

149 FERC ¶ 61,231
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

PPL Electric Utilities Corporation

Docket Nos. ER09-1148-000
ER09-1148-001
(consolidated)

ORDER ON REHEARING AND FORMAL CHALLENGE,
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 20, 2012)

1. This order concerns two annual updates filed by PPL Electric Utilities Corporation (PPL) to its formula transmission rate which is contained in Attachment H-8 of the PJM Open Access Transmission Tariff (OATT).¹ In Docket No. ER09-1148-001, on August 30, 2011, Eastern Pennsylvania Power Group (EPPG) Boroughs² filed a request for rehearing of the Commission's August 15, 2011 order in Docket No. ER09-1148-000,³ which concerned EPPG Boroughs' December 15, 2010, formal challenge (2010 Formal Challenge) to PPL's 2010 Update to its formula rate (2010 Update). We grant in part and reject in part the request for rehearing, and set the 2010 Update in part for hearing.
2. In Docket No. ER09-1148-000 on December 7, 2011, EPPG Boroughs filed their formal challenge (2011 Formal Challenge) to PPL's 2011 Update to its formula rate (2011 Update). We grant in part and reject in part the 2011 Formal Challenge, and set

¹ PJM OATT Attachment H-8 – Annual Transmission Rates – PPL Group for Network Integration Transmission Service, 2.0.0.

² EPPG Boroughs consist of the Pennsylvania municipalities of Blakely, Catawissa, Duncannon, Goldsboro, Hatfield, Kutztown, Lansdale, Leighton, Lewisberry, Middletown, Mifflinburg, Quakertown, Schuylkill Haven, St. Clair, Watsontown, and Weatherly. As Lewisberry is not a PPL customer, it is not part of this rehearing.

³ *PPL Electric Utilities Corp.*, 136 FERC ¶ 61,101 (2011) (August 2011 Order).

the 2011 Update in part for hearing, as ordered below. To aid parties in their settlement efforts, we will hold the hearing in abeyance, consolidate the hearings, and direct that a settlement judge be appointed.

I. PPL's Formula Rate and Protocols

3. In 2009, the Commission accepted an uncontested settlement⁴ (2009 Settlement) developed by PPL and several of its customers, with the consent of several state government agencies. EPPG Boroughs did not intervene or oppose the 2009 Settlement. The 2009 Settlement provides that any change to the 2009 Settlement (that is, to the formula rate itself) made by the Commission or proposed by a non-settling party shall be subject to the just and reasonable standard of review.⁵ The 2009 Settlement established not only a formula rate for PPL (contained in Attachment H-8G of PJM's OATT), but also the Formula Rate Implementation Protocols (Protocols)⁶ detailing how PPL's formula transmission rate would be updated annually and the update reviewed by customers. It is these Protocols that are relevant here, where we address rehearing of our order on the 2010 Formal Challenge and where we also address the 2011 Formal Challenge.

4. These Protocols require PPL to update its transmission rates annually by filling in its formula rate with financial data from the past year, in order to project rates for the coming year. PPL must also adjust these figures to compensate for any under- or over-recovery of the previous year's rates. Inputs to the formula generally use FERC Form No. 1 data. PPL's base return on equity (ROE), however, is fixed at set rates which are specified in article 3 of the 2009 Settlement; after June 1, 2010, the ROE is set at 11.18 percent, not including incentive adders.

5. Under the Protocols, PPL must submit its update by May 15 each year. During the next 180 days, the Protocols establish a process by which PPL is to respond to any concerns, requests for discovery, or other preliminary challenges by customers. If these challenges cannot be resolved promptly and satisfactorily, then the customer may file a formal challenge with the Commission in order to resolve the dispute, pursuant to sections I.E and VI of the Protocols. The Commission has the discretion, under the

⁴ *PPL Electric Utilities Corp.*, 128 FERC ¶ 61,178 (2009) (Order Approving 2009 Settlement).

⁵ *Id.* P 5.

⁶ PJM OATT Attachment H-8H – Formula Rate Implementation Protocols, 2.0.0 (Protocols).

Protocols, to order hearings and settlement judge procedures. Formal challenges are limited to the eleven avenues of inquiry listed in section VI.A (1) of the Protocols, as discussed in full below.

II. Background

6. On May 15, 2010, PPL submitted its 2010 Update. On December 15, 2010, EPPG Boroughs filed their 2010 Formal Challenge. On January 24, 2011, PPL submitted its answer to EPPG Boroughs' 2010 Formal Challenge. On August 15, 2011, the Commission issued an order rejecting the formal challenge. On August 30, 2011, EPPG Boroughs filed a request for rehearing of the Commission's August 2011 Order. EPPG Boroughs argue in their request for rehearing that the Commission erred by: (1) providing an erroneous basis for rejecting the Formal Challenge, which they allege was not the result of reasoned decision-making and was arbitrary and capricious; (2) providing incentives to PPL and other Transmission Owners (TOs) to include at their sole discretion and without any question any costs and expenses in General and Intangible (G&I) Plant and Administrative and General (A&G) expenses, which they allege was arbitrary and capricious; (3) rejecting all elements of the Formal Challenge, which they allege was arbitrary and capricious; and (4) denying the EPPG Boroughs' right to a proper due process.

7. On May 13, 2011, PPL submitted its 2011 Update as an informational filing in the present docket. On December 7, 2011, EPPG Boroughs filed their 2011 Formal Challenge. EPPG Boroughs' 2011 Formal Challenge focuses on numerous line items in the 2011 Update, as detailed below. In general, EPPG Boroughs argue that PPL includes in its formula rate costs which are erroneously booked or are clearly related to its non-transmission and unregulated business. EPPG Boroughs state that their challenged items would, in total, reduce PPL's Annual Transmission Revenue Requirement (ATRR) by \$60 million. EPPG Boroughs note that, while they are not challenging any specific allocation factor used in the formula rate, their 2011 Formal Challenge does relate to improper booking of certain costs and expenses and the unreasonableness of other costs and expenses.

8. On December 9, 2011, PPL filed a motion for an extension of time and request for a shortened comment period. On December 13, 2011, and December 19, 2011, the Commission issued a notice shortening the answering period and a notice of extension of time, respectively. On January 13, 2012, PPL submitted its answer to EPPG Boroughs' 2011 Formal Challenge.

9. On January 30, 2012, EPPG Boroughs submitted a motion for leave to answer and answer to PPL's answer. On February 8, 2012, PPL submitted a response to the motion for leave to answer and answer of the EPPG Boroughs' January 30, 2012 pleading. On February 15, 2012, EPPG Boroughs submitted a motion to reject and answer to PPL's

February 8, 2012 pleading. On February 23, 2012, EPPG Boroughs submitted a supplemental answer, to the response of PPL to EPPG Boroughs' answer. On February 29, 2012, PPL filed a response to EPPG Boroughs' supplemental answer. On May 25, 2012, EPPG Boroughs submitted a motion for expedited decision. On June 5, 2012, PPL submitted a response, stating that it did not oppose expedited action, but disputing some of EPPG Boroughs' statements.

III. Discussion

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer unless otherwise ordered by the decisional authority,⁷ and the Commission accordingly rejects these pleadings, which are not needed to aid the Commission in its disposition of this proceeding.

11. Before us, pursuant to the terms of the previously accepted 2009 Settlement and the Protocols adopted therein, are two annual update filings; these annual updates are informational filings which, once challenged, the Commission may rule on summarily or set for hearing and settlement judge procedures.⁸ Further, section II.B of the Protocols expressly prohibits requesting modifications to the formula rate itself either in an annual update or a formal challenge, stating that such requests must be made in a FPA section 205 or section 206 proceeding. For the specific PPL formula rate at issue here, section VI.A (1) of the Protocols restricts formal challenges to the following eleven specific areas of inquiry:

- a) the extent or effect of a Material Accounting Change;
- b) whether a True-Up Adjustment includes only properly recorded data in accordance with Section III;
- c) whether the Annual Update fails to include data properly recorded in accordance with Section III;

⁷ 18 C.F.R. § 385.213(a)(2) (2012).

⁸ See *PPL Electric Utilities Corp.*, Docket No. ER09-1148-000 (Mar. 19, 2010) (delegated letter order) (March 2010 Order). As explained in the March 2010 Order, absent the filing of a formal challenge, the Commission will not act on these annual informational filings and they may take effect pursuant to the terms of the Protocols without any need for the Commission to accept them for filing.

- d) whether the Annual Update satisfies the transparency standard of Section III.D;
- e) the proper application by PPL Electric of the Formula Rate and the procedures in these Protocols;
- f) the accuracy of data and the consistency with the Formula Rate of the charges shown in the Annual Update (including the True-Up Adjustment);
- g) the consistency of the amortization/depreciation rates in the Formula Rate with the most recent depreciation and service life study approved for use by the Commission as the basis for calculating amortization/depreciation rates in the Formula Rate;
- h) the prudence of PPL Electric's projected costs and expenditures;
- i) the prudence of the actual costs and expenditures;
- j) the effect of any change to the underlying Uniform System of Accounts or FERC Form No. 1; and
- k) whether, as a consequence of any of the above in this Section VI.A.1, the Formula Rate, as initially accepted by the Commission, has been materially altered.⁹

12. In their rehearing request, EPPG Boroughs repeat the argument from their 2010 Formal Challenge that they can challenge whether specific costs included in the formula rate are related to transmission service, even though this area of inquiry is not specifically listed in the Protocols. In support of their position, EPPG Boroughs cite to Article 5.11 of the 2009 Settlement which states: "As provided for in PPL Electric's formula rate Filing, the formula rate is designed to include only expenses that are directly or indirectly related to transmission service and not those related to retail service." The August 2011 Order rejected this line of argument. EPPG Boroughs claim that in rejecting this argument, the Commission has without justification elevated the Protocols above the main body of the 2009 Settlement. They argue that the clear and plain language of Article 5.11 instructs "that the prudently incurred costs ... are not any costs, these costs have to be incurred for providing transmission service and not retail service."¹⁰

⁹ Protocols, Section VI.A (1).

¹⁰ EPPG Boroughs Request for Rehearing at 4.

13. We deny EPPG Boroughs' argument that Article 5.11 provides a basis for challenging costs included in an Annual Update separate and apart from the Protocols. Article 5.11 is more reasonably interpreted as a description of how the formula transmission rate works, rather than as an enforceable ground for a challenge. When a cost properly is booked to a general account that relies on an allocation factor, a party cannot challenge either the allocation factor or the fact that a cost relates to distribution under Article 5.11. Rather, as EPPG Boroughs acknowledges elsewhere in its request for rehearing, the means for challenging a formula rate are in the Protocols, specifically in Section IV.A.1, quoted above. Thus, while we reject the unwarranted reliance upon Article 5.11 of the Settlement, Sections IV.A.1 (e) ("the proper application ... of the Formula Rate...") and (f) ("the accuracy of data and the consistency with the Formula Rate...") do let EPPG Boroughs challenge specific costs in those particular situations where, as discussed in more detail below, the Formula Rate would not permit those costs to be recovered.

14. To the extent that genuine issues of material fact are in dispute between the parties, we will set those matters for hearing and settlement judge procedures.¹¹ In this order, we will simultaneously address the request for rehearing of our order on the 2010 Formal Challenge and also the separate 2011 Formal Challenge. As summarized in the table below, first we will address challenges that we can rule on summarily. Second, we will address challenges in which we partly rule summarily and partly set matters for hearing and settlement judge procedures. Finally, we will address challenges that we set entirely for hearing and settlement judge procedures.

¹¹ The parties have engaged in informal discovery prior to the filing of the Formal Challenge, with PPL objecting to some of EPPG Boroughs' data requests, and EPPG Boroughs asserting that some of PPL's responses are inadequate. Given that we are setting certain matters for hearing and settlement judge procedures, EPPG Boroughs and any other participant may engage in additional discovery regarding any issue or cost item set for hearing and settlement judge procedures, and PPL may raise any objections to such discovery requests as it deems appropriate for resolution before the Presiding Judge.

	Rehearing of 2010 Formal Challenge	2011 Formal Challenge
Summary Ruling	<ul style="list-style-type: none"> • ¶ 15 (interpretation of footnote E) • ¶ 19 (cost overruns related to an outstanding project). 	<ul style="list-style-type: none"> • #5 (amounts included in Account 146) • #6 (land held for future use) • #8 (Pennsylvania Capital Stock Tax) • #9 (capital structure) • #10 (return on equity).
Partly Summary Ruling, Partly Hearing and Settlement Judge Procedures	<ul style="list-style-type: none"> • ¶ 20 (a-h) (discrepancies between data used in annual update and in Pennsylvania Retail Rate Case) • ¶ 26 (salaries and benefits for employees) • ¶ 28 (insurance expense) 	<ul style="list-style-type: none"> • #4 (prepayments of federal income taxes)
Set For Hearing and Settlement Judge Procedures	<ul style="list-style-type: none"> • ¶ 16 (project cost overruns) • ¶ 17 (Account 923) • ¶ 18 (ADIT related to CIAC) • ¶ 21 (cost of nine facilities relating to distribution not transmission) • ¶ 22 (line outage management software) • ¶ 23 (five substations providing service at a distribution level) • ¶ 24 (increase in A&G Salaries and Wages) • ¶ 25 (outside services employed for civil litigation) • ¶ 27 (environmental remediation costs) 	<ul style="list-style-type: none"> • #1 (intangible plant items) • #2 (general plant additions) • #3 (ADIT related to CIAC) • #7 (environmental remediation costs)

15. Commission Enforcement Staff, acting under its own authority, publicly announced on November 3, 2011 that it would commence an audit of PPL in Docket No. FA12-12-000 (PPL Audit). Staff stated that the PPL Audit would cover, among

other matters, PPL's accounting, recordkeeping, and reporting for the 2010 and 2011 calendar years. Of relevance to the present proceeding, the PPL Audit specifically covers PPL's compliance with the Uniform System of Accounts and the applicable reporting requirements in the FERC Form No. 1, which form the basis for some of the data that PPL uses to develop its formula rate updates. The matters being audited thus substantially overlap with several of the disputes in the present dockets. Accordingly, we clarify that matters under review in the present docket shall not prejudice matters under review in the PPL Audit, and *vice versa*, unless and until reviewed in a formal and/or delegated order of the Commission.

IV. Matters Resolved Summarily

A. 2010 Formal Challenge

1. 2010 Challenge Paragraph 15

16. In the August 2011 Order, the Commission found that PPL's formula rate allowed for prior period adjustments except in the development of the revenue requirement for the First Rate Year (2008-2009), which at that time had passed. Thus, the Commission found that PPL had properly applied its formula rate, and rejected that challenge.

17. In their request for rehearing, EPPG Boroughs argue that this challenge turns on how to interpret footnote E of Attachment 2 of the formula, which PPL claims would allow recovery of prior year expenses.¹² Specifically, EPPG Boroughs argue that Footnote E does not state that prior period adjustments after the first year can be included in the Annual Update. In addition, EPPG Boroughs argue that PPL's interpretation of first year is not even supported by Attachment H-8. EPPG Boroughs explain that the first year in Footnote E means the Year 2008 and not 2003 and 2004. Therefore, EPPG Boroughs argue, it is wrong to include the amounts in 2008 for the periods prior to 2008. If PPL's interpretation is allowed, EPPG Boroughs argue that PPL will be able to include expenses for any of the prior years without any limitations as long as PPL has the formula rate.¹³

¹² EPPG Boroughs state that they originally made this argument in their February 8, 2012 Answer. The Commission rejected that pleading consistent with Rule 213 of the Commission's Rule of Practice and Procedure, which prohibits answers to answers.

¹³ EPPG Boroughs Request for Rehearing at 7-8.

18. We affirm our determination in the August 2011 Order and deny rehearing. The formula rate template does not prohibit prior period adjustments for tax expenses. Footnote E of Attachment 2 simply states that the formula rate “[e]xcludes prior period adjustments in the first year of the formula’s operation and reconciliation for the first year.”¹⁴ It does not state, as EPPG Boroughs urge, that the formula rate excludes prior period adjustments in any other year. We do not agree with EPPG Boroughs that PPL’s interpretation conflicts with the formula rate language, nor do we find that it gives PPL license to unlimited recovery of prior-year expenses. Because a formula rate is designed to track actual costs incurred, such formulas permit prior year adjustments to actual costs. Footnote E does not indicate that this formula is to operate differently. Therefore, we confirm our finding in the August 2011 Order that PPL properly applied its formula rate template to the 2003-2004 Pennsylvania Capital Stock Tax expense in the 2010 Update.

2. 2010 Challenge Paragraph 19

19. In the August 2011 Order, the Commission found that the formula rate expressly allows the prospective recovery of plant-related costs for transmission plant expected to be placed in service during the “upcoming year / Year 2.” Additionally, the Commission found that the formula rate includes a true-up adjustment that resolves discrepancies between projected and actual costs and in-service dates, by which customers would receive an appropriate credit with interest in the following year’s formula rate Annual Update. In rejecting this challenge, the Commission concluded that PPL followed the language of the formula rate in its treatment of the costs for the subject projects.

20. In their request for rehearing, EPPG Boroughs explain that they pointed out in their February 8 Answer that they were satisfied with PPL’s Answer related to two of the three transmission projects. EPPG Boroughs argue that their concern with the third is not with the timing of when the outstanding project would be placed in service, but whether there would be cost overruns.

21. The Commission rejects EPPG Boroughs’ argument on rehearing. EPPG Boroughs’ 2010 Formal Challenge never raised an imprudence argument with respect to the transmission projects at issue here and only first raises the matter on rehearing. Even if the Commission were to accept this untimely imprudence argument, EPPG Boroughs present no information or arguments that support a finding of imprudence. The request for rehearing contains only the generic assertion that EPPG Boroughs were “concerned about the cost overruns (prudency) of the third project.”¹⁵ Such a broad, unsupported

¹⁴ August 2011 Order, 136 FERC ¶ 61,101 at P 23.

¹⁵ EPPG Boroughs Request for Rehearing at 12.

assertion does not persuade us to require PPL to affirmatively show that the costs associated with the third project were prudently incurred, and to do so first on rehearing. The Commission denies rehearing on this issue.

B. 2011 Formal Challenge

1. 2011 Challenge No. 5

22. In Challenge No. 5, EPPG Boroughs argue that PPL improperly books the amounts that are collected from ratepayers through certain accounts such as Account 924 (Property Insurance) to Account 146 (Accounts Receivable from Associated Companies), and also Account 926 (Pension and Benefits) to Account 228.3 (Accumulated Provisions for Pensions and Benefits). Specifically, EPPG Boroughs argue that it is not clear why PPL is booking the amounts collected through rates as assets when they should be booked as liabilities. EPPG Boroughs further argue that ratepayers should not pay a return on these account balances, because they were already collected from ratepayers.

23. EPPG Boroughs note that booking the Account 146 balance of \$7,589,810 as a liability instead of as an asset would reduce the rate base by \$823,047 and the ATRR by \$112,264. EPPG Boroughs further note that booking Account 228.3 balance of \$315,801,653 as a liability reduces the rate base by \$34,245,847 and the ATRR by \$4,671,134.

24. PPL responds that these balances are actually not included in the 2011 Update and therefore have no effect on rate base. Specifically, PPL states that the amount recorded in Account 146 offsets entries in Account 924 (Property Insurance) and that the amount in Account 146 reflects the insurance premium costs which are due to PPL's affiliate, PPL Power Insurance LTD, and which are partially offset by storm insurance recoveries received. Additionally, PPL states that Account 228.3 offsets entries to Account 926 (Pensions and Benefits) and that the majority of these costs in Account 228.3 represent actual payments to vendors for medical and dental claims paid, employer matching contributions to employee savings plans, as well as life insurance, long-term disability, accidental death and dismemberment insurance premiums paid, and pension and post-retirement medical costs.¹⁶ In addition, PPL states that it does not earn a return on the balances in Accounts 146 and 228.3 and, therefore, EPPG Boroughs' challenge should be rejected.

¹⁶ January 24, 2011 Answer, PPL Kleha 2012 testimony at 11-12.

25. We find that the record indicates that the amounts that PPL books to Accounts 146 and 228.3 do not affect rate base and were not recovered in the 2011 Update. Therefore we summarily reject EPPG Boroughs' challenge on this issue.

2. 2011 Challenge No. 6

26. In Challenge No. 6, EPPG Boroughs dispute PPL's inclusion of \$32,608,502 for land held for future use in the transmission rate base. EPPG Boroughs state that PPL did not include this amount in its Pennsylvania retail rate case and did not demonstrate why this land is beneficial only to transmission customers and does not provide any benefits to its retail customers. EPPG Boroughs argue that this amount should be excluded in computing the ATRR which would reduce the ATRR by \$4,447,800.¹⁷

27. PPL responds that it has classified land held for future use by functionalizing and directly assigning land associated with electric plant rated at 69 kV and above as transmission-related and land associated with electric plant rated below 69 kV as distribution-related. PPL states that its FERC Form No. 1 lists land and rights-of-way associated with electric plant rated at 69 kV and above as transmission plant and land and rights-of-way associated with electric plant rated below 69 kV as distribution plant. PPL further states that its 2011 Update demonstrates how the amounts listed in the FERC Form No. 1 are used to determine the transmission portion of land held for future use, which ultimately is included at line 24 of the formula rate template. Therefore, PPL states that the transparency of the annual update, and the process of tracking amounts from its FERC Form No. 1 to the 2011 Update, clearly demonstrate that the \$32.6 million included at line 24 of the 2011 Update only includes the transmission portion of land held for future use.¹⁸

28. PPL also responds that the Commission should reject EPPG Boroughs' argument that land held for future use should be excluded from the 2011 Update because it was not included in PPL's state retail distribution rate case. PPL notes that the Commission, in the August 2011 Order, rejected the same comparison between PPL's retail distribution rate case and its 2010 Update.¹⁹ PPL states that, while the Pennsylvania PUC's rules and regulations do not allow for the recovery of land held for future use, Commission

¹⁷ EPPG Boroughs 2011 Formal Challenge at 8.

¹⁸ PPL January 13, 2012 Answer at 20-22.

¹⁹ *Id.* at 22 (citing August 2011 Order, 136 FERC ¶ 61,101 at P 40).

precedent and PPL's Commission-approved formula rate template do.²⁰ PPL states that the Commission should reject EPPG Boroughs' challenge as without merit.

29. Our determination of this issue is controlled by our findings in the August 2011 Order. We find that PPL appropriately accounted for land held for future use in its 2011 Update. Specifically, PPL's FERC Form No. 1 lists land and rights-of-way associated with electric plant rated at 69 kV and above as transmission plant and land and rights-of-way associated with electric plant rated below 69 kV as distribution plant.²¹ EPPG Boroughs' arguments about the discrepancies between PPL's filing with the Commission and its filings in Pennsylvania, again, deal purely with matters where Pennsylvania PUC and Commission procedures differ, and are therefore beyond the scope of what may be challenged under the Protocols.²² We reject those arguments.

3. 2011 Challenge No. 8

30. In Challenge No. 8, EPPG Boroughs dispute PPL's inclusion of \$37,904 of Pennsylvania Capital Stock Tax. Specifically, EPPG Boroughs state that this amount relates to the 2009 tax year and should therefore be excluded.²³

31. PPL responds that because it prepays Pennsylvania Capital Stock Tax each year based upon its estimated tax expense for the year, the estimated amount must be trued-up to reflect the actual tax expense for the year. Accordingly, PPL notes that the \$37,904 actually represents an adjustment to the amount of Pennsylvania Capital Stock Tax owed by PPL in 2009 to reflect the actual tax expense, and although the amount related to a prior period, the adjustment was incurred and paid during the 2010 calendar year.

32. PPL further notes that the formula rate template allows for the inclusion of prior period adjustments to tax expenses. Specifically, it states, Note E on Attachment 2 of the template states that only those prior period adjustments made during the "first year" should be excluded from the formula rate, but subsequent prior period adjustments, such as the 2009 Pennsylvania Capital Stock Tax adjustment, can be included in an annual

²⁰ *Id.* at 22 & n.79 (stating that the 2009 Settlement (at §5.2) specifically addressed the inclusion of land held for future use in the formula rate and provides guidelines that PPL must follow in including such costs in the annual update).

²¹ August 2011 Order, 136 FERC ¶ 61,101 at P 40.

²² *Id.*

²³ EPPG Boroughs 2011 Formal Challenge at 9.

update.²⁴ PPL emphasizes that the Commission rejected a similar argument in the August 2011 Order, finding that PPL's "formula rate allows for prior period adjustments except in the development of the revenue requirement for the First Rate year (2008-2009), which has passed" and that PPL "properly applied its formula rate."²⁵ Therefore, PPL states that the costs associated with the capital stock adjustment were properly included in the 2011 Update, and EPPG Boroughs' challenge should be rejected.

33. PPL argues that, to the extent that EPPG Boroughs are challenging the prudence of the costs associated with the Pennsylvania Capital Stock Tax adjustment, they have failed to provide any evidence to support their claim.²⁶

34. EPPG Boroughs raised a similar challenge to the prior period adjustments related to this state tax on which we ruled in the August 2011 Order.²⁷ We find that PPL's formula rate allows for prior period adjustments, except in the development of the revenue requirement for the first rate year, which has passed. As for any alleged imprudence involving this adjustment, the amount of any state tax is set by the state and there is no evidence that PPL was imprudent vis-à-vis the timing of this prior period tax adjustment. We find that PPL has properly applied its formula rate, and we reject this challenge.²⁸

4. 2011 Challenge No. 9

35. In Challenge No. 9, EPPG Boroughs raise two issues involving PPL's capital structure. First, EPPG Boroughs dispute the increases in PPL's debt cost to 6.69 percent from 5.01 percent in 2009, in PPL's preferred stock cost to 6.53 percent from 6.01 percent in 2009, and in PPL's percentage of common equity to total capitalization (common equity ratio) to 49.9 percent from 39.8 percent in 2009. EPPG Boroughs contend that PPL has not justified these increases.

36. Second, EPPG Boroughs argue that, because PPL Corporation, and not PPL Electric, issues the equity and debt, PPL Corporation's capital structure and costs should

²⁴ PPL January 13, 2012 Answer at 24.

²⁵ *Id.* at 25 (citing August 2011 Order, 136 FERC ¶ 61,101 at P 24).

²⁶ *Id.* at 25.

²⁷ August 2011 Order, 136 FERC ¶ 61,101 at P 24.

²⁸ *Id.*

be used in order to prevent any manipulations of capital structure simply to increase transmission service rates. EPPG Boroughs note that, by using PPL Corporation's capital structure, the overall return decreases by \$22,119,868 based on PPL's transmission rate base and by \$19,450,525 based on the adjusted rate base.²⁹

37. With respect to the allegation that it has not justified the increases in its debt and stock costs and common equity ratio, PPL responds that EPPG Boroughs have misstated these changes. PPL explains that in its 2010 Update, which was based on inputs from 2009, its debt cost was 7.70 percent and its preferred stock cost was 6.01 percent. Additionally, PPL notes that its common equity percentage was 47.8 percent in the 2010 Update. Therefore, from the 2010 Update to the 2011 Update, PPL's preferred stock cost increased by 0.52 percentage points to 6.53 percent, debt cost decreased by 1.01 percentage points to 6.69 percent, and the common equity ratio increased by 2.2 percentage points to 50 percent.

38. PPL also notes that the increase in its preferred cost was the result of redemptions of preferred stock and that its common equity ratio changed as a result of changes in its total long term debt, preferred stock, and common stock in proportion to its total capitalization from the 2010 Update to the 2011 Update, with total long term debt increased by approximately \$5.5 million, preferred stock decreased by approximately \$50.5 million, and common stock increased by \$98.5 million, resulting in a net increase of 2.2 percentage points in PPL's common equity percentage.³⁰

39. PPL further explains that the determination of its capital structure is governed by the formula rate and is based on actual data for PPL Electric. PPL notes that the formula rate template does not provide for the use of a hypothetical capital structure or any capital structure other than that set forth in its FERC Form No. 1. Therefore, PPL states that EPPG Boroughs' argument that PPL Corporation's capital structure should be used instead of PPL's capital structure is an attempt to modify the formula rate and is outside the scope of allowable challenges established by the Protocols.³¹

40. PPL also argues that to require it to use the capital structure of its parent to determine its rate of return would be contrary to Commission policy.³² PPL also notes

²⁹ EPPG Boroughs 2011 Formal Challenge at 9-10.

³⁰ PPL January 13, 2012 Answer at 26-27.

³¹ *Id.* at 27 & n.93 (citing August 2011 Order, 136 FERC ¶ 61,101 at P 14).

³² *Id.* at 27 (citing *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 49 (2007)).

that it is, in its own term, “ring-fenced” (that is, financially isolated) from PPL Corporation to ensure that it cannot access capital, and the corresponding cost of capital, from PPL Corporation and other affiliates.³³ PPL further notes that it issues its own long-term debt and preferred stock, and receives an independent rating from credit rating agencies.

41. We reject EPPG Boroughs’ challenge. First, PPL’s Protocols require that its ATRR be based on data from its FERC Form No. 1 and the Commission’s Uniform System of Accounts.³⁴ The 2011 Update reflects this mandatory treatment. While EPPG Boroughs argue that PPL has not justified these increases, PPL is not required to – the formula rate establishes the method for calculating the capital structure that the Commission previously found to be fair and reasonable when it accepted the 2009 Settlement.³⁵ PPL used actual data from its FERC Form No. 1, and the Protocols do not require anything else, including justification for any changes.

42. Second, we find that the formula rate obligates PPL to use its own capital structure, as set forth in its FERC Form No. 1, and not the structure of its parent corporation. Even if PPL sought to use its parent’s capital structure in its 2011 Update in order to mitigate the increases that EPPG Boroughs dispute, we could not permit PPL to do so, because such an adjustment would not conform to the terms of the formula rate, which is the rate on file. Accordingly, we reject this challenge.

5. 2011 Challenge No. 10

43. In Challenge No. 10, EPPG Boroughs argue that PPL’s ROE should be reduced from 11.68 percent to a 9.48 percent base ROE. EPPG Boroughs further argue that PPL should no longer receive an adder for participation in a regional transmission organization (RTO) because “it has been many years since PPL joined PJM and PPL has enjoyed the substantial benefits of PJM.”³⁶ EPPG Boroughs calculate that the use of an ROE of 9.48 percent would reduce the ATRR by \$34.8 million based on PPL’s transmission rate base and by \$30.6 million based on the adjusted rate base.

³³ *Id.* at 27.

³⁴ Protocols, Section III.B (2)(a)(b).

³⁵ Order Approving 2009 Settlement, 128 FERC ¶ 61,178 at P 9.

³⁶ EPPG Boroughs 2011 Formal Challenge at 10-11.

44. PPL responds by stating that EPPG Boroughs' challenge should be rejected. Specifically, PPL notes that the Commission rejected the same ROE challenge in the EPPG Boroughs' 2010 Formal Challenge, finding in the August 2011 Order that such a challenge is "outside the scope of allowable challenges to the Annual Update."³⁷ In any event, PPL argues, EPPG Boroughs' discounted cash flow (DCF) analysis supporting its proposed base ROE of 9.48 percent has several flaws which include, but are not limited to, the following: (1) the analysis had no supporting witness; (2) EPPG Boroughs did not include work papers or supporting documentation; (3) the proxy group members identified are not comparable to PPL; (4) there is no indication that the dividend yields have been adjusted in the manner required by the Commission; and (5) EPPG Boroughs' DCF analysis likely understates the required ROE for PPL because it fails to account for the substantial capital investments that PPL anticipates making in its transmission system in the next several years.³⁸

45. In addition, PPL asserts that EPPG Boroughs' objection to its retention of an incentive adder for its membership in PJM is not only outside the scope of a formal challenge, but also is contrary to the Commission's policy of using the adder to recognize the benefits of a utility's voluntary and continued membership in an RTO.³⁹

46. As we found in the August 2011 Order, EPPG Boroughs' challenge to the ROE is outside the scope of allowable challenges to the annual update and we therefore reject it.⁴⁰ Article 3 of the 2009 Settlement set forth stated ROE percentages for specific time periods, which the Commission approved and which PPL correctly applied. Given that the 2009 Settlement does not provide any flexibility with respect to incentive adders, we

³⁷ PPL January 13, 2012 Answer at 28-29 (citing August 2011 Order, 136 FERC ¶ 61,101 at P 72).

³⁸ *Id.* at 28-30.

³⁹ *Id.* at n.101 (citing *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (2006), FERC Stats. & Regs. ¶ 31,222, at PP 327, 331 (2006); *order on reh'g*, Order No. 679-A, 72 Fed. Reg. 1152 (2007), FERC Stats. & Regs. ¶ 31,236 (2007); *order denying reh'g*, 119 FERC ¶ 61,062 (2007) (stating that an entity is eligible for the RTO incentive adder "if it can demonstrate that it has joined an RTO, ISO, or other Commission-approved Transmission Organization, and that its membership is on-going" and finding that the "basis for the incentive is a recognition of the benefits that flow from membership in such organizations and the fact that continuing membership is generally voluntary")).

⁴⁰ August 2011 Order, 136 FERC ¶ 61,101 at P 72.

also dismiss EPPG Boroughs' suggestion that the RTO incentive adder be removed. There is no basis on which to change the current ROE.

V. Matters Partly Resolved and Partly Set for Hearing and Settlement Judge Procedures

A. 2010 Formal Challenge

1. 2010 Challenge Paragraph 20 (a-h)

47. The Commission rejected EPPG Boroughs' challenge paragraph 20, regarding discrepancies between the data used in PPL's 2010 Update and in its Pennsylvania Retail Rate Case (PA Retail Rate Case), Docket No. R2010-2161694. In sub-paragraphs (a) through (h) of paragraph 20, EPPG Boroughs listed the various ways in which the PA Retail Rate Case uses different numbers than the 2010 Update.⁴¹ The Commission noted that data used in the PA Retail Rate Case and in the 2010 Update were not directly comparable. The Commission further noted that the 2010 Update was limited in scope, being not a rate change application, but rather only an update to inputs and values, based on certain adjustments, the main one being a projection for new plant additions for the next year of 2010 which assumes that all expenses will change in proportion to the increase in plant. In contrast, the PA Retail Rate Case was a rate change application that required PPL to project changes to its historical 2009 plant and expenses to produce projected 2010 amounts which are then further adjusted by normalization and annualization processes. Based on that analysis, the Commission rejected this challenge.

48. On rehearing, EPPG Boroughs clarify that their questions related to the accuracy of PPL's inputs to the 2010 Update. Specifically, EPPG Boroughs question the amounts for the year 2009 used in the PA Retail Rate Case as well as the 2010 Update. EPPG Boroughs note that the differences in the two cases are not insignificant and the Commission must now require PPL to provide the detailed explanation of the difference in the amounts used in the PA Retail Case and 2010 Update.

⁴¹ The specific items which EPPG Boroughs listed in sub-paragraphs (a) through (h) are, respectively: Land Held for Future Use; Transmission Materials and Supplies; Transmission Prepayments; General and Intangible Plant; General and Intangible Accumulated Depreciation; Transmission O&M; Total A&G Expense; and Income Taxes. We discuss several of these items elsewhere in this order, and set some of them for hearing and settlement judge proceedings for reasons other than their alleged discrepancy with the PA Retail Rate Case. To the extent that a specific item is not discussed elsewhere in this order, that item is not set for hearing.

49. Additionally, EPPG Boroughs argue that the Commission ignored their concern about the amount of federal income tax prepayment included in the 2010 Update. EPPG Boroughs clarify that it was not a prepayment for a future period; it was a payment for the income taxes that PPL already collected from its customers during 2009. Specifically, EPPG Boroughs states that for the tax year 2009, PPL received a refund of \$58.25 million which does not benefit customers; however, PPL earned \$263,571, which is a windfall to PPL at unnecessary cost to transmission customers. EPPG Boroughs note that in the PA Retail Rate Case, PPL did not use this amount as prepayments as the Pennsylvania Public Utility Commission (Pennsylvania PUC) is not as “generous” as is the Commission. In addition, EPPG Boroughs assert that the inclusion of the refund resulted in transmission customers being charged for estimated federal tax payments that were substantially greater than PPL’s actual tax liability. Therefore, EPPG Boroughs argue that PPL should be ordered to exclude this prepayment.

50. When EPPG Boroughs initially raised their concerns about federal income tax prepayments in its 2010 Formal Challenge, PPL, in its January 24, 2011 Answer, stated that it uses the annualization method established by the Internal Revenue Service to estimate its federal income tax payments.⁴² PPL explained that the annualization method allows a company to establish a prepaid balance when it overpays its federal income taxes due to actual taxes being lower than estimated taxes paid. According to PPL, this method shields a corporation from the risks associated with underpayment, which entail significant additions to taxes based on the amount of the underpayment. PPL emphasized that its actual federal income tax owed for the fourth quarter of 2009 was lower than the estimate derived by the annualization methodology; therefore, it established a prepaid balance after the 2009 calendar year.⁴³ According to PPL, under the formula, the prepayment expense is subject to the true-up adjustment, meaning ratepayers are credited with interest in the next Annual Update for any decrease in the prepayment amount.⁴⁴

51. We grant rehearing in part. We reaffirm our earlier finding that the discrepancies between the data used in the 2010 Update to the Commission and the data given to the Pennsylvania PUC in the PA Retail Rate Case are innocuous and beyond the scope of a challenge because they are due to the different calculations that are done to arrive at the relevant figures in both contexts. However, we will set for hearing and settlement judge procedures EPPG Boroughs’ allegations set forth in P 49 above regarding PPL’s treatment of tax prepayments and the tax refund of \$58.25 million.

⁴² PPL January 24, 2011 Answer at 24.

⁴³ *Id.*

⁴⁴ PPL January 24, 2011 Answer, Kleha 2011 Testimony at 17.

2. 2010 Challenge Paragraph 26

52. In the August 2011 Order, the Commission rejected EPPG Boroughs' challenge alleging that the total of PPL's A&G benefits excessively outweighed total A&G salaries, as well as their allegation that A&G salaries and benefits were imprudently increased from 2008 to 2009. The Commission found that EPPG Boroughs failed to present any evidence that the increase in salaries and benefits was imprudent, or that it was inaccurate. The Commission further confirmed that PPL had properly applied its formula rate in increasing A&G benefits, noting PPL's detailed explanation and finding that such a decision was within the broad discretion that utilities are afforded in making operational business decisions.

53. In their request for rehearing, EPPG Boroughs state that they do not have a problem with PPL deciding upon the level of salaries and benefits for its employees. However, EPPG Boroughs state that they do object, as PPL customers, to being "required to pay unjustified salaries and benefits which continue to increase every year at double and triple digit rates."⁴⁵ EPPG Boroughs argue that they raised a serious doubt about the increase in benefits, which they claim is unreasonable by any standard. Therefore, EPPG Boroughs argue that the Commission should hold PPL to be responsible to show the prudence of such a hefty increase.

54. We affirm in part our determination on this issue. According to PPL witness Mr. Kleha's testimony, PPL's A&G benefits expense exceeded its A&G salaries expense by approximately 28 percent in 2009. In the August 2011 Order, we rejected EPPG Boroughs' challenge on this issue. Nothing raised on rehearing persuades us that we erred in this determination. Therefore, on rehearing, we affirm our rejection of that challenge because a 28 percent difference between salaries and benefits is not unusual or imprudent given modern corporate compensation.

55. However, we grant rehearing in part with respect to the approximate 55 percent increase in PPL's A&G benefits from 2008 to 2009. While PPL's FERC Form No. 1 data, along with Mr. Kleha's testimony, shows that PPL had three officers listed in 2008, four officers listed for 2009, and five officers listed for 2010, which might explain the significant increase in benefits throughout those years, we are unable to rule on this portion of the challenge without further information. Therefore, we grant rehearing on this issue and set it for hearing and settlement judge procedures.

⁴⁵ EPPG Boroughs Request for Rehearing at 16.

3. 2010 Challenge Paragraph 28

56. The August 2011 Order rejected EPPG Boroughs' challenge regarding the recovery of certain insurance expenses in Account 924. EPPG Boroughs asserted that PPL failed to clarify whether certain insurance expenses were related to storm damage to distribution or transmission facilities or both and that those expenses should therefore be excluded. The Commission found that EPPG Boroughs could not challenge the recovery of the increase in insurance expenses for two reasons. First, EPPG Boroughs had not disputed that those expenses were actually incurred by PPL. Second, the Commission concluded that whether a portion of the insurance expenses related to PPL's distribution plant was not properly part of a Formal Challenge. However, the Commission directed PPL to make an offset to the functional expense or plant account corresponding to the relevant insurance expense account in its next true-up adjustment.

57. On rehearing, EPPG Boroughs reassert that PPL's allocation to transmission of an increase of \$4 million of insurance expense related to storm damages booked in Account 924 is improper and that all of the increase should be allocated to distribution plant and customers rather than being allocated in part to transmission through the use of a net plant allocator. While the August 15 Order ordered PPL to use the insurance recovery as an offset to plant accounts, EPPG Boroughs argues that the Commission should also order PPL to apply the offset to plant accounts in the same manner as it allocated the insurance costs.⁴⁶

58. Given that we have already required PPL to make an appropriate offset for insurance recoveries, we find that, if EPPG Boroughs dispute the manner in which PPL has complied with the Commission's order, they should address that concern in PPL's true-up adjustment filings. However, upon reconsideration, we also find that we should not have summarily dismissed EPPG Boroughs' allegation regarding whether this expense was properly allocated to transmission customers as not properly part of a Formal Challenge. Thus, we grant rehearing on this issue and will set for hearing and settlement procedures EPPG Boroughs' assertion that the \$4 million increase should have been allocated entirely to distribution customers, rather than partly to distribution and partly to transmission through the use of a net plant allocator.

⁴⁶ *Id.* at 17.

B. 2011 Formal Challenge**2011 Challenge No. 4**

59. In Challenge No. 4 to PPL's 2011 Update, EPPG Boroughs dispute PPL's inclusion of \$74,734,329 of prepayments of federal income taxes. EPPG Boroughs argue that this payment is not in advance of the actual expenses incurred and thus is not a recoverable amount. In addition, EPPG Boroughs claim that PPL has admitted that its prepayment exceeded the actual income tax expenses that it ended up incurring by \$58,244,059.⁴⁷ EPPG Boroughs further assert that PPL earns significant returns on these overpayments, which remain in interest-bearing accounts for several months before the prepayment is returned to ratepayers.⁴⁸ EPPG Boroughs also argue that PPL has not included this prepayment in its last Pennsylvania retail case. EPPG Boroughs note that if this amount were excluded, the ATRR would decrease by \$1,105,422.⁴⁹

60. PPL responds that only a portion of the total federal income tax prepayment is included in its ATRR. PPL notes that the total federal income tax prepayment is functionalized using the Wages and Salary Allocator, and, as a result, only approximately \$8.1 million is included in its rate base, and the effect on its ATRR is approximately \$1.1 million. Further, PPL states that its formula rate template allows for the inclusion of this federal income tax prepayment, consistent with the Commission's Uniform System of Accounts. Moreover, PPL notes that the federal income tax prepayment expense is subject to the Protocols' true-up adjustment; therefore, as the prepayment amount fluctuates year-to-year, ratepayers will be credited with interest in the next annual update for any decrease in the prepayment amount.⁵⁰

61. Finally, PPL states that the Pennsylvania PUC and the Commission follow different ratemaking practices and procedures, and comparisons between them are not appropriate. PPL states that the Commission should, consistent with its August 2011 order, reject EPPG Boroughs' argument that the exclusion of federal income tax

⁴⁷ EPPG Boroughs 2011 Formal Challenge at 6.

⁴⁸ *Id.*

⁴⁹ *Id.* at 5-7.

⁵⁰ PPL January 13, 2012 Answer at 16-18.

prepayments in its retail distribution rate case means the same exclusion should apply to its 2011 Update.⁵¹

62. The August 2011 Order noted that the formula rate specifically permits the recovery of prepayments of federal income taxes and thus its inclusion in the formula rate is beyond the scope of the proceeding as a challenge to the formula rate itself, rather than to the updated amount. That holding applies here. We also reaffirm our earlier finding that discrepancies between the amounts used in the PA Retail Rate Case and the 2011 Update are beyond the scope of a legitimate challenge.

63. However, as we found above with respect to EPPG Boroughs' 2010 Formal Challenge on rehearing, we find that a genuine issue of material fact exists concerning whether PPL's recovery of prepayments for federal income taxes in its 2011 Update was excessive, in light of EPPG Boroughs' assertions that PPL's actual income tax liability in recent years has been only a fraction of the amount prepaid by ratepayers. Therefore, we set this issue for hearing and settlement judge procedures.

VI. Matters Set Entirely for Hearing and Settlement Judge Procedures

A. 2010 Formal Challenge

1. General Matters

64. EPPG Boroughs generally argue in their request for rehearing that the August 2011 Order provided incentives to PPL and other transmission owners to include at their sole discretion in the formula rate update any costs and expenses they wish. They criticize the G&I plant and A&G expenses items in the formula rate template for resembling "black boxes," which refers to settlements in which individual cost components are not specified or left unexplained as part of a compromise or effort to keep the settlement simple.⁵²

65. Finally, EPPG Boroughs contend that the Commission's August 2011 Order constituted a violation of the Boroughs' right to due process by denying their motion for an evidentiary hearing on the grounds that the Commission's decision as to whether to hold an evidentiary hearing is generally discretionary.

⁵¹ *Id.* at 19 (citing August 2011 Order, 136 FERC ¶ 61,101 at P 40).

⁵² EPPG Boroughs Request for Rehearing at 5.

66. After further consideration, we find that several challenges from both the 2010 and 2011 Updates involve genuine issues of material fact and we therefore set these challenges in their entirety for hearing and settlement judge procedures. Upon consideration of EPPG Boroughs' rehearing of our findings on the specific challenges discussed below, we find that the August 2011 Order erred in summarily dismissing those challenges and EPPG Boroughs has raised sufficient doubts as to PPL's explanation of and/or support for these specific items (including the accuracy of the amount and/or whether the item was properly allocated in part or in whole to transmission customers) to warrant holding an evidentiary hearing. We therefore grant rehearing and reverse our denial, in the August 2011 Order, of EPPG Boroughs' motion for an evidentiary hearing for the specific issues denoted herein. In addition, with respect to the specific matters raised in the 2011 Formal Challenge that we discuss below, we find that EPPG Boroughs has raised sufficient doubts as to PPL's explanation of and/or support for these specific items (including the accuracy of the amount and/or whether the item was properly allocated in part or in whole to transmission customers) to warrant a trial-type hearing.

2. 2010 Challenge Paragraph 16

67. Challenge Paragraph 16 involves EPPG Boroughs' concerns that PPL Energy did not satisfactorily respond to its earlier data request seeking support for the costs of New Transmission Plant Additions, which information, EPPG Boroughs asserted, is needed to ascertain ... [the] reasonableness and prudence of [any] cost overruns."⁵³ In that data request, EPPG Boroughs had requested that PPL "provide all cost estimates made for each of the Projects costing over \$1 million including initial and later revisions, whether any of these estimates is official or non-official." As noted in the August 2011 Order, PPL, while objecting to the data request as unduly burdensome, nonetheless provided its both 2009 and 2010 Business Plan Project Costs for seven individual projects, which, according to PPL, is the best information available for tracking changes in project costs as it does not maintain "unofficial" estimates for capital projects. The August 2011 Order also noted PPL's statement that the PJM Regional Transmission Expansion Plan (RTEP) annual report includes estimated costs for included projects.⁵⁴

68. In its August 2011 Order, the Commission found that PPL reasonably satisfied its obligation to respond to EPPG Boroughs' request and therefore rejected the formal challenge.⁵⁵ On rehearing, EPPG Boroughs emphasize that they still lack sufficient

⁵³ EPPG Boroughs 2010 Formal Challenge at 8.

⁵⁴ August 2011 Order at P 26.

⁵⁵ *Id.* P 27.

information to ascertain the reasonableness of the costs of New Transmission Plant Additions and the prudence of cost overruns, if any. They assert that neither PPL's data response nor the PJM RTEP website provide them with the necessary information to make these determinations.

69. Upon reconsideration of this issue, we find that EPPG Boroughs has raised sufficient doubts as to PPL's explanation of and/or support for the New Transmission Plant Additions. Therefore, the reasonableness of the costs of New Transmission Plant Additions, including the prudence of any cost overruns, is a genuine issue of material fact that will require an evidentiary hearing for resolution. We therefore grant rehearing and set this matter for hearing and settlement judge procedures.

3. 2010 Challenge Paragraphs 17 and 25

70. With respect to Challenge Paragraphs 17 and 25, which both concern expenses in Account 923 (Outside Services Employed), given the overlap between EPPG Boroughs' contentions, we discuss them together.

71. Challenge Paragraph 17 involves whether PPL included any regulatory expense in Account 923 (Outside Services Employed) and also whether it properly applied the formula rate for this account. In its August 2011 Order, the Commission dismissed EPPG Boroughs' challenge, finding that PPL had clearly stated that no regulatory expenses were included in Account 923 and that it had properly applied the formula rate for this account.⁵⁶ On rehearing, EPPG Boroughs more specifically contend that PPL refused to provide information relating to costs associated with civil litigation and other proceedings. We now determine, on rehearing, that there is a genuine issue of material fact which exists concerning the specific items included in Account 923 and whether their inclusion is appropriate for purposes of allocation to transmission customers. Therefore, we grant rehearing and set this matter for hearing and settlement judge procedures.

72. With regard to Challenge Paragraph 25, in its August 2011 Order, the Commission found that the formula rate allows PPL to recover civil litigation costs as part of its Account 923 (Outside Services Employed) expenses without reference to the specific issues of the civil litigation. The Commission also found that PPL properly employed the Wages and Salary Allocator to allocate Account 923 to the transmission function as specified in the formula rate.⁵⁷ EPPG Boroughs contend on rehearing that PPL has not

⁵⁶ *Id.* P 30.

⁵⁷ *Id.* P 58.

presented any explanation as to whether outside legal services were properly allocated to transmission customers. We find a genuine issue of material fact with respect to this issue. On rehearing, we find that the allocation to transmission customers of the costs associated with civil litigation is more appropriately addressed at hearing. However, we also find that EPPG Boroughs' assertion that these legal expenses were improperly incurred because they were caused by PPL's anti-competitive activities is without basis, as the subject expenses relate to the defense of a tortious interference with contract claim, which is not an antitrust claim. We therefore reject that portion of the challenge, but set the other aspects of the challenge for hearing and settlement judge procedures.

4. 2010 Challenge Paragraph 18

73. Regarding Challenge Paragraph 18, in its August 2011 Order the Commission found that PPL's explanation of the inclusion of Accumulated Deferred Income Taxes (ADIT) in the amount of \$21,519,517 in the ATRR to be appropriate.⁵⁸ EPPG Boroughs contend on rehearing that PPL improperly included ADIT expenses related to Contributions In Aid of Construction (CIAC) in its ATRR and maintain that, if this inclusion is permitted, PPL will be receiving a return on the income taxes it has already collected. On rehearing, we find that further information is needed to determine whether it is appropriate to allow PPL to collect ADIT expenses related to CIAC through its ATRR. Therefore, we set this matter for hearing and settlement judge procedures.

5. 2010 Challenge Paragraph 21

74. With regard to Challenge Paragraph 21, in its August 2011 Order the Commission found that PPL appropriately used the Wages and Salary Allocator as prescribed in the formula rate template with respect to nine specific cost items included in General Plant.⁵⁹ Additionally, the Commission found that the use of the allocation factor for General Plant items is fully consistent with long-standing Commission precedent.⁶⁰ EPPG Boroughs contend on rehearing that PPL's inclusion of expenses related to the nine items allocated

⁵⁸ *Id.* P 33.

⁵⁹ The specific items are: (1) Meter Data Management System; (2) Maintenance Management System; (3) Mobile Operations Management System; (4) LIDAR System; (5) Self-Service Payment Agreement Process update; (6) Harrisburg Service Center renovations; (7) Walbert Training Center renovations; (8) Cumberland Service Center renovations; and (9) Increases to Transportation Equipment, Tools and Garage Equipment and Communications Equipment.

⁶⁰ August 2011 Order at P 43.

to transmission customers was improper and that PPL provided no argument or evidence rebutting these assertions or otherwise adequately supported its inclusions of the expenses relative to these items. EPPG Boroughs further contend that they did not challenge the allocation of general and intangible facilities using the Wages and Salary Allocator; rather, they challenged the inclusion of the cost of the nine items on the basis that they are related only to distribution function and should not have been included as part of G&I Plant. After further consideration, on rehearing, we agree that PPL has not adequately explained why these items are appropriately included in G&I Plant. We therefore find that a genuine issue of material fact exists regarding the adequacy of the explanation and support for the inclusion of these nine specific items in General Plant and whether or not they solely serve a distribution function. We therefore set that matter for hearing and settlement judge procedures.

6. 2010 Challenge Paragraph 22

75. Regarding Challenge Paragraph 22, in its August 2011 Order, the Commission found that PPL appropriately transferred \$5,985,280 of investment in computer software relating to line outage management from General Plant Account 390.2, Structures and Improvements, to Intangible Plant Account 303, Miscellaneous Intangible Plant.⁶¹ EPPG Boroughs argue on rehearing that PPL's allocation of line outage management software to transmission customers was improper and that PPL has not satisfactorily explained why this expense was allocated to transmission customers. After further consideration on rehearing, we find that a genuine issue of material fact exists with respect to this issue. Specifically, we find that it is unclear whether and how line outage management software relates to transmission and thus, whether it should be allocated solely to distribution customers rather than transmission. Accordingly, we set this matter for hearing and settlement judge procedures.

7. 2010 Challenge Paragraph 23

76. With regard to Challenge Paragraph 23, in its August 2011 Order, the Commission found that PPL properly followed the language of the formula rate with respect to the allocation of investment costs of facilities with secondary voltages of less than 69 kV.⁶² EPPG Boroughs allege on rehearing that PPL improperly allocated at least part of the costs associated with five specific substations to transmission customers. EPPG Boroughs argue that PPL did not provide any evidence demonstrating that the costs of these five substations should be allocated to transmission customers, given their low

⁶¹ *Id.* PP 44-47.

⁶² *Id.* PP 48-51.

secondary voltage. After further consideration on rehearing, we find a genuine issue of material fact with respect to this issue. Based upon the information provided, it is unclear whether any of the facilities with secondary voltages of less than 69 kV should have been included in transmission rate base. Therefore, we set this matter for hearing and settlement judge procedures.

8. 2010 Challenge Paragraph 24

77. With regard to Challenge Paragraph 24, in its August 2011 Order, the Commission found that EPPG Boroughs failed to present any evidence that PPL had improperly allocated an increase in A&G Salaries and Wages from \$1,245,209 in 2008 to \$3,749,631 in 2009. The Commission also found that PPL sufficiently explained the origin of the approximate \$1.8 million increase in salaries and wages as well as explained why that amount was not actually included in the ATRR.⁶³ EPPG Boroughs contend on rehearing that the increases in A&G Salaries and Wages from 2008 to 2009, which constitute an approximate 204 percent increase, were imprudent and unreasonable. EPPG Boroughs further contend on rehearing that, although PPL explained the source of the increase, PPL had not provided an adequate justification for the specific increase. Upon reconsideration of this matter, we agree that, although PPL accounted for the source of this increase, PPL has not provided an adequate explanation of and support for the actual increase from 2008 to 2009, which is needed to justify the actual amount used in the 2010 Annual Update. We therefore find a genuine issue of material fact with respect to this issue. We thus set this matter for hearing and settlement judge procedures.

9. 2010 Challenge Paragraph 27

78. With regard to Challenge Paragraph 27, in its August 2011 Order, the Commission found that PPL properly applied the formula rate's Wage and Salary Allocator to allocate to transmission customers a portion of Environmental Remediation Costs (\$235,854) and a payment from insurance related to such remediation (\$141,085).⁶⁴ EPPG Boroughs contend on rehearing that PPL should not allocate any environmental remediation costs to transmission customers on the grounds that the remediation relates exclusively to PPL's gas operations and gas plant. After further consideration, on rehearing, we find that PPL did not adequately explain whether the remediation related only to its gas plant and operations, and if so, why it would then be appropriate to allocate any remediation costs to transmission customers. We find a genuine issue of material fact on this issue. Therefore, we set this matter for hearing and settlement judge procedures.

⁶³ *Id.* P 55.

⁶⁴ *Id.* PP 63-65.

B. 2011 Formal Challenge**1. 2011 Challenge No. 1**

79. In Challenge No. 1, EPPG Boroughs dispute the inclusion of the following four specific items as intangible plant: (1) energy acquisition software; (2) meter data management software system; (3) customer service system; and (4) customer service center phone system. EPPG Boroughs contends that these items serve distribution- and customer service-related functions and therefore should not be included in intangible plant and allocated to transmission customers via the ATRR. We agree that PPL's inclusion of these items in intangible plant, and their allocation to transmission customers, raise genuine issues of material fact. Therefore, we set this matter for hearing and settlement judge procedures.

2. 2011 Challenge No. 2

80. In Challenge No. 2, EPPG Boroughs dispute the inclusion in General Plant of what PPL refers to as the "self-service payment agreement process update." EPPG Boroughs argues that this item relates only to distribution service and should therefore be excluded from General Plant. As we did with reference to 2010 Challenge Paragraph 21, which involves this same item, we find that whether the item is related to transmission service, and thus allocated in part to transmission customers, is a genuine issue of material fact which is appropriately resolved at a trial-type hearing. Therefore, we set this matter for hearing and settlement judge procedures.

3. 2011 Challenge No. 3

81. In Challenge No. 3, EPPG Boroughs contend, similar to 2010 Challenge Paragraph No. 18, discussed above, that PPL improperly included ADIT expenses related to CIAC in Account 190. As we did with respect to the inclusion of this item in the 2010 Annual Update, we find there are genuine issues of material fact relating to this issue and we therefore set this matter for hearing and settlement judge procedures.

4. 2011 Challenge No. 7

82. In Challenge No. 7, EPPG Boroughs dispute, similar to 2010 Challenge Paragraph No. 27, discussed above, PPL's inclusion of environmental remediation costs relating to gas operations as an electric A&G expense. As we did with respect to this item in the 2010 Annual Update, we find PPL has not adequately explained whether the remediation related only to its gas plant and operations, and if so, why it would then be appropriate to allocate any remediation costs to transmission customers. Therefore, we set this matter for hearing and settlement judge procedures.

VII. Hearing and Settlement Judge Procedures

83. As explained above, under the previously approved settlement and the Protocols adopted therein, the Commission is granted the discretion – when presented with a Formal Challenge – to opt for a hearing and settlement judge procedures rather than rule summarily. Here, a number of the challenges raise issues of material fact. Accordingly, consistent with the settlement and the Protocols, we will set them for hearing and settlement judge procedures.

84. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶⁵ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.⁶⁶ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

85. Finally, we address the matter of changes to the data inputs used in the 2010 and 2011 Updates that may result from the hearing and settlement judge procedures. Section VII(A) of the Protocols states that:

Any changes to the data inputs . . . as the result of any FERC proceeding to consider the Annual Update . . . shall be incorporated into the Formula Rate and the charges produced by the Formula Rate (with interest determined in accordance with 18 C.F.R. § 35.19a) in the Annual Update for the next effective Rate Year. This reconciliation mechanism shall

⁶⁵ 18 C.F.R. § 385.603 (2012).

⁶⁶ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

apply in lieu of mid-Rate Year adjustments and any refunds or surcharges.

The Protocols thus specify that any changes to the data inputs at issue in the 2010 and 2011 Annual Updates are to be reflected through incorporation into the Formula Rate, rather than through refunds or surcharges, as generally would be the case for a rate change application submitted under section 205 of the Federal Power Act.⁶⁷ Therefore, any modifications to the 2010 Update or 2011 Update adopted by the Commission or agreed to in a settlement shall be undertaken according to the Protocols.

The Commission orders:

(A) EPPG Boroughs' request for rehearing of the August 2011 Order is hereby granted in part and denied in part, as discussed in the body of this order.

(B) EPPG Boroughs' 2011 Formal Challenge is hereby granted in part and rejected in part, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning those aspects of PPL's 2010 Update set for hearing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning those aspects of PPL's 2011 Update set for hearing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2012), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the

⁶⁷ See P 11 & note 8, *supra*.

date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The presiding administrative law judge shall advise the Commission, no later than fifteen (15) days prior to the deadline for submitting a Formal Challenge on PPL's 2012 Annual Update, in the event that the presiding judge has not by that date certified to the Commission a settlement which, if accepted, would dispose of the proceeding or issued an initial decision, as to the status of the proceeding and a best estimate as to when the proceeding will be disposed of by the presiding judge.

(I) Pursuant to the authority set forth in Section 375.304(b)(1)(i) of the Commission's regulations, Docket Nos. ER09-1148-000 and ER09-1148-001 are hereby consolidated for hearing, settlement, and decision.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.