

126 FERC ¶ 61,114  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Acting Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

Public Service Electric and Gas Company

Docket No. ER09-427-000

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued February 13, 2009)

1. On December 18, 2008, Public Service Electric and Gas Company (PSE&G) filed, pursuant to section 205 of the Federal Power Act (FPA) and Part 35 of the Commission's regulations, revised tariff sheets to Schedule 12-Appendix of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT). The proposed changes seek to eliminate the need for PSE&G to make a new section 205 filing to include generic annual revenue requirement language each time a new Regional Transmission Expansion Plan (RTEP)<sup>1</sup> project is added to section 12 of Schedule 12-Appendix. In this order, we accept PSE&G's revisions to Schedule 12-Appendix of the PJM OATT to become effective February 16, 2009.

**I. Background**

2. On July 7, 2008, PSE&G sought Commission approval, in Docket No. ER08-1233-000, to implement a cost-of-service formula rate (July 7 Filing). The Commission accepted PSE&G's formula rate, subject to modification.<sup>2</sup> PSE&G submitted a compliance filing on October 29, 2008, which the Commission accepted.<sup>3</sup>

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<sup>1</sup> PJM conducts the RTEP process, under which it identifies and designates upgrades to the system of its Transmission Owners that are required to be constructed to maintain reliability and enhance competition. *See* Schedule 6 of the PJM Operating Agreement.

<sup>2</sup> *Public Service Electric and Gas Co.*, 124 FERC ¶ 61,303 (2008) (Formula Rate Order).

<sup>3</sup> The compliance filing was accepted on January 13, 2009. *See Public Service Electric and Gas Co.*, Docket No. ER08-1233-001 (January 13, 2009) (unpublished letter order).

## **II. PSE&G's Proposal**

3. Under PSE&G's current formula rate, PSE&G is required, each time PSE&G places an RTEP project in service prior to the end of the upcoming calendar year, to list such project in an informational Annual Update filing to be filed with the Commission (Annual Update). Additionally, PSE&G must submit a section 205 filing to add a reference to PSE&G's formula rate to the "Annual Revenue Requirement" cells in Schedule 12-Appendix associated with all such PSE&G RTEP projects.
4. To avoid the need for numerous section 205 filings in accordance with the existing paradigm, PSE&G proposes to revise section 12 of the Schedule 12-Appendix by inserting the following language:

The Annual Revenue Requirement for all Public Service Electric and Gas Company Projects (Required Transmission Enhancements) in this section 12 shall be as specified in Attachment 7 of Attachment H-10A and under the procedures detailed in Attachment H-10B.

5. PSE&G asserts that this information satisfies the requirement of ensuring that for each Required Transmission Enhancement listed in section 12 of Schedule 12-Appendix, customers are apprised of where to find the Annual Revenue Requirement for PSE&G. Further, PSE&G states that this modification will not result in any change in rates or revenue requirement, but is strictly administrative.

## **III. Notice, Protest, and PSE&G's Response**

6. Notice of PSE&G's filing was published in the *Federal Register*, 73 Fed. Reg. 67,496 (2008), with interventions and protests due on or before January 8, 2009. The New Jersey Department of the Public Advocate, Division of Rate Counsel (NJ Rate Counsel), filed a timely intervention and protest. No other interventions or protests were filed.
7. The NJ Rate Counsel contends that it is unable to discern from the general language of the filing whether the effect of the proposed change would be to limit information available or shift the burden of proof to require third parties to prove that the costs of PSE&G's proposed transmission projects are not just and reasonable. While the NJ Rate Counsel does not object to measures to facilitate administrative convenience, it does protest the perceived lack of specificity. The NJ Rate Counsel requests that the issue be revisited at a future date after at least once cycle of the formula rate process has been completed in order for all parties to have sufficient experience to determine if PSE&G's proposal is acceptable.
8. On January 22, 2009, PSE&G responded to the NJ Rate Counsel's protest by stating that its proposed changes to Schedule 12-Appendix will not limit information

available to ratepayers or shift the burden of proof with respect to the justness and reasonableness of PSE&G's Annual Revenue Requirements. PSE&G points out that Attachment H-10B of the PJM OATT clearly sets forth the details of what information is to be provided by PSE&G and when, as well as the burden of proof requirements. PSE&G states that the limited nature of its request is evidenced by the fact that the tariff changes proposed by PSE&G in the instant filing are limited to the Schedule 12-Appendix of the PJM OATT. PSE&G did not propose any changes to the formula rate protocols contained in Attachment H-10B of the OATT.

#### **IV. Discussion**

##### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene are hereby granted.

10. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) prohibits an answer to an answer or a protest unless otherwise authorized by the decisional authority. In this case, we find that PSE&G's January 22, 2009 answer has assisted the Commission in its decision-making process. Therefore, we will accept it.

##### **B. Commission Determination**

11. We accept PSE&G's proposed revisions to Schedule 12-Appendix to become effective February 16, 2009, as requested. The proposed revisions enhance administrative efficiency by eliminating the need for PSE&G to make a section 205 filing each time a RTEP project is placed in service. As PSE&G notes, this continues to apprise customers of the projects included in the formula rate and is consistent with the practices of other PJM transmission owners that have adopted formula rates.<sup>4</sup>

12. The concerns raised by the NJ Rate Counsel regarding clarity, customer protections and the ability to challenge PSE&G's annual transmission rates, including the annual revenue requirement for new projects, were fully addressed by the Commission in the Formula Rate Order. Pursuant to the tariff provisions accepted in that order, Attachment H-10B establishes that PSE&G will post its Annual Update on the PJM website by October 15 of each year, and by November 30, hold a public meeting to

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<sup>4</sup> Atlantic City Electric Company, Baltimore Gas and Electric Company, Delmarva Power and Light Company, Potomac Electric Power Company and Virginia Electric and Power Company all reference their formula rates in a footnote instead of in each cell that references an RTEP project.

explain the projected costs and respond to questions from customers. In the Formula Rate Order, the Commission found that PSE&G's Annual Update process provides sufficient opportunity for customers to review PSE&G's projected costs and discuss those costs with PSE&G.<sup>5</sup> Further, in the Formula Rate Order the Commission directed PSE&G to revise its Annual Update process to increase parties' rights to challenge the underlying bases of the formula rates and file complaints with the Commission. The Commission found that it was appropriate that "any challenge to the projected costs, True-Up Adjustment or Material Accounting Change would not require the complainant to bear the ultimate burden of proof. Rather PSE&G continues to bear the ultimate burden of proof, i.e., to demonstrate the justness and reasonableness of the charges resulting from application of the formula rate."<sup>6</sup> The NJ Rate Counsel, and other customers, may challenge the reasonableness of costs reflected in the annual revenue requirement under the terms of Attachment H-10B.

13. As a result, we find that the proposed changes will not shift the burden of proof, as the tariff provisions require PSE&G to bear the responsibility to demonstrate the justness and reasonableness of the changes. We also find that the proposed changes would not limit the availability of information because the tariff provisions allow parties to seek and discuss PSE&G's projected costs.

14. We also reject the NJ Rate Counsel's request that we delay implementation of PSE&G's current proposal until at least one cycle of the formula rate process is complete. As discussed above, PSE&G's proposal increases administrative efficiency without affecting the allocation of the burden of proof or any other tariff provisions related to the implementation of the formula rate. Accordingly, we find that the NJ Rate Counsel has not demonstrated that such a delay is necessary or beneficial.

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<sup>5</sup> Formula Rate Order at P 15.

<sup>6</sup> Formula Rate Order at P 17.

The Commission orders:

PSE&G's revised tariff sheets to the PJM OATT are accepted for filing, effective February 16, 2009, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary