

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. REPORT DATE: September 7, 1999	2. BUREAU AGENDA NO. SEP-1999-L-74*
3. BUREAU: LAW	
4. SECTION(S):	5. PUBLIC MEETING DATE:
6. APPROVED BY: Director: B.R. Pankiw 7-5000 <i>BRP</i> Supervisor:	September 15, 1999
7. PERSONS IN CHARGE: K.O. Moury 2-8883 <i>KOM</i>	<i>KJR</i> SEP 23 1999
8. DOCKET NO.: R-00973954	

- 9. (a) CAPTION (abbreviate if more than 4 lines)**
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) Application of PP&L, Inc. for required state findings under 15 U.S.C. §79z-5a(c) and (k) to permit Sunbury Generation, LLC to obtain exempt wholesale generator status.

(b) PP&L plans to transfer the Sunbury Steam Electric Station and certain related facilities to Sunbury Generation, LLC. This transfer was previously approved by Commission Order entered on August 27, 1998. PP&L now requests that the Commission find that allowing Sunbury Generation, LLC to be an eligible facility will benefit consumers, is in the public interest and does not violate state law. Such findings would enable Sunbury Generation, LLC to seek a determination from the Federal Energy Regulatory Commission as an "exempt wholesale generator" under the Public Utility Holding Company Act.

(c) The Law Bureau recommends adoption of the attached proposed Order granting PP&L's request and making the necessary findings with respect to the status of Sunbury Generation, LLC as an eligible facility.

10. MOTION BY: Commissioner Chm. Quain

SECONDED: Commissioner Bloom

Commissioner Rolka - Yes
Commissioner Brownell - Yes
Commissioner Wilson - Yes

CONTENTS OF MOTION: Staff recommendation adopted.



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265
September 15, 1999

REFER TO OUR FILE

R-00973954

PAUL RUSSELL ASSOCIATE GENERAL COUNSEL
PP&L
TWO NORTH NINTH STREET
ALLENTOWN PA 18101

Application of PP&L, Inc. For Required State Findings Under 15 U.S.C.
§79z-5a(c) And (k) To Permit Sunbury Generation, LLC To Obtain Exempt
Wholesale Generator Status

To Whom It May Concern:

This is to advise you that an Order has been adopted by the
Commission in Public Meeting on September 15, 1999 in the above
entitled proceeding. **DOCKETED**

An Order has been enclosed for your records. SEP 20 1999

Very truly yours,

James J. McNulty
Secretary

Enclosure
Certified Mail
JEP

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FOLDER

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held September 15, 1999

Commissioners Present:

John M. Quain, Chairman
Robert K. Bloom, Vice Chairman
David W. Rolka
Nora Mead Brownell
Aaron Wilson, Jr.

Application of PP&L, Inc. For
Required State Findings Under
15 U.S.C. §79z-5a(c) And (k)
To Permit Sunbury Generation,
LLC To Obtain Exempt
Wholesale Generator Status

Docket No. R-00973954

ORDER

DOCKETED

SEP 20 1999

BY THE COMMISSION:

Before the Commission is a request of PP&L, Inc. (PP&L) for certain findings that would permit Sunbury Generation, LLC (Sunbury Generation) to obtain exempt wholesale generator (EWG) status, following PP&L's transfer of the Sunbury Steam Electric Station and certain related facilities (Sunbury Facilities). Although this request was originally filed by letter to the Secretary dated June 30, 1999, PP&L subsequently submitted additional supporting

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information to Commission staff on September 1, 1999. The request is unopposed and PP&L seeks expedited consideration.

Under an Asset Purchase Agreement, PP&L will transfer the Sunbury Facilities to its corporate parent, PP&L Resources, Inc. (Resources). Thereafter, Resources and PP&L will transfer the Sunbury Facilities to Sunbury Holdings, LLC (Sunbury Holdings), who will then designate its wholly-owned subsidiary Sunbury Generation as the transferee.

The transfer of generation assets and liabilities by PP&L was previously approved by Commission Order, adopting the Joint Petition for Full Settlement of PP&L's restructuring proceeding. Specifically, by that Order the Commission found:

That all aspects of PP&L'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 PP&L'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.

Application of PP&L for Approval of Restructuring Plan; Docket No. R-00973954 (Order entered August 27, 1998, at page 11, Ordering Paragraph No. 3). Pursuant to that approval, PP&L requests that the Commission make the findings necessary to permit Sunbury Generation to seek a determination from the Federal Energy Regulatory Commission (FERC)

that it is an “exempt wholesale generator” under Section 32(a) of the Public Utility Holding Company Act (PUHCA). 15 U.S.C. §79z-5a(a).

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 an EWG, Sunbury Generation would be considered an electric utility company under Section 2(a)(3) of PUHCA. 15 U.S.C. §79b(a)(3). Establishing EWG status for Sunbury Generation would effectively remove the entity from the definition of electric utility company and would eliminate the requirements of obtaining SEC approvals.

To establish EWG status, Sunbury Generation 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). Additionally, for facilities under state regulation as of October 24, 1992, the jurisdictional state regulatory commission must make 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).

The supplemental information furnished by PP&L on September 1, 1999 in support of this request indicates that EWG status for Sunbury

Generation will benefit consumers and is in the public interest.

Specifically, as PP&L notes, transfer of the Sunbury Facilities will establish a new generation owner and supplier in the wholesale market, thereby increasing the number of competitors and the level of competition in that market. In fact, the FERC has granted Sunbury Generation authority to sell power at market-based rates. Illinova Power Marketing, Inc., et al., 88 FERC 61,189 (1999) (basket letter order granting Sunbury Generation's application for market-based rate authority in Docket No. ER99-3420-000).

We agree that increased competition in the wholesale market will reduce the suppliers' costs of securing generation and ultimately 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 Pa. Public Utility Commission v. West Penn Power Co. and AYP Capital, Inc., Docket No. G-00960476 (Order entered June 6, 1996).

Moreover, allowing Sunbury Generation to be an "eligible facility" does not violate state law. All aspects of the transfer of PP&L's generating facilities to third parties were approved by our August 27, 1998 Order. Also, 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 approved. See Application of UGI Development Company, Docket No. P-00991693 (Order entered August 26, 1999); Applications of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Restructuring Plans, Docket Nos. R-00974008 and R-00974009 (Order entered October 20, 1998 approving Joint Petition for Full Settlement, Ordering Paragraph No. 8).

Upon review of PP&L's request and the supporting information submitted by PP&L, we are satisfied that through the creation of a new generation owner and supplier in the wholesale market, the transfer of the Sunbury Facilities 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 facilities by PP&L previously approved by the Commission;

THEREFORE, IT IS ORDERED:

1. That the Application of PP&L, Inc. for findings that would permit Sunbury Generation, LLC (Sunbury Generation) to obtain exempt

wholesale generator status, following PP&L's transfer of the Sunbury Steam Electric Station and certain related facilities (Sunbury Facilities) is hereby granted.

2. That it is hereby determined that allowing the Sunbury Facilities 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 State law.

BY THE COMMISSION,

A handwritten signature in cursive script that reads "James J. McNulty".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: September 15, 1999

ORDER ENTERED: **SEP 15 1999**