



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

R. 00973954

IN REPLY PLEASE
REFER TO OUR FILE
P-00991787

APRIL 13, 2000

PAUL E RUSSELL ESQUIRE
PPL ELECTRIC UTILITIES CORP
d/b/a PPL UTILITIES
TWO NORTH NINTH STREET
ALLENTOWN PA 18101-1179

DOCKETED
APR 17 2000

Petition of PPL Electric Utilities Corp, d/b/a PPL Utilities (f/k/a PP&L, Inc.) for issuance
of determination under Section 32© of PUHCA 15 U.S.C. §79z-5a(a)

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on April 13, 2000 in
the above-entitled proceeding has adopted an Order.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty,
Secretary

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FOLDER

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Enclosure
cert. Mail

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held April 13, 2000

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

Petition of PPL Electric Utilities Corp., d/b/a
PPL Utilities (f/k/a PP&L, Inc.), For Issuance of
Determination under Section 32(c) of PUHCA,
15 U.S.C. §79z-5a(a)

Docket No. P-00991787

DOCKETED
APR 17 2000

ORDER

BY THE COMMISSION:

Before the Commission is a Letter-Petition, filed on December 7, 1999, by PPL Electric Utilities Corp, d/b/a PPL Utilities, f/k/a PP&L, Inc., (PPL), requesting, *inter alia*, certain findings that would permit designated PPL generating assets to become "eligible facilities" under Section 32(c) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. §79z-5a(a), following PPL's transfer of the assets.¹ The assets for which PPL seeks "eligible facilities" findings are as follows:

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¹ For disposition purposes, the Letter-Request has been trifurcated as follows: Docket No. P-00991787, the instant request for exempt wholesale generator (EWG) findings; Docket No. R-00973954, Issuance of certificate(s) of public convenience to transfer generating assets and liabilities, and Docket No. A-11050, F0294, a request to transfer stock ownership. This Order addresses only the EWG determinations under PUHCA.

Martins Creek Steam Electric Station Units 1 and 2
Martins Creek Steam Electric Station Units 3 and 4
Martins Creek Combustion Turbine Generators
Allentown Combustion Turbine Generators
Fishbach Combustion Turbine Generators
Harrisburg Combustion Turbine Generators
Harwood Combustion Turbine Generators
Jenkins Combustion Turbine Generators
Lock Haven Combustion Turbine Generators
West Shore Combustion Turbine Generators
Williamsport Combustion Turbine Generators
Montour Steam Electric Station
Conemaugh Steam Electric Station (PPL's 11.39% undivided interest)
Keystone Steam Electric Station (PPL's 12.34% undivided interest)
Brunner Island Steam Electric Station
Wallenpaupack Hydroelectric Station
Holtwood Hydroelectric Station
Susquehanna Steam Electric Station

History of the Proceeding

On August 27, 1998, in *PPL Restructuring Proceeding*, Docket No. R-00973954, this Commission adopted a Joint Petition for Full Settlement of the issues related to PPL's restructuring in the wake of the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§2801, *et seq.*, (Competition Act). The Restructuring Order adopting the Joint Petition provides as follows at Ordering Paragraph No. 3:

That all aspects of [PPL's] transfer of its generation assets and liabilities and wholesale contracts under the settlement are approved. In addition, we grant the approvals, licenses and certificates of public convenience required under the Public Utility Code regarding the transfer or assignment of [PPL's] generating assets and liabilities under the settlement, including but not limited to approvals under Chapters 5, 11, 19, 21 and 28 of the Public Utility Code.

Citing Ordering Paragraph No. 3, the instant Letter-Petition requests that this Commission find that allowing PPL's generating assets to become "eligible facilities," as defined in 15 U.S.C. §79z-5a(a), will benefit consumers, is in the public interest, and does not violate Commonwealth law. Specifically, this Commission is being asked to make these findings as a precursor to a determination by the Federal Energy Regulatory Commission (FERC) that the new owners of the subject generating facilities qualify as EWGs.

PPL explains that through a series of transactions, it will transfer its generation assets to indirect subsidiaries of CEP Group, Inc., which would later be renamed as PPL Energy Funding Corporation. The new owners of the generation assets are identified in PPL's December 7, 1999 filing as PPL Martins Creek, LLC, PPL Montour, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, and PPL Susquehanna, LLC (Generation Owners).

The Office of Consumer Advocate (OCA) filed Comments on December 30, 1999, and filed a Notice of Intervention and Supplemental Answer on February 4, 2000. The PP&L Industrial Customer Alliance (PPLICA) filed an Answer to the Letter-Petition on January 6, 2000. The Industrial Energy Consumers of Pennsylvania (IECPA) filed a Petition to Intervene on January 31, 2000. The Mid-Atlantic Power Supply Association (MAPSA) filed Comments on February 9, 2000.

The OCA and PPLICA are concerned that PPL's reorganization will allow PPL to circumvent Section 32(k)(1) of PUHCA which prohibits an electric utility from

purchasing energy from an affiliated EWG without a Section 32(k)(2) exemption. The OCA notes that PPL has not requested a Section 32(k)(1) exemption, perhaps because it intends to place an affiliate, PPL EnergyPlus, LLC, (formerly PPL EnergyPlus Co., LLC), between itself and any affiliated EWGs. The OCA and IECPA also express rate cap concerns. IECPA asserts that PPL's EWG request does not address the potential impact on the development of competition within the Commonwealth and that limiting the use of the subject generating facilities to wholesale transactions may damage the market for retail competition. MAPSA argues that any approval of the Letter-Petition should be conditioned upon PPL's continued adherence to the Generation Code of Conduct. Other issues raised by Allegheny Electric Cooperative, Inc., the International Brotherhood of Electrical Workers, and Eric Joseph Epstein in response to the Letter-Petition generally involve matters that are beyond the scope of this docket.

PPL filed an Answer on January 12, 2000, in which PPL acknowledges, *inter alia*, that the Codes of Conduct adopted in the Restructuring Order apply to dealings between PPL and its affiliated electric generation supplier (EGS) and any affiliated generation company in PPL's current and future operations. PPL is not seeking a modification of the terms of the PUC or FERC requirements. PPL argues that the FERC will have regulatory oversight of applicable power sales agreements and that the applicable market-rate tariff has been approved by the FERC. *See PPL Resources, Inc.*, 90 FERC ¶ 61,203 (2000) and *Southaven Power, LLC, et al.*, 90 FERC ¶ 61,063 (2000) (basket letter order); *see also Illinova Power Marketing, Inc., et al.*, 88 FERC ¶ 61,189 (1999) (basket letter order

granting an application for market-based rate authority in Docket No. ER99-3420-000, relative to PPL's affiliate, Sunbury Generation).

Specifically, according to PPL, if the FERC were to determine that the market no longer provided adequate protection to customers, the FERC could revoke the market-based rate authority and require justification of rates by traditional cost-based criteria. PPL also maintains that the applicability and terms of the rate caps as governed by the Settlement Petition, the Restructuring Order, and the Competition Act will not be affected by the requested determination.

On March 17, 2000, PPL filed a further Response, grouping the issues raised into six (6) categories: (1) determinations under PUHCA, (2) sales of power to PPL by affiliates, (3) applicability of the codes of conduct, (4) transfer of PPL EnergyPlus, LLC, (5) transfer of the Susquehanna Steam Electric System, and (6) impact on employees. In support of its Letter-Petition, PPL notes that, if all the pending mergers in the industry are consummated, PPL will be one of only two major electric utilities with corporate headquarters located in the Commonwealth. PPL notes that it is scheduled to complete all aspects of its corporate realignment by July 1, 2000, and that creation of the unregulated generating companies with EWG status is an essential element of the realignment. PPL argues that this Commission's scope of discretion and review is limited in that all substantive approvals were granted by the Restructuring Order.

PPL asserts that the further concerns raised in response to its request at this docket are unfounded. PPL characterizes the issuance of formal Section 32(c) findings to be

implicit in this Commission's approval of all aspects of the transfer of PPL's generation assets in the Settlement Petition and, therefore, ministerial in nature. (PPL 3/17/00 Res., pp. 11-12). PPL cites examples of other Section 32(c) findings permitting the transfer of generating assets to affiliates. (*See Appl. of UGI*, Docket No. P-00991693 (August 26, 1999) and *Appl. of PP&L*, Docket No. R-00973954 (September 15, 1999)). (PPL 3/17/00 Res., p. 13). PPL argues that approval of the transfer of the generation assets and liabilities did not contain any restrictions on the future use of those facilities and that any additional conditions or restrictions would, therefore, be inappropriate, especially inasmuch as issues regarding the sale of power in the wholesale market are solely within the jurisdiction of the FERC. (PPL 3/17/00 Res., p. 14). PPL maintains that, after the EWG approval, the resulting expansion of the wholesale supply would enhance competition within the Commonwealth. (PPL 3/17/00 Res., pp. 14-15). PPL avers that, without the requested Commission determinations, the pro-competitive benefits of the proposed corporate realignment and the resulting investment flexibility are in jeopardy. (PPL 3/17/00 Res., p. 15).

PPL argues that the Letter-Petition presents no potential for violation of the letter or intent of Section 32(k) in light of the prior approval of the transfer of generation assets in a situation where all customers can choose a generation supplier and where there is a ten-year cap on the amount PPL charges any remaining customers for energy and capacity. PPL closes out its EWG arguments with the point that the intermediary wholesale power provider may obtain energy or capacity from any source. Thus, argues

PPL, it would not necessarily be buying power from units it formerly owned, and consequently, would not be buying power from an EWG under PUHCA. (PPL 3/17/00 Res., p. 16).

Discussion

It is clear that the transfer of generation assets and liabilities by PPL was encompassed by the Settlement Petition and was approved by the Restructuring Order. Pursuant to that prior approval, PPL may request that the Commission make the “eligible facilities” findings necessary to permit Generation Owners to seek determinations from the FERC that they qualify as EWGs under Section 32(a) of PUHCA.

Under PUHCA, the Securities and Exchange Commission (SEC) is required to approve the acquisition of the securities of an electric utility company. 15 U.S.C. §79i(a)(2). Without status as EWGs, Generation Owners would be considered electric utility companies under Section 2(a)(3) of PUHCA. 15 U.S.C. §79b(a)(3). Establishing EWG status for Generation Owners would effectively remove the entities from the definition of electric utility company and would eliminate the requirement of obtaining SEC approvals.

To establish EWG status, Generation Owners must be determined by FERC to be “exclusively in the business of owning or operating, all or part of one or more eligible facilities and selling electric energy at wholesale.” 15 U.S.C. §79z-5a(a)(1). As a precursor to the FERC determination, facilities that were under state regulation as of October 24, 1992, must receive from the jurisdictional state regulatory commission a

“specific determination that allowing such facility to be an ‘eligible facility’ (1) will benefit consumers, (2) is in the public interest, and (3) does not violate State law. . . .” 15 U.S.C. §79z-5a(c).

Specifically, as PPL notes, transfer of the generation assets will establish new generation owners and suppliers in the wholesale market, thereby increasing the number of competitors and the level of competition in that market. In fact, as noted above, the FERC has already approved a tariff which would afford Generation Owners the authority to sell power at market-based rates.

We find that increased competition in the wholesale market will reduce the suppliers’ costs of securing generation and ultimately will benefit consumers through access to lower-cost generation supplies. Further, as we have previously recognized, a more competitive electric utility industry in Pennsylvania is in the public interest. *See PaPUC v. West Penn Power Co. and AYP Capital, Inc.*, Docket No. G-00960476 (June 6, 1996). Accordingly, we conclude that the information furnished by PPL in this proceeding in support of its request indicates that EWG status for Generation Owners will benefit consumers and is in the public interest.

Moreover, all aspects of the transfer of PPL’s generating facilities to a third party, even if the third party is an affiliate, were approved by the Restructuring Order. Furthermore, the Commission has previously issued Section 32(c) findings for the transfer of generating facilities by other Pennsylvania electric utilities, after determining that no legal impediment exists, where a sale or transfer has been previously approved.

See, eg., Appl. of UGI Development Co., Docket No. P-00991693 (August 26, 1999); Appl's of Metropolitan Edison Co. and Pennsylvania Electric Co., Docket Nos. R-00974008 and R-00974009 (October 20, 1998). Accordingly, we conclude that permitting the designated generation assets to be declared as "eligible facilities" does not violate state law.

Conclusion

Upon review of PPL's request and the clarifying and supplemental pleadings submitted by PPL, we are satisfied that, through the creation of new generation owners and suppliers in the wholesale market, the transfer of the subject generating assets will increase the competitive level of that market. Consequently, as retail consumers have access to lower-cost generation supplies resulting from this increased level of competition, this transfer will benefit consumers and be in the public interest. Further, it does not violate state law in that it is consistent with prior Commission determinations for other electric utilities and is necessary to effectively implement the transfers of generation assets by PPL as previously approved by this Commission; **THEREFORE,**

IT IS ORDERED:

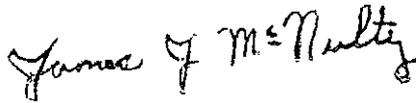
1. That the Petition of PPL Electric Utilities Corp, d/b/a PPL Utilities (f/k/a PP&L, Inc.), for issuance of a determination under Section 32(c) of PUHCA, 15 U.S.C. §79z-5a(a), of findings that would permit the Generation Owners identified herein to apply to the Federal Energy Regulatory Commission for exempt wholesale generator

status, following PPL's transfer of the designated generation assets and certain related facilities is granted.

2. That it is hereby determined that allowing the designated generation assets to qualify as "eligible facilities" under the Public Utility Holding Company Act of 1935 will benefit consumers, is in the public interest, and does not violate Commonwealth law.

3. That a copy of this Order be filed at Docket Nos. R-00973954 and A-110500, F0294.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: April 13, 2000

ORDER ENTERED: **APR 13 2000**