

157 FERC ¶ 61,028
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

PPL Electric Utilities Corporation

Docket No. TS16-2-000

ORDER DENYING CONFIRMATION OF EXEMPTION

(Issued October 20, 2016)

1. In this order, the Commission denies a request by PPL Electric Utilities Corporation (PPL Electric) for confirmation that the Commission's Standards of Conduct requirements adopted in Order No. 717¹ and set forth in Part 358 of the Commission's regulations² do not apply to PPL Electric.

I. Background

2. PPL Electric identifies itself as a Pennsylvania corporation and a wholly owned subsidiary of PPL Corporation, and as a public utility that owns facilities used for the transmission of electric energy in interstate commerce.³ PPL Electric states that it is a Transmission Owner and a load-serving entity in the PJM Interconnection, L.L.C. (PJM) balancing authority area.⁴ It also states that it provides energy and capacity to retail customers in east central Pennsylvania and states that, in this role, it purchases the requirements of its customers as a price taker⁵ at wholesale and provides power sales at

¹ 18 C.F.R. pt. 358 (2016); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, 129 FERC ¶ 61,043, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011).

² 18 C.F.R. pt. 358 (2016).

³ PPL Electric Confirmation Request at 2.

⁴ *Id.* at 3.

⁵ A price-taker is an individual or company that must accept prevailing prices in a market, lacking the market share to influence market price on its own.

retail.⁶ PPL Electric further states that it makes limited wholesale sales of electricity to PJM relating to its purchases in excess of its customers' contemporaneous needs. PPL Electric also claims that it has transferred operational control over its transmission facilities to PJM and that transmission service over those facilities is provided by PJM pursuant to the PJM Open Access Transmission Tariff.⁷

3. PPL Electric also states that, on June 1, 2015, an indirect wholly owned subsidiary of PPL Corporation, PPL Energy Supply, LLC (PPL Energy), spun off from PPL Corporation and combined with other entities, including the generation and marketing subsidiaries of PPL Energy, to form Talen Energy Corporation.⁸ As a result, PPL Electric maintains that certain generators, which formerly were affiliates of PPL Electric, are now no longer affiliated with PPL Electric.⁹

4. PPL Electric states that its remaining affiliates, Louisville Gas and Electric Company (LGE) and Kentucky Utilities Company (KU), are both public utilities that conduct jurisdictional energy and/or transmission purchase and sale transactions with PJM, but that these transactions do not involve PPL Electric.¹⁰ PPL Electric states that KU holds a 20 percent interest in Electric Energy, Inc. (Energy Inc.), a balancing authority area and the owner and operator of a six-unit coal-fired generating facility in Joppa, Illinois.¹¹ In addition, PPL Electric states that LG&E and KU operate a joint electric balancing authority area and own approximately 5,500 circuit miles of electric transmission lines. PPL Electric also states that LG&E and KU have franchised retail service territories and provide transmission service under a single Open Access Transmission Tariff.¹² PPL Electric asserts, however, that, while LG&E, KU and Energy Inc. each employs or retains marketing function employees, PPL Electric does not

⁶ PPL Electric Confirmation Request at 2.

⁷ *Id.* at 2-3.

⁸ *Id.* at 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 4.

¹² *Id.*

conduct any transmission transactions with these companies and does not intend or expect to conduct any such transactions in the future.¹³

5. PPL Electric states that section 358.1(b) of the Commission's regulations governs the applicability of the Standards of Conduct and provides that the standards apply to "any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce and conducts transmission transactions with an affiliate that engages in marketing functions."¹⁴ PPL Electric argues that, although it owns transmission facilities, it does not now, and does not expect in the future, to engage in any transmission transactions with an affiliate that engages in marketing functions.¹⁵ Thus, it argues that the Standards of Conduct do not apply to it, as it does not engage in transmission transactions with any affiliate that employs or retains marketing function employees, and does not intend or expect to engage in any such transactions in the future, there is no risk of its provision of preferential service to such entities.¹⁶

II. Notice and Responsive Pleadings

6. Notice of PPL Electric's filing was published in the *Federal Register*, 81 Fed. Reg. 56,628 (2016), with interventions and protests due on or before September 6, 2016. None was filed.

III. Discussion

7. The Commission's Standards of Conduct govern the relationships between a transmission provider and its marketing affiliates, and are intended to foreclose preferential access for those affiliates to non-public transmission, customer, or market information.¹⁷ The Standards of Conduct also require a transmission provider's transmission function employees to function independently from its marketing function employees.¹⁸ Any public utility that owns, operates, or controls facilities used for the

¹³ *Id.* at 5.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *See* 18 C.F.R. § 358.2(a)-(d) (2016). The Commission's Standards of Conduct regulations provide a definition of "affiliate" at 18 C.F.R. § 358.3(a) (2016).

¹⁸ 18 C.F.R. § 358.5 (2016).

transmission of electric energy and engages in transmission transactions with affiliates with marketing functions must comply with the Standards of Conduct.¹⁹

8. The Commission orders establishing the requirement for public utilities to abide by certain Standards of Conduct are Order Nos. 889,²⁰ 2004,²¹ and 717 and these requirements are set out in Part 358 of the Commission's regulations.²²

9. We find that PPL Electric's contention, that it should be found not subject to the Commission's Standards of Conduct requirements because it does not now, and does not expect in the future to, engage in any transmission transactions with an affiliate that engages in marketing functions, is inconsistent with its own representations as to its business activities. Specifically, while PPL Electric may have divested itself of the majority of its merchant function activities/affiliates engaged in marketing activities, it is still making sales for resale in interstate commerce. The fact that PPL Electric is a "price taker" for the balancing sales to PJM is not relevant to the determination whether sales for resale in interstate commerce are jurisdictional activities under section 205 of the Federal Power Act.²³ PPL Electric obtained Commission authorization to make these sales at market-based rates under FPA section 205.²⁴

¹⁹ 18 C.F.R. § 358.1(b) (2016).

²⁰ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035, at 31,590 (1996), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

²¹ *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155, at P16 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007).

²² 18 C.F.R. pt. 358.

²³ 16 U.S.C. § 824d (2012).

²⁴ *Pa. Power and Light*, 80 FERC ¶ 61,053 (1997).

10. A review of PPL Electric's Electric Quarterly Reports filed with the Commission under Order No. 2001²⁵ and the Commission's regulations at 18 C.F.R. § 35.10b (2016) shows that PPL Electric has made wholesale power sales to PJM after the June 1, 2015 date when it represents that its affiliation with certain entities with which it was previously affiliated ended. In fact, it appears that PPL Electric continues to make these sales to PJM.²⁶

11. Moreover, even though it no longer has affiliated entities that engage in marketing activities, PPL Electric is engaging in a marketing function activity by effectuating the cash-out balancing sales that it describes in its application.²⁷ The definition of affiliate at 18 C.F.R. § 358.3(a)(1) includes a division that operates as a functional unit. The definition of marketing function in 18 C.F.R. § 358.3(c)(1) includes sales for resale in interstate commerce. PPL Electric does not dispute that it is making sales for resale in interstate commerce to PJM. It also does not appear from our reading of PPL Electric's representations that its power sales to PJM only involved passive activities that were deemed in other cases not characterized as the sale for resale of jurisdictional power.²⁸ Thus, PPL Electric, by serving its network load and making the cash-out jurisdictional balancing sales to PJM, is engaging in transmission transactions with itself.

12. While PPL Electric has not requested a waiver, we note that section 358.1(c) of the Commission's regulations states that a transmission provider in a Commission-approved ISO or RTO that does not operate or control its transmission system and has no access to transmission function may request a waiver from the Standards of Conduct. PPL Electric's representation that it has transferred "operational control over transmission facilities to PJM," does not meet the all the requirements to be considered exempt from the Standards of Conduct or to be granted a waiver of those standards. PPL Electric has not provided any information on whether it operates its transmission system

²⁵ *Revised Public Utility Filing Requirements*, Order No. 2001, FERC Stats.& Regs. ¶ 31,127 (2002), *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reconsideration and clarification denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filings*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filings*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *clarification order*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004).

²⁶ See PPL Electric EQR filing for Q 2, April-June 2016.

²⁷ PPL Electric Confirmation Request at 2.

²⁸ See *Exelon Corp.*, 123 FERC ¶ 61,167, at PP 12, 28-29 (2008), cited in *Bangor Hydro Electric Co.*, 136 FERC ¶ 61,182, at P 13 (2011) (*Bangor Hydro*).

and whether it has relinquished access to non-public transmission information.²⁹ Therefore, it also appears that PPL Electric does not qualify for a waiver of the Standards of Conduct under section 358.1(c) of the Commission's regulations.

13. Moreover, the facts as alleged by PPL Electric are entirely distinguishable from those present in *Hudson Transmission Partners, L.L.C.*,³⁰ on which PPL Electric relies heavily. In *Hudson Partners*, the applicant owned and operated an 8-mile long transmission line connecting PJM and the New York Independent System Operator, Inc. Transmission over the line was provided by PJM under the PJM tariff and the applicant stated it was not a participant in any PJM energy markets, as either a buyer or a seller, and had not obtained Commission authorization to make wholesale sales of power under FPA section 205. Applicant also stated in *Hudson Partners* that it did not engage in any other business activities and did not have any power sales or marketing functions. Thus, the facts and circumstances presented in the two cases are distinguishable and do not provide a basis for making the finding here, as we did in *Hudson Partners*, that the Commission's Standards of Conduct regulations are inapplicable to the applicant.

14. Our finding here is without prejudice to PPL Electric submitting a request for waiver of the Standards of Conduct under section 358.1(c) accompanied by the required information.

The Commission orders:

PPL Electric's request for confirmation that it is not subject to the Commission's Standards of Conduct requirements is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁹ See *Black Hills Power, Inc.*, 135 FERC ¶ 61,058, at PP 36-37 (2011) (*Black Hills*); *Bangor Hydro* 136 FERC ¶ 61,182 at P 12.

³⁰ 149 FERC ¶ 61,269 (2014) (*Hudson Partners*).