

UNITED STATES OF AMERICA<sup>89</sup> FERC ¶ 61,192  
FEDERAL ENERGY REGULATORY COMMISSION

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

UGI Development Company

Docket No. EG99-241-000

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

(Issued November 22, 1999)

On September 23, 1999, UGI Development Company (UGID) filed an application for determination of exempt wholesale generator (EWG) status pursuant to section 32 of the Public Utility Holding Company Act of 1935 (PUHCA), as amended by the Energy Policy Act of 1992 (PUHCA).<sup>1</sup>

Notice of the application was published in the Federal Register,<sup>2</sup> with interventions or comments due on or before October 18, 1999. None was filed.

UGID has submitted a sworn statement by a representative legally authorized to bind it stating that:

1. UGID is 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, or both owning and operating, all or part of one or more eligible facilities and selling electric energy at wholesale;
2. UGID's eligible facilities (Facilities) consist of:  
(a) the Hunlock Power Station, a coal-fired electric generation facility with a continuous net capacity of 43 MW located at Hunlock Creek, Pennsylvania; and (b) a 1.11 percent interest in the Conemaugh Power Station, a coal-fired electric generation facility consisting of two 850 MW units located near Indiana, Pennsylvania;
3. UGID's Facilities constitute an "eligible facility" as defined in section 32(a)(2) of PUHCA, because they will be

<sup>1</sup> 15 U.S.C. § 79z-5a (1994).

<sup>2</sup> 64 Fed. Reg. 53,372 (1999).

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used for the generation of electric energy exclusively at wholesale;

4. UGID states that it holds an interest in a wholly-owned subsidiary, UGID Holding Company. It further states that it (or its subsidiary) may trade emission allowances associated with the Facilities in the normal course of the Facility's operation. UGID states that these activities are incidental to its business of owning and operating the Facilities and selling electricity at wholesale;

5. No portion of the Facilities will be owned or operated by an electric utility company that is an affiliate or associate company of UGID;

6. As of October 24, 1992, a rate or charge for electric energy produced by the Facilities was in effect under the laws of Pennsylvania. Accordingly, UGID has attached a determination from the Pennsylvania Public Utility Commission finding that allowing the Facilities to be eligible facilities: (1) will benefit consumers; (2) is in the public interest; and (3) does not violate state law;

7. There are no leasing arrangements involving the Facilities and any United States public utility company or any affiliate or associate of any United States public utility company; and

8. UGID is an affiliate of UGI Utilities, an electric utility company.

Discussion

This application raises the issue of whether an applicant may trade emission allowances associated with an eligible facility in the normal course of its operation as an activity incidental to its business of owning and operating the eligible facility and selling electricity at wholesale. In previous cases, we have found that an EWG may engage in a number of "incidental" commercial activities, in addition to its primary business of selling power at wholesale generated at its eligible facility, without violating the statutory "exclusivity" requirement. Although we have not previously ruled on trading of emission allowances, it is analogous to other activities we have

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evaluated and deemed permissible. Thus, we find that UGID may

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For example, in *Selkirk Cogen Partners, L.P.*, 69 FERC ¶ 61,037 (1994), we authorized an EWG to resell its excess gas supplies and transportation capacity so long as the EWG did not contract for more gas and transportation than it believed was (continued...)

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trade emission allowances obtained for the normal operation of its eligible facility while continuing to meet the requirement that an EWG be engaged "exclusively" in the business of owning and operating all or part of an eligible facility and selling electric energy at wholesale. The fact that the emission allowances will be obtained for the normal course of operating the applicant's eligible facility is an important consideration; in other words, the applicant cannot obtain additional emission allowances in excess of what it reasonably expects to need for trading purposes.<sup>4</sup>

Accordingly, based on the information contained in this application, the Commission determines that UGID 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 )

David P. Boergers,  
Secretary.

<sup>3</sup>  
(... continued)  
necessary to operate its facility.

<sup>4</sup>  
Id.