

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Exelon Corporation
Exelon Ventures Company, LLC
Commonwealth Edison Company
Commonwealth Edison Company of Indiana, Inc.
PECO Energy Company
Exelon Generation Company, LLC

Docket No. EC06-36-000

ORDER AUTHORIZING IN PART AND DENYING
IN PART ACQUISITION OF SECURITIES

(Issued February 7, 2006)

1. On December 7, 2005, Exelon Corporation (Exelon), Exelon Ventures Company, LLC (Ventures), Commonwealth Edison Company (ComEd), Commonwealth Edison Company of Indiana (ComEd Indiana), PECO Energy Company (PECO), and Exelon Generation Company (Exelon Generation) (collectively, Applicants) filed an application under section 203 of the Federal Power Act (FPA)¹ requesting Commission authorization to acquire securities pursuant to the Exelon Utility Money Pool Agreement (Money Pool) and through other transactions. In this order, we issue blanket authorization for certain financing transactions, subject to certain conditions. We deny the request to authorize financing transactions by Public Service Electric and Gas (PSE&G) following completion of the merger between Exelon and Public Service Enterprise Group Incorporated (PSEG), as further described below.

I. Background

A. Description of Applicants

2. Exelon is a registered holding company under the Public Utility Holding Company Act of 1935 (PUHCA 1935)² and the parent company of the other Applicants. Ventures

¹ 16 U.S.C. § 824b (2000), *amended by* Energy Policy Act of 2005 § 1289, Pub. L. No. 109-58, 119 Stat. 594, 982-93 (2005) (EPAAct 2005).

² 15 U.S.C. § 79a *et seq.*(2000). This statute was repealed, effective February 8, 2006, and replaced by the Public Utility Holding Company Act of 2005 (PUHCA 2005). *See* EPAAct 2005 §§ 1261-77, 119 Stat. 594, 972-78.

is an intermediate holding company that owns the outstanding equity securities of Exelon Generation. Exelon Generation owns and operates electric generating facilities and engages in wholesale energy marketing and competitive retail sales. ComEd is a holding company and engages in the purchase, transmission, distribution, and sale of electricity to retail and wholesale customers in Illinois. ComEd Indiana, a subsidiary of ComEd, owns transmission assets in Indiana and transmits electricity to ComEd. PECO engages in the purchase, transmission, distribution, and sale of electricity and the purchase, distribution, and sale of natural gas in Pennsylvania.

B. Description of Proposed Transactions

1. Money Pool Transactions

3. Applicants request authorization to acquire securities through two types of financing transactions. The first type involves using the Money Pool as approved by the Securities and Exchange Commission (SEC),³ which will occur in two separate transactions. In the first Money Pool transaction, Applicants will acquire securities through December 31, 2007. Parties to the Money Pool include Exelon, ComEd, ComEd Indiana, PECO, and Exelon Generation (collectively, Parties). Parties will act as both lenders and borrowers except for Exelon, which participates only as a lender by acquiring the securities of other participants. Parties state that borrowings from the Money Pool (and thus, the maximum amount of securities that a Party can acquire from each issuer) will be limited to a maximum amount outstanding of \$2.5 billion for ComEd, \$1.5 billion for PECO, \$1.5 billion for Exelon Generation, and \$15 million for ComEd of Indiana. Loans will bear interest at the prevailing market rate for short-term financial instruments, the lender's cost of external funds, or a combination of the two. The respective companies will repay the debt within 365 days or earlier upon demand by the issuer.

4. In the second Money Pool transaction, Applicants seek authorization for PSE&G to participate as a lender and borrower in the Money Pool if the merger between Exelon and PSEG closes.⁴ PSE&G is PSEG's regulated utility subsidiary. Applicants state that PSE&G's Money Pool limit will be no more than \$1 billion.

2. Debt And Equity Financing Transactions

5. Under the second type of financing transaction, Ventures and ComEd will acquire debt or equity securities from their respective subsidiaries, Exelon Generation and ComEd of Indiana, through December 31, 2007. Applicants state that Ventures and

³ SEC, *Exelon Corporation, et al.*, Holding Company Act Release No. 35-27830 (April 1, 2004).

⁴ *Exelon Corp.*, 112 FERC ¶61,011 (2005).

ComEd will make loans or equity contributions to Exelon Generation and ComEd of Indiana, respectively, and that their acquisitions will be limited to \$500 million from Exelon Generation and \$25 million from ComEd of Indiana.

II. Notice of Filing

6. Notice of the application was published in the *Federal Register*, 70 Fed. Reg. 76,273 (2005), with comments, protests, or interventions due on or before December 28, 2005. None was filed.

III. Discussion

A. Standard of Review Under Section 203

7. Section 203(a)(4) of the FPA, as amended, provides that the Commission must approve a transaction if it finds that the proposed transaction will be consistent with the public interest and will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest. The Commission's Merger Policy Statement provides that the Commission will generally take into account three factors in analyzing proposed section 203 transactions: (a) the effect on competition, (b) the effect on rates, and (c) the effect on regulation.⁵ Order No. 669 provides additional guidance for implementing the Commission's responsibilities, particularly with respect to amendments of section 203(a) in EPAAct 2005.⁶

8. Applicants state that the proposed transactions will have no adverse impact on competition, rates, or regulation by state commissions in Illinois, Indiana, and Pennsylvania. Applicants state that the proposed transactions will not result in cross-subsidization of non-utility associate companies, which include Exelon and Exelon Generation, and that no assets of the utility Applicants will be pledged in support of the

⁵ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

⁶ *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats & Regs. ¶ 31,200 (2005), *reh. pdg.* FERC Stats. & Regs. ¶ 31,200 (2005).

proposed transactions. Applicants maintain that because Exelon can only lend to, but not borrow from, the Money Pool, cross-subsidization will not occur.

B. Commission Determination

1. Money Pool Transactions

9. The Commission grants Applicants' request that they be permitted to acquire securities as part of Money Pool transactions, subject to the same limits and the same reporting requirements on Exelon's Money Pool transactions now imposed by the SEC under PUHCA 1935.⁷ The Commission understands the need for public utilities to quickly obtain or provide financing as part of money pool transactions and finds that, with the conditions discussed herein on the proposed transactions, the transactions will not adversely affect competition, rates or regulation and will not result in cross-subsidization or a pledge or encumbrance of assets. However, we are in the early stages of implementing EAct 2005. For that reason, and in order to preserve the status quo of Applicants' activities permitted by the SEC under PUHCA 1935, the Commission concludes that it is appropriate to grant the authorization, to the extent it is not already granted under Order No. 669, for one year. The authorization expires one year from the effective date of this order without prejudice to requests to extend the authorization and subject to any relevant Commission action on rehearing of Order No. 669. The authorization expires one year from the effective date of this order without prejudice to requests to extend the authorization and subject to any relevant Commission action on rehearing of Order No. 669, including the imposition of any additional conditions, to be prospectively applied, that may be necessary for the protection of ratepayers.

10. We will deny Applicants' request for authorization for PSE&G to participate as a lender and borrower in the Money Pool if the merger between Exelon and Public Service Enterprise Group Incorporated (PSEG) closes. At this time, PSE&G is not an applicant requesting participation in the money pool. Therefore, we deny this authorization without prejudice to Exelon and PSEG jointly filing a request.

2. Debt And Equity Financing Transactions

11. Applicants' proposed transactions in which Ventures and ComEd will acquire debt or equity securities from their respective subsidiaries, Exelon Generation and ComEd of Indiana, through December 31, 2007, are essentially acquisitions of securities in a subsidiary by its holding company. It will qualify for blanket authorization under Order No. 669.⁸ For this reason, this request for authorization is moot.

⁷SEC, *Exelon Corporation, et al.*, Holding Company Act Release No. 35-27830 (April 1, 2004).

⁸ Order No. 669, *supra* §33.1(c)(2)(iii) subject to the conditions of §33.1(c)(3)-(4).

The Commission orders:

(A) Applicants' transactions are authorized, subject to the limits and reporting requirements imposed by the SEC referred to in the body of this order.

(B) The approvals granted herein are subject to the outcome of Commission action on rehearing of Order No. 669, Docket No. RM05-34-000, including any additional conditions for ratepayer protections that the Commission may impose on any similar blanket authorizations granted in association with that docket.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) If the transactions result in changes in the status or the upstream ownership of Applicants' affiliated qualifying facilities, if any, an appropriate filing for recertification pursuant to 18 C.F.R. § 292.207 shall be made.

(H) This order is effective February 8, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.