

136 FERC ¶ 61,166  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

September 9, 2011

In Reply Refer To:  
PPL EnergyPlus, LLC  
Docket Nos. ER11-3978-000  
ER11-4030-000  
ER11-4032-000

Bracewell & Giuliani LLP  
Attention: Sandra E. Rizzo, Esq.  
Attorney for PPL EnergyPlus, LLC  
2000 K Street, NW  
Suite 500  
Washington, DC 20006

Dear Ms. Rizzo:

1. On July 12, 2011, you filed in Docket No. ER11-4032-000, on behalf of PPL EnergyPlus, LLC (PPL EnergyPlus), a rate schedule providing the terms and conditions that will govern the sale, assignment, and transfer of PPL EnergyPlus' transmission rights on non-jurisdictional transmitting utility systems. The proposed reassignment tariff filed in Docket No. ER11-4032-000 is accepted for filing, effective March 1, 2010, as requested, subject to a compliance filing, as discussed below.
2. On July 1, 2011, PPL EnergyPlus filed a transmission reassignment tariff that was intended to facilitate transactions on non-jurisdictional transmission systems, such as the Bonneville Power Administration's (BPA) system, that have not adopted section 23 of the Commission's *pro forma* open access transmission tariff (OATT). PPL EnergyPlus requested a March 1, 2010 effective date to coincide with the date PPL EnergyPlus acquired firm transmission rights on BPA's system. On July 11, 2011, in Docket No. ER11-4030-000, PPL EnergyPlus filed a Notice of Cancellation to cancel the eTariff submission in Docket No. ER11-3978-000 because it had erroneously filed its tariff without a statutory filing code. On July 12, 2011, in Docket No. ER11-4032-000, PPL EnergyPlus corrected its error by refileing its eTariff submission with a statutory filing code.
3. Notice of PPL EnergyPlus' original tariff filing, in Docket No. ER11-3978-000, was published in the *Federal Register*, 76 Fed. Reg. 41,785 (2011), with protests and interventions due on or before July 22, 2011. Notice of PPL EnergyPlus' Notice of Cancellation was published in the *Federal Register*, 76 Fed. Reg. 42,702 (2011), with

protests and interventions due on or before August 1, 2011. Notice of PPL EnergyPlus' second tariff filing, in Docket No. ER11-4032-000, was published in the *Federal Register*, 76 Fed. Reg. 42,702 (2011) with protests and interventions due on or before August 2, 2011. BPA and Powerex filed untimely motions to intervene and comments in Docket No. ER11-3978-000. PPL EnergyPlus filed an answer to BPA's comments, and BPA filed an answer to Powerex's comments.

4. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2011), the Commission will grant BPA and Powerex's late-filed motions to intervene in Docket No. ER11-3978-000, given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept PPL EnergyPlus' answer and BPA's answer because they have provided information that assisted us in our decision-making process.

5. BPA states that its OATT contains a price cap on the resale or assignment of transmission service.<sup>1</sup> BPA adds that its transmission service agreement with PPL EnergyPlus expressly incorporates by reference the aforementioned price cap.<sup>2</sup> BPA asks the Commission to acknowledge that acceptance of PPL EnergyPlus' transmission reassignment tariff does not supersede the terms and conditions of PPL EnergyPlus' transmission service agreement with BPA or BPA's OATT. PPL EnergyPlus responds that it is willing to commit that it will not make sales pursuant to its proposed transmission reassignment tariff at prices higher than those permitted by the BPA OATT, unless and until the Commission indicates that the resale price restriction in BPA's OATT is inappropriate either as a general matter or as applied to the holder of a stand-alone transmission reassignment tariff.<sup>3</sup>

6. Powerex asks the Commission to reaffirm its finding that jurisdictional entities engaging in bilateral transmission reassignments are authorized to do so notwithstanding any price ceiling separately established by an unregulated transmitting utility that is not a party to the reassignment transaction.<sup>4</sup> Powerex argues that the reassignment of capacity is a jurisdictional transaction under a Commission-approved rate schedule rather than a transaction under BPA's OATT, and therefore BPA cannot apply a price cap to such an

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<sup>1</sup> BPA July 28, 2011 Comments at 3.

<sup>2</sup> *Id.*

<sup>3</sup> PPL EnergyPlus August 5, 2011 Answer at 3.

<sup>4</sup> Powerex August 8, 2011 Comments at 9.

arrangement.<sup>5</sup> BPA responds that Powerex's arguments confuse the issues in this proceeding.<sup>6</sup> BPA argues that the Commission has not addressed whether independent rate schedules supersede BPA's tariff and transmission service agreements.<sup>7</sup>

7. As PPL EnergyPlus and BPA note, the Commission has stated that "those public utility customers holding rights to [BPA's] transmission capacity may need to file a separate tariff in order to transfer, sell, or reassign transmission capacity rights on [BPA's] transmission system."<sup>8</sup> PPL EnergyPlus' reassignment tariff filing reflects this directive. We accept PPL EnergyPlus' commitment to abide by its existing point-to-point transmission service agreement with BPA and not make sales pursuant to its transmission reassignment tariff at prices higher than those permitted by the BPA OATT. Accordingly, we direct PPL EnergyPlus to make a compliance filing within 30 days of the date of this order to revise its tariff to expressly incorporate this commitment.

8. We find that Powerex's argument is misplaced. Our findings in this proceeding are based on PPL EnergyPlus' commitment here to the price cap. Any agreements that Powerex may have entered into are not before us in this proceeding.

9. Accordingly, we accept the proposed reassignment tariff filed in Docket No. ER11-4032-000, effective March 1, 2010, as requested,<sup>9</sup> subject to a compliance filing, as discussed above, we accept the Notice of Cancellation filed in Docket No. ER11-4030-000, and the filing in Docket No. ER11-3978-000 is cancelled.

10. This order terminates Docket Nos. ER11-3978-000 and ER11-4030-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> *Id.* at 8.

<sup>6</sup> BPA August 18, 2011 Comments at 3.

<sup>7</sup> *Id.* at 4.

<sup>8</sup> *U.S. Dept. of Energy, Bonneville Power Admin.*, 128 FERC ¶ 61,057, at P 24 (2009).

<sup>9</sup> *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, *clarified*, 65 FERC ¶ 61,081 (1993).