

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Central Mississippi Generating Company, LLC Docket No. EG04-16-000

ORDER GRANTING APPLICATION FOR DETERMINATION OF EXEMPT
WHOLESALE GENERATOR STATUS

(Issued December 23, 2003)

1. On November 7, 2003, Central Mississippi Generating Company, LLC (Central Mississippi) 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 In this order, we grant the Applicant's request for EWG status. Our determination serves customers by ensuring that applicants who qualify for EWG status under PUHCA will receive such status, as Congress intended.
2. Central Mississippi submitted a sworn statement by a representative legally authorized to bind it stating that the eligible facility is a natural gas-fired, combined cycle electric generating facility with a nominal capacity of approximately 526 MW located in Attala County, Mississippi (Facility). Central Mississippi states that the Facility includes infrastructure support consisting of an administration, control and maintenance building; a water treatment building; and water supply and discharge pipelines. Central Mississippi states that the Facility also includes related transmission interconnection facilities necessary to effectuate the sale of electricity to Central Mississippi's wholesale power purchaser(s). Central Mississippi's Facility is interconnected with the transmission system of Entergy Corp.
3. Central Mississippi states that it is engaged directly, or indirectly through one or more "affiliates," as defined in PUHCA Section 2(a)(11)(B), and exclusively in the business of owning or operating, or both owning and operating, all or part of one of more eligible facilities, and selling electric energy at wholesale. Central Mississippi may also be engaged in the sale of steam, fuel, ancillary services, transmission capacity, and emission allowances, as by-products incidental to wholesale electrical sales.

¹ 15 U.S.C. § 79z-5a (2000).

4. Central Mississippi states that the Facility is an “eligible facility” as defined in Section 32(a)(2) of PUHCA because it will be used for the generation of electric energy exclusively for sale at wholesale.

5. Notice of the application was published in the Federal Register,² with interventions or comments due no later than November 28, 2003. A timely motion to intervene was filed by VCC Attala OL, LLC (VCC Attala) and TCC Attala OL, LLC (TCC Attala) (collectively, Owner Lessors).

Discussion

6. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,³ the timely, unopposed motion to intervene makes the Owner Lessors a party to this proceeding.

7. Central Mississippi’s application, on its face, meets the requirements for EWG status. The Owner Lessors, in their November 25, 2003 motion to intervene, state that a determination that Central Mississippi is an EWG would permit Central Mississippi’s upstream owners, a group of passive owners, to perfect their security interest in the Facility and related assets and to begin foreclosure proceedings without subjecting them to regulation under PUHCA. Owner Lessors state that this could cause them substantial economic harm. However, Owner Lessors have not alleged a basis for denying Central Mississippi status as an EWG. Accordingly, we will grant Central Mississippi’s application.

The Commission orders:

8. Based on the information contained in the application of Central Mississippi Generating Company, LLC, the Commission determines that Central Mississippi 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)

Linda Mitry,
Acting Secretary.

² 68 Fed. Reg. 66,088 (2003).

³ 18 C.F.R. § 385.214 (2003).