

BEFORE THE MISSISSIPPI PUBLIC SERVICE COMMISSION

**MISSISSIPPI POWER COMPANY
EC-120-0097-00**

CB ENERGY, LLC

DOCKET NO. 2015-UA-65

**IN RE: JOINT PETITION OF MISSISSIPPI POWER COMPANY
AND CB ENERGY, LLC FOR APPROVAL OF A POWER
PURCHASE AGREEMENT AND FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY TO
CONSTRUCT, OPERATE, AND MAINTAIN SOLAR
GENERATING FACILITIES IN HARRISON COUNTY,
MISSISSIPPI**

FINAL ORDER

THIS CAUSE came to be heard on the Joint Petition for Certificate of Public Convenience and Necessity ("Joint Petition") filed by Mississippi Power Company ("MPC" or the "Company") and CB Energy, LLC ("CB Energy" and, collectively, the "Petitioners"). The Mississippi Public Service Commission ("Commission"), being fully apprised in the premises and having considered the documents and record before it does hereby find and order as follows:

BACKGROUND

1. On May 1, 2015, the Petitioners filed their Joint Petition seeking a certificate of public convenience and necessity for CB Energy's construction of a 3.29 MW AC (4.21 MW DC) solar facility located at the United States Naval Construction Battalion Center in Gulfport, Mississippi (the "Project") to be owned, operated, and maintained by CB Energy. In the same filing, MPC sought Commission approval to include in rates the cost of a 25-year power purchase agreement with CB Energy, whereby MPC would take the entire output of the solar

energy produced by the Project, as it is generated, in exchange for payments made on a rate per megawatt-hour of energy basis according to a fixed price schedule (the "PPA"). In conjunction with its filing, MPC mailed direct notice concerning the Project to each of its customers. No retail customers intervened or objected.

2. The Mississippi Public Utilities Staff ("Staff") retained Bates White, a utility-industry expert, to assist with review of the filing, and Petitioners provided substantial documentation supporting their Joint Petition. The Staff has evaluated the assumptions and projections underlying the Joint Petition, as well as the financing approach intended to support the Project's construction and operation. The Commission has also independently analyzed the Company's filings and no party has contested or otherwise sought relief concerning the discovery process in this case.

3. On September 28, 2015, the Commission issued its Notice for Hearing, finding that the public convenience and necessity required that an evidentiary hearing be held on less than twenty (20) day notice in light of impending tax incentive deadlines and the Project's scheduling requirements. Therefore, an evidentiary hearing was set for October 6, 2015, directly following the Commission's previously scheduled monthly docket call and open meeting. The Commission also found that SMEPA, the only intervenor to the proceedings, had expressed no disapproval of the Project and would not be prejudiced by the Commission's expedited hearing schedule. A full opportunity for discovery was afforded all

parties and the record in this proceeding contains substantial evidence supporting the Commission's findings.

4. The Commission issued an October 2, 2015 Order Cancelling and Re-Setting Hearing and rescheduled its evidentiary hearing for November 3, 2015. A public hearing was held on November 3, 2015, and all parties were provided an opportunity to participate.

LEGAL AUTHORITY

5. Pursuant to Sections 77-3-11, 77-3-13, and 77-3-14 of the *Mississippi Code of 1972, as amended*, the Commission is equipped with statutory authority to approve applications for certificates of public convenience and necessity. In addition, RP 7 of the Commission's Rules gives effect to these sections by prescribing the specific filing requirements that must be met by a petitioner seeking a certificate. Under Section 77-3-14(1):

no public utility or other person shall begin the construction of any facility for the generation and transmission of electricity to be directly or indirectly used for the furnishing of public utility service in this state ... without first obtaining from the commission a certificate that the public convenience and necessity requires, or will require, such construction.

When determining whether to grant such certificate, the Commission will:

take into account the utility's arrangements with other electric utilities for the interchange of power, pooling of plant, purchase of power and other methods for providing reliable, efficient and economical electric service.¹

¹ MISS. CODE ANN. § 77-3-14(3)(Rev. 2011).

As a further condition to the issuance of a certificate, the Commission must approve the estimated construction costs for the proposed facility.² The Commission has previously approved a certificate, while waiving certain filing requirements, for an electric generator which, while not a “public utility”, is nonetheless an “other person” within the meaning of § 77-3-14.³

6. The Commission is also authorized to approve utility requests to enter into, and include in rates, power purchase agreements. The Commission is charged with “exclusive, original jurisdiction over the intrastate business and property of public utilities.”⁴ MPC is a public utility.

7. Since the PPA does not include a capacity payment for which MPC can request a return on capacity, approvals under Sections 77-3-91 through 77-3-95 of the *Mississippi Code of 1972, as amended*, are not required.

COMMISSION FINDINGS

8. The Commission finds that it has jurisdiction over the parties and subject matter in this proceeding.

9. Petitioner, CB Energy, is not, and does not intend to become, a public utility under the laws of the State of Mississippi. Even though Petitioner, CB Energy, is not a public utility, it is an “other person” within the meaning of § 77-3-14.

² MISS. CODE ANN. § 77-3-14(4)(Rev. 2011).

³ See *HKCR, LLC*, Docket No. 2014-UA-266, Order Granting Facilities Certificate (February 19, 2015).

⁴ MISS. CODE ANN. § 77-3-5(Rev. 2011).

10. Petitioner, CB Energy, has reasonably complied with all applicable filing requirements and has provided information sufficient for this Commission's and Staff's consideration of this matter. The Commission specifically finds that Items 3, 5, 7, 9, 10, 11, 12, and 17 of Appendix "A", Schedule 1, to the Commission's Rules are not applicable to Petitioner, CB Energy, because CB Energy is not a public utility under the laws of the State of Mississippi and does not intend to operate as a public utility in the State of Mississippi.⁵ Therefore, for good cause shown this Commission hereby waives all other requirements that may be prescribed by the Public Utility Act and the Commission's Rules not otherwise provided by Petitioner, CB Energy.

11. During its investigation, the Staff and Bates White propounded data requests to MPC covering various aspects of the Company's filings. MPC responded to each of the data requests in accordance with this Commission's procedural Rules. The Commission also independently analyzed the Company's filings. No party has contested or otherwise sought relief concerning the discovery process in this case. Therefore, this Commission finds that a full opportunity for discovery was afforded all parties and that the record in this proceeding contains substantial evidence supporting the Commission's findings.

12. The uncontroverted evidence before the Commission indicates that the Project and the PPA are in the public interest. In reaching this finding, the Commission has taken into account the utility's arrangements with other electric

⁵ See *supra* note 3.

utilities for the interchange of power, pooling of plant, purchase of power and other methods for providing reliable, efficient and economical service. This analysis is supported by the Company's reliance upon an actual projected hourly avoided cost analysis over the life of the PPA term. The Commission also finds that the construction cost estimate is reasonable and, as will be discussed below, is largely irrelevant to MPC's retail customers because MPC will purchase energy from the Project at an already-determined rate.

13. The Commission finds that the Project and the PPA present an opportunity for Mississippi Power to add fuel diversity to its fleet and to capture the benefits of solar generation for all of its customers. Further, the PPA presents an opportunity to put long-term downward pressure on MPC's rates over the life of the PPA term. The large-scale of the Project and the concerted efforts of Petitioners have created an opportunity for Mississippi to further demonstrate its commitment to renewable energy while deploying cost-effective resources.

14. The Commission also finds, however, that the Project's price projections are not without risk. Put differently, the Project's benefit projections are just that—projections—and the underlying assumptions (particularly MPC's projected gas prices and MPC's alternative generation options) may change. Even in this case, however, the Project will be in the public interest, given the increased fuel diversity and risk mitigation opportunities the Project will offer MPC's customers throughout the PPA's 25-year term. Fuel diversity matters, particularly because fuel price stability matters. The Project offers an entirely new generation

source to MPC's generation fleet and this generation source, unlike the coal, natural gas, and lignite fuels associated with the Company's currently-planned generation fleet has no fuel cost. Because solar generation facilities create energy from the sun, there is no need to purchase fuel and the cost associated with these projects is due, instead, to capital costs and maintenance cost requirements.

15. The Commission finds that MPC's customers are protected from the risk of construction cost overruns with respect to the Project. Under the PPA, the Company is paying only for energy received and, therefore, no capital investment or fixed cost will be required.

16. The Company's analysis utilized a scenario approach whereby the Project's net present value was modeled under a range of reasonable fuel and carbon compliance forecasts. The Commission finds that the use of a range of scenarios to evaluate the relative economics of the Project was a prudent and effective approach. Further, although the Company relies upon assumptions, these assumptions are reasonable.

17. The Commission finds that the natural gas price assumptions relied upon by the Company are reasonable. The Company compared the Company's gas price forecasts to the EIA AEO gas price forecasts. Although the EIA AEO's price forecasts are imperfect, they provide an acceptable litmus test by which to evaluate the reasonableness of MPC's projections. In light of MPC's gas price forecasts, the Commission's expert knowledge, and the input of the Staff and the Staff's expert, we find that the low, moderate, and high forecasts used in MPC's analyses are

reasonable and that the Project provides an acceptable and reasonable opportunity to benefit customers under a broad range of future scenarios. Although the carbon compliance costs—if any—likely to face the Company during the PPA's term are uncertain, the Project will only become more attractive for MPC's customers in scenarios where carbon compliance costs are imposed. Because the Project generates energy from the sun, there will be no carbon emissions associated with its operation, which we find serves to enhance the value of the Project for MPC's customers. Additionally, the Commission understands that MPC will have exclusive rights to all environmental attributes which it may use to either serve its customers with renewable energy or to sell to third parties for the benefit of customers.

18. Based on the foregoing, the Commission hereby approves the certification of the Project and authorizes MPC's recovery of its costs associated with the PPA.

IT IS THEREFORE, ORDERED, that, based upon all of the above, including all of the filed testimony in this proceeding, the data request responses, and other documents contained in the record, and all of the oral testimony provided at the hearings in this matter and as found by this Commission as is more fully described in this order, the public convenience and necessity requires and will require the construction, acquisition, operation, and maintenance of the Project. Therefore, the Commission hereby grants CB Energy, LLC a certificate of public

convenience and necessity for the construction, acquisition, operation, and maintenance of the Project. It is further,

ORDERED, that Petitioner, CB Energy, is not a public utility and the Project is not utility property under the laws of the State of Mississippi. It is further,

ORDERED, that Petitioner, CB Energy, is not subject to the Commission's jurisdiction except for the requirement of obtaining a Certificate of Public Convenience and Necessity as set forth in § 77-3-14. It is further,

ORDERED, that Petitioner, CB Energy, has complied with all of the rules and regulations of the Commission concerning the issuance of such Certificate of Public Convenience and Necessity; and that Petitioner, CB Energy, should be and hereby is granted a Certificate of Public Convenience and Necessity for the construction and operation of the Project for the generation, transmission, and wholesale sale of electricity in interstate commerce. It is further,

ORDERED, that the Joint Petition filed in this cause, as provided for herein, be, and is hereby, granted. It is further,

ORDERED, that the Company is hereby permitted to recover its costs associated with the PPA through rates, by way of its Fuel Recovery Clause as authorized by § 77-3-42.

This Order shall be deemed issued on the day it is served upon the parties herein by the Executive Secretary of this Commission who shall note the service date in the file of this Docket.

SO ORDERED, this the 10th day of November, 2015.

Chairman Lynn Posey voted aye; Vice Chairman R. Stephen Renfroe voted aye; and Commissioner Brandon Presley voted aye.

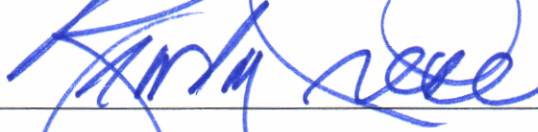
MISSISSIPPI PUBLIC SERVICE COMMISSION



Lynn Posey, Chairman

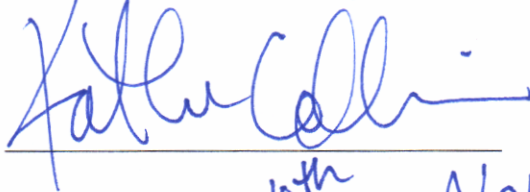



R. Stephen Renfroe, Vice Chairman



Brandon Presley, Commissioner

ATTEST: A True Copy



Effective this the 10th Day of November, 2015.