BEFORE THE UNITED STATES DEPARTMENT OF ENERGY

Application for Authorization To Transmit Electric Energy to a Foreign Country	DOE–HQ–2025–0019

APPLICATION FOR REHEARING OF PUBLIC CITIZEN

Pursuant to 16 U.S.C. § 825*l*(a), Public Citizen requests rehearing of the Department of Energy's adoption of a final rule revising Part 205 of the Department's rules, 10 C.F.R. § 205.300 *et seq.*, relating to applications for authorization to export electricity. *See* Application for Authorization To Transmit Electric Energy to a Foreign Country, 91 Fed. Reg. 36970 (June 22, 2026) (Final Rule). The Final Rule amends section 205.300 of the Department's rules, 10 C.F.R. § 205.300, to provide that applications to export electricity from the United States need only "include information the applicant deems relevant to DOE's determination under section 202(e) in the Federal Power Act," 16 U.S.C. § 824a(e). 91 Fed. Reg. at 36975. The Final Rule repeals sections 205.301 through 205.309 of the Department's rules, 10 C.F.R. §§ 205.301–.309, which set out timing, content, and reporting requirements for export applications. The Final Rule also discontinues the Department's practice of including in the Federal Register notice of an export application a statement that advises interested persons of their right to file protests and intervention motions. Instead, the Final Rule provides that the Department will publish notice of export applications on either its website or the Federal Register, and will consider "comments" in deciding whether to grant the applications. 91 Fed. Reg. at 36972.

Established in 1971, Public Citizen is a national, not-for-profit, nonpartisan research and advocacy organization representing the interests of household consumers. Public Citizen is active before the Federal Energy Regulatory Commission (FERC) and the Department in advocating policies that promote just and reasonable rates for consumers. Public Citizen has frequently intervened in Department proceedings to challenge export applications that would harm consumers by raising their energy prices or worsening the climate crisis. In recent filings, Public Citizen has explained that Department actions authorizing electricity exports cannot be reconciled with the Trump administration's position, as reflected in the Department's emergency orders under section 202(c) of the Federal Power Act, 16 U.S.C. § 824a(c), and in President Trump's executive orders, that the United States faces an energy emergency due to inadequate supply. Public Citizen filed comments on the Department's proposed rule in this proceeding.

Public Citizen urges the Department to reconsider the Final Rule because the Final Rule is contrary to law, arbitrary and capricious, and procedurally infirm, for the reasons set forth below.

STATEMENT OF ISSUES

1. The Final Rule improperly deprives interested persons of the ability to file protests and intervene in proceedings on export applications. Intervention is necessary for an interested person to become a party to a proceeding, and the Department lacks statutory authority to deny persons the ability to intervene. The Department failed to provided a reasoned explanation for moving to a comment-based system for export applications, and also failed to provide notice of this change in the notice of proposed rulemaking.

2. The Department failed to provide a reasoned explanation for repealing the content requirements for export applications. The purported marketplace and regulatory changes that the Department cited do not justify repealing those requirements. The Department's contention that repealing the requirements would reduce regulatory burdens is belied by its recognition that it will

need to post guidance to application on the information that export applications must contain to obtain export authorization.

3. The Department acted arbitrarily when it provided no justification for its decision to repeal post-authorization reporting requirements on exporters.

I. THE FINAL RULE IMPROPERLY DEPRIVES INTERESTED PERSONS OF THE ABILITY TO FILE PROTESTS AND INTERVENE IN PROCEEDINGS ON EXPORT APPLICATIONS

4. As the Final Rule recognizes, 91 Fed. Reg. at 36971, the Department may not issue an export authorization under section 202(e) without first providing interested persons an "opportunity for hearing." 16 U.S.C. § 824a(e). To ensure a "meaningful opportunity for hearing," an interested person is "entitled to intervene" so that they may submit evidence and information that would bear on the Department's decision to grant an application or to hold a hearing to resolve factual questions in dispute. *Citizens for Allegan Cnty., Inc. v. Fed. Power Comm'n*, 414 F.2d 1125, 1128 (D.C. Cir. 1969). Moreover, intervention enables an interested person to become a "party to a proceeding" who can seek judicial review of the Department's orders under section 313(b) of the Federal Power Act, 16 U.S.C. 825*l*(b); *see Pub. Serv. Comm'n of State of N.Y. v. Fed. Power Comm'n*, 284 F.2d 200, 203–04 (D.C. Cir. 1960); *New Energy Cap. Partners, LLC v. FERC*, 671 F. App'x 802, 804 (D.C. Cir. 2016). FERC's rules thus provide that a "person seeking to intervene *to become a party* . . . must file a motion to intervene." 18 C.F.R. § 385.214(a)(3) (emphasis added). The Department's Federal Register notices of export applications have traditionally followed FERC's procedural rules by cross-referencing those rules and advising that "[a]ny person desiring *to become a party* to this proceeding should file a motion to intervene . . . in accordance with" FERC procedures. *See*, *e.g.*, Application for Authorization To Export Electric Energy; Electric Power Markets USA, LLC, 91 Fed. Reg. 2927, 2928 (Jan. 23, 2026) (emphasis added).

5. The Final Rule violates section 202(e) by denying would-be intervenors like Public Citizen the opportunity to intervene in export application proceedings. Instead of intervention that accords full party status, the Final Rule establishes a regime under which the Department will "consider" comments on applications. 91 Fed. Reg. at 36972. Commenters, however, lack full party status with the right to seek a hearing or judicial review of adverse Department actions. The Department lacks the statutory authority to strip interested members of the public of their rights in this manner.

6. The Department's reasoning is also arbitrary and capricious. The preamble to the Final Rule asserts that the intervention process "unnecessarily delays and complicates the [export application] process, especially given that Congress only granted limited authority to the Department to deny applications." *Id.* The Department neither cites record evidence of delays or complications nor explains how a comment-based regime speeds up or simplifies the process. Nor could it, because intervention motions are largely unopposed given the widespread recognition that the public has a substantial interest in the Department's actions on export applications. Moreover, what the Department calls its "limited authority" to deny export applications has no relevance to the procedure used to consider export applications, which, under the statutory scheme, require an opportunity for hearing and the concomitant right of interested persons to intervene.

7. Compounding this problem, the Final Rule threatens to deprive interested persons of notice of export applications. Instead of providing notice in the Federal Register as the Department has previously done, the Final Rule indicates that the Department will provide notice either in the Federal Register or on an unidentified departmental website—without specifying how the Department will decide where to provide notice. This change is unexplained and arbitrary, and makes it more likely that interested members of the public will miss notices of export applications.

8. In addition to these infirmities, the notice of proposed rulemaking did not provide notice to the public that the Final Rule would adopt a comment-based regime in lieu of the Department's traditional practice of incorporating FERC's procedures, or change the Department's practice of publishing notice of export applications in the Federal Register. For this reason as well, the Department should reject this change to the export application procedures.

II. THE FINAL RULE'S REPEAL OF CONTENT REQUIREMENTS FOR EXPORT APPLICATIONS IS ARBITRARY AND CAPRICIOUS

9. The Final Rule repeals sections 205.302 through 205.304 of the Department's rules, 10 C.F.R. §§ 205.302–.304, which specify content requirements for export applications. The effect of this repeal is that export applications will no longer be required to contain a base-level amount of information upon which potential intervenors like Public Citizen can assess whether a particular application should be contested and, if so, on what grounds. The Department failed to provide a reasoned explanation for this change.

10. The preamble to the Final Rule states that repealing the content requirements "align[s] agency procedures to current policy by removing economic, administrative, and procedural burdens on applicants tied to outdated application requirements." 91 Fed. Reg. at 36971. But the Department failed to identify which of the content requirements for export applications is "outdated" or burdensome. The preamble notes the development of "Regional Transmission Organizations, Independent System Operators, balancing authorities[,] or other such entities," and "the rise of electric power marketers." *Id*. Elsewhere, the Department asserts that a "multi-layered enforcement mechanism" exists that "provides assurance that approved exports will not lead to operational reliability issues on the domestic transmission system." *Id*. at 36972. These explanations do not provide reasoned bases for eliminating content requirements for export applications.

11. At the outset, the Final Rule does not affect only export applications by electric power marketers. Accordingly, the Department's conclusion that "their exports allow for the transfer of electricity that might not otherwise be utilized to a willing customer" would not justify wholesale repeal of the content requirements for all applicants. *Id.* Moreover, the Department's conclusion that their "exports are not drawn from resources earmarked for specific domestic customer obligations" does not mean that their exports would not "impair domestic sufficiency of supply," given that any export of power (whether earmarked or not) necessarily makes that power unavailable to domestic customers. *Id.* Accordingly, even as to power marketers, the Department still must consider whether grant of an export application would "impair the sufficiency of electric supply within the United States." 16 U.S.C. § 824a(e).

12. In any event, the preamble fails to draw any connection between the identified changes in energy markets and the information that the Department and potential intervenors need to be able to assess export applications. The Department seems to suggest that marketplace changes make it easier for the section 202(e) standard to be met. But even if that were correct, the Department and potential intervenors still need the underlying factual information so that the question that 202(e) asks—whether the export 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"—can be evaluated. The Department acknowledged as much in response to IECA's recommendation that the Department should "issue guidelines for applicants setting forth examples of the various types of information that would enable DOE to find that the proposed transmission will not impair the sufficiency of the 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 FPA." 91 Fed. Reg. at 36971 (quotation marks omitted) (quoting DOE HQ–2025–0019–0005 at

4). The Department responded by expressing its intent to "publish supplemental materials outside of the Code of Federal Regulations to assist prospective applicants with preparing applications." But sections 205.302 to 205.304 already assist prospective applicants by advising them of the information that should be included in export applications, including an explanation for "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." 10 C.F.R. § 205.302(g). Repealing that content rule from the CFR only to provide content guidance through a mechanism "outside of" the CFR is irrational and would not serve the purported purpose of reducing applicants' burdens or providing them with guidance to speed up processing. And to the extent the Department concluded that other content requirements in its rules were outdated or unnecessary, nothing in the justification for the Final Rule attempts to justify that conclusion.

13. The preamble also cites an unpublished proposal in Fall 2023 to "modernize[]" export regulations. 91 Fed. Reg. at 36971. But the OIRA abstract of that proposal states that it would "clarify[] procedural instructions and updat[e] the procedures to better reflect changes in the industry and changes to DOE policy." https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=1901-AB35. Nothing there suggests a wholesale repeal of all content requirements. The preamble also asserts that a "simplified process is appropriate because Congress provided only limited decision-making authority to the Department for considering export authorization applications." 91 Fed. Reg. at 36971. But the section 202(e) standard for granting export authorization has remained unchanged since its enactment in 1935. A statutory standard that has been in place for 91 years cannot provide a reasoned basis for the Department's conclusion that information and exhibits

required by the content requirements are no longer necessary or useful in deciding whether to issue an export authorization.

III. THE REPEAL OF SECTION 205.308 IS UNEXPLAINED AND ARBITRARY

14. Section 205.308 of the Department's Rules, 10 C.F.R. § 205.308, imposes three reporting requirements on applicants granted authorization to export electricity:

> (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.
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> (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.
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> (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.

The Department failed to provide a reasoned explanation for its decision to repeal these reporting requirements. These requirements are not part of the application process and therefore do not have any effect on applicants' burden when preparing and filing applications or on the Department's ability to process export applications. Rather, these reporting requirements provide information that enables the Department to carry out its responsibilities under the Federal Power Act. The Final Rule, however, does not provide a reasoned explanation of the Department's decision to eliminate these reporting requirements. Indeed, the preamble to the Final Rule does not even acknowledge the existence of these separate reporting requirements. The decision to eliminate these reporting obligations was therefore arbitrary and capricious, and the Department should reconsider that action.

Respectfully submitted,

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