

128 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Electric Utilities Corporation

Docket Nos. ER08-1457-000
ER08-1457-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 21, 2009)

Background

1. On August 28, 2008, as amended August 29, 2008, PPL Electric Utilities Corporation (PPL Electric) filed proposed revisions to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) to implement a cost-of-service formula transmission rate for PPL Electric's current and future transmission service.
2. On October 29, 2008, the Commission issued an order accepting PPL Electric's proposed cost-of-service formula transmission rate subject to a nominal suspension, refund, certain conditions and the outcome of hearing and settlement judge proceedings.¹ The Commission also granted PPL Electric's request for waiver of certain of the Commission's regulations under 18 C.F.R. Part 35.²

Offer of Settlement

3. On May 1, 2009, PPL Electric, American Municipal Power-Ohio, Inc., PPL Industrial Customer Alliance, and Citizens' Electric Company (collectively, the Settling Parties) filed an Offer of Settlement (Settlement) and accompanying materials under Rule 602 of the Commission's Rules of Practice and Procedure.³ The Settlement states that Maryland Office of People's Counsel, Pennsylvania Office of Consumer Advocate, the Office of Ohio Consumers' Counsel, the New Jersey Division of Rate Counsel, the West

¹ *PPL Elec. Utils. Corp.*, 125 FERC ¶ 61,121 (2008).

² *Id.* P 41.

³ 18 C.F.R. § 385.602 (2009).

Virginia Consumer Advocate Division, the D.C. Office of People's Counsel, Allegheny Power, Allegheny Electric Cooperative, Inc., the Pennsylvania Public Utility Commission, and UGI Utilities, Inc. participated in the Settlement discussions and have indicated they do not oppose the Settlement.

4. The Settlement contains modifications to PPL Electric's Attachment H-8G of the PJM Tariff, PPL Electric's transmission cost-of-service formula rate,⁴ and Attachment H-8H of the PJM Tariff, Formula Rate Implementation Protocols. The Settlement provides for a base return on equity (Base ROE) to be used in the formula rate, in addition to the approved 50 basis point adder for continued participation in PJM and any ROE incentive adders approved by the Commission for specific transmission projects, as follows:

(A) From November 1, 2008 through May 31, 2009, the Base ROE shall be 11.10 percent,

(B) From June 1, 2009 through May 31, 2010, the Base ROE shall be 11.14 percent, and

(C) On June 1, 2010 and thereafter, the Base ROE shall be 11.18 percent.

5. The Settlement also provides that:

The terms and conditions of the Settlement shall not be subject to change except by written amendment executed by all of the Settling Parties. The standard of review for any modification to this Settlement set forth in a written amendment executed by all of the Settling Parties shall be the "just and reasonable standard." Any change to the Settlement by the Commission - on its own initiative or pursuant to the challenge of a non-settling party - shall be subject to the just and reasonable standard.⁵

6. The Settlement further provides that:

For the period commencing with the effective date of the Formula Rate, November 1, 2008, through and including May 31, 2011 (Moratorium Period), no Settling Party or Non-Opposing Party may make a filing under Section 205 or 206 of the FPA to change the Base ROE set forth in Article 3.1. To the extent that the Commission does not dismiss such Section 205 or 206 filing by a Settling Party or Non-Opposing Party pursuant to this Settlement, the standard of review the

⁴ Attachment 9 to Attachment H-8G contains revised depreciation rates.

⁵ Settlement, Article VI, P 6.1.

Commission shall apply to such Section 205 or 206 filing shall be the "public interest" standard of review as set forth in *United Gas Pipe Line Co., v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). To the extent that the Commission - on its own initiative or pursuant to the challenge by a person other than a Settling Party or Non-Opposing Party - considers any change to the Base ROE during the Moratorium Period, the standard of review for any such proposed changes shall be the most stringent standard permitted by law.⁶

7. Furthermore, the Settlement provides that PJM will make the refunds (including interest as specified pursuant to 18 C.F.R. § 35.19(1) of the Commission's Regulations) necessary to reflect the rates provided in the Settlement.⁷

Comments & Certification

8. On May 11, 2009, the Pennsylvania Public Utility Commission filed an initial comment stating that it does not oppose the Settlement. On May 20, 2009, Commission Trial Staff filed an initial comment in support of the Settlement. On May 26, 2009, the Settlement Judge certified the Settlement to the Commission as uncontested.

Commission Determination

9. The Commission finds that the Settlement resolves all outstanding issues in the above-referenced proceeding. The Settlement is fair and reasonable and in the public interest, and is approved. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the applicable standard of review set forth in Article VI of the Settlement.

10. In addition, the Commission finds that the tariff sheets contained in the Settlement are in compliance with Order No. 614 and are made effective as noted in the settlement.⁸

11. The Commission directs PJM to file a refund report within thirty (30) days of the date on which PJM has provided refunds to customers.

12. This order terminates Docket Nos. ER08-1457-000 and ER08-1457-001.

⁶ *Id.* P 6.2.

⁷ *Id.*, Article II, P 2.5.

⁸ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000).

The Commission orders:

(A) The May 1, 2009 Settlement filed by PPL Electric Utilities Corporation is hereby approved, as discussed in the body of this order.

(B) PJM is directed to file a refund report within thirty (30) days of the date on which PJM has provided refunds to customers.

By the Commission. Commissioner Kelly and Chairman Wellinghoff concurring in part with a joint statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

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ER08-1457-001

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KELLY, Commissioner, and WELLINGHOFF, Chairman, *concurring in part*:

The proposed standard of review for the base ROE during the moratorium period would have the Commission apply the “most stringent standard permitted by law” to any changes proposed by third-parties or the Commission acting *sua sponte*.

The U.S. Supreme Court has held that whenever the Commission reviews certain types of contracts, the Federal Power Act (FPA) requires it to apply the presumption that the contract meets the “just and reasonable” requirement imposed by the FPA.¹ The contracts that are accorded this special application of the “just and reasonable” standard are those “freely negotiated wholesale-energy contract[s]” that were given a unique role in the FPA.² In contrast, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that the proper standard of review for a different type of agreement, with regard to changes proposed by non-contracting third parties, was the “‘just and reasonable’ standard in section 206 of the Federal Power Act.”³ The agreement at issue in *Maine PUC* was a multilateral settlement negotiated in a Commission adjudication of a utility’s proposal to revise its tariff substantially to enable it to establish and operate a locational installed electricity capacity market. The D.C. Circuit’s rationale in *Maine PUC* applies with at least equal force to changes to an agreement sought by the Commission acting *sua sponte*.⁴

¹ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2737 (2008) (*Morgan Stanley*).

² *Id.*

³ *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, 478, *petition for reh’g denied*, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*).

⁴ *See Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201 (2008) (Comm’rs Wellinghoff and Kelly dissenting in part).

Our review of the agreement in question here indicates that it more closely resembles the *Maine PUC* adjudicatory settlement than the *Morgan Stanley* wholesale-energy sales contracts, which, for example, were freely negotiated outside the regulatory process. Therefore, the standard of review that the Commission must apply to changes proposed by either third-parties or the Commission acting *sua sponte* is the “just and reasonable” standard of review. In those instances, the Commission retains the right to investigate the rates, terms, and conditions of the settlement under the “just and reasonable” standard of review set forth under FPA section 206.⁵

For these reasons, we concur in part.

Suedeem G. Kelly

Jon Wellinghoff

⁵ 16 U.S.C. § 824e (2006).