

Administrative Law Judges' Ruling

Notice is hereby given that the Administrative Law Judge has completed a preliminary review of the application filed by Pepco Energy Services, Inc. ("Applicant") in the Docket 02-0747, and hereby requests a verified response containing the information and/or clarifications described below.

This verified response shall be filed with the Office of the Chief Clerk of the Commission on or before December 4, 2002. This date is a mailing date for purposes of making the filing with the Chief Clerk. It is a receipt date, by FAX (217-524-8928), electronic mail or otherwise, for purposes of serving a copy on the Administrative Law Judges (thilliard@icc.state.il.us) and (bshowtis@icc.state.il.us) as well as on Mr. Steve Hickey of the Commission (shickey@icc.state.il.us). Unless otherwise noted, section references below are to 83 Ill. Adm. Code 451.

General:

Section 451.20: Requirements for All Applicants under Section 16-115(d) of the Act

Section 451.20(e) requires that Applicant certify that it complies with the requirements of Section 16-115(d)(5) of the Public Utilities Act. Applicant certified that it complies with Section 16-115(d)(5). Paragraph 16(b) of the application states that Applicant is affiliated with Pepco and Conectiv Power Delivery, which own or control facilities by which electricity is transmitted or distributed. Please explain how Applicant meets the requirements of Section 16-115(d)(5) of the Public Utilities Act in light of the Appellate Court decision in *Local Union Nos. 15, 51 and 702, International Brotherhood of Electrical Workers v. Illinois Commerce Commission*, 265 Ill. Dec. 302, 772 N.E.2d 340 (5th Dist. 2002)

Applicant states that: "two of Applicant's corporate affiliates, Pepco and Conectiv Power Delivery, own transmission and distribution facilities within their service territories in Delaware, the District of Columbia, Maryland, New Jersey, and Virginia. ... Additionally, the jurisdictions where Applicant's affiliates have facilities have open access legislation that meets the requirements of Section 16-115(d)(5)." Please provide citations of authority for each jurisdiction.

Please identify each Illinois electric utility and each affiliate of an Illinois electric utility currently serving retail customers in the service territories of (a) Pepco and (b) Conectiv Power Delivery.

Please identify each Illinois electric utility and each affiliate of an Illinois electric utility currently authorized to serve retail customers in the service territories of (a) Pepco and (b) Conectiv Power Delivery.

Please explain how electric power and energy can be physically delivered from Illinois to the service territories of Pepco and Conectiv Power Delivery. Provide any documents or studies that support this conclusion.

Please explain how electric power and energy can be economically delivered by the electric utilities, in whose service areas Applicant proposes to be certified, to the service territories of Pepco and Conectiv Power Delivery. Please provide any documents and economic analyses that support such a conclusion.

Pursuant to Section 451.20(f)(1), Applicant needs to provide documentation from the Illinois Secretary of State that it is licensed to do business in the State of Illinois.

Section 451.30: Required Filings and Procedures

Applicant needs to provide proof of publication as required by Section 451.30(a).

Section 451.50: License or Permit Bond Requirements

Section 451.50(a) requires that the cost of the license or permit bond shall be paid by the applicant. Applicant needs to certify that the cost of the license or permit bond was paid by Applicant.

Section 451.310: General Qualifications under Subpart D

Sections 451.310(c) and (d) require the applicant to certify that it will comply with the applicable requirements for residential and small commercial retail customers. Applicant provided such certification with respect to small commercial retail customers, but did not certify that it will comply for residential customers. Applicant needs to certify that it will comply with the requirements of Sections 451.310(c) and (d) for residential, as well as small commercial, retail customers.

Section 451.320: Financial Qualifications under Subpart D

Applicant's Funds from Operations to Average Total Debt and Total Debt to Total Capitalization ratios do not include the off balance sheet debt associated with Viron/Pepco Service Partnership. Applicant states that these liabilities will only be recognized by Applicant in the event Applicant does not meet its stipulated energy savings targets with the Military District of Washington. Furthermore, Applicant does not anticipate any issues preventing its successful performance of this energy savings contract. However, Applicant fails to demonstrate how it will meet its stipulated energy savings targets with the Military District of Washington.

Applicant should include its off balance sheet debt associated with Viron/Pepco Service Partnership in the calculations of the two ratios unless it can demonstrate that it will meet its stipulated energy savings targets with the Military District of Washington.

Applicant's Pre-Tax Interest Coverage and Funds from Operations Interest Coverage ratios do not include off balance sheet interest expenses. Applicant needs to indicate whether it has off balance sheet interest expenses. Applicant needs to include any off balance sheet interest expenses in its Pre-Tax Interest Coverage and Funds from Operations Interest Coverage ratios.

Applicant's Funds from Operations Interest Coverage and Funds from Operations to Average Total Debt ratios are flawed. The applicant adds the account "changes in certain assets and liabilities" to "Net cash provided by operating activities" in its calculation of Funds from Operations. The account "Net cash provided by operating activities" already includes "changes in certain assets and liabilities". Therefore, the account "changes in certain assets and liabilities" should be removed (subtracted) from "Net cash provided by operating activities".

Applicant should submit corrected financial ratios as described above.

Section 451.330: Technical Qualifications under Subpart D

5. Applicant states in Item 18(b) of its application that it meets the technical requirements of Section 451.330(b), as demonstrated in Attachment E of its application. However, Attachment E does not demonstrate whether Applicant meets the technical qualification requirements provided in Section 451.330(b). Therefore, for each of the technical requirements listed below, Applicant should (1) indicate which individual on its staff possesses the requisite experience and (2) describe that individual's relevant experience, including the length of the experience.

- a. Four years electric sales experience;
- b. Four years electric system operational experience;
- c. Six months experience with OASIS reservation processes;
- d. Six months experience with NERC tagging processes; and
- e. Two years experience working with rules and practices established by NERC and MAIN and/or MAPP.

In the event Applicant does not meet the "length of experience qualifications" described in Section 451.330(b), Applicant needs to make the demonstration described in Section 451.330(d).

Section 451.340: Managerial Qualifications under Subpart D

6. Applicant states in Item 19 of its application that it meets the managerial requirements set forth in Section 451.340, as demonstrated in Attachment E of its application. However, Attachment E does not demonstrate whether Applicant meets the managerial qualification requirements provided in Section 451.340. Therefore, for the managerial qualification requirements listed below, Applicant should (1) indicate at least three individuals in managerial positions who possess the requisite experience and (2) describe each individual's relevant experience, including the length of the experience.

- a. Four or more years demonstrated experience in a management position with enterprise financial and administration responsibilities including profit and loss responsibilities;
- b. Four years electric sales experience;
- c. Four years electric system operational experience;

In the event Applicant does not meet the “length of experience qualifications” described in Section 451.340, Applicant needs to make the demonstration described in Section 451.340(c).