

83 FERC ¶ 61,106

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt H. bert, Jr.

Si the Framingham LLC)	Docket No. EG98-41-000
Si the West Medway LLC)	Docket No. EG98-42-000
Si the Wyman LLC)	Docket No. EG98-43-000
Si the New Boston LLC)	Docket No. EG98-44-000
Si the Edgar LLC)	Docket No. EG98-45-000
Si the Mystic LLC)	Docket No. EG98-46-000
		(not consolidated)

DETERMINATION OF EXEMPT WHOLESALE GENERATOR STATUS AND
INTERPRETATION OF SECTION 32 OF THE PUBLIC UTILITY
HOLDING COMPANY ACT OF 1935, AS AMENDED

(Issued April 30, 1998)

On February 11, 1998, as revised on March 25, 1998, and March 27, 1998, Si the Framingham LLC (Framingham); Si the West Medway LLC (West Medway); Si the Edgar LLC (Edgar); Si the Wyman LLC (Wyman); Si the New Boston LLC (New Boston); and Si the Mystic LLC (Mystic) (together the "Si the New England Projects") filed applications for determination of exempt wholesale generator (EWG) status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended by the Energy Policy Act of 1992 (PUHCA). 1/

Notice of the applications was published in the Federal Register, 2/ with interventions or comments due on or before May 28, 1996. A timely motion to intervene in all six proceedings was filed by El Segundo Power, LLC (El Segundo). El Segundo's timely, unopposed motion to intervene serves to make it a party to the six proceedings.

Si the New England Projects has submitted a sworn statement by a representative authorized to bind each of the applicants stating that:

1. Each applicant will be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning or operating,

1/ 15 U.S.C. § 79z-5a (1994).

2/ 63 Fed. Reg. 9,223, 9,512, 10,017, 11,441, 17,402 (1998).

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or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale;

2. None of the applicants will be engaged in (nor is presently engaged in) making retail sales of electric energy to consumers outside of the United States;

3. The facilities of the six applicants covered by their respective applications (Facilities) will consist of five fossil generation facilities and a 5.89 percent interest in a sixth generation facility. 3/

4. There are and will be no leasing arrangements involving the Facilities;

5. No electric utility company, as defined in section 2(a)(3) of PUHCA, is an affiliate or associate company of the applicants, as defined by section 2(a)(11) and 2(a)(10) of PUHCA.

6. On October 24, 1992, the respective Facilities were in the rate base of Boston Edison Company (Boston Edison), a public utility. Accordingly, under section 365.3(b) of the Commission's regulations, 18 C.F.R. § 365.3(b) (1997), the applicants have attached to their filings a written determination by the Massachusetts Department of Public Utilities (now the Massachusetts Department of Telecommunications and Energy) finding that allowing the facilities to be eligible facilities will benefit consumers, is in the public interest, and does not violate State law.

In addition to selling electric energy at wholesale from the Facilities, the applicants will sell ancillary services for

- 3/ The Framingham facility is the Framingham Station, a 33 MW generation facility located in Framingham, Massachusetts. The West Medway facility is the Medway Electric Generating Station, a 120 MW generation facility located in West Medway, Massachusetts. The Edgar facility is the Edgar Electric Generating Station, a 21 MW generation facility located in Weymouth, Massachusetts. The Wyman facility is the Wyman 4 Turbine Unit at the W.F. Wyman Generating Station, a 619 MW generation facility, located in Yarmouth, Maine (in which Wyman will hold an undivided 5.89 percent interest). The New Boston facility is the New Boston Electric Generating Station, a 778 MW generation facility located in Boston, Massachusetts. The Mystic facility is the Mystic Electric Generating Station, a 990 MW generation facility located in Everett, Massachusetts.

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resale. 4/ Si the New England Projects argues on behalf of the applicants that under Commission precedent, 5/ these ancillary services are by-products of the Facilities' wholesale electric energy sales, and thus selling these ancillary services at wholesale will not violate the requirement of section 32(a)(1) of PUHCA that EWGs be exclusively engaged in selling electric energy at wholesale. 6/ It further argues 7/ that the ancillary services that the applicants will be providing are incidental to their wholesale electric generation activities and thus are permissible activities.

We find that the sale of ancillary services for resale by the applicants, as described in their respective applications, 8/

- 4/ The Facilities are being acquired from Boston Edison. For no less than six months after the acquisition, Boston Edison has agreed to purchase capacity, energy, and ancillary services from the respective facilities of the applicants. After this transition period is completed, applicants intend to sell ancillary services at wholesale through New England Power Pool (NEPOOL) spot markets.
- 5/ Citing Richmond Power Enterprises, L.P., 62 FERC ¶ 61,157 (1993) (Richmond Power) and Elm Energy & Recycling (UK) Ltd., 63 FERC ¶ 61,201 (1993).
- 6/ As noted, the PUHCA section 32(b) exception for foreign retail sales is not applicable.
- 7/ Citing, e.g., Selkirk Cogen Partners, L.P., 69 FERC ¶ 61,037 at 61,168-69 (1994) (Selkirk).
- 8/ The only "ancillary services" identified by Si the New England Projects are "synchronous reserves and asynchronous reserves" March 25, 1998 Amendment at 3. We interpret these services as being Operating Reserve - Spinning Reserve Service and Operating Reserve - Supplemental Reserve Service, respectively.

As explained below, we find that the sale of these services, as long as such sale is incidental to the sale of electric energy at wholesale, will not result in any violation of the exclusivity requirement.

We take this opportunity to advise prospective EWG applicants that the same finding will also be made if an EWG sells other ancillary services for resale: (1) Reactive Supply and Voltage Control for Generation Services; (2) Regulation and Frequency Response Service; and (3) Energy Imbalance Service, as long as the sale of such services is
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is a by-product that is incidental to their wholesale electric energy sales from their respective Facilities. Thus, the sale of ancillary services for resale does not violate the exclusivity requirement of PUHCA. Just as with the analogous circumstances in Selkirk and Richmond Power, we see no reason to infer that Congress would wish for EWGs to be forced to waste their ability to provide ancillary services for resale associated with operation of their facilities for wholesale sale of electric energy in order to maintain EWG status.

Based upon the information contained in their applications, the Commission determines that the applicants are EWGs as defined in section 32(a)(1) of PUHCA. As required by section 32(a)(1) of PUHCA, the Secretary is directed to notify the Securities and Exchange Commission of this determination.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

8/(... continued)

incidental to the sale of electric energy at wholesale.

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