

144 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Exelon Generation Company, LLC
CER Generation II, LLC
Constellation Mystic Power, LLC
Constellation NewEnergy, Inc.
Constellation Power Source Generation, Inc.
Criterion Power Partners, LLC

Docket No. EL13-64-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued September 3, 2013)

1. On May 16, 2013, Exelon Generation Company, LLC (Exelon Generation) and certain direct and indirect subsidiaries of Exelon Generation¹ (the Acquired Subsidiaries) (collectively Applicants) filed a petition for a declaratory order requesting that the Commission find that section 305(a) of the Federal Power Act (FPA)² is not a bar to the payment of dividends from capital accounts under the limitations and circumstances described in the petition. For the reasons stated below, we will grant Applicants' petition for a declaratory order.

¹ The direct and indirect subsidiaries of Exelon Generation include CER Generation II, LLC, Constellation Mystic Power, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, Inc. and Criterion Power Partners, LLC.

² 16 U.S.C. § 825d(a) (2006). Section 305(a) declares unlawful the payment "of any dividends [by any] public utility from any funds properly included in capital account."

I. Background

A. Exelon Generation

2. Exelon Generation, an intermediate holding company and a wholly-owned subsidiary of Exelon Ventures LLC (Exelon Ventures), which, in turn, is a wholly-owned subsidiary of Exelon Corporation (Exelon), manages Exelon's nuclear, fossil, renewable and hydroelectric fleets of generating assets. Exelon Generation is a "public utility" under the FPA³ with market-based rate authorization.⁴ Applicants state that Exelon Generation does not have captive customers,⁵ does not provide transmission or distribution services, and does not serve as a designated "provider of last resort" (POLR) for any class of customers. Applicants also state that Exelon Generation is not required to keep its books and records in accordance with the Commission's Uniform System of Accounts (USofA)⁶ and that it is a holding company exempt from federal books and record requirements under the Public Utility Holding Company Act of 2005.⁷ Exelon Generation further states that it has blanket authorization from the Commission for issuances of securities and assumptions of liability under FPA section 204⁸ and Part 34 of the Commission's regulations.⁹

³ 16 U.S.C. § 824(e) (2006).

⁴ *Exelon Generation Co.*, 93 FERC ¶ 61,140 (2000) (authorizing market-based rates under Exelon Generation's Tariff No. 1); *Exelon Generation Co.*, Docket No. ER01-2794-000 (Oct. 3, 2001) (unpublished delegated letter order accepting Tariff No. 2 under Exelon Generation's market-based rate authority).

⁵ Applicants note that the Commission's regulations define "captive customers" to mean "any wholesale or retail electric energy customers served by a franchised public utility under cost-based regulation." 18 C.F.R. § 35.36(a)(6) (2013).

⁶ Applicants add, however, that Exelon Generation and its subsidiaries keep their books and records in accordance with Generally Accepted Accounting Principles.

⁷ 42 U.S.C. § 16451, *et seq.* (2006).

⁸ 16 U.S.C. § 824c (2006).

⁹ 18 C.F.R. Part 34 (2013).

B. Acquired Subsidiaries

3. Applicants state that, as a result of the acquisition of Constellation Energy Group, Inc. (Constellation) by Exelon in 2012 (Merger),¹⁰ the subsidiaries of Constellation became direct and indirect subsidiaries of Exelon Generation (collectively the Legacy Constellation Subsidiaries).¹¹ The Acquired Subsidiaries are a subset of the Legacy Constellation Subsidiaries. Applicants state that the Acquired Subsidiaries include:

- (1) CER Generation II, LLC, which owns and operates a nominal 200 MW capacity natural gas-fired generating facility in West Valley, Utah;
- (2) Constellation Mystic Power, LLC, which owns and operates generating facilities in Massachusetts totaling 2,656.3 MW;
- (3) Constellation NewEnergy, Inc., a competitive retail energy provider that provides customized energy solutions and comprehensive energy services, including demand response, to residential, commercial, and industrial customers in 17 states and the District of Columbia;
- (4) Constellation Power Source Generation, Inc., which owns and/or operates: (i) over 954.6 MW of generating capacity at six wholly-owned generation facilities in Maryland; (ii) 541 MW in generation associated with partial ownership interests in the Keystone and Conemaugh generating plants in Pennsylvania; and (iii) an entitlement to 277 MW in generation capacity from a hydroelectric

¹⁰ On March 9, 2012, pursuant to sections 203(a)(1) and 203(a)(2) of the FPA, the Commission issued an order authorizing the Merger of Exelon and Constellation. *Exelon Corp. and Constellation Energy Group, Inc.*, 138 FERC ¶ 61,167 (2012) (*Merger Order*). The Merger closed on March 12, 2012. Applicants' May 16, 2013 Petition at 2 n.2.

¹¹ Applicants state that the Legacy Constellation Subsidiaries are engaged in a variety of businesses, including, among others, retail gas supply, electric generation, electric products and services, fuel processing, and operations and maintenance services. Applicants' May 16, 2013 Petition at 3. Applicants also state that some of these companies have competitive energy operations, including merchant generation plants and competitive wholesale and retail businesses with separate market-based rate authorizations. *Id.*

generating plant in Pennsylvania by virtue of a stock interest in Safe Harbor Water Power Corporation; and

- (5) Criterion Power Partners, LLC, which owns and operates an approximately 70 MW wind facility in Maryland.

Applicants state that the Acquired Subsidiaries are “public utilities” under the FPA¹² with market-based rate authorization,¹³ do not have captive customers,¹⁴ do not provide transmission or distribution services, and do not serve as a designated POLR for any class of customers.

C. Merger Accounting

4. Applicants explain that the Merger was recorded by Exelon under the purchase method of accounting¹⁵ and that Exelon applied “push-down” accounting to the Legacy Constellation Subsidiaries, including the Acquired Subsidiaries.¹⁶ As a result of the

¹² See *supra* note 3.

¹³ *CER Generation II, LLC*, Docket No. ER08-860-000 (May 27, 2008) (unpublished delegated letter order granting market-based rate authority to CER Generation II, LLC); *Constellation Mystic Power, LLC*, Docket No. ER10-2281-000 and -001 (Oct. 27, 2010) (unpublished delegated letter order granting market-based rate authority to Constellation Mystic Power, LLC); *NEV, L.L.C.*, 81 FERC ¶ 61,186 (1997) (granting market-based rate authority to Constellation NewEnergy, Inc.); *AmerGen Vt., LLC*, 90 FERC ¶ 61,307 (2000) (granting market-based rate authority to Constellation Generation, Inc.); *Criterion Power Partners, LLC*, Docket Nos. ER10-1443-000 and ER10-1443-001 (Aug. 9, 2010) (unpublished delegated letter order granting market-based rate authority to Criterion Power Partners, LLC).

¹⁴ See *supra* note 5.

¹⁵ Applicants explain that, under the purchase method of accounting, if the acquiring company’s purchase price exceeds the fair market value of the acquired company’s identifiable net assets, the excess is recorded as goodwill on the acquiring company’s balance sheet. The goodwill and any other corresponding adjustments to the values of assets and liabilities of the acquired company on the acquiring company’s balance sheet generally are assigned or “pushed down” to the balance sheets of the acquired company or the acquired company’s subsidiaries (referred to as “push-down” accounting).

¹⁶ Push-down accounting was not applied to Exelon Generation itself because

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“push-down” of purchase accounting adjustments for the Legacy Constellation Subsidiaries at the time of the Merger closing, the pre-merger retained earnings balances of the Legacy Constellation Subsidiaries were “reset to zero” and reestablished on their books as miscellaneous paid-in capital. In effect, the traditional source of dividends - retained earnings - was eliminated, without, however, having any impact on cash actually available for paying dividends.

D. Applicants’ Petition

5. Applicants explain that the purpose of this petition is to obtain a determination from the Commission that section 305(a) of the FPA does not prohibit: (1) the Acquired Subsidiaries from paying dividends to their parent company, Exelon Generation, from their respective capital accounts in equal measure to the funds that were recorded as retained earnings at the close of the Merger; and (2) Exelon Generation from, in turn, paying dividends to its parent company, Exelon Ventures, from its capital accounts to the extent that Exelon Generation has received dividends from any of the Legacy Constellation Subsidiaries paid out of funds recorded as miscellaneous paid-in capital.¹⁷ Applicants state that granting its petition will enable Exelon to move excess cash out of the Acquired Subsidiaries and Exelon Generation to allow the use of this cash elsewhere in the Exelon system. Otherwise, Applicants assert that significant corporate funds could be stranded on the books of the Applicants and rendered unavailable for legitimate corporate purposes.¹⁸

6. Therefore, Applicants request that the Commission declare that section 305(a) of the FPA does not bar Applicants from paying dividends from their capital accounts on the traditional grounds that the Commission makes such declarations, including that: (1) the

Exelon Generation was an existing subsidiary of Exelon. However, as explained by Applicants, dividends paid to Exelon Generation from the capital accounts of the Legacy Constellation Subsidiaries might not be reflected in Exelon Generation’s own retained earnings. Hence, as a “public utility” under the FPA, Exelon Generation then might be precluded by section 305(a) from, in turn, passing through such dividends to its parent, Exelon Ventures. Applicants’ May 16, 2013 Petition at 9.

¹⁷ Applicants note that, with the exception of the Acquired Subsidiaries, the Legacy Constellation Subsidiaries are not “public utilities” under the FPA and thus are not themselves limited by FPA section 305(a) from utilizing funds recorded in their capital accounts to pay dividends to Exelon Generation. Applicants’ May 16, 2013 Petition at 7 n.16.

¹⁸ Applicants’ May 16, 2013 Petition at 1, 7.

source of the dividends will be clearly identified; (2) the dividends will not be excessive; and (3) the issuance of such dividends will not harm shareholders.¹⁹ In support of their request and applying the three-factor analysis articulated in *Citizens* to the circumstances of their case, Applicants assert that the source of the dividends paid to Exelon Generation from paid-in capital of each Acquired Subsidiary is clearly identified and transparent and that the Commission will be able to monitor the Applicants' commitment to limit such dividends under section 301(c) of the FPA, 16 U.S.C. § 825(c) (2006).²⁰ Second, Applicants make the commitment that the amount of funds utilized for dividends from the paid-in capital account of each Acquired Subsidiary to Exelon Generation will not exceed the amount of funds recorded as retained earnings on the books of each respective Acquired Subsidiary at the close of the Merger.²¹ Similarly, Applicants state that the amount of funds reflected on the books of Exelon Generation as paid-in capital available for the payment of dividends will not exceed the amount of dividends received by Exelon Generation from the Legacy Constellation Subsidiaries paid out of funds recorded as paid-in capital. Accordingly, Applicants state that the dividends to be paid from the proposed capital accounts will not be excessive because they will be subject to these limiting principles. Third, Applicants state that the proposed payment of dividends from the capital accounts will not harm shareholders because shareholders will own the same assets both before and after the dividends are paid. Exelon Generation, the intermediate holding company of the Acquired Subsidiaries, will continue to own 100 percent of the

¹⁹ In *Citizens Utils. Co.*, the Commission used a three-factor analysis to determine that a proposed transaction does not implicate the prohibitions in section 305(a) of the FPA: (1) that the utility clearly identifies the sources from which the dividends will be paid, (2) that the dividends will not be excessive, and (3) that the proposed transaction will not have an adverse effect on the value of shareholders' interests. *Citizens Utils. Co.*, 84 FERC ¶ 61,158, at 61,865 (1998) (*Citizens*).

²⁰ Citing *Merger Order*, 138 FERC ¶ 61,167 at P 128.

²¹ Applicants state that, in the application of purchase accounting, the amount of paid-in capital established for each subsidiary is based on the fair value of the subsidiary's net assets (i.e., assets less liabilities) as of the acquisition date, reflecting a new basis of accounting as compared to the historical cost basis used prior to applying purchase accounting. Applicants note that it is possible, then, that the amount of paid-in capital established pursuant to purchase accounting may be less than the amount of retained earnings of the subsidiary on a historical cost basis. Applicants state that, in these cases, if directed by the Commission, Exelon will limit the amount of dividends to be distributed from such subsidiary's paid-in capital account to the amount of paid-in capital established in purchase accounting. Applicants' May 16, 2013 Petition at 7 n.17.

direct or indirect interests in the Acquired Subsidiaries following the payment of dividends utilizing funds included in a capital account. Further, the immediate parent company of Exelon Generation, Exelon Ventures, will continue to own 100 percent of the interests in Exelon Generation following the payment of dividends utilizing funds included in a capital account of Exelon Generation.

7. As further assurance, if the Commission orders it to do so, Applicants commit to notify the Commission within thirty (30) days of learning that a rating agency has decided to downgrade the Senior Unsecured debt rating of Exelon Generation to below investment grade.²²

8. In addition, if directed to do so by the Commission, Applicants commit to demonstrate compliance with the limitation commitments set forth above by creating sub-accounts to track the extent to which the funds from paid-in capital are utilized for future dividends from each of the Applicants. Specifically, for the Acquired Subsidiaries, Applicants propose to record the amount of retained earnings reestablished as miscellaneous paid-in capital at the Merger in a separate sub-account of miscellaneous paid-in capital for each Acquired Subsidiary. Applicants explain that, in the future, as dividends are paid by any Acquired Subsidiary, the applicable sub-accounts in miscellaneous paid-in capital will be reduced correspondingly until the applicable sub-accounts are reduced to zero. Once the subaccount of an Acquired Subsidiary is reduced to zero, that subsidiary will no longer utilize the capital account for paying dividends from funds reflected as miscellaneous paid-in capital. For Exelon Generation, Applicants propose to record in a separate sub-account of miscellaneous paid-in capital, the amount of dividends that Exelon Generation received from miscellaneous paid-in capital from any Legacy Constellation Subsidiary. In this way, the amount of funds reflected on the books of Exelon Generation as miscellaneous paid-in capital available to Exelon Generation for payment of dividends to Exelon Ventures will not exceed the amount of dividends received by Exelon Generation from the Legacy Constellation Subsidiaries paid out of funds recorded on their books as miscellaneous paid-in capital.

²² This commitment is consistent with a commitment made by the applicants concerning their FPA section 305(a) petition in *Exelon Generation Company, LLC*, 114 FERC ¶ 61,317, at P 9 (2006).

9. In the alternative, Applicants request the Commission declare that, as a matter of public policy, section 305(a) of the FPA does not bar the distribution of funds included in capital accounts of (i) the Applicants as well as (ii) every current and future public utility subsidiary, directly or indirectly held by Exelon, that has market-based rate authority, does not have captive customers, does not provide transmission or distribution services and does not serve as a designated POLR for any class of customers because the concerns underlying the enactment of section 305(a) of the FPA are not present in the case of Applicants and any such similarly-situated entities.²³ Applicants state that, in the case of Applicants and similarly-situated, current and future Exelon subsidiaries who also have market-based rate authority, do not have captive customers, do not provide transmission or distribution services and do not serve as a designated POLR for any class of customers, the distribution of dividends would not have any adverse effect on the financial integrity of any traditional public utility, its customers, or the ability of state commissions to protect public utility customers. Therefore, Applicants argue that a broad declaration – that section 305(a) of the FPA does not bar the distribution of funds included in capital accounts of Applicants and similarly-situated, current and future Exelon subsidiaries - is warranted.

10. Further, Applicants argue that, in Order No. 697, the Commission concluded that it is appropriate to apply a different standard of oversight to public utilities that do not have captive customers and do not sell at cost-based rates.²⁴ Applicants explain that, in Order No. 697, the Commission found that it was reasonable to continue to grant entities that do not have captive customers and do not sell at cost-based rates: (1) waivers from the requirement to maintain their books in accordance with the USofA; and (2) blanket authorizations under section 204(a) to issue securities.²⁵ Applicants argue that it would

²³ Applicants state that, as the Commission has noted, key concerns underlying the enactment of FPA section 305(a) include holding companies paying out excessive dividends on the securities of their operating companies and corporate officials raiding corporate coffers for their personal benefit. Applicants' May 16, 2013 Petition at 8 (citing *Citizens*, 84 FERC at 61,865, and *Louisville Gas & Elec. Co.*, 139 FERC ¶ 61,114, at P 12 (2012)).

²⁴ Applicants' May 16, 2013 Petition at 14.

²⁵ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 984, 999, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. &

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be anomalous for the Commission to grant a non-traditional public utility (e.g., a merchant generator or power marketer) with market-based rate authorization waiver from the requirement to maintain its books in accordance with the USofA, as well as a blanket authorization under section 204(a) to issue securities, while, at the same time, under section 305(a), limiting the accounts from which the public utility may pay dividends.²⁶

II. Notice of Filing and Responsive Pleadings

11. Notice of Applicants' petition was published in the *Federal Register*, 78 Fed. Reg. 32, 385 (2013), with interventions or protests due on or before June 17, 2013. Electric Power Supply Association (EPSA)²⁷ filed a timely motion to intervene and supportive comments. On June 20, 2013, Applicants filed an answer to EPSA's comments (Answer).

12. EPSA generally supports both alternative declarations requested by Applicants and also advocates that the Commission grant an even broader FPA section 305(a) determination. EPSA posits that the factors that make the Applicants' petition compelling are broadly applicable to certain classes of public utilities, such as merchant generators and power marketers, which have market-based rate tariffs on file with the Commission, do not have captive customers, and do not provide transmission or distribution services. EPSA adds that, although Applicants propose that the entities eligible for Applicants' alternative broadly construed declaration include a limitation that they would not serve as a designated POLR, such condition is not necessary where a designated POLR would meet the other three criteria, i.e, would have market-based rate tariffs on file with the Commission, would not have captive customers, and would not provide transmission or distribution services.²⁸ Therefore, EPSA argues for omitting the POLR limitation in its request for an even broader FPA section 305(a) determination.

13. In support of its request for a broader FPA section 305(a) determination, EPSA argues that, in the case of entities that have market-based rate authority, do not have captive customers, do not provide transmission or distribution services, the concerns

Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, No. 08-71827, 2011 U.S. App. LEXIS 20724 (9th Cir. Oct. 13, 2011).

²⁶ Applicants' May 16, 2013 Petition at 15.

²⁷ EPSA is the national trade association for competitive power suppliers, including merchant generators and power marketers.

²⁸ EPSA June 17, 2013 Comments at 2 n.3.

underlying section 305(a) are not present.²⁹ In such cases, according to EPSA, the distribution of dividends would not have any adverse effect on the financial integrity of any traditional public utility, its customers, or the ability of state commissions to protect public utility customers.

14. In sum, because of the broad applicability of these principles to the competitive power industry as a whole, and in the interest of judicial economy, EPSA requests that the Commission issue a blanket declaratory order finding that section 305(a) of the FPA does not act as a bar to the payment of dividends from capital accounts by any public utility that has market-based rate authority, does not have captive customers, and does not provide transmission or distribution services.³⁰

15. In their Answer, Applicants support EPSA's request for a broader FPA section 305(a) determination and, therefore, note their agreement with EPSA's proposal to drop the POLR limitation.³¹ Applicants observe that POLR service is a retail electric service and, thus, within the regulatory framework of the state utility commissions.³² Applicants also state that those public utilities that provide transmission and distribution services and also serve as a POLR would not be eligible for the alternative broad declaration sought in Applicants' petition in any event because of the limiting condition that such utilities are providing transmission and distribution services.³³ Further, Applicants assert that eliminating the POLR limitation would have positive public policy implications because, in such case, non-traditional public utilities would not be discouraged from participating in POLR service due to the FPA section 305(a) limits on the payment of dividends.³⁴ Accordingly, Applicants state that they would not object to the Commission's issuance of a blanket declaratory order based on EPSA's proposal.

²⁹ For the concerns underlying section 305(a), *see supra* note 23.

³⁰ EPSA June 17, 2013 Comments at 5-6.

³¹ Applicants note that POLR, or default service, is also known by other terms, such a Standard Offer Service or Basic Generation Service. Applicants' June 20, 2013 Answer at 2 n.3.

³² Applicants' June 20, 2013 Answer at 2.

³³ *Id.*

³⁴ *Id.*

III. Discussion

A. Procedural Issues

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), EPSA's timely, unopposed motion to intervene serves to make it a party to this proceeding.

B. Substantive Issues

17. We will grant Applicants' primary request for relief since we agree that the concerns underlying section 305(a) of the FPA are not present under the limitations and circumstances described in the petition. However, as discussed below, we decline to grant the request for a broader determination.

18. Section 305(a) provides that:

It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, *or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.*³⁵

19. As the Commission has noted, the legislative history suggests that the concerns underlying the enactment of section 305(a) included "that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies. A key concern, thus, was corporate officials raiding corporate coffers for their personal financial benefit."³⁶

³⁵ 16 U.S.C. § 825d(a) (2006) (*emphasis added*).

³⁶ *Citizens*, 84 FERC at 61,865 (footnotes omitted); *see also Entergy Louisiana Inc.*, 114 FERC ¶ 61,060, at P 12 (2006); *Exelon Corp.*, 109 FERC ¶ 61,172, at P 8 (2004); *ALLETE, Inc.*, 107 FERC ¶ 61,041, at P 10 (2004).

20. The concerns underlying section 305(a) are not present under the limitations and circumstances described in the petition. We have granted similar relief in a number of other cases -- including a case involving Exelon Generation -- in which the effects of the push-down of purchase accounting in merger transactions have resulted in the reclassification of retained earnings as additional paid-in capital.³⁷ Applicants have clearly identified the sources from which payments will be made. With respect to Applicants' specific commitments, first, Applicants have committed that the amount of funds utilized for dividends from the paid-in capital account of each Acquired Subsidiary to Exelon Generation will not exceed the amount of funds recorded as retained earnings on the books of each respective Acquired Subsidiary at the close of the Merger. Second, Applicants have committed that the amount of dividends from paid-in-capital paid by Exelon Generation to its parent will not exceed the amount of dividends from paid-in-capital received from the Legacy Constellation Subsidiaries. We accept these two commitments and we expect the Applicants to fulfill these commitments. We also find that these commitments provide assurance that the payment of dividends will not result in the abuses underlying section 305(a). Finally, the proposed dividends will not have an adverse effect on the value of shareholder interests because shareholders will own the same assets both before and after the Applicants pay dividends. Exelon Generation, the intermediate holding company of the Acquired Subsidiaries, will continue to own 100 percent of the direct or indirect interests in the Acquired Subsidiaries following the payment of dividends utilizing funds included in their capital accounts. Also, the immediate parent company of Exelon Generation, Exelon Ventures, will continue to own a 100 percent of the interests in Exelon Generation following the payment of dividends utilizing funds included in a capital account of Exelon Generation.

21. For these reasons, we grant the petition and find that section 305(a) of the FPA is not a bar to the payment of dividends out of capital accounts subject to the limitations described above.

22. The Commission believes that Applicants (and EPSA) make a strong case for a close examination of whether section 305(a) should be interpreted as not prohibiting the payment of dividends from capital account by any public utility that has a market-based rate tariff on file with the Commission, does not have captive customers, and does not provide transmission or distribution services. Accordingly, while the Commission declines to grant the broader relief requested in this proceeding, the Commission intends

³⁷ See, e.g., *Exelon Generation Company, LLC*, 114 FERC ¶ 61,317 (2006); *accord Louisville Gas & Elec. Co. & Kentucky Utilities Co.*, 139 FERC ¶ 61,114 (2012); *Duke Energy Ohio, Inc.*, 137 FERC ¶ 61,137 (2011).

to open a generic proceeding, which will provide public notice and an opportunity for a broader range of interested parties to comment.

The Commission orders:

(A) Applicants' petition for declaratory order is hereby granted, as discussed in the body of this order.

(B) Applicants must inform the Commission of any change in circumstances that would reflect a departure from the facts the Commission relied upon in granting the petition.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.