

90 FERC ¶ 61,194

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
William L. Massey, Linda Breathitt,  
and Curt Hébert, Jr.

Killingholme Generation Limited

Docket No. EG00-64-000

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

(Issued February 25, 2000)

On December 29, 1999, Killingholme Generation Limited (KGL) 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 January 24, 2000. None was filed.

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

1. KGL 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. KGL's eligible facility (Facility) consists of a 650 megawatt natural gas-fired Combined Cycle Gas Turbine (CCGT) power station. The power station has three units. Each of the three units contains a gas turbine with a capacity of 145 megawatts, and a Heat Recovery Steam Generator. The three Heat Recovery Steam Generators power a single steam turbine and generator with a capacity of

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

<sup>2</sup>65 Fed. Reg. 1362 (2000).

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227 megawatts. The Facility delivers power through a 400 kV banking compound to an adjacent 400 kV substation owned and operated by the National Grid Company. KGL will also acquire a CCGT simulator operator training facility at the Facility to assist in staff operations training;

3. KGL's Facility constitutes an "eligible facility" as defined in section 32(a)(2) of PUHCA, because it will be used for the generation of electric energy exclusively at wholesale;

4. KGL is affiliated, as defined in section 2(a)(1) of PUHCA, with the following electric utilities: Northern States Power Company and Northern States Power (Wisconsin). No electric utility company, as defined by section 2(a)(3) of PUHCA, that is an affiliate or associate company of KGL, as defined by sections 2(a)(10) and (2)(a)(11) of PUHCA, will own or operate any portion of the Facility;

5. There are no lease arrangements involving the Facility other than those discussed below:

KGL proposes to allow personnel from unaffiliated stations to use the CCGT simulator operator training facility located at its Facility. KGL will collect rental payments from the third-party use of the CCGT simulator operator training facility for training purposes of approximately \$40,000 per year, which is about .02 percent of the revenues that KGL will receive from the sale of power. In addition, KGL will continue a pre-existing lease of excess agricultural lands (approximately 20 acres) associated with the Facility to local farmers, but will not receive any revenues associated with the lease. KGL states that these activities are incidental to its business of owning and operating the Facility and selling electricity at wholesale;

6. No rates or charges in connection with the Facility have previously been in effect.

### Discussion

KGL's application raises the issue of whether the use and rental payments from a third-party user of a simulator operator training facility associated with an eligible facility violates the requirement set forth at 32(a)(1) of PUHCA that an EWG be "exclusively" in the business of owning and/or operating eligible facilities and selling electric energy 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.<sup>3</sup> We believe that, under the circumstances here, use of a simulator operator training facility by third parties, and collecting rents for such use, is incidental to the ownership and/or operation of a generating facility for wholesale sales of electric energy and thus will not violate the exclusivity requirement. We base our determination on the following facts: (1) KGL must train its own personnel to operate its facility and others will use the simulator facility only about five weeks per year; (2) KGL is in the business of owning and operating a Facility used for sales of electric energy, not in the simulator operator training business; and (3) the revenues associated with this activity are de minimis in relation to KGL's sale of wholesale energy. Accordingly, we find that KGL will not violate the exclusivity requirement of section 32(a)(1) of PUHCA.

Similarly, in the circumstances of the present case, we find that KGL's uncompensated continuation of the lease of agricultural lands associated with the Facility does not violate the exclusivity requirement of section 32(a)(1) of PUHCA.<sup>4</sup> KGL's primary business activity is the ownership and/or operation of the Facility used for sales of electric energy at wholesale. Thus, we find that the exclusivity requirement is not violated under these circumstances.

Accordingly, based on the information contained in this application, the Commission determines that KGL is an EWG as defined in section 32(a)(1) of PUHCA.

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<sup>3</sup>For example, in *UGI Development Company*, 89 FERC ¶ 61,192 (1999), we authorized an EWG to trade emission allowances obtained for the normal operation of its eligible facility so long as the EWG did not obtain additional emission allowances for trading purposes. Similarly, 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 necessary to operate its facility.

<sup>4</sup>For example, in *Collins Trust I, et al.*, 89 FERC ¶ 61,148 (1999), we determined that an EWG will not violate the exclusivity requirement if it does not receive any revenues for pre-existing leases of property that were incidental to the EWG's primary business activity (the ownership and/or operation of an eligible facility for sales of electric energy at wholesale).

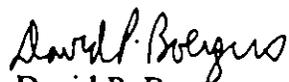
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As required by section 32(a)(1) of PUHCA, the Secretary is directed to notify the Securities and Exchange Commission of this determination.

By the Commission.

( S E A L )

  
David P. Boergers,  
Secretary.