

168 FERC ¶ 61,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

PPL Electric Utilities Corporation

Docket No. EC19-71-000

ORDER DISMISSING APPLICATION

(Issued July 22, 2019)

1. On March 25, 2019, as amended on April 3, 2019, pursuant to section 203(a)(1)(A) of the Federal Power Act (FPA)¹ and the Commission's regulations², PPL Electric Utilities Corporation (PPL) submitted an application (Application) requesting approval for the transfer of certain step-up transformers and related jurisdictional facilities (Facilities) located in the Conestoga Substation (Substation) to the National Railroad Passenger Corporation (Amtrak) (Proposed Transaction).³

2. As discussed below, we find that the value of the Facilities, determined pursuant to our regulations, is below the \$10 million jurisdictional threshold established in FPA section 203(a)(1)(A). We therefore dismiss the Application for lack of jurisdiction.

I. Background

A. Description of PPL

3. PPL states that it is a public utility that owns transmission facilities located within PJM Interconnection, L.L.C. (PJM), and that transmission service over these facilities is provided under the PJM Open Access Transmission Tariff. PPL states that it has

¹ 16 U.S.C. § 824b(a)(1)(A) (2012).

² 18 C.F.R. pt. 33 (2018).

³ Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Consideration, Shortened Comment Period and Certain Waivers, Docket No. EC19-71-000 (filed Mar. 25, 2019) (Application).

authority to make wholesale sales of electric energy at market-based rates, and is a wholly owned subsidiary of PPL Corporation, a holding company.

B. Description of the Proposed Transaction

4. PPL states that, until recently, it jointly owned the Substation with Amtrak. PPL explains that Amtrak owned three of the seven transformers housed in the Substation, and that PPL owned the other four transformers, the land, buildings, and other non-jurisdictional fixtures that make up the Substation.⁴ PPL explains that, in a decision issued on March 6, 2019, however, the United States District Court for the Eastern District of Pennsylvania (District Court) awarded Amtrak possession in eminent domain over the portion of the Substation owned by PPL.⁵

5. According to PPL, the District Court directed it to deliver possession of the Substation to Amtrak by March 26, 2019. PPL explains that, although it argued to the District Court that prior Commission authorization under FPA section 203 was required before it could transfer the Substation to Amtrak, the District Court found that the statute was inapplicable to the Proposed Transaction because PPL had failed to demonstrate that the Substation had a value in excess of \$10 million.⁶ PPL states that, although the District Court offered to revisit the issue of FPA section 203 approval after completing discovery on the actual value of the Substation,⁷ PPL is submitting the Application to comply with its obligations under the FPA based on its belief that prior approval of the Proposed Transaction is necessary under FPA section 203(a)(1)(A).⁸

⁴ *Id.* at 4.

⁵ *Id.* at 1 (citing *National Railroad Passenger Corp. v. 4,044 Acres More or Less of Land and Fixtures & PPL Electric Utilities Corp.*, No. CV 17-1752 Document 61 (E.D. Pa. Mar. 6, 2019) (Condemnation Order)). The District Court issued the Condemnation Order in response to a Complaint for Condemnation and Declaration of Taking filed by Amtrak on April 17, 2017. *Id.* at 7.

⁶ *Id.* at 8 (citing Condemnation Order at 25-26).

⁷ The District Court bifurcated the proceeding into two phases: the Condemnation Proceeding, which has been completed, and the Valuation Proceeding, which is ongoing.

⁸ Application at 9. *See also* Motion for Leave to Answer and Answer of PPL Electric Utilities Corporation at 2, Docket No. EC19-71-000 (filed Apr. 30, 2019) (PPL April 30 Answer).

II. Notice of Filing and Responsive Pleadings

6. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 12,245, with interventions and protests due on or before April 15, 2019. Notice of the Supplement was published in the *Federal Register*, 84 Fed. Reg. 14,359, with comments due on or before April 15, 2019.

7. Amtrak and PJM filed motions to intervene. On April 15, 2019, Safe Harbor Water Power Corporation (Safe Harbor) filed a motion to intervene and comments. Amtrak filed a protest.⁹

8. On April 30, 2019, PPL filed a motion for leave to answer and answer to Amtrak's protest. Amtrak filed a motion for leave to answer and answer to Safe Harbor's comments. PJM filed reply comments in response to Safe Harbor's comments and Amtrak's protest.

9. On May 9, 2019, Safe Harbor filed a motion for leave to answer and answer to PJM's reply comments.

10. On May 16, 2019, PJM filed a motion for leave to answer and answer to Safe Harbor.

11. On May 21, 2019, Amtrak filed a motion for leave to answer and answer to PPL's answer and PJM's reply comments.¹⁰

12. On June 3, 2019, and June 10, 2019, respectively, PJM and PPL filed answers to Amtrak's answer.

13. On June 12, 2019, Safe Harbor filed an answer to PJM's May 16, 2019 answer.

⁹ Protest of the National Railroad Passenger Corporation, Docket No. EC19-71-000 (filed Apr. 15, 2019) (Amtrak Protest).

¹⁰ Motion for Leave to Answer and Answer of the National Railroad Passenger Corporation, Docket No. EC19-71-000 (filed May 21, 2019) (Amtrak Answer).

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹¹ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹² prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. The Commission does not have Jurisdiction over the Proposed Transaction under FPA Section 203(a)(1)(A)

1. Application

16. As noted above, PPL states that, during the Condemnation Proceeding, it argued that the market value of the Substation exceeds \$10 million and that, as a result, Commission approval is required under FPA section 203 prior to Amtrak condemning the Substation. PPL explains that it disputed Amtrak's \$2 million valuation of the Substation, alleging that while the original book value of the Substation is approximately \$2.9 million, it had invested over \$10 million towards capital improvements at the Substation prior to the Condemnation.¹³

2. Protest

17. Amtrak argues that the Commission should dismiss the Application for lack of jurisdiction because PPL has failed to provide adequate evidence that the value of the Facilities is \$10 million or more, as required by FPA section 203(a)(1)(A). Amtrak claims that, without a value above \$10 million, the Commission dismisses FPA section 203 applications as outside of its jurisdiction.¹⁴

¹¹ 18 C.F.R. § 385.214 (2018).

¹² 18 C.F.R. § 385.213(a)(2).

¹³ Application at 7.

¹⁴ Amtrak Protest at 12 (citing *Fla. Power & Light Co.*, 161 FERC ¶ 61,254, at

18. According to Amtrak, the evidence submitted in this proceeding points to a value of less than \$10 million for the Facilities. First, Amtrak notes that, in the Application, PPL specifies the original book value of the Substation as \$2,951,536.¹⁵ Second, Amtrak provides an appraisal that concludes that the fair market value of the Substation is \$2 million.¹⁶ Third, Amtrak disputes PPL's claim that it has invested over \$10 million towards capital improvements required at the Substation prior to the condemnation. Amtrak argues that the extra equipment PPL has allegedly purchased has not been added to the Substation; is not located at the Substation; has not been placed into service; and is not being transferred to Amtrak as part of the Proposed Transaction. Amtrak concludes that this equipment adds no value to the Facilities and is therefore irrelevant.

19. Amtrak claims that even if the purchased equipment was relevant to the value of the Substation, PPL has provided no evidence in the Application of the extent, nature, or applicability of the equipment purchases. Amtrak explains that, during the Condemnation Proceeding, it sought a temporary restraining order from the District Court to prevent PPL from making capital improvements at the Substation. In response, PPL stated that it had spent approximately \$5,903,000 in materials in anticipation of making such improvements. As Amtrak and PPL subsequently agreed to a stipulation in which PPL agreed not to make any capital improvements to the Substation, Amtrak concludes that, by its own admission, PPL's equipment expenditures did not exceed \$5,903,000. Amtrak asserts that, even if PPL had spent more than that amount on capital improvements at the Substation, it has failed to quantify the impact of those purchases on the value of the Substation. Amtrak alleges that "just because PPL may have spent \$10 million on capital improvements to the Substation that does not mean that the actual value of the Substation is in excess of \$10 million."¹⁷

3. Responsive Pleadings

20. PPL responds that it submitted a verified FPA section 203 application representing that the market value of the Substation exceeds the \$10 million threshold. PPL also provides an affidavit that it submitted to the District Court in the Valuation Proceeding,

62,424 (2017)).

¹⁵ *Id.* at 13 (citing Application at 7).

¹⁶ *Id.* at Ex. F: Appraisal Report 12-30-16 Conestoga Substation. Amtrak states that the appraisal was the basis for its payment to the District Court in compensation to PPL. *Id.* at 13.

¹⁷ *Id.* at 15 (quoting Condemnation Order at 25-26).

which states that the net book value of the Substation is \$1,109,994 as of June 30, 2017; that the original book value of the Substation is \$2,951,536 as of June 30, 2017; and that “PPL has invested \$10,201,044 dollars towards capital improvements needed at the Conestoga Substation through June 30, 2017.”¹⁸ PPL notes that it is not seeking to litigate the value of the Substation before the Commission, but that because it “has a good faith belief that the Substation exceeds the \$10 million threshold and has submitted evidence to support this belief, [PPL] is obligated to seek Commission approval”¹⁹ for the Proposed Transaction.

21. PPL reiterates that, because FPA section 203(a)(1)(A) requires prior Commission authorization, it cannot wait until the Valuation Proceeding has finished to seek authorization. PPL also suggests that the Commission need not make an explicit finding on the value of the Substation to approve the Application given that it has approved FPA section 203 applications without making a determination as to the jurisdictional nature of the facilities at issue where the applicant has consented to the Commission’s jurisdiction under FPA section 203 and requested that the Commission approve the disposition.²⁰

22. In its answer, Amtrak argues that the Declaration, in particular the statement regarding PPL’s investment towards capital improvements, does not support a \$10 million valuation of the Facilities. Amtrak claims that the word “towards” does not indicate whether the expenditures by PPL were actually applied or installed at the Substation, let alone in a way that would add value to it. Amtrak also alleges that the phrase “PPL has invested” denotes a cost to PPL, but does not provide clarity on whether any value was added to the Substation. Amtrak concludes that, without any information supporting actual capital improvements at the Substation, the Declaration is unhelpful.²¹

23. In its June 10, 2019 answer to Amtrak, PPL clarifies that it did not submit the Declaration in this proceeding to prove or litigate the value of the Substation. PPL explains that it “filed the [Declaration] to demonstrate that [it] has a good faith belief that

¹⁸ PPL April 30 Answer, Exhibit D: Declaration of John H. Schwartz at 4-6 (Declaration).

¹⁹ *Id.* at 10.

²⁰ *Id.* at 10-11 (citing *Northern States Power Co.*, 159 FERC ¶ 62,032 (2017); *Ocean State Power*, 47 FERC ¶ 61,321 (1989)).

²¹ Amtrak Answer at 16-17.

the market value of the [Substation] exceeds \$10 million dollars and that [it] took this position in the District Court proceeding.”²²

4. Commission Determination

24. FPA section 203(a)(1)(A) states:

(1) No public utility shall, without first having secured an order of the Commission authorizing it to do so—

(A) sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of \$10,000,000;

25. PPL represents that the value of the Facilities exceeds \$10 million, but Amtrak challenges that representation. Amtrak argues that the Facilities do not have a value in excess of \$10 million and that, as a result, the Commission does not have jurisdiction over the Proposed Transaction under FPA section 203(a)(1)(A). We find that the value of the Facilities, determined in accordance with our regulations, does not exceed \$10 million. Accordingly, we dismiss the Application for lack of jurisdiction.

26. Under the Commission’s regulations, value, when applied to transmission facilities in transactions between non-affiliated parties, as here, means the “market value of the facilities.”²³ The regulations state further that “the Commission will rebuttably presume that the market value is the transaction price.”²⁴

27. In Order No. 669,²⁵ which adopted the regulations on value, the Commission noted that many transactions likely would include some assets that are subject to FPA section 203 and some assets that are not subject to FPA section 203. The Commission reasoned that, in such situations, the acquiring entity probably would have made a valuation analysis of the constituent parts of the transaction, to guide negotiations or the

²² Motion for Leave to Answer and Answer of PPL at 5, Docket No. EC19-71-000 (filed Jun. 10, 2019).

²³ 18 C.F.R. § 33.1(b)(3)(i) (2018).

²⁴ *Id.*

²⁵ *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005) (Order No. 669), *order on reh’g*, Order No. 669-A, 115 FERC ¶ 61,097 (Order No. 669-A), *order on reh’g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

recording of the value of the facilities on its balance sheet, and that such analysis would “almost certainly”²⁶ include a valuation of the physical facilities. The Commission concluded that potential applicants should rely on such valuations in deciding whether to file for FPA section 203 approval. If separate valuations of the physical assets were not performed, the Commission stated they should rely on the original cost undepreciated.²⁷

28. In the unique circumstances of the Proposed Transaction, where the Substation is being disposed of pursuant to the Condemnation Order, there is no agreed-upon transaction price for the Substation. Nor is there any separate agreed-upon value for the Facilities. In this circumstance, Order No. 669 mandates that we use the original cost undepreciated of the Facilities to establish their value.

29. Here, PPL’s proposed accounting entries establish that the original cost undepreciated of the Facilities is less than \$3 million,²⁸ below the \$10 million threshold established in FPA section 203(a)(1)(A). Accordingly, consistent with Order No. 669 and our regulations, we conclude that the Facilities do not meet the value threshold. We therefore dismiss the Application for lack of jurisdiction over the Proposed Transaction.²⁹

30. Parties have raised several other issues unrelated to the value of the Facilities. Because we dismiss the Application for lack of jurisdiction, we need not address in this proceeding the protests of and comments on the Application that are unrelated to the value of the Facilities.

²⁶ Order No. 669, 113 FERC ¶ 61,315 at P 116.

²⁷ *Id.* P 117. *See also* Order No. 669-A, 115 FERC ¶ 61,097 at n.20 (“As we held in Order No. 669 at P 117, if a valuation analysis is not performed, the standard of original cost undepreciated is to be used in determining whether section 203 applies to the transaction.”).

²⁸ Supplement to Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Consideration, Shortened Comment Period and Certain Waivers, Attachment 1: Proposed Accounting Entries at 1, Docket No. EC19-71-000 (filed Apr. 3, 2019).

²⁹ Our dismissal is without prejudice to PPL filing a new application with additional evidence regarding the market value of the Facilities.

The Commission orders:

The Application is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.