

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of PPL Interstate Energy)	Docket Nos.
Company and PPL Electric Utilities)	A-2014-2435752
Corporation for All of the Necessary)	A-2014-2435833
Authority, Approvals, and Certificates of)	
Public Convenience (1) for the Transfer of PPL)	
Corporation’s Ownership Interests in PPL)	
Interstate Energy Company to Talen Energy)	
Corporation, and Certain Post-Closing)	
Transactions Associated therewith; (2) for the)	
Transfer of Certain Property Interests Between)	
PPL Electric Utilities Corporation and PPL)	
Energy Supply, LLC and its Subsidiaries in)	
Conjunction with the Transfer of All of the)	
Interests of PPL Energy Supply, LLC and its)	
Subsidiaries to Talen Energy Corporation; (3))	
for any Modification or Amendment of)	
Associated Affiliated Interest Agreements;)	
and (4) for any Other Approvals Necessary to)	
Complete the Contemplated Transactions)	
)	

**ANSWER TO PRELIMINARY OBJECTIONS
OF MONITORING ANALYTICS, LLC**

Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), files this answer to preliminary objections pursuant to 52 Pa.Code §5.101(f). Applicants object to the Market Monitor’s intervention, arguing that the Market Monitor has (i) failed to assert its interests in the appropriate forum, (ii) failed to satisfy the requirements for late intervention, and (iii) improperly submitted comments. The Market Monitor has complied in all material respects with the requirement for seeking leave to intervene out of time and is in conformance with the requirements set forth in 52 Pa.Code §§ 5.71 through 5.74.

I. ANSWER

A. The Issues Raised by the Market Monitor in this Proceeding Can and Should Be Considered.

The proposed transaction must be reviewed pursuant to Section 2811 of the Public Utility Code that was adopted by the General Assembly as part of the Customer Choice Act.¹ Pursuant to Section 2811, the Commission generally has responsibility for “monitor[ing] the market for the supply and distribution of electricity to retail customers and tak[ing] steps as set forth in this section to prevent anticompetitive or discriminatory conduct and the unlawful exercise of market power.”

Pursuant to Section 1102, the Applicants have the burden of proving by a preponderance of the evidence that the proposed transaction is in the public interest because it “will affirmatively promote the service, accommodation, convenience or safety of the public in some substantial way.”² The statutory mandate is broad and does not depend on the specific elements of the proposed transaction that triggered this Commission’s jurisdiction. The Applicants argue that the Commission does not have jurisdiction to approve the spinoff and combination of deregulated generation assets, and only has the authority to review the merger in part, specifically, the transfer of control of oil and gas assets to Talen Energy.³ This argument cannot be accepted without unduly restricting the Commission’s authority to review future mergers and protect the interests of Pennsylvania customers. The Market Monitor’s comments demonstrate that the Transaction would

¹ 66 Pa. C.S. §2811(a).

² 66 Pa.C.S. § 1102(a)(3); see also *City of York v. PA Public Utility Commission*, 449 Pa. 136, 295 A.2d 825, 828 (Pa. 1972); see also *Joint Application of SBC Communications, Inc., and AT&T Corp. together with its Certified Pennsylvania Subsidiaries for Approval of Merger*, Docket Nos. A-311163F0006, A-310213F0008, A-310258F0005, Commission Opinion and Order entered October 5, 2005 at 16–17.

³ Objection at 6–7.

significantly increase concentration in specific, highly concentrated locational energy markets, would increase concentration in the capacity market and would have minimal effect on the market for regulation. The effect of these impacts will affect prices at the local level, and are, accordingly, within the proper scope of Sections 2811 and 1102.

The proposed transaction involves various intercompany agreements regarding electric generation assets. The Applicants describe the agreements as follows:

These agreements fall into four general categories: (1) agreements which will remain in place after closing, but PPL Energy and its subsidiaries will no longer be affiliates of PPL EU; (2) agreements that will remain in place after closing, but PPL Energy Supply and its subsidiaries will no longer be parties to the agreements; (3) agreements between PPL IEC and PPL Energy Supply and its subsidiaries that will remain in place after closing; and (4) agreements that will terminate and be replaced at closing.⁴

Certain of the agreements will remain in place after closing, but PPL Energy Supply and its subsidiaries will no longer be affiliates or parties to the agreements. The Applicants argue that because there will be no amendment or modification to this category of agreements, this Commission's approval is not required, but requests such approval to the extent this Commission deems necessary.⁵ The Applicants have, therefore, submitted to the Commission's jurisdiction over these agreements as the Commission determines its jurisdiction.

Certain other agreements will terminate and be replaced entirely at closing. At least until those agreements are replaced, the Commission has the authority to monitor the transaction and its impacts under Section 2811.

⁴ Application at 19.

⁵ *Id.*

To properly fulfill the mandate under Section 1102, the merger should be reviewed in its entirety to determine whether the transaction is in the public interest, provides substantial benefits, and is not likely to result in anticompetitive and discriminatory conduct or the unlawful exercise of market power in the retail electric and natural gas markets.

B. The Market Monitor Has Standing.

The Commonwealth Court has articulated the criteria to determine whether a party has standing as follows:

In order to be aggrieved, a party must have a substantial interest in the subject matter of the litigation, the interest must be direct, and the interest must be immediate. The substantial interest requirement means that “there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law.” Direct interest “means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which [the person] complains.” Finally, the interest must “be ‘immediate’ and ‘not a remote consequence of the judgment.’”⁶

The Market Monitor performs a public interest function that is particularly concerned with monitoring the PJM markets to detect and deter the potential exercise of market power.⁷ The Market Monitor is frequently involved in state proceedings that raise market power or competition issues.⁸ Accordingly, the Market Monitor has a discernible

⁶ *Energy Conservation Council of Pa. v. PUC*, 995 A.2d 465, 475 (Pa. Cmwlth. 2009). (Citations omitted).

⁷ PJM Open Access Transmission Tariff (OATT) Attachment M §§ I, IV.

⁸ *See In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction*, D.C. P.U.C. Formal Case No. 1119, (Filed 6/18/2014); *see also In The Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.*, NJ BPU Dkt. No. EM14060581 (Filed 6/18/2014); *Joint Petition of Pepco Holdings, Inc., Delmarva Power & Light Company, Potomac Electric Power Company, Conectiv LLC, Exelon Corporation, and Exelon Energy Delivery Company LLC For Approval of Transfer of Control Pursuant to the Utility Transfers Act*, VA SCC Case No. PUE-2014-00048 (Filed 6/03/2014); *In The Matter of the Application of Delmarva Power & Light*

and direct interest in this proceeding. The intended purpose in creating the Market Monitor was the designation of an objective expert to assist state and federal agencies in identifying instances of market power and ensuring compliance with market rules to promote a robust electricity market.⁹ Due to its exclusive authority and duty to perform the market monitoring function for PJM, the Market Monitor's interest cannot be represented by any other party. Furthermore, the Market Monitor has independent analytical capabilities and knowledge of the PJM markets and market rules that may assist the Commission in its decision on the proposed transaction.

C. Good Cause Exists to Grant Intervention.

The Market Monitor has provided reasonable grounds for the Commission to grant the Market Monitor's request for intervention even though it was submitted out of time. The Market Monitor has already filed its comments in advance of this proceeding, and the companies have already had an opportunity to review the comments when they were filed with the Federal Energy Regulatory Commission on September 15, 2014.¹⁰ Under these circumstances, the companies will not be harmed and the interests of Pennsylvania customers will be well served by granting this intervention out of time.

D. The Commission Can Accept Submittals from the Market Monitor Submitted in Its Capacity as the Independent Market Monitor for PJM.

The Market Monitor's comments are properly submitted before this Commission. The Federal Energy Regulatory Commission has accepted the Market Monitor as the entity

Company, Exelon Corporation, Pepco Holdings, Inc., Purple Acquisition Corporation, Exelon Energy Delivery Company, LLC For Approvals Under the Provisions of 26 Del. C. §§ 215 and 1016, DE PSC Dkt. No. 14-193 (Filed 6/18/2014); In The Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc., MD PSC Case No. 9361 (Filed 8/19/2014).

⁹ OATT Attachment M § IV(A-B).

¹⁰ *Comments of the Independent Market Monitor for PJM*, FERC Docket No. EC14-112-000 (September 15, 2014).

designated to perform the market monitoring function required for PJM Interconnection, L.L.C., a Regional Transmission Organization.¹¹ The FERC routinely accepts State of the Market Reports and Quarterly State of the Market Reports prepared by Monitoring Analytics under the supervision of Dr. Bowring. The FERC routinely accepts testimony from the Market Monitor in technical conferences and rulemaking proceedings.

Requiring the Market Monitor to submit a notarized affidavit with every filing that relies on statements made by the Market Monitor under Dr. Bowring's supervision is unnecessary. Recognition of the Market Monitor's capacity to present analysis and comment on topics within the scope of its chartered function is inherent to that function. Nevertheless, in order to facilitate this Commission's acceptance of materials filed by the Market Monitor into the record in this proceeding, the Market Monitor submits the attached affidavit.

¹¹ See *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257 (1997); see also, *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *Allegheny Elec. Coop. v. PJM Interconnection, L.L.C.*, 122 FERC ¶ 61,257 (2008); *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,238 (2013).

II. CONCLUSION

For the reasons stated above, the Market Monitor requests that it be permitted to intervene in this proceeding as a party for all purposes.

Respectfully submitted,



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Dated: October 24, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 24th day of October, 2014.



Jeffrey W. Mayes

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Attachment

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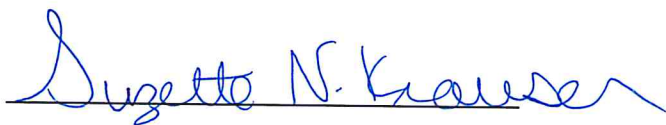
AFFIDAVIT OF JOSEPH E. BOWRING

I, Joseph E. Bowring, being duly sworn according to law, depose and say that I am authorized to make this affidavit on behalf of Monitoring Analytics, LLC, being the holder of the office of President. The facts above set forth are true and correct and I expect to be able to prove the same at any hearing hereof.



Joseph E. Bowring

Sworn and subscribed before me this 24 day of October 2014.



Notary Public

My Commission Expires: 12/1/2016

