

OFFICIAL  
EXHIBITS

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JLG  
MJK

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

IURC  
Joint PETITIONER'S - AEP  
EXHIBIT NO. Ad Nts 1  
12-8-16 DATE AT REPORTER

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.

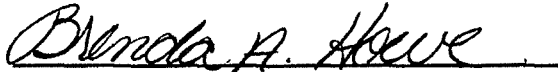
3. Upon consummation of the sale of the Facility to AEGCo, PSEG Lawrenceburg and its affiliates shall be fully released, without condition, from any and all duties and obligations contained in the 2000 Order as described above.

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**