

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF AEP)
GENERATING COMPANY, LIGHTSTONE)
GENERATION LLC AND LAWRENCEBURG)
POWER, LLC FOR APPROVAL OF THE SALE) CAUSE NO. 44868
OF THE LAWRENCEBURG GENERATING)
FACILITY AND FOR SUCCESSION TO THE)
DECLINATION OF THE COMMISSION'S)
JURISDICTION IN ACCORDANCE WITH THE)
COMMISSION'S ORDERS IN CAUSE NOS.)
43212 AND 41757

VERIFIED JOINT PETITION AND REQUEST FOR ADMINISTRATIVE NOTICE

AEP Generating Company ("AEG") and Lightstone Generation LLC ("Lightstone Generation"), acting on behalf of itself and its wholly owned subsidiary, Lawrenceburg Power, LLC ("Lawrenceburg Power") (Lightstone Generation and Lawrenceburg Power are collectively referred to as the "Lightstone Entities") (AEG and the Lightstone Entities are collectively referred to as "Joint Petitioners"), respectfully petition the Indiana Utility Regulatory Commission ("Commission") for approval of the sale of AEG's Lawrenceburg Generating Facility, located in Lawrenceburg, Indiana, ("Facility") to the Lightstone Entities and for the continued declination of the Commission's jurisdiction in accordance with the Commission's April 18, 2007 and August 8, 2007 orders in Cause No. 43212 (collectively, the "43212 Orders") and Ind. Code § 8-1-2.5-5. Joint Petitioners also request that the Commission take administrative notice of the Commission's orders in Cause Nos. 43212 and 41757, as discussed in Paragraph 14 below. In support of this Petition, Joint Petitioners provide the following information:

AEG

1. AEG is a corporation organized under the laws of the State of Ohio. AEG is registered with the Indiana Secretary of State and is authorized to do business in the State of Indiana. AEG is a *public utility* as defined in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the laws of the State of Indiana.

2. AEG is a wholly owned subsidiary of American Electric Power Company, Inc. ("AEP"). AEG owns and operates the Facility. The Facility is a natural-gas-fired, combined-cycle generating plant with a summer net capacity of 1,096 MW. All of the power generated by the Facility is sold on a wholesale basis pursuant to a market-based rate certification approved by the Federal Energy Regulatory Commission ("FERC"). AEG does not sell any of the power generated by the Facility on a retail basis in Indiana or elsewhere.

3. In the December 20, 2000 Order in Cause No. 41757 ("41757 Order"), the Commission determined that the prior owner of the Facility, PSEG Lawrenceburg Energy Company LLC ("PSEG Lawrenceburg"), was a *public utility* under Ind. Code § 8-1-2-1(a) but, pursuant to Ind. Code § 8-1-2.5-5 determined that it was in the public interest for the Commission to decline to exercise its jurisdiction over PSEG Lawrenceburg, with the exception of a few, limited provisions, including jurisdiction over transfers of ownership, as described in the 41757 Order. In pertinent part, the Commission's declination of jurisdiction in Cause No. 41757 was subject to the following requirement:

Transfers of Ownership: In determining the public interest the Commission may place limitations on any transfers of ownership of the

assets of an energy utility over which we have otherwise disclaimed jurisdiction. Therefore, we are reserving our jurisdiction and will require Petitioner to seek Commission approval of any transfer of the assets owned by Petitioner. . . .

Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor agrees to the same terms and conditions imposed on Petitioner as set forth in this Order.

41757 Order, p. 10.

4. In the Commission's April 18, 2007 Order in Cause No. 43212 (the "April 43212 Order"), the Commission approved the sale of the Facility by PSEG Lawrenceburg to AEG and authorized AEG to succeed to the declination of jurisdiction granted by the 41757 Order, subject to certain conditions, including the requirement that AEG would seek Commission approval prior to any future transfer of ownership of the Facility. April 43212 Order, p. 4. Joint Petitioners assert that the conditions under which a third-party owner and operator may succeed to the declination of jurisdiction, which are set forth in the 41757 Order (copied above), apply to the transfer that is the subject of this Cause.

THE LIGHTSTONE ENTITIES

5. Lightstone Generation is a limited liability company organized under the laws of the State of Delaware. It is a newly established joint venture of The Blackstone Group L.P. ("Blackstone"), a leading global alternative asset manager founded in 1985 and publicly listed on the New York Stock Exchange since 2007, and ArcLight Capital Partners, LLC ("ArcLight"), a specialized private equity firm exclusively focused on the energy industry. Lightstone Generation has submitted an application for a license to do

business in the State of Indiana, which is pending. Joint Petitioners will provide the Commission with a copy of that license, once it is granted.

6. On September 13, 2016, AEG and its affiliate, AEP Generation Resources, Inc., entered into an agreement with Lightstone Generation (f/k/a Burgundy Power LLC) for the sale of all of AEG's right, title, and interest in the Facility to Lightstone Generation, subject to the satisfaction of various conditions, including the receipt of applicable regulatory approvals (the "Transaction").¹ Pursuant to the same agreement, Lightstone Generation shall also assume the liabilities and obligations of AEG relating to the Facility (and the other three AEG-affiliated generating facilities that are part of the Transaction), except for certain limited liabilities expressly retained by AEG.

7. Lawrenceburg Power is a limited liability company organized under the laws of the State of Delaware and is a wholly owned subsidiary of Lightstone Generation. Lawrenceburg Power has also submitted an application for a license to do business in the State of Indiana, which is pending. Joint Petitioners will provide the Commission with a copy of that license, once it is granted. It is one of four newly established subsidiary companies that Lightstone Generation has formed for the purpose of holding the ownership interest of the generating facilities that are to be acquired through the Transaction. Upon close of the Transaction, Lightstone Generation will contribute 100% ownership interest in the Facility to Lawrenceburg

¹ The Transaction also includes the purchase by Lightstone Generation of three electric generating facilities located in Ohio from AEP Generation Resources, Inc. pursuant to the same agreement between Lightstone Generation, AEG, and AEP Generation Resources, Inc.

Power. Lightstone Generation will, however, retain responsibility for operation and management of the Facility, including ongoing regulatory compliance responsibilities.

8. The Lightstone Entities have the necessary technical, financial, and managerial capability to own and operate the Facility. Through their respective investment fund vehicles, the two sponsors of the Lightstone Generation joint venture, Blackstone and ArcLight, have significant investments and experience owning and operating power generation in North America and Europe. Combined they have managed, owned, and/or operated more than 38,000 MW of power generation globally, including operations in the PJM Interconnection, the Midcontinent Independent System Operator, New York ISO, the Electric Reliability Council of Texas, and the California Independent System Operator competitive markets in the United States.

9. The joint venture will leverage the collective management and capital resources of Blackstone and ArcLight, including Blackstone's Kindle Energy LLC asset management team and ArcLight's affiliates Consolidated Asset Management Services ("CAMS") and Eastern Generation LLC ("Eastern Generation"). Kindle currently provides asset management services for Blackstone with respect to 1,600 MW across four power plants and a coal mine in Texas. CAMS currently manages over 30 power plant facilities representing over 8,000 MW of generating capacity, and Eastern Generation owns and operates seven facilities for ArcLight with a total capacity of approximately 5,000 MW. As a joint venture of Blackstone and ArcLight, Lightstone Generation has at its disposal the capability and resources to own and operate the Facility in a safe, reliable, environmentally compliant, and efficient manner.

10. The Lightstone Entities will continue to sell power generated by the Facility on a wholesale basis pursuant to market-based rate authority, except for reactive power sales, which will be made pursuant to a cost-of-service rate schedule. The Lightstone Entities' sales from the Facility and all rates for those sales will be subject to regulation by FERC. The Lightstone Entities will not sell power from the Facility on a retail basis in Indiana or elsewhere.

11. The Lightstone Entities agree to accept the same terms and conditions as those imposed on AEG by the 43212 Orders, to the extent applicable, as explained more fully in Lightstone Generation's testimony.

Relief Sought

12. Joint Petitioners request that the Commission grant such approvals as are necessary for the sale of the Facility, approve the Lightstone Entities' succession to AEG's declination of jurisdiction as set forth in the April 43212 Order, and release and terminate, without condition, AEG and its affiliates from any and all duties and obligations contained in either of the 43212 Orders, including the financial assurance and decommissioning obligations.

Governing Statutes

13. The relief sought in this petition is governed by the terms of the 41757 and 43212 Orders and by the Public Service Commission Act, as amended, including Ind. Code §§ 8-1-2-83(a), 8-1-2-84, and 8-1-2.5-5.

Request for Administrative Notice

14. Pursuant to 170 IAC 1-1.1-21(f) Joint Petitioners request that the Commission take administrative notice of its April 18, 2007 and August 8, 2007 orders

in Cause No. 43212 and its December 20, 2000 in Cause No. 41757. Copies of the orders are attached to this petition.

Service

15. AEG's duly authorized representatives to whom all correspondence and communications in this Cause should be sent are:

Teresa Morton Nyhart (Atty. No. 14044-49)
Hillary Close (Atty. No. 25104-49)
BARNES & THORNBURG LLP
11 South Meridian Street
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Nyhart Phone: (317) 231-7716
Close Phone: (317) 231-7785
Fax: (317) 231-7433
Nyhart Email: tnyhart@btlaw.com
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WITH A COURTESY COPY TO:

Matthew Satterwhite
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, Ohio 43215
Phone: (614) 716-1915
Fax: (614) 716-2950
Email: mjsatterwhite@aep.com

16. Lightstone Generation's duly authorized representative to whom all correspondence and communications in this Cause should be sent is:

Jeffery A. Earl (Atty. No. 27821-64)
52 West Main Street
Danville, IN 46122
Phone: (317) 451-6145
Fax: (317) 718-8112
Email: jeff@lewisandearl.com

WITH A COURTESY COPY TO:

Elizabeth Quirk-Hendry
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Prehearing Conference

17. Pursuant to 170 IAC 1-1.1-15(b), Joint Petitioners request the Commission promptly conduct a prehearing conference to establish a procedural schedule in this Cause. In accordance with 170 IAC 1-1.1-15(e), Joint Petitioners will seek to enter into a stipulation with the Indiana Office of Utility Consumer Counselor regarding a procedural schedule in lieu of a prehearing conference.

WHEREFORE, Joint Petitioners AEG and the Lightstone Entities pray the Commission make such investigation as it deems appropriate and thereafter enter an order in this Cause:

- (i) Granting any approvals that may be necessary for AEG to transfer the Facility to the Lightstone Entities;
- (ii) Approving the Lightstone Entities' succession to AEG's declination of jurisdiction as set forth in the April 43212 Order;
- (iii) Releasing and terminating without condition AEG from any and all duties and obligations imposed on AEG by the 43212 Orders, including the financial assurance, decommissioning obligations, and periodic update and reporting requirements contained in the 43212 Orders; and

- (iv) Granting to Joint Petitioners such other relief as may be appropriate and proper.

Respectfully submitted,

AEG

LIGHTSTONE GENERATION

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Attorney for Lightstone Generation LLC

Attorneys for AEP GENERATING COMPANY

VERIFICATION

I, Stephan T. Haynes, Senior Vice President - Strategic Initiatives and Chief Risk Officer for American Electric Power, affirm under penalties of perjury that the representations contained in the foregoing are true and correct to the best of my knowledge, information and belief.

Dated: October 12, 2016



Stephan T. Haynes

VERIFICATION

I, William Lee Davis, Chief Executive Officer for Lightstone Generation LLC, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.

Dated: October 12, 2016.


William Lee Davis

ADMINISTRATIVE NOTICE EXHIBITS

ORIGINAL



STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JLG



**JOINT PETITION OF PSEG
LAWRENCEBURG ENERGY COMPANY LLC
("PSEG LAWRENCEBURG") AND AEP
GENERATING COMPANY ("AEGCo") FOR
APPROVAL OF THE SALE OF PSEG
LAWRENCEBURG'S GENERATING
FACILITY TO AEGCo PURSUANT TO THE
COMMISSION'S ORDER IN CAUSE NO.
41757 DATED DECEMBER 20, 2000**)

CAUSE NO. 43212

APPROVED: APR 18 2007

**BY THE COMMISSION:
Gregory D. Server, Commissioner
Aaron Schmoll, Administrative Law Judge**

On January 26, 2007, Joint Petitioners PSEG Lawrenceburg Energy Company LLC ("PSEG Lawrenceburg") and AEP Generating Company ("AEGCo") (collectively "Joint Petitioners") filed their Verified Joint Petition seeking such approvals as may be necessary for PSEG Lawrenceburg to sell its electric generating facility located in Lawrenceburg, Indiana to AEGCo, for AEGCo to succeed to the declination of jurisdiction granted PSEG Lawrenceburg by the Commission's Order in Cause No. 41757 dated December 20, 2000 ("2000 Order") and for PSEG Lawrenceburg to be released from the duties and obligations contained in the 2000 Order. On the same date, Joint Petitioners also filed the prepared direct testimony and exhibits of Stephan T. Haynes, Vice President and Assistant Treasurer of American Electric Power Service Corporation, on behalf of AEGCo and Michael J. Thomson on behalf of PSEG Lawrenceburg. On March 9, 2007, PSEG Lawrenceburg filed the prepared direct testimony of Frances X. Sullivan, Vice President-Fossil Operations for PSEG Power LLC, in substitution of the testimony of Mr. Thomson.

On March 1, 2007, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed the prepared direct testimony of its witness, Barbara A. Smith, Utility Analyst in the OUCC's Electric Division. On March 8, 2007, AEGCo filed the supplemental testimony of Mr. Haynes.

Pursuant to notice given as provided by law, proof of which was incorporated into the record by reference and placed in the officials files of the Commission, a public evidentiary hearing was held in this Cause on March 16, 2007, in Room E306 of the Indiana Government Center South, Indianapolis, Indiana. At the evidentiary hearing, evidence offered by PSEG Lawrenceburg, AEGCo, and the OUCC was admitted into the record. No members of the general public were present at the hearing.

Based on the applicable law and evidence herein, the Commission now finds:

1. **Notice and Jurisdiction.** Due legal and timely notice of the evidentiary hearing in this Cause was given and published as required by law. In the 2000 Order, the Commission determined PSEG Lawrenceburg was a public utility as defined in Ind. Code § 8-1-2-1(a). AEGCo also is a public utility as defined in Ind. Code § 8-1-2-1(a) and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the laws of the state of Indiana. The Commission has jurisdiction over Joint Petitioners and the subject matter of this proceeding.

2. **Joint Petitioners' Characteristics and Business.**

A. **PSEG Lawrenceburg.** PSEG Lawrenceburg is a limited liability company organized under the laws of the State of Delaware and authorized to do business in the State of Indiana. PSEG Lawrenceburg is a wholly-owned subsidiary of PSEG Fossil LLC, which is a wholly-owned subsidiary of PSEG Power LLC ("PSEG Power"), which is a wholly-owned subsidiary of Public Service Enterprise Group Incorporated. PSEG Lawrenceburg owns and operates a natural gas-fired combined cycle electric generating facility located in Lawrenceburg, Indiana ("Facility"). All power generated by the Facility is sold on a wholesale basis pursuant to market-based rate authority granted by the Federal Energy Regulatory Commission ("FERC"). PSEG Lawrenceburg makes no retail sales in Indiana or elsewhere. In the 2000 Order, the Commission determined pursuant to Ind. Code § 8-1-2.5-5 that it was in the public interest to decline to exercise its jurisdiction over PSEG Lawrenceburg with the exception of a few limited provisions that are described in the 2000 Order.

B. **AEGCo.** AEGCo is a corporation organized under the laws of the State of Ohio and authorized to do business in the State of Indiana. AEGCo is a wholly-owned subsidiary of American Electric Power Company, Inc. ("AEP"). AEGCo has a 50% undivided ownership interest in Unit 1 of the Rockport Generating Station in Spencer County, Indiana ("Rockport Plant") and a 50% leasehold interest in Unit 2 of the Rockport Plant. All power relating to AEGCo's interests in the Rockport Plant is sold on a wholesale basis pursuant to contracts on file with FERC. AEGCo makes no retail sales in Indiana or elsewhere. In Cause Nos. 38690 and 38691, the Commission declined to exercise its jurisdiction over the sale and leaseback transaction by which AEGCo acquired its interest in Rockport Unit 2.

3. **Relief Requested.** Joint Petitioners request any approvals from the Commission that may be necessary for PSEG Lawrenceburg to sell the Facility to AEGCo. Joint Petitioners also request the Commission approve AEGCo's succession to the declination of jurisdiction set forth in the 2000 Order in accordance with the following provision of the 2000 Order:

Transfers of Ownership: In determining the public interest the Commission may place limitations on any transfers of ownership of the assets of an energy utility over which we have otherwise disclaimed jurisdiction. Therefore, we are reserving our jurisdiction and will require Petitioner to seek Commission approval of any transfer of the assets owned by Petitioner. . . . Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary

technical, financial, and managerial capability to own and operate the Facility; and (2) the successor agrees to the same terms and conditions imposed on Petitioner as set forth in this Order.

2000 Order, p. 10.

Joint Petitioners also request that the Commission release, without condition, PSEG Lawrenceburg and its affiliates from any and all duties and obligations contained in the 2000 Order, including the financial assurance and decommissioning obligations.

4. Joint Petitioners' Evidence.

A. Evidence of AEGCo. Mr. Haynes testified regarding AEGCo's technical, financial and managerial capability to own and operate the Facility; the purchase and sale agreement between AEGCo and PSEG Lawrenceburg; and AEGCo's willingness to abide by the terms and conditions of the 2000 Order.

Mr. Haynes discussed AEGCo's existing business associated with its interest in the Rockport Plant which includes the sale of power generated by the Plant to Indiana Michigan Power Company ("I&M") and Kentucky Power Company pursuant to long-term FERC-approved power agreements. Mr. Haynes noted that AEGCo is a wholly-owned subsidiary of AEP, one of the largest investor-owned public utility holding companies in the United States. Mr. Haynes said that AEP has sufficient financial capability to ensure that AEGCo can adequately operate and maintain the Facility. He stated AEP's operating companies provide service to over 5 million retail customers in eleven states and have an extensive portfolio of assets that includes 35,000 MW of generating capacity (including 7,000 MW of gas-fired operation), 39,000 miles of transmission lines and 205,483 miles of distribution lines. Mr. Haynes also testified that AEGCo's capabilities were demonstrated by its longstanding ownership and operation of the Rockport Plant and pointed out that the Facility is located near both the Rockport Plant and I&M's Tanners Creek Plant where AEP maintains operational resources.

Mr. Haynes testified that the agreement with PSEG Lawrenceburg provides that upon satisfaction of the closing conditions which include regulatory approvals, PSEG Lawrenceburg's ownership of the Facility will be transferred to AEGCo and AEGCo will assume PSEG Lawrenceburg's liabilities and obligations, except for limited liabilities expressly retained by PSEG Lawrenceburg. He also explained that the agreement gives AEGCo the right to interview and make offers to the employees and contractors presently operating the Facility.

Mr. Haynes said that AEGCo would abide by the terms and conditions of the 2000 Order, but noted that some terms that relate to the location, need for and construction of the Facility are no longer applicable because the Facility is now operational. He also stated that given AEP's size and presence in Indiana, the financial assurance requirement relating to returning the site to its prior condition in the event of abandonment, financial failure and/or bankruptcy by PSEG Lawrenceburg was no longer necessary. Mr. Haynes described AEGCo's understanding of the conditions that will be applicable to it as follows:

- a.) AEGCo does not intend, nor does it request authority, to sell electricity generated by the Facility to the general public or to any retail customer.
- b.) AEGCo agrees to operate the Facility in a manner consistent with good utility practice.
- c.) AEGCo does not seek or request authority to exercise any of the rights, powers, or privileges of an Indiana public utility in the operation of the Facility, *e.g.*, the power of eminent domain, the use of public rights of way, etc.
- d.) AEGCo's costs will not be recovered through a rate base/rate of return or other process typically associated with public utility rates.
- e.) AEGCo's wholesale rates and charges for the sale of energy will be subject to the jurisdiction of FERC and are required to be just and reasonable in conformity with standards set by FERC.
- f.) AEGCo shall, prior to operating the Facility, have obtained all appropriate air, water and other permits in accordance with the law.
- g.) AEGCo shall not engage in retail electric sales and shall become subject to applicable Indiana regulations governing affiliate relationships only to the extent both of the following apply: (i) AEGCo sells electric power to I&M, and (ii) I&M is considered an "affiliate" of AEGCo, as defined in Ind. Code § 8-1-2-49.
- h.) AEGCo will seek IURC approval prior to any future transfer of ownership of the Facility.
- i.) AEGCo will file an Annual Report with the Commission as provided in Ind. Code § 8-1-2-49.
- j.) AEGCo agrees to provide other information regarding the Facility as the IURC may from time to time request.
- k.) AEGCo agrees to obtain approval from the Commission prior to taking action to increase, decrease or otherwise materially change the Facility's capacity or operation.

B. Evidence of PSEG Lawrenceburg. Mr. Sullivan described the Facility that PSEG Lawrenceburg proposes to sell to AEGCo. He stated that the Facility is a gas-fired combined cycle generating facility with a summer net capacity of 1096 MW. The Facility is comprised of four combustion turbine generators and two steam turbine generators. He stated that the Facility is interconnected with the AEP transmission system and that commercial operation began in June, 2004. Mr. Sullivan explained that all of the power generated by the Facility is sold on a wholesale basis pursuant to FERC authority and PSEG Lawrenceburg makes no retail sales in Indiana or elsewhere.

Mr. Sullivan testified that PSEG Lawrenceburg proposes to sell the Facility in order to concentrate its wholesale energy business in certain core markets outside of Indiana. Mr. Sullivan described the proposed transaction between PSEG Lawrenceburg and AEGCo, stating that all of PSEG Lawrenceburg's right, title and interest in the Facility would be sold to AEGCo and AEGCo would also assume the liabilities and obligations of PSEG Lawrenceburg relating to the Facility, except for limited liabilities expressly retained by PSEG Lawrenceburg.

Mr. Sullivan discussed the request that PSEG Lawrenceburg and its affiliates be fully released from any and all duties and obligations contained in the 2000 Order. He said that after the sale, neither PSEG Lawrenceburg nor any of its affiliates will have any involvement in the ownership or operation of the Facility. Mr. Sullivan asserted that PSEG Lawrenceburg will have no control over the Facility and, therefore, will have no way of complying with those obligations. Instead, AEGCo will succeed to PSEG Lawrenceburg's rights and obligations under the 2000 Order. In addition, Mr. Sullivan noted, PSEG Lawrenceburg has entered into the transaction with the understanding that PSEG Lawrenceburg and its affiliates will be free and clear of any residual duties and obligations relating to the 2000 Order.

5. **OUCC's Evidence.** Ms. Smith stated that the OUCC did not oppose the transaction, primarily due to AEGCo's technical, financial and managerial capability to own and operate the Facility. Ms. Smith stated the OUCC recommends approval of the relief requested in the Petition subject to conditions relating to (1) the Commission's reservation of jurisdiction over future asset transfers; (2) the obtaining of all necessary licenses and permits; (3) Commission approval or jurisdiction over material changes in capacity or operation, transfers to an AEGCo affiliate of equal standing, security interests and future affiliations between AEGCo and regulated Indiana utilities; (4) the execution and submission for OUCC review of an agreement between AEP and AEGCo for operating the Facility, consistent with the affiliate guidelines and bi-annual audit report submitted to the Commission pursuant to Cause No. 41210; and (5) submission to the Commission and the OUCC of a copy of the note purchase agreement once financing is approved.

Ms. Smith also testified that the OUCC recommends that the Commission release and terminate without condition any and all duties and obligations of PSEG Lawrenceburg and its affiliates contained in the 2000 Order since they will have no involvement in or control over the ownership or operation of the plant after the sale is completed.

6. **AEGCo's Supplemental Evidence.** Mr. Haynes provided supplemental testimony responding to OUCC witness Smith's testimony. In the supplemental testimony, Mr. Haynes said AEGCo had engaged in informal discussions with the OUCC in order to obtain further explanation and clarification about Ms. Smith's proposed conditions. He testified that AEGCo is willing to accept the following additional conditions as clarified in the discussions with the OUCC:

- a.) AEGCo will seek to obtain Commission approval prior to a transfer of the Facility to another subsidiary of AEGCo's parent which is of "equal standing" to AEGCo. This condition is consistent with the condition that AEGCo seek Commission approval prior to any future transfer of the Facility.

- b.) AEGCo will notify the Commission and the OUCC if it sells electricity from the Facility to (i) a non-affiliated Indiana regulated utility or (ii) an affiliated utility other than an affiliated Indiana regulated utility.
- c.) AEGCo will seek to obtain Commission approval prior to selling electricity from the Facility to (i) an affiliated regulated Indiana Utility or (ii) an affiliate with the intent to sell to an affiliated Indiana regulated utility.
- d.) The Affiliate Guidelines in Cause No. 41210 will be followed and any revised or amended guidelines will be submitted to the Commission and the OUCC.
- e.) AEGCo will submit a copy of the agreement regarding the operation of the Facility to the Commission and the OUCC and said agreement shall be consistent with the Affiliate Guidelines in Cause No. 41210.
- f.) AEGCo will notify the Commission and the OUCC when financing for the Facility is obtained.

7. **Commission Discussion and Findings.** Joint Petitioners request approval of the proposed sale of the Facility by PSEG Lawrenceburg to AEGCo and AEGCo's succession to the Commission's declination of jurisdiction described in the 2000 Order upon consummation of the sale. In the 2000 Order, the Commission found that PSEG Lawrenceburg was a "public utility" within the meaning of Ind. Code § 8-1-2-1, but, pursuant to Ind. Code § 8-1-2.5-5, determined that it was in the public interest to decline to exercise our jurisdiction over PSEG Lawrenceburg with the exception of a few limited provisions that are detailed in the 2000 Order. Among the exceptions was a paragraph entitled "Transfers of Ownership," which stated "a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor agrees to the same terms and conditions imposed on Petitioner as set forth in this Order." 2000 Order, p. 10.

The evidence of record demonstrates that AEGCo has the necessary technical, financial, and managerial capability to own and operate the Facility. AEGCo already has an interest in the Rockport Plant, a major Indiana generating station, and is a subsidiary of AEP, one of the largest electric utility holding companies in the country with over 35,000 MW of generating capacity. The Facility is also near the Rockport Plant and I&M's Tanners Creek Plan where AEP operational resources are already in place.

AEGCo has also accepted the terms and conditions of the 2000 Order that it believes are still applicable and necessary as discussed above and additional conditions proposed by the OUCC as clarified in Mr. Haynes' supplemental testimony after discussions with the OUCC.

Mr. Haynes did state in his direct testimony that he did not believe the financial assurance condition contained within the 2000 Order was necessary. However, the Commission found in the 2000 Order that public interest required the inclusion of the following financial assurance condition:

Financial Assurance. The Commission has determined that it is in the public interest that the Petitioner establish and maintain an independent financial instrument to ensure that funds will be available in the event of abandonment, financial failure, and/or bankruptcy to return the site to its current condition. The financial instrument utilized may, at the Petitioner's option, be established by one of the following options:

- (1) Surety bond;
- (2) Letter of credit;
- (3) A certificate of insurance;
- (4) Financial test;
- (5) Corporate guarantee, or
- (6) Other financial guarantee approved by the Commission

In order to ensure that adequate funds will be available for this purpose, the Petitioner should prepare a cost estimate that contains a detailed estimate of the costs associated with fully decommissioning the Facility and returning the site to its current condition. The financial instrument selected and utilized by the Petitioner must be sufficient to cover the costs contained in the cost estimate. A copy of the current cost estimate and the financial instrument selected by the Petitioner must be submitted to the Secretary of the Commission for approval within sixty (60) days of the date of approval of this Order. The cost estimate and corresponding financial instrument, must be revised by the Petitioner every five (5) years to account for inflation.

2000 Order at 11. The Commission finds that in the interest of continuity, AEGCo should be subject to the same condition.

Accordingly, the sale of the Facility by PSEG Lawrenceburg to AEGCo should be approved and, upon completion of the sale transaction, AEGCo shall succeed to the declination of jurisdiction granted by the 2000 Order subject to the conditions set forth in Mr. Haynes' direct and supplemental testimony, as well as the financial assurance condition listed above. As the Commission found in the 2000 Order with respect to PSEG Lawrenceburg, the Commission similarly finds that it is in the public interest for AEGCo to own and operate the Facility in accordance with such declination of jurisdiction. The Commission further finds that upon consummation of the sale transaction, PSEG Lawrenceburg and its affiliates shall be fully released, without condition, from any and all duties and obligations contained in the 2000 Order, including the financial assurance and decommissioning obligations, and that such duties and obligations will be terminated as to PSEG Lawrenceburg and its affiliates without any further action by the Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The sale of the Facility by PSEG Lawrenceburg to AEGCo is hereby approved.

2. Upon consummation of the sale of the Facility to AEGCo, AEGCo shall succeed to the declination of jurisdiction granted by the 2000 Order, subject to the conditions set forth in Mr. Haynes' direct and supplemental testimony as described above, as well as the financial assurance condition listed in Paragraph 6.

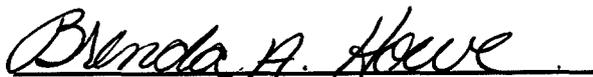
3. Upon consummation of the sale of the Facility to AEGCo, PSEG Lawrenceburg and its affiliates shall be fully released, without condition, from any and all duties and obligations contained in the 2000 Order as described above.

4. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, SERVER AND ZIEGNER CONCUR:

APPROVED: APR 18 2007

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



**Brenda A. Howe
Secretary to the Commission**

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF PSEG)
LAWRENCEBURG ENERGY COMPANY)
LLC ("PSEG LAWRENCEBURG") AND AEP)
GENERATING COMPANY ("AEGCo") FOR)
APPROVAL OF THE SALE OF PSEG)
LAWRENCEBURG'S GENERATING)
FACILITY TO AEGCo PURSUANT TO THE)
COMMISSION'S ORDER IN CAUSE NO.)
41757 DATED DECEMBER 20, 2000)

CAUSE NO. 43212

APPROVED: AUG 08 2007

BY THE COMMISSION:
Gregory D. Server, Commissioner
Aaron Schmoll, Administrative Law Judge

On April 18, 2007, the Commission entered its Order ("Order") in this Cause approving the sale of PSEG Lawrenceburg Energy Company LLC's ("PSEG Lawrenceburg") generating facility to AEP Generating Company ("AEGCo"). In its Order, the Commission required AEGCo to provide a financial instrument to "ensure that funds will be available in the event of abandonment, financial failure, and for bankruptcy to return the site to its current condition." Order at 7. In response thereto, on June 15, 2007, AEGCo filed its *Request for Approval of Financial Assurance Instrument and Supplement Order* ("Request"). With its request, AEGCo has submitted for approval a "Capital Funds Agreement" between AEGCo and American Electric Power Company, Inc. ("AEP"). No party to the proceeding has filed any objection or response to the Request or the Capital Funds Agreement.

The Capital Funds Agreement provides that AEGCo's parent company, AEP, shall supply or cause to be supplied all capital necessary to meet the requirements of the financial assurance obligation. As the Commission noted in its Order, AEP is "one of the largest electric utility holding companies in the country with over 35,000 MW of generating capacity." Order at 6. After reviewing the Capital Funds Agreement, we find it meets the requirements of the Order and should be approved.

AEGCo also requested that the Commission waive the requirement in the Order that the cost estimate and corresponding financial instrument be revised by AEGCo every five years to account for inflation. Although the broad language of the Capital Funds Agreement includes a provision that AEP provide "such amounts of capital . . . as shall be required to enable AEGCO to pay in full when due the financial assurance obligation addressed by the Indiana Utility Regulatory Commission in its April 18, 2007 Order in Cause No. 43212," the Commission finds that periodic updates of the cost estimate would be prudent. However, the Commission notes

that because a cost estimate was last provided by PSEG Lawrenceburg in 2005, it is reasonable for AEGCo to update the cost estimate in 2010.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION, that:

1. The Capital Funds Agreement between AEGCo and AEP complies with the Commission's April 18, 2007 Order issued in this Cause.
2. AEGCo shall revise the cost estimate and corresponding financial instrument every five years, commencing July 1, 2010.
3. This Order shall be effective on and after the date of its approval.

LANDIS, SERVER AND ZIEGNER CONCUR; HARDY AND GOLC ABSENT:

APPROVED:

AUG 08 2007

I hereby certify that the above is a true and correct copy of the Order as approved.


Brenda A. Howe
Secretary to the Commission

[Handwritten initials and signatures]

STATE OF INDIANA
ORIGINAL
INDIANA UTILITY REGULATORY COMMISSION

PETITION OF PSEG LAWRENCEBURG ENERGY)
COMPANY LLC FOR (A) A DETERMINATION)
OF THE COMMISSION'S JURISDICTION WITH)
RESPECT TO A 1150 MW POWER GENERATING)
FACILITY; (B) FOR DECLINATION OF THE)
COMMISSION'S JURISDICTION OVER THE)
CONSTRUCTION; OWNERSHIP, OPERATION)
AND FINANCING OF THE FACILITY)
PURSUANT TO IND. CODE 8-1-2.5; AND (C) TO)
THE EXTENT THE COMMISSION DOES NOT)
DECLINE ITS JURISDICTION, SUCH)
APPROVALS AND AUTHORIZATIONS AS ARE)
NECESSARY TO CONSTRUCT, OWN AND)
OPERATE THE FACILITY, INCLUDING)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY UNDER IND.)
CODE 8-1-8.5.)

CAUSE NO. 41757

APPROVED:

DEC 20 2000

BY THE COMMISSION:
William D. McCarty, Chairman
David W. Hadley, Commissioner
Scott R. Storms, Administrative Law Judge

On June 14, 2000, PSEG Lawrenceburg Energy Company LLC ("Petitioner" or "PSEG Lawrenceburg") filed its Petition in this Cause for certain determinations, declinations of jurisdiction and approvals relating to its proposed construction of a 1150 MW power generating facility in Lawrenceburg, Indiana (the "Facility").

Pursuant to the Prehearing Conference on July 19, 2000, the Prehearing Conference Order dated August 2, 2000, and notice of hearing given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing in this Cause was held on October 26, 2000 in Room E306, Indiana Government Center South, Indianapolis, Indiana. At the hearing, evidence was submitted by Petitioner, the Office of Utility Consumer Counselor (the "OUCC" or the "Public") and Intervenor Citizens Action Coalition of Indiana, Inc. (the "CAC"). No members of the general public appeared at the evidentiary hearing.

Based upon the applicable law and evidence herein, the Commission now finds:

1. **Notice and Jurisdiction.** Notice of the hearing in this cause was duly given and published more than ten (10) days prior to the hearing in newspapers of general circulation published in the English language as required by law.

Petitioner intends to own, operate, and control plant and equipment within this State for the production of electricity. The Indiana Court of Appeals has held that the Commission has the authority and duty, when requested under appropriate circumstances, to determine whether a business is a public utility. *Hidden Valley Lake Property Owners v. HVL Utilities*, 408 N.E.2d 622, at 629 (Ind. App. 1980) (*reh'g den.*, 411 N.E.2d 1262). Further, the Commission has jurisdiction to decline to exercise, in whole or in part, its jurisdiction over an "energy utility." Ind. Code § 8-1-2.5. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of the Petition.

2. Petitioner's Characteristics and Business. Petitioner is a limited liability company organized under the laws of the State of Delaware. Petitioner is registered with the Indiana Secretary of State to do business in the State of Indiana. There are two members of Petitioner: (a) PSEG Global USA Inc. which has a 99% ownership interest, and (b) PSEG Midwest Operating Company which has a 1% ownership interest. Both members are wholly-owned subsidiaries of PSEG Global Inc. ("PSEG Global") which is in the business of developing, owning and operating electric generation facilities and distribution systems and engages in power production and distribution in the United States, South America and Asia. PSEG Global is a direct subsidiary of PSEG Energy Holdings and an ultimate subsidiary of Public Service Enterprise Group, a diversified energy company with annual revenues of approximately \$6 billion and more than 100 years of experience in the gas and electric power business. Other subsidiaries of Public Service Enterprise Group include Public Service Electric & Gas Company ("PSE&G"), a public utility engaged in electric and gas distribution in New Jersey and PSEG Power. PSEG Power was formed to own and operate the electric generation assets of PSE&G.

Upon completion, the Facility will generate electricity solely for sales for resale in the wholesale market. Petitioner will be an Exempt Wholesale Generator ("EWG") pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935 ("PUHCA"), 15 U.S.C. §79z-5a(a)(1) and power from the Facility will be sold pursuant to Federal Energy Regulatory Commission ("FERC") authorized wholesale market-based rates.

3. Relief Requested. Petitioner has requested that the Commission determine that the construction, ownership and operation of the Facility will not make Petitioner an Indiana "public utility" as defined by Indiana law. In the alternative, if the Commission finds that Petitioner is a public utility under Indiana law, Petitioner requested that the Commission decline to exercise its jurisdiction over Petitioner as a public utility, including, but not limited to, its jurisdiction under Ind. Code § 8-1-8.5. In the further alternative, Petitioner requested that to the extent the Commission does not decline its jurisdiction, the Commission grant to Petitioner all necessary certificates and authority required for the construction, ownership and operation of the Facility.

Petitioner asserts that the exercise of the Commission's jurisdiction over Petitioner and its ownership, development, financing, construction and operation of the Facility is unnecessary and would be a waste of the Commission's resources. Petitioner represents that, on the other hand, declination of jurisdiction over Petitioner by the Commission would be beneficial to the Commission, Petitioner, and the electricity consumers of Indiana. Petitioner alleges that such a

declination would permit immediate and necessary construction of the Facility to meet electric energy use requirements in Indiana. Petitioner further alleges that such a declination will allow Petitioner to promote energy utility efficiency, reliability, and competitive rates for power.

Petitioner represents that it does not intend to sell the electricity generated by the Facility to the general public or to any retail customer. Petitioner did not request authority to exercise any of the rights or privileges of a public utility in the construction and operation of the Facility, e.g., eminent domain, use of public rights-of-way, *etc.* Petitioner has represented that it does not intend to recover its costs through a rate base/rate of return or other process typically associated with "public utility" rates. Petitioner will construct the Facility and the output of the Facility will be sold to one or more power marketers, energy service providers or public utilities purchasing in a competitive wholesale market. Petitioner argues that its development, financing, construction and operation of the Facility, and the ultimate purchase by any public utility, either directly or indirectly, of the electricity it generates, should not cause Petitioner to become a "public utility." In the alternative, Petitioner requests that the Commission substantially decline to exercise its jurisdiction over Petitioner or, to the extent it does not decline its jurisdiction, grant such certificates and authority as are necessary for the Facility.

4. Evidence Presented.

Petitioner Petitioner's witness Benjamin H. Sisson, Director of Business Development for PSEG Global and Vice President of PSEG Lawrenceburg, testified about Petitioner's project. Mr. Sisson stated that the Facility will be located on 70 acres of industrial zoned land in Lawrenceburg. Mr. Sisson said the Facility would use natural gas as its fuel. The Facility will have four GE Frame 7FA combustion turbines operated in combined cycle mode. In this mode, heat will be recovered from the combustion turbine exhaust gas to generate steam and drive two associated steam turbine generators. The plant design will incorporate supplemental gas burners in the heat recovery boilers to increase the amount of steam generated and yield additional electric power output during times of need. Mr. Sisson said the Facility would be an intermediate load or load following plant which Petitioner anticipated would operate between 25% and 65% of the time which is less than a base load plant but more than a peaking unit.

Mr. Sisson discussed the reasons why the site in Lawrenceburg was selected for the project. Mr. Sisson described the compatibility of the project with the area in which it is located, the time schedule for the project, and Petitioner's evaluation of the need for the project, including the market studies upon which Petitioner relies. Mr. Sisson also testified regarding local zoning requirements; other local permits and approvals; Petitioner's noise evaluation; the status of necessary environmental permits; air quality issues; water and wastewater issues; the gas supply for the project; AEP's system impact studies; the community support for the project; and the benefits to the State of Indiana which would be created by the Facility. Mr. Sisson testified that Petitioner had filed on July 20, 2000 and July 26, 2000 applications with the Indiana Department of Environmental Management for the required Air Permits (the Prevention of Significant Deterioration ("PSD") Construction Permit and Acid Rain Permit) and National Pollutant Discharge Elimination System

("NPDES") permit for Process Water Discharged from the facility. Mr. Sisson also stated that modeling completed as part of the Air Permit preparation activities using a USEPA-approved model showed that the Facility would have no significant impact on local or regional air quality.

Mr. Sisson said that Petitioner considered surface water from Tanners Creek to be the primary source of water supply for the Facility. Other potential sources were the cooling water discharge stream of the Seagram distillery and groundwater. Groundwater is available from an aquifer which is robust and one of the largest resources of water in the region. Evidence presented by the Petitioner in the form of a *Ground Water Supply Pump Test Plan*, confirms the existence of a sufficient water supply in the area. Mr. Sisson committed that Petitioner's use of groundwater would not adversely affect the ability of the local and neighboring water utilities to serve their customers.

OUCC: OUCC's witness Dr. Peter M. Boerger testified that the Commission should put certain limitations, restrictions and conditions on any declination of jurisdiction which it might grant in this proceeding. Dr. Boerger stated that Petitioner should not be permitted to exercise special rights, powers and privileges granted to utilities selling at retail in Indiana. Dr. Boerger said that Petitioner should be required to comply with all local construction-related requirements. Dr. Boerger also testified about the transmission study; the need for submission of a gas supply study; and, requirements that should apply if Petitioner later becomes an affiliate of an Indiana retail electric utility.

Citizens Action Coalition: CAC witness Reed Cearley, a utility consultant and former Associate Director of the State Utility Forecasting Group, testified regarding the project; the regulatory framework for merchant plants; the current market status of merchant plants; merchant plant developments and trends; the relationship between merchant plants and the energy needs of the State of Indiana; the standards he believes should be met before the Commission declines jurisdiction over a merchant plant; his analyses of the market studies relied on by Petitioner; local siting issues; Petitioner's site selection process; affiliate relationship issues; financing issues; and other considerations related to merchant plants generally and Petitioner's project specifically.

Petitioner's Rebuttal Testimony: On rebuttal, Mr. Sisson responded to the issues raised by Dr. Boerger and Mr. Cearley. Mr. Sisson's rebuttal testimony included a discussion of Petitioner's site selection process. Petitioner also presented as witnesses on rebuttal Judah Rose, Senior Vice President of ICF Consulting ("ICF"), who testified regarding ICF's electric market study performed for PSEG Global, and Gregg Shively, head of the Fuel Strategy and Business Planning practice at Pace Global Energy Services ("Pace"), who testified about gas issues relating to the Facility, including the fuel strategy and detailed gas study which Pace developed for PSEG Global.

5. **Conclusions and Order Upon Review of Facts and Issues.** Petitioner has asserted that, if the Commission finds from the record evidence that Petitioner is a public utility for purposes of Indiana's utility power plant construction law (Ind. Code § 8-1-8.5-1 *et seq.*), then Petitioner would be an "energy utility" as defined by Ind. Code § 8-1-2.5-2. The Commission may decline to

exercise its jurisdiction pursuant to Ind. Code § 8-1-2.5-1 *et seq.*, including the Commission's jurisdiction under Ind. Code § 8-1-8.5-1 *et seq.*, to issue certificates of public convenience and necessity for the construction of the Facility. In order for the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5, or to issue Petitioner a certificate of public convenience and necessity under Ind. Code § 8-1-8.5 if it retains such jurisdiction, the Commission must assert jurisdiction over Petitioner as a public utility.

Petitioner intends to own, operate, and control an electric generation facility. The evidence establishes that Petitioner's ownership, development, financing, construction and operation of the Facility is for the purpose of sale of the power generated by that plant in the wholesale market to public utilities, energy service providers and power marketers within and without Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. *See, In re Petition of Commonwealth Edison of Indiana, Inc.*, Cause No. 36093 (Ind. Util. Reg. Comm'n, June 12, 1980); *In re Petition of AES Greenfield, LLC*, Cause No. 41361 (Ind. Util. Reg. Comm'n, March 11, 1999), wherein the Commission specifically found that it had jurisdiction over utilities with operations such as the Petitioner's. Consequently, for purposes of the ownership, development, financing, construction and operation of the Facility, we find that Petitioner is a public utility within the meaning of Ind. Code § 8-1-2-1.

While we conclude that the Petitioner's proposed Facility is a "public utility" as defined in the Public Service Commission Act, the Indiana Code authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an "energy utility" if certain conditions are satisfied. In particular, the Indiana Code provides that "the Commission may enter an order, after notice and hearing, that the public interest requires the Commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over . . . the energy utility . . ." Ind. Code § 8-1-2.5-5.

In determining whether the public interest will be served, the Commission will consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the Commission unnecessary or wasteful.
- (2) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
- (3) Whether the Commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of Commission jurisdiction inhibits an energy utility from

- (5) competing with other providers of functionally similar energy services or equipment.

Ind. Code § 8-1-2.5-5.

In determining whether the public interest would be served by such a declination, the Commission concludes that it should consider, among other things, whether the proposed location of the electric generation facility will significantly and negatively impact an Indiana electricity supplier or its customers. In addition, the Commission notes that evidence has been presented in this Cause that demonstrates that market conditions exist that will support the construction of a plant selling at competitive rates into the wholesale market. Finally, the Commission has examined evidence in this Cause regarding the Petitioner's financial viability and proposed financing structure for the project.

Petitioner does not intend, nor does it request authority, to sell the electricity generated by the Facility to the general public or to any retail customer. Petitioner acknowledges that, consistent with FERC precedent, it is required to pay for the costs of interconnection with AEP, consistent with the terms and conditions of the Interconnection Agreement between AEP and Petitioner, and that it will be responsible for costs that may be incurred under FERC tariffs and regulations. Petitioner agrees to operate its Facility in a manner consistent with good utility practice. Petitioner does not seek or request authority to exercise any of the rights, powers, or privileges of a Indiana public utility in the construction and operation of the Facility, *e.g.*, the power of eminent domain, the use of public rights of way, *etc.* Further, the evidence demonstrates that Petitioner's costs will not be recovered through a rate base/rate of return or other process typically associated with public utility rates. Petitioner has presented evidence that the officials of Lawrenceburg have reviewed and support the development, construction and operation of the Facility, and we note that no evidence was presented to indicate any local opposition to the Facility.

To operate as an EWG Petitioner must apply to FERC for such status. 15 U.S.C. § 79z-5(a)(1). In addition, Petitioner's wholesale rates and charges for the sale of energy will be subject to the jurisdiction of FERC and are required to be just and reasonable, in conformity with standards set by FERC. 16 U.S.C. § 824d. Nothing herein should be construed to replace or affect any approvals needed on environmental issues under Indiana and federal law from the Indiana Department of Environmental Management or the U.S. Environmental Protection Agency. Petitioner shall, prior to beginning operation of the facility, have obtained all appropriate air, water and other permits in accordance with the law.

As noted above, and in support of its proposal that the Commission decline to exercise its jurisdiction the Petitioner presented evidence in this Cause that addressed a number of factors deemed to be in the public interest. including the following:

Location: Petitioner has submitted evidence that it has complied with local zoning and land use requirements, has obtained or will obtain all local construction-related permits and will not rely on the public utility exemption from local zoning regulation. Therefore, regardless of whether these

local approvals are legally necessary, they have been or will be obtained in this case. As part of its public interest determination, the Commission may consider whether or not the location of a proposed facility is compatible with the surrounding land uses. In determining compatibility, the Commission may evaluate and consider any evidence of compliance with local zoning and land use requirements.

In deciding whether to decline jurisdiction over Petitioner and the Facility, the Commission has authority to consider whether the public interest will be served by the Facility being in its planned location. In such a review, the Commission considered the potential for adverse effects on Indiana "electricity suppliers" (as that term is used in Ind. Code § 8-1-2.3), their customers, or a local community in deciding whether to decline, or subsequently reassert, jurisdiction over Petitioner or the construction of its Facility. Indiana statutes regarding surface and groundwater rights and obligations, including those establishing the authority of the Indiana Natural Resources Commission (Ind. Code § 14-25-7-15) do not limit our jurisdiction to make such determinations under the public interest standards of Ind. Code § 8-1-2.5 or the public convenience and necessity standards of Ind. Code § 8-1-8.5-5(b)(3). If a proposed new power plant will significantly and negatively impact an electricity supplier, its consumers, or a local community, the Commission may, refuse to decline jurisdiction under Ind. Code § 8-1-2.5 and Ind. Code § 8-1-8.5. Similarly, while FERC has jurisdiction over interstate transmission service, this Commission can consider the effects that a new power plant could have on other Indiana electricity suppliers and their consumers when determining whether to decline jurisdiction over, or to certify construction of, a new power plant. In this regard, this Commission does not decline any jurisdiction it has to adjudicate disputes regarding alleged adverse impacts on the transmission and distribution facilities of an Indiana electricity supplier and its consumers.

With specific regard to Petitioner's Facility, Petitioner has filed with the Commission Phase I and Phase II System Impact Studies ("SIS"): At Petitioner's request, AEP served its Phase I SIS on the neighboring retail Indiana electric utilities interconnected to AEP on July 14, 2000 and its Phase II SIS on the same utilities on August 17, 2000. We note that no objections thereto have been submitted to the Commission. Petitioner has also submitted on a confidential basis the analysis regarding gas supplies for the Facility performed by Pace and the electric market study performed by ICF. Petitioner has also submitted evidence for the record regarding the Facility's lack of impact on the water rights and water uses of the Lawrenceburg community. In addition, although the Petitioner has no plans to do so, evidence presented by the Petitioner indicates that due to its technology the plant could be converted to utilize gasified coal if an alternative fuel source becomes attractive at some point in the future. Thus, in this case, Petitioner has demonstrated, through record evidence, that the impact of the Facility on transmission systems of Indiana utilities, and the impact of the Facility on regional gas supplies and water use rights, will not adversely impact Indiana utilities, consumers or communities. Petitioner also has demonstrated that the local community in Lawrenceburg supports the proposed Facility. Accordingly, on the basis of this information, we have determined that the public interest will be served if the Facility is located as planned.

Need: In determining the public interest, the Commission will review the need (*i.e.*, will the development of additional generating capacity serve the public interest). To demonstrate need, entities must provide evidence that a proposed facility will meet the demands of the market; a mere assertion that the wholesale market is competitive is insufficient to meet this standard. As the Commission has noted in previous orders, it is aware of the changing business environment for the production and marketing of electricity at wholesale, in which “merchant” plants are increasingly common. These merchant plants are projected to be mostly gas-fired combustion turbines and combined cycle units. Moreover, the Petitioner presented evidence that the need for more power was demonstrated by the extreme heat events experienced in Indiana in June 1998 and July 1999.

For purposes of demonstrating need, Petitioner has submitted to the Commission and the parties on a confidential basis its analysis of the Midwest power market. This study shows a need by 2005 for additional power in the Southern segment of the East Central Area Reliability Council (“ECAR”) Region of approximately 11,308 MW – generally proportionate to the increased need in Indiana over the same period. It further shows a need for additional capacity, including intermediate and baseload capacity, in Southern ECAR after 2005. According to Petitioner’s evidence, neither of these needs have yet been met. Petitioner’s evidence also shows that the Facility will be dispatched with sufficient frequency in the competitive wholesale market over the period of its expected operating life to recover its revenue requirement. Petitioner will submit to the Commission prior to construction a certificate that it has obtained financing for the Facility as represented in its testimony.

Petitioner’s market study provides the evidence necessary for the Commission to be satisfied that there is not only a generic need for power in the region, but also a particular need for the power to be generated by the Facility. Evidence presented by the Petitioner indicates that the proposed Facility should reduce the cost of power and provide additional power that, in turn, will benefit ratepayers in Indiana. The evidence further demonstrates that the Petitioner has agreed to provide notice of any change in the in-service date, which the Commission may use to refine its integrated resource planning for Indiana retail utilities.

In evaluating need, the Commission notes that the CAC has proposed that “tolling agreements” between certain merchant power plant developers and parties who both provide the fuel for and take the power from a plant should be filed with the Commission on a confidential basis. Petitioner does not intend to use long-term tolling agreements for purposes of increasing the leverage in the project financing. Therefore, this issue is not relevant in this case. If Petitioner later chooses to enter into any tolling agreements in excess of five years in duration, it agrees to file such agreements with the Commission on a confidential basis.

Financing: To ensure that ratepayers and consumers are not adversely affected by the proposed development of generation plants in Indiana, developers must demonstrate to the Commission that the financial structure of a proposed project will not jeopardize retail electric supply. Specifically, the Commission is seriously concerned that highly leveraged projects may adversely impact the public interest, and present undue risk to Indiana’s jurisdictional retail utilities

which must maintain the reliability of retail electric supply at its current level. In assessing a developer's financing to ensure the viability of a proposed project, the Commission may consider the developer's ability to finance, construct, own, and operate other generating facilities in a commercially responsible manner. As necessary, the Commission also may consider the specific method proposed to finance a particular project, including the debt/equity ratio proposed by a developer.

The evidence in this case demonstrates that the proposed Facility will not be financed under a highly leveraged "project financing" arrangement whereby the Facility will be financed almost entirely with borrowed funds to be repaid from the project's revenue stream. Instead, Petitioner's parent expects to invest sufficient funds in the Facility to support a debt/equity ratio of 60/40 or even 50/50. At the very least, Petitioner has committed that it will have a maximum debt ratio of 70%.

To ensure that Indiana consumers are not adversely affected by a merchant plant's financing arrangements, developers must demonstrate the long-term economic viability of their proposed projects. In this proceeding, Petitioner has filed on a confidential basis its market analysis for the Midwest power market to demonstrate that there is a need for the power generated by the Facility. Petitioner also agreed to file with the Commission, prior to construction, a certification of its actual financing for the Facility.

The evidence presented in this Cause demonstrates that PSEG Global has assets of \$1.7 billion and ownership interests in 19 currently operating generation facilities totaling 2,002 MW of capacity located in the United States, Argentina, China and Venezuela. In addition, PSEG Global has ownership interests in 18 operating projects either under construction or in advanced stages of development totaling 4,832 MW of capacity in the United States, Argentina, Tunisia, China, Italy and Poland. Moreover, PSEG Global's affiliate, PSEG Power, currently owns 10,200 MW of existing generation capacity and expects to add 3,000 to 5,000 MWs within a three to five year time frame. Most of these existing plants were acquired from PSE&G, the retail electric utility affiliate of PSEG Global and PSEG Power. The ultimate parent company, Public Service Enterprise Group, is a Fortune 500 company with annual revenues of approximately \$6 billion and 11,000 employees.

Thus, Petitioner, a wholly-owned subsidiary of PSEG Global and ultimately of Public Service Enterprise Group, has adequately demonstrated that it has the technical, financial, and managerial capability to construct and operate the Facility, and that Petitioner's development of the Facility will not adversely affect ratepayers or consumers, or otherwise jeopardize retail electric supply. Accordingly, based on the evidence presented in this Cause, we decline to exercise jurisdiction with respect to any financing of the Facility.

In addition to determining whether the public interest would be served if the Commission declines jurisdiction over Petitioner, the Commission also has reviewed what actions it must take to ensure that the public interest is served throughout the commercial life of the Facility. Specifically, the Commission has determined the extent to which it must reserve its authority over Petitioner's activities involving affiliate transactions and transfers of ownership.

Affiliate Transactions: To ensure that the Commission's declination of jurisdiction over an "energy utility" is in the public interest, the Commission must be assured that adequate consumer protections are in place should an "energy utility" subsequently become an affiliate, as defined in Ind. Code § 8-1-2-49, of any regulated Indiana retail utility. While the Commission is declining jurisdiction over Petitioner's affiliate transactions initially, the Commission reserves its authority to regulate Petitioner should it become an affiliate of any regulated Indiana retail utility. Petitioner agrees to inform the Commission and the OUCC of any affiliation with any regulated retail utility operating in Indiana at the time of its occurrence. Further, Petitioner agrees to obtain prior Commission approval with respect to the sale of any electricity to any such affiliated regulated Indiana retail utility. Accordingly, if Petitioner becomes affiliated with any regulated Indiana retail utility and Petitioner (either directly or through an affiliate) engages in retail electric sales, Petitioner will, without further action of this Commission, automatically become subject to: (1) all applicable regulations governing affiliate relationships as those regulations exist at the time Petitioner becomes an "affiliate" of a regulated Indiana retail utility; or (2) regulations governing retail electric sales in Indiana under such subsequently enacted Indiana statutes. The Commission notes that it retains certain authority under Section 201 of the Federal Power Act, as amended, to examine the books, accounts, memoranda, contracts, and records of EWGs selling to regulated Indiana retail utilities, consistent with the limitations contained therein, and under Section 32(k) of PUHCA to review transactions between EWGs and regulated Indiana retail utility affiliates.

Transfers of Ownership: In determining the public interest the Commission may place limitations on any transfers of ownership of the assets of an energy utility over which we have otherwise disclaimed jurisdiction. Therefore, we are reserving our jurisdiction and will require Petitioner to seek Commission approval of any transfer of the assets owned by Petitioner. Petitioner, however, shall not be required to seek prior approval of any transfers of ownership of the Facility assets or ownership interests in the Petitioner involving: (1) the grant of a security interest to a bank or other lender or collateral agent, administrative agent or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing); (2) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility; and (2) the successor agrees to the same terms and conditions imposed on Petitioner as set forth in this Order.

Given the above findings, and the additional requirements contained in this Order, the Commission believes that a declination of jurisdiction over Petitioner as an energy utility, except over the areas discussed above as to which we are reserving our jurisdiction, is in the public interest. While the Commission is not declining jurisdiction over Petitioner for a particular term of years, the Commission does not intend to reassert jurisdiction over Petitioner absent circumstances affecting the public interest. *See, In the Matter of An Investigation into Centrex Charters Offered by Indiana Bell Telephone Company, Inc., d/b/u Ameritech Indiana, Cause No. 40612, September 13, 1996.*

Petitioner is not granted authority to offer its power for sale to the general public. Therefore, any revenue that it derives from the sale of electricity for resale by the purchaser is not subject to the public utility fee.

6. Financial Assurance: The Commission has determined that it is in the public interest that the Petitioner establish and maintain an independent financial instrument to ensure that funds will be available in the event of abandonment, financial failure, and/or bankruptcy to return the site to its current condition. The financial instrument utilized may, at the Petitioner's option, be established by one of the following options:

- (1) Surety bond;
- (2) Letter of credit;
- (3) A certificate of insurance;
- (4) Financial test;
- (5) Corporate guarantee, or
- (6) Other financial guarantee approved by the Commission

In order to ensure that adequate funds will be available for this purpose, the Petitioner should prepare a cost estimate that contains a detailed estimate of the costs associated with fully decommissioning the Facility and returning the site to its current condition. The financial instrument selected and utilized by the Petitioner must be sufficient to cover the costs contained in the cost estimate. A copy of the current cost estimate and the financial instrument selected by the Petitioner must be submitted to the Secretary of the Commission for approval within sixty (60) days of the date of approval of this Order. The cost estimate and corresponding financial instrument, must be revised by the Petitioner every five (5) years to account for inflation.

7. Reporting Requirements: If after notice and hearing the Commission determines that Petitioner either (1) has failed to commence construction of the Facility within two years of the date of this Order and is no longer diligently pursuing the commencement of construction of the Facility, or (2) has not completed construction of the Facility within five years of the date of this Order, then this declination of jurisdiction will automatically terminate. In addition to the foregoing reporting requirements, it shall be a condition of this Order and our continued partial declination of jurisdiction over Petitioner's operations, that it file with the Commission Annual Reports as provided in I.C. 8-1-2-49 and provide such other information as the Commission may from time to time request. These reporting requirements are intended to ensure that the Commission obtains reliable up-to-date information in a timely manner necessary to carry out its statutory obligations regarding the construction and operation of generating facilities, as well as the statutory obligations of the Commission's State Utility Forecasting Group, and the Office of the Utility Consumer Counselor. The Commission will require the following reports ("Reporting Requirements") be prepared and filed by the Petitioner. A responsible officer of Petitioner shall verify all reports. The Petitioner shall provide one (1) paper copy and one (1) electronic copy to the Secretary of the Commission, and to the OUCC, within the timeframes prescribed below:

(a) **Planning Report:** A Planning Report that includes the following information shall be submitted to the Commission within six (6) weeks of approval of this Order. To avoid unnecessary duplication, it is not necessary for the Petitioner to refile information that remains unchanged and has been previously submitted.

- (1) Project ownership and name(s) of the facility;
- (2) Name, title, address, and phone number(s) for primary contact person(s) at the facility;
- (3) Specific location (county and nearest city or town);
- (4) Ownership of land on which the facility is located;
- (5) Anticipated "boilerplate capacity" of the unit. If multiple units will be located at the proposed site list the anticipated boilerplate capacity of each unit.
- (6) Unit type [manufacturer, model number, operational characteristics];
- (7) Primary fuel to be used by the facility;
- (8) Secondary fuel (if applicable)
- (9) Connecting utility(s)
- (10) Copy of "System Impact Studies" prepared by connecting utility(s)
- (11) Primary and, if applicable, secondary water source
- (12) Expected in-service (commercial operation) date;
- (13) An estimate of the engineering\construction timeline and critical milestones for the facility.

(b) **First Year Report:** A First Year Report, that includes the following information, shall be submitted within thirteen (13) months of the in-service date.

- (1) Summer and winter dependable capacity ratings;
- (2) Annual capacity factor, summer seasonal (June through August) capacity factor, and winter seasonal (December through March) capacity factor. Please include hours of operation annually and for each season;
- (3) Annual average gas usage, average daily gas usage, peak output gas usage;
- (4) Total annual, peak day, and summer seasonal water usage and discharge; itemization of any operational and or environmental restrictions placed upon the Facility during the year as a result of environmental conditions or impacts;
- (5) Itemization of transmission Loading Restrictions (TLRs) or other operational restrictions incurred during the year;
- (6) Number of employees employed by the Facility.

8. **Construction Notices:** Brief notifications shall also be filed with the Commission during the construction period as follows:

(a) **Start-Up Report:** A Construction Start-up Report, that includes the following information, shall be submitted one (1) week prior to commencement of construction activities.

- (1) Status of permits from the Indiana Department of Environmental Management (IDEM), Indiana Department of Natural Resources (DNR), and, if applicable, United States Army Corps of Engineers, and other necessary permits;
- (2) Expected in-service date;

(b) **Mid-Point Notice:** A Mid-Point Report, that includes the following information, shall be submitted at the mid-point described on the timeframes and contained in the "Planning Report." In the event the actual construction schedule is at variance with the construction timeframes, the Petitioner will provide an explanation for the variation in the schedule and shall include a revised estimate of the completion schedule.

- (1) Status of construction;
- (2) Expected in-service date;

(c) **Testing Notification Notice:** A Testing Notice shall be submitted to the Commission two (2) weeks prior any testing of the facility, and should advise the Commission that testing of the facility is about to begin.

(d) **In-Service Notice:** An In-Service Notice that includes the following information shall be submitted to the Commission at the time of the initial commercial operation of the generating facility.

- (1) Contracts for firm utility sales and contracts for firm sales to Indiana utilities. Please itemize the contract amount and the entity;
- (2) A summary of fuel contracts (e.g., "tolling arrangement," firm, spot] and itemize the pipeline(s) involved in the transactions;
- (3) Contingency plans, if any, detailing response plans to emergency conditions as required by state or local units of government, transmission owner and /or relevant regional transmission grid operator;
- (4) Certified (or accredited) dependable capacity rating

Notification of Changes in Capacity or Operation: In the event that the Petitioner intends to increase, decrease or otherwise materially change the facility's capacity or operation, the owner must obtain the Commission's prior approval.

9. **Confidential Exhibits.** On October 10, 2000, Petitioner filed a Motion For Protection of Confidential Information requesting that the Commission find that certain of its rebuttal exhibits be determined to be confidential and protected from public disclosure under Ind. Code § 8-1-2-29 and § 5-14-3-4 and that the Commission adopt procedures to protect the confidentiality of such information. The motion related to (a) the Midwest Natural Gas Market Assessment prepared for PSEG Global by Pace (*Petitioner's Exhibit BHS-22*); (b) Pace's Midwest Projects Fuel Screening and Regional Fuel Procurement Strategy presentation (*Petitioner's Exhibit BHS-23*), (c) internal documentation regarding PSEG Global's site selection process (*Petitioner's Exhibit BHS-24*); (d) a schedule of cash requirements and exposure relating to Petitioner's project (*Petitioner's Exhibit BHS-25*); (e) ICF's Southern ECAR market study (*Petitioner's Exhibit BHS-26*); (f) a memorandum from Pace describing Petitioner's gas strategy (*Petitioner's Exhibit GS-4*); and (g) Pace's gas study (*Petitioner's Exhibit GS-5*). The motion was supported by an affidavit of Mr. Sisson regarding the high degree of confidentiality associated with this information.

On October 12, 2000, the presiding officers in this Cause issued a docket entry making a preliminary finding that the information shall be treated as confidential in accordance with Ind. Code § 5-14-3-4 and that confidential procedures should be followed with respect to the information. Pursuant to the docket entry, Petitioner delivered one copy of the confidential rebuttal exhibits to the presiding Administrative Law Judge under seal and conspicuously identified as confidential. At the time of the hearing, the presiding officers made an *in camera* inspection of the information. Based thereon, the Commission confirms that a permanent finding of confidentiality should be made.

The Commission, therefore, finds that *Petitioner's Exhibits BHS-22 through BHS-26 and Petitioner's Exhibits GS-4 and GS-5* (collectively the "Confidential Exhibits") contain confidential, proprietary, competitively sensitive and trade secret information that has economic value to Petitioner and its affiliates from being neither known to nor ascertainable by its competitors and other persons who could obtain economic value from the knowledge and use of such information; that the public disclosure of such information would have a substantial detrimental effect on Petitioner and its affiliates; and that the information is subject to efforts of Petitioner and its affiliates that are reasonable under the circumstances to maintain its secrecy.

Accordingly, the Confidential Exhibits should be exempt from the public access requirements of Ind. Code § 5-14-3-4 and § 8-1-2-29, and held as confidential by the Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. Petitioner is and is hereby adjudged to be a "public utility" within the meaning of the Indiana Code § 8-1-2-1.
2. The Facility of approximately 1150 MWs is and is hereby adjudged to be a "utility" within the meaning of Indiana Code § 8-1-2-1.

3. Petitioner shall not exercise any of the rights, powers, and privileges of an Indiana public utility in the construction and operation of the Facility, *e.g.*, the power of eminent domain, use of public rights-of-way, exemption from zoning and land use regulation, *etc.*

4. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Facility without further order of the Commission so long as retail power service remains subject to Commission regulation.

5. Petitioner shall advise the Secretary of the Commission and the OUCC of the final plant site, in-service date, rated capacity, interconnection point with AEP's transmission system, any change of ownership of the Facility, and all other reporting requirements referenced in this Order. Should the information submitted to the Commission by Petitioner subsequently change, Petitioner is obligated to provide the Commission with updated information.

6. Petitioner shall submit to the Commission the information identified in, and in accordance with, Finding Nos. 5, 6, 7 and 8.

7. Based on the findings and conclusions stated above and subject to the limitations and requirements contained in Ordering Paragraphs 3, 4, 5, 6, 7, and 8 the Commission declines its jurisdiction over Petitioner except to the extent otherwise provided herein. If after notice and hearing the Commission determines that Petitioner either (1) has failed to commence construction of the Facility within two (2) years of the date of this Order and is no longer diligently pursuing the commencement of construction of the Facility, or (2) has not completed construction of the Facility within five (5) years of the date of this Order, then this declination of jurisdiction will automatically terminate.

8. The gross revenues generated by sales for resale of the electricity generated by the Facility are hereby adjudged to be exempt from the public utility fee prescribed by Indiana Code § 8-1-6-1 *et. seq.*

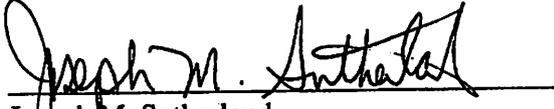
9. *Petitioner's Exhibits BHS-22 through BHS-26 and Petitioner's Exhibits GS-4 and GS-5* are hereby declared to contain "trade secrets" as defined in Ind. Code §24-2-3-2 and, therefore, are exempt from the public access requirements of Ind. Code §5-14-3-4 and § 8-1-2-29 and shall be held as confidential by the Commission.

10. This Order shall be effective on and after the date of its approval.

McCARTY, HADLEY, RIPLEY, SWANSON-HULL, AND ZIEGNER CONCUR:
APPROVED:

DEC 20 2000

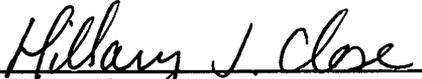
I hereby certify that the above is a true
and correct copy of the Order as approved.

A handwritten signature in black ink, appearing to read "Joseph M. Sutherland", written over a horizontal line.

Joseph M. Sutherland
Secretary to the Commission

CERTIFICATE OF SERVICE

The undersigned certifies that two copies of the foregoing Verified Petition were served this 12th day of October, 2016, via hand delivery, on the Office of Utility Consumer Counselor, PNC Center, 115 W. Washington St., Suite 1500 South, Indianapolis, Indiana 46204.


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