

98 FERC ¶ 61, 136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Linda Breathitt,

Orion Power Holdings, Inc.
Astoria Generating Company, L.P.
Carr Street Generating Station, L.P.
Erie Boulevard Hydropower, L.P.
Orion Power MidWest, L.P.
Twelvepole Creek, L.L.C.
Liberty Electric Power, L.L.C.

and

Docket No. EC02-11-000

Reliant Resources, Inc.
Reliant Energy Power Generation Merger Sub, Inc.

ORDER AUTHORIZING MERGER AND GRANTING WAIVER

(Issued February 13, 2002)

On October 22, 2001, Reliant Resources, Inc. (Reliant), its wholly-owned subsidiary, Reliant Energy Power Generation Merger Sub, Inc. (Merger Sub) and Orion Power Holdings, Inc. (Orion) filed, on behalf of their jurisdictional subsidiaries and affiliates (collectively, Applicants), a joint application pursuant to section 203 of the Federal Power Act (FPA)¹ seeking authorization of the disposition of the jurisdictional facilities owned by Orion's subsidiaries.² The disposition of the jurisdictional facilities

¹ 16 U.S.C. § 824(b) (1994).

² Orion's jurisdictional subsidiaries are Astoria Generating Company (Astoria), Carr Street Generating Station, L.P. (Carr Street), Erie Boulevard Hydropower, L.P. (Erie Boulevard), Orion Power MidWest, L.P. (Orion Power MidWest), Twelvepole Creek, L.L.C. (Twelvepole Creek), and Liberty Electric Power, L.L.C. (Liberty Electric).

will occur as a result of the merger of Merger Sub into Orion. As a result of the merger, Orion will become a wholly-owned subsidiary of Reliant.

The Commission has reviewed the proposed merger under the Commission's Merger Policy Statement³ and its regulations implementing section 203 of the FPA⁴ (Order No. 642) and, as discussed below, we authorize it as consistent with the public interest. We also grant the requested waiver.

I. Background

A. Description of the Parties

1. Reliant and Merger Sub

Reliant is a publicly-traded corporation that provides electric energy and related services to wholesale and retail customers in the United States and western Europe. Reliant is a majority-owned subsidiary of Reliant Energy, Incorporated, an international energy services and energy delivery company that is an exempt public utility company under section 3(a)(2) of the Public Utility Holding Company of 1935 (PUHCA). Through indirect, wholly-owned subsidiaries, Reliant owns and/or operates various jurisdictional facilities.⁵

Merger Sub is a direct, wholly-owned subsidiary of Reliant. It was formed for the sole purpose of merging into Orion. Merger Sub does not own or control any jurisdictional facilities.

³ See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶¶ 31,044, at pp. 30,117 -18 (1996), reconsideration denied, Order No. 592-A , 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997).

⁴ Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642 , FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶¶31,111 (2000), reh'g denied, Order No. 642-A , 94 FERC ¶ 61,289 (2001).

⁵ These subsidiaries and their jurisdictional facilities are described in Exhibits B and G to the Joint Application for Approval of Merger.

2. Orion and Its Subsidiaries

Orion is a publicly-traded company that is the parent holding company of the six jurisdictional public utilities: Astoria, Carr Street, Erie Boulevard, Orion Power MidWest, Twelvepole Creek, and Liberty Electric.

Astoria is a limited partnership formed to own and operate generation facilities in the State of New York. It is comprised of the sole general partner, Orion Power New York GP, Inc., and the sole limited partner, Orion Power New York, L.P. Both are wholly-owned subsidiaries of Orion. Astoria now owns and operates three generation facilities in the State of New York. Astoria sells its energy in the markets administered by New York Independent System Operator (NYISO) at market-based rates.⁶

Carr Street is a limited partnership formed to own and operate a 102 MW gas-fired combined-cycle cogeneration facility in East Syracuse, New York. Its corporate ownership is identical to that of Astoria. All of Carr Street's energy is sold under a long-term tolling agreement in effect through November 2003, which is on file with the Commission. Carr Street also has a market-based rate authority.⁷

Erie Boulevard is a limited partnership formed to own and operate hydroelectric generation facilities in the State of New York. Its corporate ownership is identical to that of Astoria and Carr Street. Erie Boulevard's energy is sold under long-term contracts in effect through September 2004, which are on file with the Commission. Erie Boulevard has market-based rate authority.⁸

Orion Power MidWest is a limited partnership formed to own and operate electric generation facilities in Ohio and Western Pennsylvania. It is comprised of the general partner, Orion Power MidWest GP, and the sole limited partner, Orion Power MidWest LP. Both Orion Power MidWest GP and Orion Power MidWest LP are direct, wholly-owned subsidiaries of Orion. Orion Power MidWest has entered into two Provider of

⁶ Astoria was granted market-based authority in 1999. See *Minergy Neenah, L.L.C., et al.*, 88 FERC ¶ 61,102 (1999).

⁷ See *Carr Street Generating Station, L.P.*, 85 FERC ¶ 61,009 (1998).

⁸ See *Niagara Mohawk Power Corp., et al.*, 87 FERC ¶ 61,302, order on reh'g, 89 FERC ¶ 61,189 (1999).

Last Resort (POLR) contracts running through December 31, 2004, under which it supplies all energy required by Duquesne Light Company (Duquesne Light) to meet its obligations as default energy provider to retail customers in its service area. Applicants state that it has been Orion Power Midwest's experience in 2000 and 2001 that substantially all of the output of its facilities is needed to meet its obligations under the POLR contracts. Orion Power Midwest has market-based rate authority.⁹

Twelvepole Creek is a limited liability company formed to own and develop the Ceredo Facility, a 500 MW facility in Wayne County, West Virginia. Orion Power Midwest is the sole member of Twelvepole Creek. Twelvepole Creek's energy is used to meet Orion Power Midwest's obligations under the POLR contracts and any excess energy is sold under spot or short-term bilateral contracts at market-based rates.¹⁰

Liberty Electric is a limited liability company formed to own and operate the Liberty Electric Generating Station, a 568 MW generation plant under construction near Philadelphia. The sole member of Liberty Electric is Liberty Electric PA, LLC, a wholly-owned indirect subsidiary of Orion. When the plant is ready in early 2002, Liberty Electric will sell its energy under a long-term tolling agreement in effect for 14 years. Applicants state that Liberty Electric has recently filed for market-based rate authority and will also file the long-term tolling agreement with the Commission once service commences.

Additionally, Applicants state that Orion acquired the stock of CPV Atlantic, Inc. and agreed to acquire the stock of CPV Gulfcoast, Inc. before the end of 2001. Through their subsidiaries, CPV Atlantic and CPV Gulfcoast will each construct a 250 MW generation facility in Florida, to become operational in 2004.

B. Description of the Proposed Merger

Reliant, Merger Sub, and Orion have entered into an agreement to merge Merger Sub into Orion. After the transaction, Orion will be the surviving entity (Surviving Co.) and Merger Sub will cease to exist.

To effectuate the merger, each share of Merger Sub's common stock will be converted into a single share of common stock in Surviving Co. Each share of Orion's

⁹ See AmerGen Vermont, LLC, et al., 90 FERC ¶ 61,307 (2000).

¹⁰ Twelvepole Creek was granted market-based rate authority in 2001. See Twelvepole Creek, LLC, 94 FERC ¶ 61,162 (2001).

common stock that is owned by Reliant, Merger Sub, or Orion will be retired and cease to exist. The rest of Orion's common stock will be converted into the right to receive cash and will then cease to exist. As a result of the merger, Surviving Co. will become a wholly-owned subsidiary of Reliant. Orion's jurisdictional subsidiaries will be indirectly owned by Surviving Co.

II. Notice of Filing and Responsive Pleadings

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 56,293 (2001), with comments, interventions, and protests due on or before December 21, 2001. The entities listed in the Appendix to this order filed timely, unopposed motions to intervene. Pursuant to 18 C.F.R. § 385.214 (2001), the filing of a timely, unopposed motion to intervene makes the movant a party to the proceeding. Applicants filed an answer to comments submitted by intervenors. Maryland Office of People's Counsel (MPC) and Duquesne Industrial Intervenors (DII) filed answers to Applicants' answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2) (2001), prohibits the filing of an answer to a protest and an answer to an answer, unless otherwise permitted by the decisional authority. We will permit the answers filed here, as we find them useful in addressing the issues arising in this proceeding.

New York State Public Service Commission filed a motion to file late comments and comments. The comments (which include New York Commission's declaratory ruling on the stock transfer) are hereby accepted.

III. Discussion

A. Standard of Review

Section 203(a) of the FPA provides that the Commission must approve a proposed merger if it finds that the merger "will be consistent with the public interest." Consistent with the Merger Policy Statement, the Commission will generally consider the following three factors in analyzing proposed mergers: (1) the effect on competition, (2) the effect on rates, and (3) the effect on regulation.

B. Effect on Competition

Applicants analyze the effects of the proposed merger on relevant wholesale energy and capacity markets. These effects are related to the consolidation of generation controlled by Applicants (i.e., horizontal effects) and the consolidation of generation and

transmission assets or delivered gas controlled by Applicants (i.e., vertical effects). Applicants define non-firm energy, short-term capacity, long-term capacity and ancillary services as the relevant products and conclude that the merger will not adversely affect competition in these markets.

1. Horizontal Competitive Issues

a. Applicants' Argument

Applicants provide an analysis of the effects of the proposed merger in accordance with Appendix A of the Merger Policy Statement. In particular, they analyze the proposed merger using economic capacity and available economic capacity as proxies for the relevant products in the relevant geographic markets using the Delivered Price Test (DPT). They define NYISO, New York City, PJM Interconnection LLC (PJM), PJM West and PJM East as the relevant geographic markets.¹¹

Applicants evaluate conditions assuming market prices ranging from \$17-\$36 per MWh in the shoulder off-peak periods to \$76-\$180 per MWh in the summer super-peak period. The prices are based on the average market-clearing prices for the day-ahead market reported by NYISO and PJM. The prices vary across destination markets for given time periods and load conditions.¹²

Applicants' analysis shows no horizontal screen violations. Almost all of the markets are found to be unconcentrated (Herfindahl-Hirschman Index (HHI) less than 1000). While some markets are moderately concentrated (HHI greater than or equal to 1000 but less than 1800), the merger-related change in concentration in those markets is less than 100 HHI in all cases.

Applicants test the sensitivity of their results to changes in a number of underlying assumptions. For example, they perform a test under the assumptions that there are no

¹¹Applicants include the Allegheny Power and Duquesne Light control areas as part of PJM and PJM West destination markets in order to capture in their analysis the generation overlap between Reliant's 4200 MW of generation capacity in PJM and Orion's 2614 MW of assets that it bought from Duquesne Light. Most of Orion's assets purchased from Duquesne Light are located in the Duquesne Light and Allegheny Power control areas.

¹² They define 9 time period/load level combinations: Super Peak, Peak and Off-Peak for the Summer, Winter and Shoulder seasons.

imports into the PJM market and no new merchant plants are built.¹³ Under all scenarios, Applicants report no screen failures.

Applicants also address the effect of the proposed merger on ancillary services markets. They state that the only ancillary service sold at market-based rates in PJM is regulation service. They also note that only generators located within the PJM control area can supply regulation services. Applicants cite to a study of the PJM regulation services market performed by Joseph Bowring, head of the PJM Market Monitoring Unit, which was submitted to the Commission with PJM's February 15, 2000 request for market-based pricing authority for regulation services. Applicants point out that in that study it was estimated that there is more than a 300 percent excess capacity margin in the PJM regulation services market.¹⁴

b. Comments, Protests, and Answers

MPC requests that the Commission require Applicants to perform a Supply Margin Assessment (SMA) for the markets affected by the merger. It argues that the Commission's "hub-and-spoke HHI analysis" is insufficient for analyzing a merger's effect on competition. The Pennsylvania Office of Consumer Advocate (Pa. OCA) also contends that the Commission should require Applicants to supplement their filing with an SMA analysis for the Duquesne Light, PJM, and PJM West markets. In addition, Pa. OCA argues that because of the movement toward a single Northeast regional market, Applicants should also perform an SMA analysis for a Northeast Regional Transmission Organization (RTO) market. DII argues that because Reliant's acquisition of Orion's generation assets will trigger a review of Reliant's market-based rate authority, and the SMA has been adopted as the test for determining whether to grant market-based rate authority, Applicants should be required to provide the information necessary to perform an SMA. These parties argue that the fact that Orion and Reliant are operating in an approved RTO should not exempt them from performing an SMA.

In response, Applicants argue that they should not be required to perform an SMA test because the SMA test was designed as an interim measure for assessing whether to grant market-based rates. In addition, they state that even in market-based rates cases,

¹³ Appendix A to Joint Application for Expedited Approval of Merger. Direct Testimony of Dr. Craig Roach, Table 3.

¹⁴ *Id.* at 44. Applicants state that the peak demand for regulation services is projected to be 575 MW, while 2393 MW of capacity is available to supply regulation services.

companies that sell into ISOs are exempt from the requirement to perform the SMA test. Despite their objections, Applicants have performed an SMA for the PJM, NYISO and Allegheny markets. They report that they pass the test in those markets.

In addition, Pa. OCA states that Applicants have not sufficiently analyzed the merger's effect on competition in the installed capacity (ICAP) market in PJM or PJM West. In response, Applicants state that their analysis of economic capacity and available economic capacity is more conservative than an installed capacity analysis, so there is no need for a separate installed capacity analysis. Specifically, they argue that since economic capacity and available economic capacity only include generation capacity whose production costs are within 5 percent of the market price, whereas installed capacity includes all generation capacity, analyses of economic capacity and available economic capacity will generally produce more highly concentrated markets. They conclude that since there were no screen failures using available economic and economic capacity, there is no need for an installed capacity analysis to show that the merger will not harm competition in the PJM ICAP market.

In its response to Applicants' answer, MPC argues that Applicants' SMA test only analyzes the PJM energy market, not the PJM capacity credit market. It states that rather than using the peak energy demand in their SMA test, Applicants should have based the demand on the capacity obligation, which is defined as peak energy demand plus reserve requirements. MPC argues that Applicants would not pass the SMA test if the capacity obligation were used as the demand measure in the SMA. MPC reiterates its request that the Commission require Applicants to file an SMA analysis for all relevant geographic and product markets, including the PJM capacity credit market. In its response to Applicants' answer, DII agrees.

c. Commission Determination

We find that the combination of Applicants' generation facilities will not have an adverse effect on competition in relevant markets. Applicants' analysis has demonstrated that the merger will not increase market concentration beyond the thresholds established in the Merger Policy Statement and Order No. 642.

Regarding the effect on competition in the PJM ICAP market, we agree with Applicants that an analysis of economic capacity and available economic capacity is generally more conservative than an installed capacity analysis. Moreover, in their answer, Applicants have provided an analysis of installed capacity in the PJM market showing no screen failures. We recognize that not all suppliers in PJM that are capable of providing ICAP currently do provide ICAP. However our review of market

conditions focuses on those suppliers that could compete in the PJM ICAP market.¹⁵ In the case of the PJM ICAP market, an installed capacity analysis reflects the pool of potential suppliers, because, unlike energy markets, the ability to compete in the PJM ICAP market does not depend on the operating costs of the generating units. Therefore, Applicants' installed capacity analysis showing no screen failures demonstrates that the proposed merger will not harm competition in the PJM ICAP market.

Applicants are not required to perform an SMA. The test was designed as an interim measure for analyzing markets in market-based rate proceedings. Applicants have provided an Appendix A analysis as required by the Merger Policy Statement and Order No. 642. Accordingly, we reject MPC's argument challenging the results of the SMA provided by Applicants in their answer. For the same reason, we also reject DII's claim that because Reliant's market-based rate authority will have to be reviewed, we should require an SMA test in this proceeding. In addition, MPC is incorrect in its characterization of the Appendix A analysis required for merger applications as a hub-and-spoke analysis. Appendix A requires applicants to perform a DPT to calculate the change in market concentration resulting from the consolidation of generation assets, which Applicants have done.

2. Vertical Competitive Issues

a. Applicants' Argument

Applicants argue that the merger does not raise vertical market power concerns. Specifically, they note that neither Orion nor Reliant owns or operates any transmission facilities in the relevant geographic markets. Applicants state that one of Orion's current shareholders, Baltimore Gas & Electric Company (BG&E), does own transmission facilities in PJM, but that these facilities are subject to the PJM's Open Access Transmission Tariff. Moreover, they state that after the merger, BG&E will no longer be affiliated with Orion.

¹⁵ The concern regarding a merger causing an increase in market concentration would be the elimination of suppliers who could respond to an attempt (unilaterally or through collusion) to raise prices by economic or physical withholding. The analyses using installed capacity, economic capacity and available economic capacity reflect the effect of the merger on the structure of the market and thus will show whether the merger significantly alters the ability of suppliers to respond to a price increase.

Applicants also argue that the combination of their natural gas transportation assets and electric generation facilities will not harm competition. They state that Reliant has affiliated natural gas companies, but they are located outside the relevant geographic electricity markets. Applicants state that Orion has no interests in the natural gas transportation business.

b. Commission Determination

Applicants have shown that the combination of electric generation and transmission facilities and the combination of natural gas transportation and electric generation facilities will not harm competition. Neither Orion nor Reliant owns or operates any transmission facilities in the relevant geographic markets. In addition, BG&E transmission facilities are operated by PJM, and BG&E will no longer be affiliated with Orion after the merger is consummated. Also, neither merging party owns or operates natural gas transportation facilities in any of the relevant electricity markets.

There were no protests regarding the vertical effects of the merger.

C. Effect on Rates

a. Argument

Applicants state that the transaction will not have an adverse effect on rates because Orion's jurisdictional subsidiaries and Reliant sell power at market-based rates and will continue to do so. Thus, Applicants state that they do not have any captive customers whose rates could be affected by the merger. Applicants also state that all of their agreements to sell or commit energy to third parties under long-term contracts and tolling agreements are on file with the Commission and will not be affected by the transaction.

b. Comments, Protests, and Answers

DII and PaOCA express concern regarding POLR contracts between Duquesne Light and Orion. Both intervenors want assurance that customers receiving POLR service under these contracts will not be harmed by the proposed transaction. DII believes that, although Applicants state that the POLR contracts will not be affected, the Merger Agreement gives Orion unfettered discretion to make changes to the POLR contracts while the merger is pending. According to DII, Applicants should be required to provide detailed information regarding the treatment of POLR contracts or to commit that the transaction will not adversely affect the POLR contracts in any way. PaOCA

requests that the Commission ensure that Reliant honors the POLR contracts and direct Reliant to continue to work in good faith with Duquesne Light to implement the contracts. PaOCA also asks that the Commission require Applicants to clarify that Reliant can still negotiate extensions or modifications to the POLR agreements after the merger.

In their answer, Applicants reiterate their commitment to honor the POLR contracts. In addition, Reliant commits that it will continue to work in good faith with Duquesne Light to implement the POLR contracts. Applicants also confirm that the Merger Agreement does not prohibit Reliant from negotiating any post-merger extensions or modifications to the POLR contracts. Regarding DII's concern regarding unfettered discretion to make changes to the POLR contracts, Applicants explain that Duquesne Light is a party to the POLR contracts, that the POLR contracts are rate schedules on file with the Commission, and that no changes can be made to the contracts without Duquesne Light's consent and a filing with both the Commission and the Pennsylvania Public Utility Commission.

c. Commission Determination

The Merger Policy Statement and Order No. 642 require that applicants provide mechanisms that will protect ratepayers from adverse effects of the proposed transaction.¹⁶ We believe that Applicants' commitments regarding their current contracts, including the POLR contracts, along with their clarifications in their answer, are adequate to ensure that the merger will not adversely affect rates. DII's concerns regarding any changes to the POLR contracts on file with the Commission are premature given that any changes will have to be filed before they are implemented. In addition, we note that intervenors may file a complaint with the Commission under section 206 of the FPA¹⁷ if they believe that Applicants fail to fulfill their commitments.

D. Effect on Regulation

As explained in the Merger Policy Statement, the Commission's primary concern with the effect on regulation of a proposed merger involves possible changes in the Commission's jurisdiction when a registered holding company is formed, thus invoking

¹⁶ See Merger Policy Statement at 30,123-124 and Order No. 642 at 31,914.

¹⁷ 16. U.S.C. § 824e (1994).

the jurisdiction of the Securities and Exchange Commission.¹⁸ Applicants state that the proposed transaction will not result in the formation of a new registered public utility holding company and reiterate that their recent amendments to their respective codes of conduct demonstrate their commitment to abide by the Commission's regulations governing relationships among affiliates.¹⁹

In the Merger Policy Statement, we also expressed concern with the effect on state regulation where a state does not have authority to act on a merger and raises concerns about the effect on regulation.²⁰ Applicants argue that Commission approval of the proposed transaction will not affect any state regulatory agency's authority. They will submit the transaction to the New York Public Service Commission for review and, if any state regulatory agency had jurisdiction before the transaction, that state regulatory agency will retain its jurisdiction after the transaction.

In light of the above facts and the lack of intervenor or State Commission objections, the Commission is satisfied that the proposed merger will not adversely affect state or federal regulation.

E. Accounting Issues

The application indicates that none of the Applicants is required to maintain its books of account in accordance with the Commission's Uniform System of Accounts. No proposed accounting entries need be submitted because the jurisdictional entities, Astoria, Carr Street, Erie Boulevard, Twelvepole Creek, Liberty Electric Power, and Orion Power Midwest, have been granted waiver of the Commission's accounting requirements.²¹

¹⁸ See Merger Policy Statement at 30,124-25.

¹⁹ See Joint Application for Expedited Approval of Merger, at 20, note 23.

²⁰ See supra note 18.

²¹ See *Minergy Neenah, L.L.C., et al.*, 88 FERC ¶ 61,102 (1999); *Carr Street Generating Station, L.P.*, 85 FERC ¶ 61,009 (1998); *Niagara Mohawk Power Corp., et al.*, 87 FERC ¶ 61,302, reh'g granted in part, 89 FERC ¶ 61,189 (1999); *Twelvepole Creek, LLC*, 94 FERC ¶ 61,162 (2001); *AmerGen Vermont, LLC, et al.*, 90 FERC ¶ 61,307 (2000).

F. Waiver

Applicants request waiver of the requirement to file Exhibits D and K. Exhibit D is required pursuant to 18 C.F.R. § 33.2(c)(4) (2001). It provides a description of all joint ventures, strategic alliances, tolling agreements and other business arrangements, both current and planned to occur within a year after the consummation of the transaction. Exhibit D is not necessary if the applicant demonstrates that the proposed transaction will not affect any of its business interests. Exhibit K is required under 18 C.F.R. § 33.2(h) (2001). It is a map showing properties of each party to the transaction, which involves physical property of any party.

We grant Applicants' request for waiver of the requirement to file Exhibits D and K. Applicants state that Exhibit D is unnecessary because the proposed merger will not affect any of the Applicants' business interests. They explain that all contracts, joint ventures, or strategic alliances entered into by any of the Applicants before the transaction will be honored after the merger.²² Also, according to Applicants, Exhibit K is unnecessary because the transaction does not involve direct sale of transfer of property.

The Commission orders:

(A) Applicants' proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the merger application.

(B) The waiver requested by Applicants is hereby granted.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost of any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

²² See Exhibit D to Joint Application for Expedited Approval of Merger.

(F) Applicants must promptly inform the Commission of any change in the circumstances that would reflect a departure from the facts the Commission has relied upon in approving the merger accounting.

(G) Applicants shall advise the Commission within 10 days of the date on which the transaction is consummated.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.

Orion Power Holdings, Inc., et al.
Docket No. EC02-11-000

Duquesne Industrial Intervenors*
Duquesne Light Company
FirstEnergy Corp.
Keyspan-Ravenswood, Inc.
Maryland Office of People's Counsel*
Maryland Public Service Commission
Pennsylvania Office of Consumer Advocate*
Pennsylvania Public Utility Commission*

* filed comments/protests and/or answers