aid in effectuating the provisions of the Federal Power Act, approved August 26, 1935 (49 Stat. 838), and the Natural Gas Act, approved June 21, 1938 (52 Stat. 821), I hereby authorize and request the Federal Power Commission (1) to receive all applications for permits for the construction, operation, maintenance, or connection, at the borders of the United States, of facilities for the transmission of electric energy between the United States and foreign countries, and for the exportation and importation of natural gas to or from foreign countries, and (2), after obtaining the recommendations of the Secretary of State and the Secretary of War thereon, to submit each such application to the President with a recommendation as to whether the permit applied for should be granted, and if so, upon what terms and conditions.

The Federal Power Commission may prescribe such regulations not inconsistent herewith as it may deem necessary or desirable for carrying out the provisions of this order.

FRANKLIN D ROOSEVELT

THE WHITE HOUSE,
July 13, 1939.

[1] 2 F.R. 1374.
[2] 3 F.R. 82.

EXECUTIVE ORDER 8203

TRANSFER OF JURISDICTION OVER CERTAIN LANDS FROM THE SECRETARY OF AGRICULTURE TO THE SECRETARY OF WAR

WISCONSIN

WHEREAS certain lands within the hereinafter-described areas have been acquired, or are in process of acquisition, under the authority of the Emergency Relief Appropriation Act of 1935, approved April 8, 1935 (49 Stat. 115), in connection with the Camp McCoy, LO-WI 16, Land-Utilization and Land-Conservation Project of the Department of Agriculture, in Wisconsin; and

WHEREAS by Executive Order No. 7908, dated June 9, 1938, all the right, title, and interest of the United States in such lands, acquired or in process of acquisition, was transferred to the Secretary of Agriculture for use, administration, and disposition in accordance with the provisions of Title III of the Bankhead-Jones Farm Tenant Act, approved July 22, 1937 (50 Stat. 522, 525), and the related provisions of Title IV thereof; and immediately upon the acquisition of legal title to those lands now in process of acquisition the said order, by the terms thereof, will become applicable to all the additional right, title, and interest thereby acquired by the United States; and

WHEREAS it appears that the use of such lands as a military reservation would be in the public interest:

NOW, THEREFORE, by virtue of and pursuant to the authority vested in me by section 32 of Title III of the said Bankhead-Jones Farm Tenant Act, and upon recommendation of the Secretary of Agriculture, it is ordered that all lands within the hereinafter-described areas acquired or in process of acquisition by the United States, together with the improvements thereon, be, and they are hereby, transferred from the Secretary of Agriculture to the Secretary of War for use as a military reservation: *Provided, however*, that the Secretary of Agriculture shall retain such jurisdiction over the lands now in process of acquisition by the United States as may be necessary to enable him to complete their acquisition.

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T. 17 N., R. 2
sec. 16, S½.
sec. 17, S½ NE¼SE¼;
sec. 18, S½S
sec. 19, NE¼
secs. 20 and
sec. 28, NW
sec. 29, N½N
T. 17 N., R. 3
sec. 3, NW¼
sec. 8, SE¼;
sec. 9, all;
sec. 10, SW
sec. 13, S½S
secs. 14 to 1
sec. 17, SE¼
sec. 20, E½.
sec. 21, all;
sec. 22, N½.
sec. 23, N½.
sec. 24, NW
sec. 28, all;
sec. 29, E½.
sec. 32, N½
sec. 33, N½.
sec. 34, NW and W½N
T. 18 N., R. 3
sec. 26, N½;
sec. 27, SE¼
sec. 34, NE
sec. 35, W½

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Federal Register

Tuesday
October 28, 1980

Part V

Department of Energy

Economic Regulatory Administration

Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 205

[Docket No. ERA-R-80-03]

Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

AGENCY: Economic Regulatory Administration.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby issues rules (Subpart W to Part 205) to implement the provisions of Section 202(e) of the Federal Power Act and Executive Order 10485, as amended. Section 202(e) of the Federal Power Act specifies that the export of electric energy shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. Executive Order 10485, as amended by Executive Order 12038, establishes the procedures and standards for issuance of a Presidential Permit authorizing the construction, connection, operation and maintenance of electrical transmission facilities at international boundaries.

DATES: Effective: November 1, 1980.

Applications received by the ERA on or before 5:00 p.m. EST October 31, 1980, can be filed in accordance with the current rules in 18 CFR 32.20 *et seq.*, and 32.50 *et seq.*

FOR FURTHER INFORMATION CONTACT:

James M. Brown, Jr., System Reliability and Emergency Response Branch, Department of Energy, Room 4110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 653-3825.

Lise Courtney Howe, Office of General Counsel, Department of Energy, Room 5E064, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-2900.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Discussion of comments received and the ERA's response.
A. Application for Authorization to Transmit Electric Energy.
B. Application for a Presidential Permit.
III. The Final Regulations.
A. Application for Authorization to Transmit Electric Energy.
B. Application for a Presidential Permit.
C. General.
IV. Other Matters.

I. Background

On April 15, 1980, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) issued proposed regulations relating to applications for authorization to transmit electric energy to a foreign country and regulations relating to applications for construction, connection, operation, or maintenance of facilities for the transmission of electric energy at an international boundary (45 FR 25780).

The authority to regulate exports of electricity was transferred from the Federal Power Commission (FPC) and vested in the Secretary of Energy (Secretary) pursuant to Sections 301 and 402(f) of the DOE Organization Act. The authority to license the construction, connection, operation, and maintenance of international electric transmission facilities was transferred from the Chairman of the Federal Power Commission to the Secretary by Executive Order 12038 which amended Executive Order 10485. Responsibility for the review and consideration of such applications to export electricity and of Presidential Permits has been delegated by the Secretary to the Administrator of the Economic Regulatory Administration by DOE Delegation Order No. 0204-4 (42 FR 60726).

A public hearing on the proposed regulations was held in Washington, D.C., on April 29, 1980. The DOE received four written comments on the proposed regulations. The commenting parties made several suggestions, resulting in some changes in the regulations issued today.

II. Discussion of Comments and DOE Response

The following is a discussion of comments received and the DOE's response to the comments. This discussion is organized according to the sections of the regulations.

A. Application for Authorization to Transmit Electric Energy

1. Who Shall Apply § 205.300.

The DOE received a comment requesting clarification of how an exchange transaction "import" was to be handled. Section 202(e) of the Federal Power Act specifies that an export shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the U.S. or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. Thus, the DOE exercises direct jurisdiction only over the export portion of an electricity exchange. However, the import may be considered as a factor in the overall adequacy of supply and/or coordination review.

2. Time of Filing § 205.301.

Some comments were received requesting the DOE to review the requirement that an application be filed at least six months in advance of initiation of a proposed electricity export and to provide for a waiver of the limit for good cause shown. The DOE is persuaded by these comments and the final rule is changed to provide for such waivers.

3. Contents of the Application § 205.302.

A comment was received on paragraph (g) suggesting that the ERA, and not the applicant, should bear the burden of proof that the export will not impair the sufficiency of the electric supply.

Section 202(e) of the Federal Power Act requires the ERA to determine whether a proposed export would impair or tend to impair the electric supply or the coordination of utility planning within the U.S. The ERA recognizes its responsibility under Section 202(e) but the proponent of the proposed transfer has access to system data which is unique to that system. Therefore, the ERA believes the applicant should explain why the proposed transfer will not impair or tend to impair the adequacy of its system. The ERA's role is to perform a technical evaluation of the power system data received and then to make the necessary determinations.

Another comment on this section stated that the National Electric Reliability Council (NERC) already analyzes in great detail the effect of proposed transfers of electricity. The comment further stated that the ERA review may raise problems of overlapping technical reviews. As stated previously, the ERA has a statutory responsibility under Section 202(e) of the Federal Power Act to make such reviews. The Department of Energy Organization Act specifies that authority to approve exports of electric energy shall reside with the DOE. Furthermore, the ERA is not aware of any NERC program to review specific electricity exports.

Finally, a commenter suggested that the applicant be required to submit information regarding only its own service area, and not for the appropriate Fuel Use Electric Region. The DOE is persuaded by this comment, and this final rule will only require information for the applicant's system.

4. Required Exhibits § 205.303.

The ERA received a comment on Exhibit A stating that while

international agreements are being negotiated, it may not be in the best interest of any of the parties to submit these agreements, supplemental memoranda, or drafts of agreements to the ERA as public documents.

The ERA does not intend this Exhibit to include working memoranda or supplemental memoranda, but only documents which are intrinsic to the agreement itself. The Exhibit A requirement is changed to permit the applicant to request that this information be treated as proprietary by the ERA.

A comment concerning Exhibit C questioned whether a Presidential Permit number would be assigned before a Presidential Permit is issued, and how an applicant could identify the border crossing by Presidential Permit number on the key map. The ERA docket number will become the Presidential Permit number, if it is issued. Thereby, an applicant can use the docket number which will be assigned at the time a filing is accepted.

The ERA received a number of comments on Exhibit F. One of the comments suggested that economy transfers be exempted from the regulations, along with diversity exchanges and emergency situations. The reasons cited by the commentors are the time restraints and the random nature of such transfers. The ERA recognizes that there can be significant benefits from international electricity exchanges, and has provided the applicant with a means to obtain waiver of the time requirement where good cause is shown (§ 205.301). A number of comments were received on the requirement that the applicant explain the methodology employed to inform other U.S. electric utilities of the available capacity and energy which may be in excess of the applicant's requirements. The purpose of this requirement is to ensure that the electric energy or capacity proposed for export is made available to other U.S. domestic utilities before it is exported, so that electric supply within the United States is adequate. The information filed shall be in sufficient detail to explain the applicant's proposed procedures. Its complexity will be dependent upon the applicant's existing communication links with neighboring utilities. However, the establishment of a formal operating procedure which requires that the dispatch centers of neighboring utilities be formally contacted prior to initiating economy or other non-firm exports normally will be satisfactory.

5. Other Information § 205.304.

A comment was received on the exemption of less than 1 million kWh annual usage. The comment stated that it is less than the peak usage of four or five residences and implied that a higher limit should be established. The ERA disagrees. The average U.S. residential customer uses 8,000 kWh annually. The ERA did not change the limit.

6. Filing Schedule and Annual Reports § 205.308.

One party commented that the requirements in Section 205.308 are also required by the Federal Energy Regulatory Commission in FPC Form 12, Schedule 11. The ERA recognizes this fact and the final rule provides for accepting this data in its existing format.

7. Filing Procedures and Fees § 205.309.

A comment was received requesting the ERA to reconsider charging a $500 fee for filing an export application and to state the cost support for this fee. The statutory authority and direction for the ERA to assess fees for utility applications is the Independent Offices Appropriation Act of 1952, Public Law No. 82-137, 31 U.S.C. Section 483a. The work performed by the ERA in processing these applications is considered for the present to be consistent with the proposed $500 filing fee applying the criteria of this Act. Therefore, pending further review of the work performed in light of these criteria, the filing fee will be the same as originally established by the Federal Power Commission.

B. Application for a Presidential Permit.

1. Contents of Application § 205.321 (in Proposed Rules). The ERA received a comment on the fact that a Presidential Permit application does not specify when such application should be filed. Pursuant to DOE's responsibilities under the National Environmental Policy Act (NEPA), the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement is required, a minimum 18-24 month permit processing time is necessary. If no environmental impact statement is required, then a processing time of six months normally would be sufficient. A new § 205.321, Time of Filing, was added to the final rules in response to this comment and the remaining sections were renumbered accordingly.

A comment on the originally proposed § 205.321, was received by the ERA requesting that the power flow plots be submitted in the format customarily used by the applicant. The ERA agrees with this comment but will require a detailed legend to be included with the power flow plots.

III. The Final Regulations.

A. Application for Authorization to Transmit Electric Energy.

The Economic Regulatory Administration of the Department of Energy hereby gives notice of the issuance of regulations implementing the provisions of Section 202(e) of the Federal Power Act. Section 202(e) of the Federal Power Act specifies that the export of electric energy shall be authorized provided that the proposed transmission will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. Section 202(e) further provides the authority to impose such terms and conditions on the export authorization as may be appropriate.

B. Application for a Presidential Permit.

The Economic Regulatory Administration of the Department of Energy hereby gives notice of the issuance of regulations implementing the provisions of Executive Order 10485, as amended by Executive Order 12038.

These Executive Orders establish the procedures and standards for issuance of a Presidential Permit authorizing the construction, connection, operation and maintenance of electrical transmission facilities at an international boundary and further provide that the ERA may impose such terms and conditions on the Presidential Permit as may be appropriate.

C. General.

The regulations are adopted as originally proposed except for the modifications described above, and other minor clarifying and conforming modifications.

IV. Other Matters.

The DOE has determined that this rulemaking is nonsignificant as that term is used in Executive Order 12044 and DOE Order 2030. The rule is not considered likely to have a major impact as defined by Executive Order 12044, and as amplified in DOE Order 2030. Accordingly, no regulatory analysis has been performed.

Section 404 of the Department of Energy Organization Act (DOE Act) requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary proposes to prescribe rules, regulations and statements of policy of general applicability in the exercise of functions transferred to him under sections 301 and 306 of the DOE Act. The FERC was

notified and requested to make the necessary determination regarding impact on any function within its jurisdiction under Sections 402(a)(1), (b) and (c)(1) of the DOE Act. FERC notified ERA on October 17, 1980, that it would not take referral of these regulations; however, the FERC suggested informally that copies of applications under these regulations should also be furnished to the FERC and the appropriate state regulatory agencies. We concur and have modified §§ 205.309 and 205.326 to incorporate this suggestion.

In consideration of the foregoing, Chapter II of Title 10, Code of Federal Regulations, is amended by establishing §§ 205.300–.309 and 205.320–.327 as set forth below.

Issued in Washington, D.C., on October 21, 1980.

Hazel R. Rollins,

Administrator, Economic Regulatory Administration.

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Application for Authorization to Transmit Electric Energy to a Foreign Country.

Sec.
205.300 Who shall apply.
205.301 Time of filing.
205.302 Contents of application.
205.303 Required exhibits.
205.304 Other information.
205.305 Transferability.
205.306 Authorization not exclusive.
205.307 Form and style; number of copies.
205.308 Filing schedule and annual reports.
205.309 Filing procedures and fees.

Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.

Sec.
205.320 Who shall apply.
205.321 Time of filing.
205.322 Contents of application.
205.323 Transferability.
205.324 Form and style; number of copies.
205.325 Annual report.
205.236 Filing procedures and fees.
205.327 Other information.

Authority: Department of Energy Organization Act, Pub. L. No. 95–91, 91 Stat. 565 (42 U.S.C. Section 7101). Federal Power Act, Pub. L. 66–280, 41 Stat. 1063 (16 U.S.C. Section 792) *et seq.*, Department of Energy Delegation Order No. 0204–4 (42 FR 60726). E.O. 10485, 18 FR 5397, 3 CFR, 1949–1953, Comp., p. 970 as amended by E.O. 12038, 43 FR 4957, 3 CFR 1978 Comp., p. 136.

Subpart W—Electric Power System Permits and Reports; Applications; Administrative Procedures and Sanctions

Application for Authorization to Transmit Electric Energy to a Foreign Country.

§ 205.300 Who shall apply.

(a) An electric utility or other entity subject to DOE jurisdiction under Part II of the Federal Power Act who proposes to transmit any electricity from the United States to a foreign country must submit an application or be a party to an application submitted by another entity. The application shall be submitted to the Office of Utility Systems of the Economic Regulatory Administration (EPA).

(b) In connection with an application under §§ 205.300 through 205.309, attention is directed to the provisions of §§ 205.320 through 205.327, below, concerning applications for Presidential Permits for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the transmission of electric energy between the United States and a foreign country in compliance with Executive Order 10485, as amended by Executive Order 12038.

§ 205.301 Time of filing.

Each application should be made at least six months in advance of the initiation of the proposed electricity export, except when otherwise permitted by the ERA to resolve an emergency situation.

§ 205.302 Contents of application.

Every application shall contain the following information set forth in the order indicated below:

(a) The exact legal name of the applicant.

(b) The exact legal name of all partners.

(c) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed.

(d) The state or territory under the laws of which the applicant is organized or incorporated, or authorized to operate. If the applicant is authorized to operate in more than one state, all pertinent facts shall be included.

(e) The name and address of any known Federal, State or local government agency which may have any jurisdiction over the action to be taken in this application and a brief description of that authority.

(f) A description of the transmission facilities through which the electric energy will be delivered to the foreign country, including the name of the owners and the location of any remote facilities.

(g) A technical discussion of the proposed electricity export's reliability, fuel use and system stability impact on the applicant's present and prospective electric power supply system. Applicant must explain why the proposed electricity export will not impair the sufficiency of electric supply on its system and why the export will not impede or tend to impede the regional coordination of electric utility planning or operation.

(h) The original application shall be signed and verified under oath by an officer of the applicant having knowledge of the matters set forth therein.

§ 205.303 Required exhibits.

There shall be filed with the application and as a part thereof the following exhibits:

(a) *Exhibit A.* A copy of the agreement or proposed agreement under which the electricity is to be transmitted including a listing of the terms and conditions. If this agreement contains proprietary information that should not be released to the general public, the applicant must identify such data and include a statement explaining why proprietary treatment is appropriate.

(b) *Exhibit B.* A showing, including a signed opinion of counsel, that the proposed export of electricity is within the corporate power of the applicant, and that the applicant has complied or will comply with all pertinent Federal and State laws.

(c) *Exhibit C.* A general map showing the applicant's overall electric system and a detailed map highlighting the location of the facilities or the proposed facilities to be used for the generation and transmission of the electric energy to be exported. The detailed map shall identify the location of the proposed border crossing point(s) or power transfer point(s) by Presidential Permit number whenever possible.

(d) *Exhibit D.* If an applicant resides or has its principal office outside the United States, such applicant shall designate, by irrevocable power of attorney, an agent residing within the United States. A verified copy of such power of attorney shall be furnished with the application.

(e) *Exhibit E.* A statement of any corporate relationship or existing contract between the applicant and any other person, corporation, or foreign government, which in any way relates to the control or fixing of rates for the

purchase, sale or transmission of electric energy.

(f) *Exhibit F.* An explanation of the methodology (Operating Procedures) to inform neighboring electric utilities in the United States of the available capacity and energy which may be in excess of the applicant's requirements before delivery of such capacity to the foreign purchaser. Approved firm export, diversity exchange and emergency exports are exempted from this requirement. Those materials required by this section which have been filed previously with the ERA may be incorporated by reference.

§ 205.304 Other information.

Where the application is for authority to export less than 1,000,000 kilowatt hours annually, applicants need not furnish the information called for in §§205.302(g) and 205.303 (Exhibit C). Applicants, regardless of the amount of electric energy to be exported, may be required to furnish such supplemental information as the ERA may deem pertinent.

§ 205.305 Transferability.

(a) An authorization to transmit electric energy from the United States to a foreign country granted by order of the ERA under Section 202(e) of the Federal Power Act shall not be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of this authority by operation of law (including transfers to receivers, trustees, or purchasers under foreclosure or judicial sale). This continuance is contingent on the filing of an application for permanent authorization and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of this authority to export electricity, the transferee and the transferor shall file jointly an application pursuant to this subsection, setting forth such information as required by §§ 205.300 through .304, together with a statement of reasons for the transfer.

(c) The ERA may at any time subsequent to the original order of authorization, after opportunity for hearing, issue such supplemental orders as it may find necessary or appropriate.

§ 205.306 Authorization not exclusive.

No authorization granted pursuant to Section 202(e) of the Act shall be deemed to prevent an authorization from being granted to any other person or entity to export electric energy or to prevent any other person or entity from making application for an export authorization.

§ 207.307 Form and style; number of copies

An original and two conformed copies of an application containing the information required under Sections 205.300 through 205.309 must be filed.

§ 205.308 Filing schedule and annual reports.

(a) Persons authorized to transmit electric energy from the United States shall promptly file all supplements, notices of succession in ownership or operation, notices of cancellation, and certificates of concurrence. In general, these documents should be filed at least 30 days prior to the effective date of any change.

(b) A change in the tariff arrangement does not require an amendment to the authorization. However, any entity with an authorization to export electric energy shall file with the ERA, and the appropriate state regulatory agency, a certified copy of any changed rate schedule and terms. Such changes may take effect upon the date of filing of informational data with the ERA.

(c) Persons receiving authorization to transmit electric energy from the United States shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year detailing the gross amount of kilowatt-hours of energy, by authorized category, received or delivered, and the cost and revenue associated with each category.

§ 205.309 Filing procedures and fees.

Applications shall be addressed to the Office of Utility Systems of the Economic Regulatory Administration. Every application shall be accompanied by a fee of $500.00. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications and notifications of rate changes shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

Application for Presidential Permit Authorizing the Construction, Connection, Operation, and Maintenance of Facilities for Transmission of Electric Energy at International Boundaries.

§ 205.320 Who shall apply.

(a) Any person, firm, co-operative, corporation or other entity who operates an electric power transmission or distribution facility crossing the border of the United States, for the transmission of electric energy between the United States and a foreign country, shall have a Presidential Permit, in compliance with Executive Order 10485, as amended by Executive Order 12038. Such applications should be filed with the Office of Utility Systems of the Economic Regulatory Administration.

Note.—Executive Order 12038, dated February 3, 1978, amended Executive Order 10485, dated September 3, 1953, to delete the words "Federal Power Commission" and "Commission" and substitute for each "Secretary of Energy." Executive Order 10485 revoked and superseded Executive Order 8202, dated July 13, 1939.

(b) In connection with applications hereunder, attention is directed to the provisions of §§ 205.300 to 205.309, above, concerning applications for authorization to transmit electric energy from the United States to a foreign country pursuant to Section 202(e) of the Federal Power Act.

§ 205.321 Time of filing.

Pursuant to the DOE's responsibility under the National Environmental Policy Act, the DOE must make an environmental determination of the proposed action. If, as a result of this determination, an environmental impact statement (EIS) must be prepared, the permit processing time normally will be 18–24 months. If no environmental impact statement is required, then a six-month processing time normally would be sufficient.

§ 205.322 Contents of application.

Every application shall be accompanied by a fee prescribed in § 205.326 of this subpart and shall provide, in the order indicated, the following:

(a) *Information regarding the applicant.*

(1) The legal name of the applicant;

(2) The legal name of all partners;

(3) The name, title, post office address, and telephone number of the person to whom correspondence in regard to the application shall be addressed;

(4) Whether the applicant or its transmission lines are owned wholly or in part by a foreign government or directly or indirectly assisted by a foreign government or instrumentality thereof; or whether the applicant has any agreement pertaining to such ownership by or assistance from any foreign government or instrumentality thereof.

(5) List all existing contracts that the applicant has with any foreign government, or any foreign private concerns, relating to any purchase, sale or delivery of electric energy.

(6) A showing, including a signed opinion of counsel, that the construction, connection, operation, or maintenance of the proposed facility is within the corporate power of the applicant, and that the applicant has complied with or will comply with all pertinent Federal and State laws;

(b) *Information regarding the transmission lines to be covered by the Presidential Permit.* (1)(i) A technical description providing the following information: (A) number of circuits, with identification as to whether the circuit is overhead or underground; (B) the operating voltage and frequency; and (C) conductor size, type and number of conductors per phase. (ii) If the proposed interconnection is an overhead line the following additional information must also be provided: (A) the wind and ice loading design parameters; (B) a full description and drawing of a typical supporting structure including strength specifications; (C) structure spacing with typical ruling and maximum spans; (D) conductor (phase) spacing; and (E) the designed line to ground and conductor side clearances. (iii) If an underground or underwater interconnection is proposed, the following additional information must also be provided: (A) burial depth; (B) type of cable and a description of any required supporting equipment, such as insulation medium pressurizing or forced cooling; and (C) cathodic protection scheme. Technical diagrams which provide clarification of any of the above items should be included.

(2) A general area map with a scale not greater than 1 inch = 40 kilometers (1 inch = 25 miles) showing the overall system, and a detailed map at a scale of 1 inch = 8 kilometers (1 inch = 5 miles) showing the physical location, longitude and latitude of the facility on the international border. The map shall indicate ownership of the facilities at or on each side of the border between the United States and the foreign country. The maps, plans, and description of the facilities shall distinguish the facilities or parts thereof already constructed from those to be constructed.

(3) Applications for the bulk power supply facility which is proposed to be operated at 138 kilovolts or higher shall contain the following bulk power system information:

(i) Data regarding the expected power transfer capability, using normal and short time emergency conductor ratings;

(ii) System power flow plots for the applicant's service area for heavy summer and light spring load periods, with and without the proposed international interconnection, for the year the line is scheduled to be placed in service and for the fifth year thereafter. The power flow plots submitted can be in the format customarily used by the utility, but the ERA requires a detailed legend to be included with the power flow plots;

(iii) Data on the line design features for minimizing television and/or radio interference caused by operation of the subject transmission facilities;

(iv) A description of the relay protection scheme, including equipment and proposed functional devices;

(v) After receipt of the system power flow plots, the ERA may require the applicant to furnish system stability analysis for the applicant's system.

(c) Information regarding the environmental impacts shall be provided as follows for each routing alternative:

(1) Statement of the environmental impacts of the proposed facilities including a list of each flood plain, wetland, critical wildlife habitat, navigable waterway crossing, Indian land, or historic site which may be impacted by the proposed facility with a description of proposed activities therein.

(2) A list of any known Historic Places, as specified in 36 CFR, Part 800, which may be eligible for the National Register of Historic Places.

(3) Details regarding the minimum right-of-way width for construction, operation and maintenance of the transmission lines and the rationale for selecting that right-of-way width.

(4) A list of threatened or endangered wildlife or plant life which may be located in the proposed alternative.

(d) A brief description of all practical alternatives to the proposed facility and a discussion of the general environmental impacts of each alternative.

(e) The original of each application shall be signed and verified under oath by an officer of the applicant, having knowledge of the matters therein set forth.

§ 205.323 Transferability.

(a) Neither a permit issued by the ERA pursuant to Executive Order 10485, as amended, nor the facility shall be transferable or assignable. Provided written notice is given to the ERA within 30 days, the authorization may continue in effect temporarily in the event of the involuntary transfer of the facility by operation of law (including transfers to receivers, trustees, or purchases under foreclosure or judicial sale). This continuance is contingent on the filing of an application for a new permit and may be effective until a decision is made thereon.

(b) In the event of a proposed voluntary transfer of the facility, the permittee and the party to whom the transfer would be made shall file a joint application with the ERA pursuant to this paragraph, setting forth information as required by § 205.320 *et seq.*, together with a statement of reasons for the transfer. The application shall be accompanied by a filing fee pursuant to § 205.326.

(c) No substantial change shall be made in any facility authorized by permit or in the operation thereof unless or until such change has been approved by the ERA.

(d) Permits may be modified or revoked without notice by the President of the United States, or by the Administrator of the ERA after public notice.

§ 205.324 Form and style; number of copies.

All applicants shall file an original and two conformed copies of the application and all accompanying documents required under §§ 205.320 through 205.327.

§ 205.325 Annual report.

Persons receiving permits to construct, connect, operate or maintain electric transmission facilities at international boundaries shall submit to the ERA, by February 15 each year, a report covering each month of the preceding calendar year, detailing by category the gross amount of kilowatt-hours of energy received or delivered and the cost and revenue associated with each category.

§ 205.326 Filing procedures and fees.

Applications shall be forwarded to the Office of Utility Systems of the Economic Regulatory Administration and shall be accompanied by a filing fee of $150. The application fee will be charged irrespective of the ERA's disposition of the application. Fee payment shall be by check, draft, or money order payable to the Treasurer of the United States. Copies of applications shall be furnished to the Federal Energy Regulatory Commission and all affected State public utility regulatory agencies.

§ 205.327 Other information.

The applicant may be required after filing the application to furnish such supplemental information as the ERA may deem pertinent. Such requests shall be written and a prompt response will be expected. Protest regarding the supplying of such information should be directed to the Administrator of the ERA.

[FR Doc. 80-33548 Filed 10-27-80; 8:45 am]
BILLING CODE 6450-01-M

DEPARTMENT OF ENERGY

DELEGATION

FROM THE ASSISTANT SECRETARY FOR FOSSIL ENERGY

TO THE DEPUTY ASSISTANT SECRETARY FOR FUELS PROGRAMS

Pursuant to the authority vested in me as Assistant Secretary for Fossil Energy ("Assistant Secretary") by the Secretary of Energy and by the Department of Energy Organization Act (Pub. L. No. 95-91) (the "DOE Act") --

(a) There is hereby delegated to the Deputy Assistant Secretary for Fuels Programs ("Deputy Assistant Secretary"), the following authority to:

1. Monitor compliance with the prohibition against the construction of new powerplants without the capability to use coal or another alternate fuel as a primary energy source, pursuant to Section 201 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95-620) ("FUA"), as amended; grant or deny exemptions from such prohibition, pursuant to Sections 211 through 214 of FUA; issue prohibitions against the use of oil or natural gas to certifying existing electric powerplants under Section 301 of FUA; grant or deny exemptions to certifying existing electric powerplants under Sections 311 through 314 of FUA; and take such other actions as may be necessary or appropriate to perform any of the above functions pursuant to Section 701 of FUA;

2. Issue notices of effectiveness, modification or rescission to coal conversion orders issued pursuant to Section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. No. 93-319), as amended;

E

3. Establish, modify and encourage regional districts in the country for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and promote and encourage such interconnection and coordination within each such district and between such districts, pursuant to the provisions of Section 202(a) of the Federal Power Act (Pub. L. No. 74-333);

4. Investigate and determine, upon the Deputy Assistant Secretary's own motion or the request of any State commission, the cost of production or transmission of electric energy by means of facilities that are subject to the jurisdiction defined by Section 201 of the Federal Power Act, as the Deputy Assistant Secretary determines is necessary or appropriate to perform his functions, pursuant to the provisions of Section 206(b) of the Federal Power Act;

5. Conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, including the generation, transmission, distribution, and sale of electric energy by any agency, authority or instrumentality of the United States, or of any State or municipality or other political subdivision of a State, as the Deputy Assistant Secretary determines is necessary or appropriate to perform his functions, pursuant to Section 311 of the Federal Power Act;

6. Regulate the export of electric energy to a foreign country, pursuant to the provisions of Sections 202(e) and 202(f) of the Federal Power Act; and authorize the construction,

connection, operation and maintenance of facilities, at the borders of the United States, for the transmission of electric energy between the United States and a foreign country, pursuant to the provisions of Executive Order 10485, as amended by Executive Order 12038;

7. Participate in establishment and review of priorities for the curtailment of the deliveries of natural gas pursuant to the Natural Gas Act (Pub. L. No. 75-688) and Sections 401, 402, and 403 of the Natural Gas Policy Act of 1978 (Pub. L. No. 95-621), in consultation with the Office of International Affairs and Energy Emergencies concerning energy emergency-related curtailment policy guidance, as necessary and appropriate.

8. Regulate natural gas imports and exports, pursuant to the Natural Gas Act, in accordance with Delegation Order No. 0204-111;

9. Participate in any proceeding before the Federal Energy Regulatory Commission, pursuant to the provisions of Section 405 of the DOE Act, or in any proceeding before any Federal or State agency or commission whenever such participation is related to the exercise of authority delegated to the Deputy Assistant Secretary;

10. Initiate and conduct investigations, conduct conferences, administrative hearings and public hearings, administer oaths or affirmations to any person, and suspend or disqualify any person appearing at such conferences or hearings, issue subpoenas, authorize payment, if appropriate, of witness fees and mileage to any witness appearing in response to such subpoenas, prepare required reports, issue notices, orders, licenses, and permits,

collect fees and take such other action as may be necessary or appropriate to perform any of the above functions.

(b) This authority may be further delegated, in whole or in part.

(c) In exercising the authority delegated by this Order or as redelegated pursuant thereto, the Deputy Assistant Secretary and his delegate(s) shall be governed by the rules, regulations and procedures of DOE and the policies prescribed by the Secretary or his delegate(s).

(d) Nothing in this Order shall preclude the Assistant Secretary from exercising or further delegating any of the authorities hereby delegated, whenever, in his judgment, the exercise of such authority is necessary or appropriate to administer the functions vested in him.

(e) All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

(f) The delegation order, dated January 31, 1989, from the Assistant Secretary for Fossil Energy to the Director, Office of Fuels Programs, Economic Regulatory Administration, to take all actions necessary to implement the functions of the Office of Fuels Programs, is hereby rescinded.

This Order is effective July 14, 1989.

7/14/89
Date

J. Allen Wampler
Assistant Secretary for Fossil Energy

UNITED STATES OF AMERICA

[6450-01]

DEPARTMENT OF ENERGY

OFFICE OF FOSSIL ENERGY

AGENCY: Department of Energy
Office of Fossil Energy

ACTION: Notice of Transfer of Certain Functions from the Office of Fuels Programs of the Economic Regulatory Administration to the Assistant Secretary for Fossil Energy

SUMMARY: The Assistant Secretary for Fossil Energy of the Department of Energy gives notice that on January 6, 1989, certain functions previously performed by the Economic Regulatory Administration's (ERA) Office of Fuels Programs were transferred to the Office of Fossil Energy (FE). DOE Delegation Order No. 0204-127 (attached as Appendix) specifies the transferred functions, which include the administration of the natural gas import and export authorization program pursuant to the Natural Gas Act of 1938 (NGA), administration of electricity export licensing activities in accordance with the Federal Power Act (FPA), the issuance of Presidential permits for construction and use of transmission facilities for international exchanges of electricity pursuant to Executive Order 10485, and the administration of the coal conversion program pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA).

All filings made pursuant to Section 3 of the NGA, Section 202(e) of the FPA, Executive Order 10485, and Titles II and III of FUA, shall be filed with the Office of Fuels Programs, Fossil Energy, Docket Room, 3F-056, FE-50, Forrestal Building, 1000

F

Independence Avenue, S.W., Washington, D.C., 20585, (202) 586-9478. There will be no change in the way filings are processed at this time. Technical changes to the current administrative procedures applicable to these programs will be made as necessary, in response to this transfer of functions and published at a later date.

Any questions should be directed to:

Larine A. Moore
Docket Room
Office of Fuels Programs
Fossil Energy
U.S. Department of Energy
Forrestal Building, Room 3F-056
1000 Independence Avenue, S.W.
Washington, D.C. 20585
(202) 586-9478

Michael T. Skinker
Natural Gas and Mineral Leasing
Office of General Counsel
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Issued in Washington, D.C., March 10, 1989.

J. Allen Wampler
Assistant Secretary
Fossil Energy

APPENDIX

DEPARTMENT OF ENERGY

DELEGATION ORDER NO. 0204- 127

TO THE ASSISTANT SECRETARY FOR FOSSIL ENERGY

Pursuant to the authority vested in me as Secretary of Energy ("Secretary") and by the Department of Energy Organization Act (Pub. L. No. 95-91) (the "DOE Act") --

(a) There is hereby delegated to the Assistant Secretary for Fossil Energy ("Assistant Secretary"), the authority to:

1. Monitor compliance with the prohibition against the construction of new powerplants without the capability to use coal or another alternate fuel as a primary energy source, pursuant to Section 201 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. No. 95-620) ("FUA"), as amended; grant or deny exemptions from such prohibition, pursuant to Sections 211 through 214 of FUA; issue prohibitions against the use of oil or natural gas to certifying existing electric powerplants under Section 301 of FUA; grant or deny exemptions to certifying existing electric powerplants under Sections 311 through 314 of FUA; and take such other actions as may be necessary or appropriate to perform any of the above functions pursuant to Section 701 of FUA;

2. Issue notices of effectiveness, modification or rescission to coal conversion orders issued pursuant to Section 2

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of the Energy Supply and Environmental Coordination Act of 1974 (Pub. L. No. 93-319), as amended:

3. Establish, modify and encourage regional districts in the country for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and promote and encourage such interconnection and coordination within each such district and between such districts, pursuant to the provisions of Section 202(a) of the Federal Power Act (Pub. L. No. 74-333);

4. Investigate and determine, upon the Assistant Secretary's own motion or the request of any State commission, the cost of production or transmission of electric energy by means of facilities that are subject to the jurisdiction defined by Section 201 of the Federal Power Act, as the Assistant Secretary determines is necessary or appropriate to perform his functions, pursuant to the provisions of Section 206(b) of the Federal Power Act;

5. Conduct investigations regarding the generation, transmission, distribution, and sale of electric energy, however produced, throughout the United States and its possessions, including the generation, transmission, distribution, and sale of electric energy by any agency, authority or instrumentality of the United States, or of any State or municipality or other political subdivision of a State, as the Assistant Secretary

determines is necessary or appropriate to perform his functions, pursuant to Section 311 of the Federal Power Act;

6. Regulate the export of electric energy to a foreign country, pursuant to the provisions of Sections 202(e) and 202(f) of the Federal Power Act; and authorize the construction, connection, operation and maintenance of facilities, at the borders of the United States, for the transmission of electric energy between the United States and a foreign country, pursuant to the provisions of Executive Order 10485, as amended by Executive Order 12038;

7. Establish and review priorities for the curtailment of natural gas pursuant to the Natural Gas Act (Pub. L. No. 75-688), Sections 401, 402, and 403 of the Natural Gas Policy Act of 1978 (Pub. L. No. 95-621); and consult with the Assistant Secretary for International Affairs and Energy Emergencies concerning energy emergency-related curtailment policy guidance, as necessary or appropriate.

8. Regulate natural gas imports and exports, pursuant to the Natural Gas Act, in accordance with Delegation Order No. 0204-111;

9. Participate in any proceeding before the Federal Energy Regulatory Commission, pursuant to the provisions of Section 405 of the DOE Act, or in any proceeding before any Federal or State agency or commission whenever such participation is related to

the exercise of authority delegated to the Assistant Secretary;

10. Adopt rules, formulate and establish enforcement policy, initiate and conduct investigations, conduct conferences, administrative hearings and public hearings, prepare required reports, issue orders, and take such other action as may be necessary or appropriate to perform any of the above functions.

(b) This authority may be further delegated, in whole or in part, with the exception of the authority to propose or adopt rules.

(c) In exercising the authority delegated by this Order or as redelegated pursuant thereto, the Assistant Secretary and his delegate(s) shall be governed by the rules, regulations and procedures of DOE and the policies prescribed by the Secretary or his delegate(s).

(d) Delegation Order Nos. 0204-111 and 0204-112 are amended by changing "Administrator of the Economic Regulatory Administration" to "Assistant Secretary for Fossil Energy" wherever it appears and by changing "Administrator" to "Assistant Secretary" wherever it appears.

(e) Nothing in this Order shall preclude the Secretary from exercising or further delegating any of the authorities hereby delegated, whenever, in his judgment, the exercise of such authority is necessary or appropriate to administer the functions vested in him.

(f) All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended or superseded.

This Order is effective February 7th, 1989.

2/7/89
Date

Donna R. Fitzpatrick
Acting Secretary of Energy

U.S. DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

[Docket No. EA-48-I]

ORDER
AMENDING AUTHORIZATION TO
EXPORT ELECTRIC ENERGY TO MEXICO
AND SUPERSEDING PRIOR AUTHORIZATIONS;
EL PASO ELECTRIC COMPANY

BACKGROUND

On September 5, 1991, the El Paso Electric Company (EPE), applied to the Department of Energy (DOE), pursuant to section 202(e) of the Federal Power Act, to amend EPE's existing authorization to transmit electric energy to Mexico, issued by the Federal Power Commission on October 9, 1970.

The existing electricity export authorization, amended by the DOE on December 13, 1990, allows EPE to export electric energy to Mexico without energy limitations at a maximum transmission rate of 150,000 kilowatts (KW). EPE now requests that the export authorization be amended to increase the maximum transmission rate to 200,000 KW. EPE's request is occasioned by a request from the Comision Federal de Electricidad (CFE), the Mexican national electric utility, to increase the amount of energy that EPE exports to Ciudad Juarez, Mexico, in order to allow more efficient planning and operation of the trans-border electric supply system in the region.

The proposed export would be transmitted over two international transmission lines: the 115-kV Ascarate line upgraded from 69-kV

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by an amendment to Presidential Permit PP-48-3, issued on December 13, 1990, and the new 115-kV Diablo interconnection authorized on this date by Presidential Permit PP-92.

Notice of EPE's application was placed in the Federal Register on October 7, 1991, (56 FR 50570) stating that any person desiring to be heard or to make any protest with reference to the application should file with the DOE a petition to intervene or protest in accordance with the Rules of Practice and Procedure (18 CFR 385.211 or 385.214) on or before November 21, 1991. No comments, protests, or petitions to intervene were received.

The DOE has assessed the potential environmental impacts associated with amending the existing electricity export authorization by increasing the maximum rate of transmission from 150,000 KW to 200,000 KW and has determined that the proposed action would not constitute a major Federal action which could significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 C.S.C. 4321, et seq. The DOE has prepared a Finding of No Significant Impact dated April 15, 1992, which documents the rationale supporting this finding.

The DOE also has assessed the impact that the proposed increase from 150,000 KW to 200,000 KW in the maximum rate of export would have on the reliability of the U.S. electric power supply system.

This review showed that whenever EPE exchanges electric energy with Mexico, synchronism between the two systems can only be maintained either by separating CFE's Ciudad Juarez electric system from CFE's national electric grid or by separating EPE's electric system from the rest of the Western Systems Coordinating Counsel (WSCC) system. Such an arrangement causes the importing system to be "seen" as a radial load by the exporting system. Presently, during periods when no energy is scheduled for delivery across the U.S.-Mexican border, line disconnect switches on the EPE system are opened, thus electrically disconnecting the EPE and Ciudad Juarez electrical systems and precluding the possibility of a fault on one system from affecting the other. A continuation of this operating procedure will ensure that any "cross-border" loads served by either EPE or CFE will be connected only radially to the supplying system and would not result in any impairment of reliability of the U.S. power supply system. As a result of this review the DOE has determined that the export of electric energy to Mexico as requested by EPE would not impair the sufficiency of electric supply within the United States and would not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE. A staff analysis in support of this finding has been made a part of Docket No. EA-48-I.

FINDING

The Deputy Assistant Secretary for Fuels Programs finds that the proposed transmission of electric energy from the United States to Mexico, as limited herein and as hereinafter authorized, will not have any significant environmental impacts, will not impair the sufficiency of electric supply within the United States, and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy.

IT IS HEREBY ORDERED THAT:

A) The export authorization issued to EPE in Docket No. PP-48A-3 is hereby amended to increase the maximum allowable rate of transmission to 200,000 KW.

(B) The electric energy which EPE hereby is authorized to transmit from the United States to Mexico shall be transmitted over any facilities for which El Paso Electric holds a Presidential permit issued pursuant to Executive Order 10485, as amended by Executive Order 12038.

(C) El Paso Electric is authorized to export electric energy to Mexico only when that portion of the Ciudad Juarez electrical system served by EPE is electrically separated and isolated from the CFE national interconnected electrical system. EPE is herein limited to supplying only those loads

on the Ciudad Juarez electric system when they are connected to the EPE system in a radial mode.

(D) El Paso Electric shall reduce or terminate exports to CFE, including emergency sales, during any system operating conditions on the El Paso system which would create a potential reliability problem.

(E) The authorization herein granted may be modified from time to time or terminated by further order of the DOE.

(F) EPE shall conduct all operations pursuant to the authorization hereby granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the DOE.

(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) EPE shall make and preserve full and complete records with respect to the electrical energy exported to Mexico. EPE shall furnish a report to the DOE annually, on or before February 15, showing the gross amount of electricity

delivered, the consideration received during each month of the calendar year, and the maximum hourly rate of transmission.

Issued in Washington, D.C., April 16, 1992.

Charles F. Vacek
Deputy Assistant Secretary
for Fuels Programs
Office of Fossil Energy

DEPARTMENT OF ENERGY
Fossil Energy
[Docket Nos. PP-48-3]

AMENDMENT TO PRESIDENTIAL PERMIT PP-48 AUTHORIZING THE EL PASO ELECTRIC COMPANY TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN ELECTRIC TRANSMISSION FACILITIES AT THE INTERNATIONAL BORDER BETWEEN THE UNITED STATES AND MEXICO

BACKGROUND

On August 30, 1990, El Paso Electric Company (EPE) applied to the Department of Energy (DOE), pursuant to Executive Order 10485, as amended by Executive Order 12038, to amend the Presidential permit contained in Docket No. PP-48 (formally FPC Docket IT-5762) and issued to EPE on May 21, 1946. Presidential permit PP-48, as amended on March 15, 1949, and November 26, 1958, authorized the construction, connection, operation, and maintenance of a 69-kilovolt (kV) transmission line at the international border between the U.S. and Mexico.

Notice of the application from EPE for amendment of the existing Presidential permit was given on September 12, 1990, (55 FR 37523) stating that any person desiring to be heard or to make any protest with reference to the application should file with the DOE a Petition to Intervene or protest in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.0) on or before October 12, 1990. No comments, protests, or Petitions to Intervene were received.

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In its application to amend the Presidential permit, EPE requested authority to convert the existing 69-kV international transmission line to 115-kV. EPE has indicated that this amendment is required because the Comision Federal de Electricidad (CFE), the Mexican national utility, plans to convert its local 69-kV facilities to 115-kV operation and EPE must effect a similar conversion of its international transmission facilities in order to maintain its interconnection with CFE.

EPE's existing 69-kV facilities extend approximately 7100 feet from EPE's Ascarate Substation located in El Paso to the U.S. - Mexican border. Only approximately 2100 feet of the existing transmission facilities would require any physical modification to effect the conversion. All construction would take place within the existing right-of-way and would include replacement of ten existing poles, installation of new insulators, the addition of six new poles, and the replacement of the existing conductors.

The DOE has assessed the potential environmental impacts associated with the conversion of the existing 69-kV facilities to 115-kV operation and has determined that the proposed action clearly would not constitute a major Federal action which could significantly affect the quality of the human environment within the meaning of the National Environmental

Policy Act of 1969, 42 U.S.C. 4321, et seq. The DOE, in a Memorandum To The File dated September 26, 1990, documents the rationale supporting this finding.

The DOE also has assessed the potential impacts on system reliability associated with the conversion of the existing 69-kV facilities to 115-kV operation. Whenever EPE exchanges electric energy with Mexico, synchronism between the two systems can only be maintained either by separating CFE's Ciudad Juarez electric system from CFE's national electric grid or by separating EPE's electric system from the rest of the Western Systems Coordinating Council system. Such an arrangement would cause the importing system to be "seen" as a radial load by the exporting system. Presently, during periods when no energy is scheduled for delivery across the border, line disconnect switches on the EPE system are opened, thus electrically disconnecting the two systems and precluding the possibility of a fault on one system from effecting the other. A continuation of this operating procedure will ensure that any "cross-border" loads served by either EPE or CFE will be connected only radially to the supplying system and would not result in any impairment of reliability of the U.S. power supply system.

Furthermore, the existing 69-kV interconnection provides EPE with access to an emergency source of power from the CFE system. Once CFE converts its existing 69-kV facilities to 115 kV operation, EPE would not be able to obtain emergency assistance at that

border crossing without similarly converting its international interconnection to 115-kV operation. Therefore, denial of the requested amendment for conversion to 115-kV would eliminate EPE's access to an emergency power source and would actually reduce the overall reliability of the EPE electric system.

Based on this assessment, and after review and evaluation of the information submitted by the applicant, the Deputy Assistant Secretary for Fuels Programs, Fossil Energy, has concluded that the conversion of the existing 69-kV international transmission facilities to 115-kV operation would not impair the reliability of the electric power supply system of the United States.

FINDING

Having found that there is no significant environmental impact and that there is no electric reliability problem associated with the modification and operation of the proposed facility, and since the Secretary of State by letter dated November 29, 1990, and the Secretary of Defense by letter dated November 27, 1990, have concurred with amending the Presidential permit, the Deputy Assistant Secretary for Fuels Programs, Fossil Energy, finds that the amendment of the Presidential permit, as provided hereafter, is appropriate and consistent with the public interest.

AUTHORIZATION

Pursuant to the provisions of Executive Order No. 10485, as amended by Executive Order No. 12038, and the Rules and Regulations thereunder (Title 10, Code of Federal Regulations, section 205.320 et seq.), Presidential Permit PP-48 hereby is amended by granting El Paso Electric Company authority to construct, connect, operate and maintain at the international border of the United States and Mexico, one 115-kV, alternating current (ac) transmission line which previously was a 69-kV transmission line 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 the DOE after public notice, and may be amended by the 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 115-kV transmission line from the existing Ascarate Substation located in El Paso, Texas, to the international border between the United States and Mexico, and there connecting with the CFE 115-kV system. This transmission line will be built in the existing right-of-way of the 69-kV

transmission line previously authorized on May 21, 1946, by Presidential Permit PP-48, as amended.

These facilities are more specifically shown and described in the application filed by the applicant on August 30, 1990.

Article 3. The facilities described in Article 2 will be designed and operated in accordance with the applicable criteria established by the Inland Power Pool, and consistent with those of the Western Systems Coordinating Council. Furthermore, the subject facilities shall be operated in a manner such that the EPE and CFE Ciudad Juarez electric systems shall be directly connected to each other only after separation of the CFE Ciudad Juarez system from CFE's main electric grid, or after separation of the EPE system from the main electric grid of the Western System Coordination Council, as appropriate.

Article 4. No change shall be made in the facilities covered by this permit or in the authorized operation of these facilities unless such change has been approved by the DOE.

Article 5. EPE or its agent 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 the DOE, who shall be an authorized representative of the United States for such purposes. EPE shall allow officers or employees of the United States with written authorization for free and unrestricted access into, through and across any lands occupied by these facilities in the performance of their duties.

Article 7. EPE shall investigate any complaints from nearby residents of radio or television interference identifiably caused by the operation of the facilities covered by this permit. EPE shall take appropriate action as necessary to mitigate such situations. Complaints from individuals residing within one-half mile of the center of the transmission circuit are the only ones which must be resolved. EPE 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 EPE 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 EPE shall hold the United States harmless from any and all such claims.

Article 9. EPE 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. EPE shall prepare, maintain and preserve complete and accurate records concerning the transfer of such electric energy; and shall furnish the DOE an annual report which will be due on or before February 15th of each year, detailing the transmission of such electric energy, as follows: (1) the gross amount of kilowatt-hours of electric energy received or delivered; (2) the maximum hourly rate of transmission in kilowatts; and (3) the consideration paid or received for such energy during each month of the preceding calendar year.

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 the DOE. Upon receipt by the 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.

Article 11. Upon the termination, revocation or surrender of this permit, the 115-kV ac transmission line, which is owned, connected, operated and maintained by EPE and described in Article 2 of this permit, shall be removed within such time as DOE may specify and at the expense of EPE. If EPE fails to remove such facilities 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 EPE. EPE shall have no claim for damages by reason of such possession, removal or repair.

However, upon a showing by EPE that certain facilities authorized herein, such as portions of its rights-of-way or the transmission line within the United States, are useful to other utility operations within the bounds of the United States, the DOE will not require that those facilities be removed and the land restored to its original condition upon termination of the international interconnection.

Article 12. This permit shall be valid upon receipt by the DOE of the Testimony of Acceptance properly executed.

In witness whereof, I, Clifford P. Tomaszewski, Acting Deputy Assistant Secretary for Fuels Programs, hereunto sign my name, this 13th day of December, 1990, in the city of Washington, District of Columbia.

Clifford P. Tomaszewski
Acting Deputy Assistant Secretary
for Fuels Programs
Fossil Energy

TESTIMONY OF ACCEPTANCE
OF
PRESIDENTIAL PERMIT PP-48-3
AUTHORIZING
EL PASO ELECTRIC COMPANY
TO CONSTRUCT, CONNECT, OPERATE AND MAINTAIN
ELECTRIC TRANSMISSION FACILITIES ACROSS
THE INTERNATIONAL BORDER BETWEEN
THE UNITED STATES AND MEXICO

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IN TESTIMONY OF ACCEPTANCE of all the provisions and conditions of Presidential Permit PP-48-3 dated December 13, 1990, El Paso Electric Company, this 27 day of December, 1990, has caused its name to be signed and its corporate seal to be affixed hereto by Frederic E. Mattson, its duly authorized representative, and attested by Guillermo Silva Jr., its Assistant Secretary.

EL PASO ELECTRIC COMPANY

By Frederic E. Mattson
Vice President

U.S. DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

PRESIDENTIAL PERMIT PP-92
AUTHORIZING
EL PASO ELECTRIC COMPANY
TO CONSTRUCT, CONNECT, OPERATE, AND MAINTAIN
ELECTRIC TRANSMISSION FACILITIES ACROSS
THE INTERNATIONAL BORDER BETWEEN
THE UNITED STATES AND MEXICO

BACKGROUND

On September 5, 1991, the El Paso Electric Company (EPE) filed an application with the Office of Fuels Programs (OFP) of the Department of Energy (DOE) for a Presidential permit to construct, connect, operate, and maintain a 115-kilovolt (kV) transmission facility at the international border between the United States and Mexico. The EPE seeks permission to construct a 2.34-mile long transmission line from its existing Diablo Substation, in Sunland Park, New Mexico, across the U.S.-Mexican border, to connect with similar facilities owned and operated by the Comision Federal de Electricidad (CFE), the Mexican national electric utility. The applicant states that the proposed facilities are needed to allow more efficient planning and operation of the trans-border power supply system in the region.

Notice of EPE's application was placed in the Federal Register on October 7, 1991, (56 FR 50570) stating that any person desiring to be heard or to make any protest with reference to the application should file with the DOE a petition to intervene or protest in accordance with the Rules of Practice and Procedure

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(18 CFR 385.211 or 385.214) on or before November 21, 1991. No comments, protests, or petitions to intervene were received.

The DOE has assessed the potential impacts on the electric system reliability associated with the addition of this second 115-kV tie to Mexico. [On December 13, 1990, DOE issued an amended Presidential permit to EPE in Docket PP-48-3 authorizing the conversion of existing 69-kV Ascarate transmission facilities to 115-kV.] Whenever EPE exchanges electric energy with Mexico, synchronism between the two systems can only be maintained either by separating CFE's Ciudad Juarez electric system from CFE's national electric grid or by separating EPE's electric system from the rest of the Western Systems Coordinating Counsel (WSCC) system. Such an arrangement causes the importing system to be "seen" as a radial load by the exporting system. Presently, during periods when no energy is scheduled for delivery across the U.S.-Mexican border, line disconnect switches on the EPE system are opened, thus electrically disconnecting the EPE and Ciudad Juarez electrical systems and precluding the possibility of a fault on one system from effecting the other. A continuation of this operating procedure will ensure that any "cross-border" loads served by either EPE or CFE will be connected only radially to the supplying system and would not result in any impairment of reliability of the U.S. power supply system.

The DOE also has assessed the potential environmental impacts associated with constructing this transmission line and has determined that the proposed action clearly would not constitute a major Federal action which could significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq. The DOE, in a Finding of No Significant Impact dated April 15, 1992, documents the rationale supporting this finding.

FINDING

Having found that there is no significant environmental impact and that there is no impairment of electric system reliability associated with the construction and operation of the proposed facility, and since the Secretary of State by letter dated April 9, 1992, and the Secretary of Defense by letter dated April 10, 1992, have concurred with the issuance of this Presidential permit, the Deputy Assistant Secretary for Fuels Programs, Fossil Energy, finds that the issuance of the Presidential permit, as provided hereafter, is appropriate and consistent with the public interest.

AUTHORIZATION

Pursuant to the provisions of Executive Order No. 10485, as amended by Executive Order No. 12038, and the Rules and Regulations thereunder (Title 10, Code of Federal Regulations, section 205.320 et seq.), permission hereby is granted to El Paso

Electric Company to construct, connect, operate, and maintain at the international border of the United States and Mexico, one 115-kV transmission line 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 the DOE after public notice, and may be amended by the 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 115-kV 60-hertz, alternating current transmission line extending from the existing Diablo Substation located in Sunland Park, New Mexico, to the international border between the United States and Mexico, at a point approximately 5 miles west of El Paso, Texas.

These facilities are more specifically shown and described in the application filed by EPE on September 5, 1991.

Article 3. El Paso Electric will provide plans to the U.S. Commissioner, International Boundary and Water Commission, for review and approval to determine that the construction, connection, operation and maintenance of the facilities authorized herein will not be inconsistent with boundary and water treaties and other agreements in force between the United States and Mexico.

Article 4. The facilities described in Article 2 will be designed and operated in accordance with the applicable criteria established by the Inland Power Pool, and consistent with those of the Western Systems Coordinating Council. Furthermore, the subject facilities shall be operated in a manner such that the EPE and CFE Ciudad Juarez electric systems shall be directly connected to each other only after separation of the CFE Ciudad Juarez system from CFE's main electric grid, or after separation of the EPE system or a portion thereof, as appropriate, from the main electric grid of the Western System Coordinating Council.

Article 5. No change shall be made in the facilities covered by this permit or in the authorized operation of these facilities unless such change has been approved by the DOE.

Article 6. EPE or its agent 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 7. The Historic Properties Treatment Plan (February 1992), prepared as part of the environmental documentation in conjunction with the Presidential permit application, contains procedures that shall be followed in mitigating any impacts to historic properties that may be affected by construction of the subject 115-kV transmission line. These treatment measures are to be instituted by the applicant during construction to ensure the protection of historic sites and their contents. Failure to implement these treatment measures shall constitute a violation of the terms and conditions of the Presidential permit, which may, as a result, be modified or revoked by the DOE in accordance with Article 1 of the Presidential permit.

Article 8. 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 the DOE, who shall be an authorized representative of the United States for such purposes. EPE shall allow officers or employees of the United States with written authorization for free and unrestricted access into, through, and across any lands occupied by these facilities in the performance of their duties.

Article 9. EPE shall investigate any complaints from nearby residents of radio or television interference identifiably caused by the operation of the facilities covered by this permit. EPE shall take appropriate action as necessary to mitigate such situations. Complaints from individuals residing within one-half mile of the center of the transmission circuit are the only ones which must be resolved. EPE shall maintain written records of all complaints received and of the corrective actions taken.

Article 10. 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 EPE 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 EPE shall hold the United States harmless from any and all such claims arising from the construction, operation or maintenance of the facilities authorized.

Article 11. EPE 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. EPE shall prepare, maintain, and preserve complete and accurate records concerning the transfer of such

electric energy; and shall furnish the DOE an annual report which will be due on or before February 15th of each year, detailing the transmission of such electric energy, as follows: (1) the gross amount of kilowatt-hours of electric energy received or delivered; (2) the maximum hourly rate of transmission in kilowatts; and (3) the consideration paid or received for such energy during each month of the preceding calendar year.

Article 12. 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 the DOE. Upon receipt by the 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.

Article 13. Upon the termination, revocation, or surrender of this permit, the 115-kV transmission line, which is owned, connected, operated, and maintained by EPE and described in Article 2 of this permit, shall be removed within such time as

DOE may specify and at the expense of EPE. If EPE fails to remove such facilities 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 EPE. EPE shall have no claim for damages by reason of such possession, removal or repair. However, upon a showing by EPE that certain facilities authorized herein, such as portions of its rights-of-way or the transmission line within the United States, are useful to other utility operations within the bounds of the United States, the DOE will not require that those facilities be removed and the land restored to its original condition upon termination of the international interconnection.

Article 15. This permit shall be valid upon receipt by the DOE of the Testimony of Acceptance properly executed.

In witness whereof, I, Charles F. Vacek, Deputy Assistant Secretary for Fuels Programs, hereunto sign my name this 16 day of April, 1992, in the city of Washington, District of Columbia.

Charles F. Vacek
Deputy Assistant Secretary
for Fuels Programs
Office of Fossil Energy

FAX COVER SHEET

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FEDERAL ENERGY REGULATORY COMMISSION
OFFICE OF THE GENERAL COUNSEL
WASHINGTON, D.C. 20426

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DATE: November 5, 1996

TO: Doug Smith

ORGANIZATION: DOE

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ADDITIONAL MESSAGE:

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Enron Power Marketing, Inc.	)	
	)	
v.	)	Docket No. EL97-8-000
	)	
El Paso Electric Company	)	

NOTICE OF SUPPLEMENTAL ORDER PROCEDURES
AND DENYING MOTION

(November 5, 1996)

~~Take notice that the Commission is undertaking certain~~ procedures to consider an emergency application of Enron Power Marketing, Inc. (EPMI) seeking an order pursuant to section 202(e) of the FPA to modify El Paso Electric Company's (El Paso) Export Authorization in Docket No. EA-48-I, (authorizing El Paso to export electricity to Mexico) and/or to modify El Paso's Presidential Permits for its United States - Mexico border facilities in Docket Nos. PP-48-3 (Ascarate) and PP-92 (Diablo). The purpose of such modifications would be to permit the use of El Paso's border facilities for other United States companies to participate in sales of firm capacity and associated energy to Comision Federal De Electricidad (CFE) pursuant to CFE's September 9, 1996 request for proposals (RFP) to provide up to a maximum of 200 MW during 1997 in the Zone of Cuidad Juarez, Chihuahua, on the United States/Mexico border.

EPMI's application was originally filed with the Department of Energy (DOE) on October 7, 1996. EPMI asked DOE to supplement orders issued February 6, 1996, in Docket No. EA-102 (authorizing EPMI to export electricity to Mexico) and April 16, 1992, in Docket No. EA-48-I to require El Paso to provide EPMI nondiscriminatory transmission access over the United States portion of the lines connecting the Diablo and Ascarate substations in the United States with the Insurgentes and Riverena substations in Mexico. EPMI also requested that DOE amend El Paso's Presidential Permits, Docket No. PP-48-3 and Docket No. PP-92, to the extent necessary to grant EPMI's request.

On November 1, 1996, the Secretary of Energy issued Delegation Order No. 0204-163, which delegated to the Commission the authority to modify or condition El Paso's Presidential Permits for its border facilities in Docket Nos. PP-48-3 and PP-92, or El Paso's authorization to export in Docket No. EA-48-I, or both. DOE authorized the Commission to take actions necessary, if any, to effectuate open access transmission over the lines connecting the Diablo and Ascarate substations in the

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United States with the Insurgentes and Riverena substations in Mexico. EPMI's October 7, 1996 application initially filed with DOE has been docketed as Docket No. EL97-8-000 and pleadings filed at DOE in response to that application are incorporated into the record in Docket No. EL97-8-000.

In a pleading filed November 1, 1996, EPMI informed the Commission that CFE will select the winning bidder on November 7, 1996, and the chosen supplier will have 10 days from that time (November 17, 1996) to demonstrate that it has transmission service to meet the CFE's requirements. El Paso filed an emergency motion on November 1, 1996, requesting a period of time no earlier than December 2, 1996, in which to submit a response to EPMI's October 7, 1996 application. El Paso states that it will, assuming its system has capacity, voluntarily provide the service sought by EPMI, as well as service to any entity that is selected by CFE as a result of its September 9, 1996 RFP, "at rates, terms and conditions that are identical to those incorporated in its Open Access Transmission Tariff" but "under a separate agreement that is not subject to the jurisdiction of the Commission," pending final action on EPMI's application. On November 4, 1996, EPMI filed an answer to El Paso's motion stating that it does not oppose El Paso's requests as long as: (1) El Paso's commitment to provide voluntary service is fully enforceable in future compliance or complaint proceedings before the Commission under sections 205 and 206 of the FPA; and (2) EPMI is afforded an opportunity to respond to the arguments that El Paso may make.

Given the time constraints involved in this proceeding, we believe it necessary to provide hearing procedures that will afford El Paso with an "opportunity for hearing" required in section 202(e) of the FPA, the Presidential Permits or the Executive Orders under which such permits were issued, or in El Paso's export authorization from DOE before November 17, 1996, on the issues raised in EPMI's October 7, 1996, application. El Paso's motion does not provide sufficient reassurance that service will be available to EPMI or another winning bidder during the pendency of this proceeding because, as EPMI notes, El Paso does not believe that service is enforceable by this Commission under the Federal Power Act and has provided potential suppliers to CFE no other means of ensuring that service will be provided. As a result, unless El Paso in the immediate future provides sufficient reassurance that service will be available during the pendency of this proceeding, timely action on this complaint is necessary. Thus, we will grant El Paso's motion only if, by November 8, El Paso agrees in writing to offer to the winning bidder selected by CFE an enforceable contract for the year 1997 to provide the necessary transmission services at rates, terms and conditions consistent with the comparability and non-discriminatory principles articulated in Order No. 888. Further, El Paso must by November 8 agree to abide by the

Commission's resolution of any disputes that arise under such contract, pending Commission resolution of the jurisdictional issues presented in this proceeding.

If El Paso does not provide this written consent by November 8, any person desiring to be heard or to protest or answer EPMI's filing in Docket No. EL97-8-000, including El Paso, should file a motion to intervene, protest, or answer, including supporting materials, with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214, 211 and 213 of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.214, 211, 213). All such motions, protests, answers, and supporting materials, must be filed on or before November 12, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

By direction of the Commission.

(S E A L)

Lois D. Cashell

Lois D. Cashell,
Secretary.