

104 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Katahdin Transmission, LLC

Docket No. EG03-68-000

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

(Issued August 11, 2003)

1. On May 16, 2003, Katahdin Transmission, LLC (Katahdin) filed an application 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 On June 12, 2003, Katahdin filed an amendment to its application. Upon consideration of the pleadings, the Commission determines that Katahdin qualifies as an EWG. Our determination will benefit customers by ensuring that applicants who qualify for EWG status under PUHCA will receive such status, as Congress intended.
2. Notices of the application and amendment were published in the Federal Register. 68 Fed. Reg. 32,481 and 37,477 (2003). No comments were filed in response to either notice.

Background

3. Katahdin was formed for the sole purpose of acquiring and simultaneously leasing to Great Lakes Hydro America, LLC (Great Lakes), a public utility company that is also an EWG, an interest in equipment comprising a discrete portion of a new 115 kV interconnection project. The project will become part of an existing EWG consisting of several hydroelectric plants and the facilities necessary to connect them with the grid owned and operated by Great Lakes in Millinocket and East Millinocket, Maine. The remaining interests in the interconnection project will be owned by Bangor Hydro-Electric Company (BHE) and are not eligible facilities under PUHCA.

¹15 U.S.C. § 79z-5a (2000).

4. Katahdin states that it is a Delaware limited liability company that is wholly-owned by Great Lakes Holding America Co., which is in turn, wholly-owned by Great Lakes Power, Inc., a wholly-owned subsidiary of Brascan Corporation (Brascan).

5. Katahdin states that it will be engaged directly, or indirectly through one or more affiliates as defined at Section 2(a)(11)(B) of PUHCA, 15 U.S.C. § 79b(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale as defined in Section 32(a)(2) of PUHCA, 15 U.S.C. § 79z-5a(2). Katahdin states that it will own and lease its interest in the interconnection project to Great Lakes and that none of the electricity transmitted across the 115 kV line will be sold at retail to consumers within or outside the United States.

6. Katahdin also avers that its facility is an “eligible facility” within the meaning of Section 32(a)(2) of PUHCA because it consists of equipment that is necessary to effect a sale of electric energy at wholesale, and that none of the electricity transmitted across the facility will be sold at retail. Katahdin's interest in the substation consists of five breakers and their associated busses and controls, along with the 115 kV transmission line. According to Katahdin, it will enter into a lease arrangement with Great Lakes, which will operate and maintain the facility, will be responsible for all of Katahdin's expenses, and will sell all of the output of the hydroelectric plants.

7. In its application Katahdin states that no electric utility company is currently an affiliate company or associate company of Katahdin as those terms are defined in PUHCA and that there was no rate or charge in effect under the laws of any state for the project prior to October 24, 1992. Katahdin also states that no portion of the Project will be owned and/or operated by an electric utility company that is an “affiliate” or “associate company” of the applicant as those terms are defined in PUHCA. Katahdin also argues that its application is distinguishable from that recently rejected by the Commission in FPL Energy New England Transmission, LLC.²

Discussion

8. Section 32(a)(2) of PUHCA expressly defines the term “eligible facilities” to include “interconnecting transmission facilities necessary to effect a sale of electric energy at wholesale.” The portion of the new facilities owned by Katahdin appear to be “necessary interconnection facilities” as defined in Section 32(a)(2) of PUHCA, because

²FPL Energy New England Transmission, LLC, 103 FERC ¶ 61,194 (2003) (FPL).

it is part of a new interconnection for Great Lakes's Hydro Plants with the BHE transmission system that is necessary for purposes of effecting Great Lakes' delivery of electric energy to wholesale markets. Without these new facilities, Great Lakes would be unable to deliver its full output onto BHE's transmission system. Because the interconnection project falls within the definition in Section 32(a)(2), it is an eligible facility. Moreover, Section 32(a)(1) states that an entity may be an EWG if it owns "all or part of one or more eligible facilities."³ Based on these facts, we find that Katahdin owns an "eligible facility."

9. The Commission agrees that the instant application is distinguishable from that recently rejected by the Commission in FPL. In FPL the Commission rejected an application for EWG status filed by FPL New England Transmission, LLC, an entity that owned an undivided ownership interest in the transmission facilities associated with the Seabrook Nuclear Unit, which included all equipment in the 345 kV Seabrook substation beyond the disconnect line on the high side of the generator step-up transformer for the Seabrook Nuclear facilities.

10. While the Commission acknowledged that interconnection facilities alone can constitute "eligible facilities," the Commission was not persuaded that the facilities were "interconnection facilities necessary to effect a sale at wholesale." First, the Commission distinguished FPL's proposal from Termoelectrica de Mexicali, S. de R.L. de C.V., 102 FERC ¶ 61,019 (2003) (Termoelectrica) where it granted EWG status to an entity owning part of an interconnection line, which was part of an eligible facility. The Commission explained that in Termoelectrica, the interconnecting facility was merely a radial line connecting the generator to the California power grid, whereas FPL's facilities included all of the interconnection facilities within the Seabrook substation that tied together three major 345 kV transmission lines in NEPOOL, including one of the major North-South wholesale transmission interfaces in New England. The Commission found that it was:

³15 U.S.C. § 79z-5a(a)(2) (2000) (emphasis added).

more of a stretch of the statute to determine that an entity that neither owns nor operates a generating facility and that owned interconnection transmission (IT) facilities described as being an integral part of the wholesale transmission system in the area, regardless of the existence of the relevant generating facility, is an EWG.[⁴]

FPL failed to demonstrate to the Commission's satisfaction that any third party usage would be "incidental" to its ownership, or operation, of an eligible facility. The instant case is easily distinguishable from FPL, and in fact is analogous to Termelectrica, in that Katahdin's interests are part of a radial line that serves no purpose other than interconnecting the power generated by Great Lakes for wholesale sales, and in that Katahdin has stated that there will be no transmission service provided to third parties over the 115 kV line built by Katahdin.⁵

11. We have stated that when an owner of an eligible facility leases it to another entity, the lease will be treated as a sale of electric energy at wholesale for purposes of qualifying the owner as an EWG under PUHCA Section 32(a)(1).⁶ Consistent with that finding, by virtue of its lease with Great Lakes, Katahdin is deemed to be selling electric energy, and meets the criteria for an EWG.

Conclusion

⁴FPL, 103 FERC ¶ 61,194 at P 12.

⁵See Katahdin's Amended Application at 7; see also Sagebrush and Euros ToyoWest Management, LLC, 103 FERC ¶ 61,332 (2003).

⁶ See Filing Requirements and Ministerial Procedures for Persons Seeking Exempt Wholesale Generator Status, Order No. 550-A, FERC Stats. & Regs. Regulations Preambles January 1991-June 1996 ¶ 30,969 at 30,840-42 (1993).

12. Based on the information contained in the application and amendment, we determine that Katahdin is an EWG 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)

Magalie R. Salas,
Secretary.