

125 FERC ¶ 61,121  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Electric Utilities Corporation

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

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS  
SUBJECT TO REFUND AND SUBJECT TO CONDITION, AND  
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEEDINGS

(Issued October 29, 2008)

1. On August 28, 2008, as amended on August 29, 2008, PPL Electric Utilities Corporation (PPL) submitted, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> revised tariff sheets to PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (OATT) to substitute a formula rate for its stated rates for the provision of network and point-to-point transmission service.<sup>2</sup> The formula rate incorporates a return on equity (ROE) of 12.84 percent, which includes a transmission rate incentive of 50 basis points for continued membership in PJM. The Commission accepts and suspends the revised tariff sheets to be effective November 1, 2008, subject to refund and condition, and the outcome of hearing and settlement judge procedures.

**I. Background**

2. PPL is a wholly-owned subsidiary of PPL Corporation and owns transmission and distribution facilities within PJM serving eastern and central Pennsylvania, and provides transmission service in accordance with PJM's OATT. PPL and its predecessors have been members of PJM and its predecessor organizations since 1927. PPL's currently-effective stated rates have been in effect since 1998.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> See Appendix for list of tariff sheets.

<sup>3</sup> *PPL Electric Utilities Corp.*, 85 FERC ¶ 61,347 (1998).

3. On December 21, 2007 in Docket No. ER08-23-000, PPL, jointly with Public Service Electric and Gas Company, filed a petition for declaratory order pursuant to section 219 of the FPA<sup>4</sup> and Order No. 679<sup>5</sup> seeking rate incentives for a proposed 500-kV transmission project, the Susquehanna-Roseland Line (Susquehanna Line). The Susquehanna Line is a baseline project under PJM's Regional Transmission Expansion Plan.<sup>6</sup> It will span 130 miles across Pennsylvania to northern New Jersey and is expected to be completed by 2012. PPL's 84-mile portion of the Susquehanna Line is estimated to cost between \$300 and \$350 million.

4. In its petition for declaratory order, PPL requested the following Order No. 679 incentives: (1) a 50-basis point ROE adder for all of its transmission facilities for continued membership in an RTO; (2) a 150-basis point ROE adder for the risks and challenges faced by the Susquehanna Line; (3) authority to include 100 percent of construction work in progress (CWIP) expenses in rate base; and (4) 100 percent recovery of prudently incurred construction costs in the event that the Susquehanna Line is abandoned as a result of factors beyond its control.

5. On April 22, 2008, the Commission granted the request for declaratory order and approved PPL's requested incentives for continued membership in PJM, CWIP, and abandonment costs.<sup>7</sup> The Commission denied the request for a 150-basis point ROE adder, finding that based on the risks associated with the Susquehanna Line, a 125-basis point adder was more appropriate. The Commission noted that the 125-basis point adder would be bound by the upper end of the zone of reasonableness, which would be determined in a future section 205 filing.<sup>8</sup>

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<sup>4</sup> 16 U.S.C. § 824s (2006).

<sup>5</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222; *order on reh 'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006); *order denying reh 'g*, 119 FERC ¶ 61,062 (2007).

<sup>6</sup> See PJM 2007 Regional Transmission Expansion Plan, <http://www.pjm.com/planning/reg-trans-exp-plan.html>. at 54 (noting that the PJM Board formally approved the Susquehanna Line in June 2007).

<sup>7</sup> *PPL Electric Utilities Corp. and Public Service Electric & Gas Co.*, 123 FERC ¶ 61,229 (2008).

<sup>8</sup> *Id.* P 39.

## II. Proposal

6. On August 28, 2008, in Docket No. ER08-1457-000, PPL filed revised tariff sheets to implement a formula rate for transmission service based on its projected annual transmission revenue requirement (ATRR). On August 29, 2008, in Docket No. ER08-1457-001, PPL filed a substitute Exhibit No. 103 to its August 28 Filing. PPL proposes to use actual calendar year cost data from its FERC Form No. 1 to populate the formula rate spreadsheet or template. The formula rate includes inputs for ROE, forecasted plant additions, and CWIP for Commission-approved incentive projects. The ATRR produced by the formula is the sum of the return on rate base, operation and maintenance expense, depreciation expense, taxes other than income taxes, and income taxes less any applicable revenue credits. PPL proposes that the initial projected ATRR be in effect from November 1, 2008, through May 31, 2009. The initial ATRR will be based on actual costs as reflected in PPL's Form No. 1. Subsequent ATRRs will go into effect on June 1 of each succeeding year, based on the prior year actual costs and projected transmission capital additions for the rate year. The true-up mechanism reconciles projected costs with actual costs.

7. PPL proposes a base ROE of 12.34 percent as a stated value that is only subject to change pursuant to a filing under section 205 or 206 of the FPA. PPL states that this base ROE plus a 50-basis point adder for continued membership in PJM will result in an ROE for non-incentive projects that falls well within the zone of reasonableness. PPL further states that the 125 basis-point incentive for the Susquehanna Line will result in an ROE of 14.09 percent for that project, which it states is still within the zone of reasonableness.

8. To develop its proposed ROE, PPL states that it applied a discounted cash flow analysis to a sample of publicly-owned regulated electric utilities (or their holding companies) based on the Northeastern proxy group prescribed in *PATH*<sup>9</sup> and the guidance provided by the Commission in *SoCal Edison* and *Consumers Energy*.<sup>10</sup> PPL states that consistent with *PEPCO* and *VEPCO*,<sup>11</sup> its sample did not include: (1) companies that do not pay common dividends; (2) companies for whom no I/B/E/S growth rate or Value Line data is available; (3) companies who are involved in merger

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<sup>9</sup> PPL Exhibit No. PPL-300 at 8, citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 95-105 (2008) (*PATH*).

<sup>10</sup> *Id.*, citing *Southern California Edison Co.*, 92 FERC ¶ 61,070 (2000) (*SoCal Edison*); *Consumers Energy Co.*, 98 FERC ¶ 61,333 (2002) (*Consumers Energy*).

<sup>11</sup> *Id.* at 9, citing *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176, at P 113 (2008) (*PEPCO*); *Va. Electric & Power Co.*, 123 FERC ¶ 61,098, at P 61 (2008) (*VEPCO*).

activities; and (4) companies whose business is comprised mainly of natural gas operations.

9. PPL states that it did not include companies that do not have a Standard and Poor's or Moody's credit quality rating equivalent to, one notch above, or one notch below the ratings for PPL and companies that have unsustainably high growth rates.<sup>12</sup> PPL states that consistent with the Commission's orders in *PEPCO* and *VEPCO*, it eliminated those utilities whose Standard and Poor's or Moody's credit ratings were more than one rating above or below its rating of A- (Standard and Poor's) and Baa1 (Moody's).<sup>13</sup> The resulting proxy group included utilities with a Standard and Poor's credit rating between A to BBB+ (or Moody's equivalent), which consists of American Electric Power Company Inc., Consolidated Edison Inc., Dominion Resources Inc., DPL Inc., Exelon Corporation, FPL Group, Inc., Northeast Utilities and Public Service Enterprise Group Inc. Based on this proxy group, PPL states that the zone of reasonable returns for its cost of equity is 8.35 percent to 16.32 percent. PPL is proposing a baseline ROE of 12.34 percent, which is the midpoint of this range.<sup>14</sup>

10. In addition to filing revised tariff sheets which include the non-populated formula template and protocols, PPL submitted a spreadsheet which shows the inputs for the initial projected ATRR.

### **III. Notice**

11. Notice of PPL's filing was published in the *Federal Register*, 73 Fed. Reg. 52,348 (2008), with interventions and protests due on or before September 19, 2008. The Pennsylvania Public Utility Commission filed a notice of intervention. The Maryland Office of Peoples' Counsel, Pennsylvania Office of Consumer Advocate, Office of the Ohio Consumer Counsel, New Jersey Division of Rate Control, West Virginia Consumer Advocate Division, D.C. Office of People's Counsel (collectively, Consumer Advocates), American Municipal Power-Ohio, PJM Interconnection, L.L.C., Allegheny Electric Cooperative, Inc., PP&L Industrial Customer Alliance, Citizen's Electric Company, and

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<sup>12</sup> Consistent with the methodology prescribed in *PATH*, PPL used a starting sample of publicly-owned companies in PJM, New York Independent System Operator, Inc. and ISO-New England Inc. However, PPL's starting sample is not identical to the starting sample the Commission adopted in *PATH*. PPL did not explain why there was a difference in the starting group, nor did any party challenge the composition of the starting group. See PPL Exhibit No. PPL-300 at 9.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 12.

Allegheny Power filed timely motions to intervene. Old Dominion Electric Cooperative filed an out-of-time motion to intervene.

12. American Municipal Power-Ohio, PP&L Industrial Customer Alliance and Citizen's Electric Company (collectively, Joint Customers) and Consumer Advocates protested PPL's filing and requested that the proceeding be set for hearing. They contend that the inputs to the formula template, including the proposed ROE, are overstated, and therefore result in unjust and unreasonable rates. In addition, Joint Customers request that the filing be suspended for five months.

13. On October 6, 2008, PPL filed an answer to the protests of the Joint Customers.

#### **IV. Commission Determination**

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

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>15</sup> the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the early stage of the proceeding, its interests, and the absence of undue prejudice or delay, we will grant the untimely motion to intervene of Old Dominion Electric Cooperative.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,<sup>16</sup> prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept PPL's answer because it has provided information that assisted us in our decision-making process.

##### **B. Formula Rate**

16. PPL's proposed formula rate for transmission service is based on actual calendar year data as reflected in Form No. 1 and projected plant additions. PPL proposes to true-up its projected costs in its Annual Update. PPL's proposed formula rate incorporates the Order No. 679 rate incentives it received for the Susquehanna Line. Specifically, it reflects an ROE of 14.09 percent and 100 percent recovery of CWIP expenses in rate base. PPL's proposal reflects an ROE of 12.84 percent for all other transmission facilities.

17. We will accept and suspend PPL's revised tariff sheets to become effective November 1, 2008, subject to refund and condition. We will make substantive findings

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<sup>15</sup> 18 C.F.R. § 385.214 (2008).

<sup>16</sup> *Id.* § 385.213(a)(2).

on certain issues regarding PPL's proposed protocols and set all remaining issues for hearing and settlement judge proceedings.

### 1. Protests

18. Consumer Advocates and Joint Customers argue that the ROE requested by PPL is unjust and unreasonable. Consumer Advocates argue that the base ROE of 12.34 percent appears to be excessive and when combined with the ROE incentive and the risk reducing formula rate may produce rates which are unjust and unreasonable. Joint Customers contend that PPL's proposed ROE is overstated, arguing that the transmission business is less risky than the generation business. Furthermore, Joint Customers contend that the conversion from stated rates to formula rates eliminates uncertainty regarding the collections of earnings. Joint Customers contend that the conversion prevents over- and under-recovery of transmission costs, thus reducing risk.

19. Joint Customers contend that PPL's zone of reasonableness is not appropriate and is excessive due to the inclusion of companies that have unsustainable growth rates and the use of dual credit rating criteria. Specifically, Joint Customers contend that PPL's proxy group is unreasonable due to the inclusion of Exelon and DPL which, it contends, have unsustainable growth rates of 13.62 percent and 11.72 percent, respectively. Joint Customers also contend that PPL's proposed 12.34 percent ROE is inflated due to the use of both Standard and Poor's and Moody's credit rating criteria, and therefore the ratings for the proxy group span four rating notches. Joint Customers further contend that the use of four notches results in PPL being less risky than the proxy group average and inflates its requested ROE. Joint Customers also contend that PPL's use of the midpoint instead of the median is not consistent with Commission precedent. Joint Customers recommend a zone of reasonableness of from 8.35 percent to 12.07 percent with a median of 10.21 percent.

20. Joint Customers raise a concern with PPL's proposal to use the year-end balances of plant in service to calculate its annual update and true-up transmission cost-of-service. They contend that Commission regulations require the use of 13-month average plant balances. They note that replacing the beginning and end-of-year average for transmission and general plant accumulated depreciation (with 13-month plant balances) reduces PPL's proposed increase by approximately \$1.3 million or 10.6 percent of the requested increase.

21. Joint Customers are also concerned with several unexplained increase in costs. For example, *Account No. 923- Outside Service Employed*, as shown in PPL's 2006 and 2007 Form No. 1, increased by \$2.7 million or 240 percent between 2006 and 2007. In addition, *Account No. 924 - Property Insurance* increased from 2006 by \$7.5 million or 77 percent over the previous year. Further, Joint Customers note that a comparison of the Form No. 1 for 2006 and 2007 shows an increase in costs for *Account No. 926 -*

*Employee Pensions and Benefits* from a credit of \$4.5 million in 2006 to a debit of \$32.6 million in 2007.

22. Joint Customers request that non-current liabilities that have already been funded through rates be treated as an offset to the transmission rate base. In addition, Joint Customers are concerned that accumulated deferred income tax costs, which reduce the transmission cost-of-service, are not allocated properly. Specifically, they are concerned with costs for pension and post retirement, revenue agent rulings, deferred inter-company gains, trademark sales, and receivables factoring.

23. Joint Customers request that *Account No. 190 – Contribution in Aid of Construction*, be examined to determine if the cost is properly allocated to the transmission cost-of-service. They are also concerned that PPL's formula template indicates that the interest rate will be calculated based on the interest rate for "March of the Current Year,"<sup>17</sup> may not be consistent with Commission regulations, which require a change in the interest rate with each calendar quarter.

24. Joint Customers request further information to determine the reasonableness of *Account No. 165 - Prepayments* which shows an increase of \$13.4 million, or 92 percent, over the previous year's balance sheet.

25. Joint Customers note that the sole support for PPL's amortized investment tax credits, land held for future use, and post-retirement benefits other than pension, as shown on Attachment 5 to the formula template, is "company records." They state that this information is not sufficient to determine if these components of the rate were properly developed.

26. Joint Customers state that PPL provides no explanations of the revenue credits or the method used to assign those credits between transmission and non-transmission functions. They note that the 2007 Form No. 1 total for two revenue credit accounts, *Account No. 454 – Rents* and *Account No. 456 – Other Electric Revenues*, was \$38.4 million. They further note that only \$10.8 million was included in Attachment 3 to the formula template as transmission-related revenue credits. Joint Customers request further analysis to determine if PPL properly allocated the transmission-related credits. Finally, Joint Customers state that PPL's filing is unclear as to whether labor costs associated with PPL's merchant function operations are included in the determination of labor allocators.

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<sup>17</sup> PPL Exhibit No. PPL-103 at 14.

## 2. Commission Determination

27. Our preliminary analysis indicates that PPL's proposed tariff sheets have not been shown to be just and reasonable and may be unjust and unreasonable and unduly discriminatory or preferential, or otherwise unlawful. We will therefore accept and suspend PPL's revised tariff sheets to become effective November 1, 2008, subject to refund and condition. We also set the proposed formula rate for hearing and settlement judge procedures. In order to allow the parties to resolve their concerns, we will not limit the scope of the proceeding, except to the extent that the specific issues are addressed *infra*.

28. The Commission has encouraged public utilities to explore the benefits of filing transmission-related formula rates.<sup>18</sup> Further, the Commission has found that the use of formula rates encourages the construction and timely placement into service of needed transmission infrastructure.<sup>19</sup> In *West Texas*,<sup>20</sup> The Commission explained that, when its preliminary examination indicates that the proposed rates may be unjust and unreasonable and substantially excessive, the Commission will impose a maximum, five-month suspension. In this proceeding, our preliminary analysis indicates that PPL's proposed formula rate raises issues of material fact that cannot be resolved based on the record before us. Accordingly, we will accept PPL's revised tariff sheets subject to condition, and suspend PPL's proposed transmission formula rate to become effective November 1, 2008, subject to refund, and to the outcome of hearing and settlement judge procedures. In balancing our previous finding that formula rates encourage timely investment in needed transmission infrastructure with our concern that the proposed rates may be unjust and unreasonable, we find that a minimum suspension period is appropriate.

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<sup>18</sup> See *Promoting Transmission Investment through Pricing Reform*, Order No. 679 at P 386, citing *Allegheny Power System Operating Companies*, 111 FERC ¶ 61,308, at P 51 (2005); *Allegheny Power System Operating Companies*, 106 FERC ¶ 61,003, at P 32 (2004).

<sup>19</sup> See *Northeast Utilities Service Company*, 105 FERC ¶ 61,089, at P 23 (2003).

<sup>20</sup> *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982) (*West Texas*).

**C. Annual Updates****1. Information Provided with Annual Update****a. Proposal**

29. PPL proposes detailed protocols for populating and updating the formula rate template. Under its proposed protocols, in May of each year, PPL will provide its Annual Update. The Annual Update will be used to develop the next rate year's ATRR by populating the formula rate template using data contained in its Form No. 1 for the prior calendar year, plus projected capital additions for the current year. The Annual Update will also be used to true-up the previous rate year's ATRR. The true-up mechanism, which is a line item in the formula template, compares the estimated ATRR for the previous rate year with the actual costs for that year. The difference between the projected and actual costs, plus interest, will be added or subtracted from the next year's projected ATRR. PPL will post the populated formula template, cost support and exhibits on PJM's website. In addition, PPL will file the Annual Update with the Commission, for informational purposes only. PPL states that it has established protocols to provide a process for parties to challenge the formula rate calculations and cost support. It further states that any changes to the data used to populate the rate formula template will be reflected in the ATRR for the following year, with interest.

**b. Protest and Answer**

30. Joint Customers contend that, as a general matter, PPL will post the numerical inputs with little explanatory material in the Annual Update. To facilitate a less adversarial process, Joint Customers request that the Commission direct PPL to provide more explanatory material, such as workpapers, adjustments not shown in the Form No. 1, and material changes, as part of its Annual Update. Joint Customers further contend that PPL's proposal limits the review and challenges of the Annual Update to the "accuracy of data" and "consistency" with the formula template and contains no protections to ensure that only prudent costs are passed through the formula. Joint Customers also contend that PPL's protocols do not address the specific rights and procedures which will apply to the true-up mechanism. Finally, Joint Customers request that the last sentence of section 3.b. be deleted from the revised tariff sheets because it is superfluous, ambiguous and overly broad. The sentence reads:

In addition, such information requests shall not solicit information concerning costs or allocations where the costs or allocation method have been determined by FERC or in the context of other Annual Updates, except that such information requests shall be permitted if they seek to determine if there has been a material change in circumstances.

31. In its answer, PPL states that Joint Customers misread its filing and that the

information necessary to review the formula inputs is either available in Form No. 1, or posted as a supplement on the PJM website. Further, PPL states that the proposed protocols place no limits on either the substance or coordination of discovery. Finally, PPL explains that the above sentence only limits information requests on matters that have already been settled by the Commission or in response to previous Annual Updates.

**c. Commission Determination**

32. The Commission finds that section 1.g. of PPL's proposed protocols provide the type of specific information requested by the Joint Customers with respect to the source of the data, supporting workpapers and explanations, and the accuracy and prudence of costs. Therefore, the Commission finds that the Joint Customers' recommendations are not necessary. In addition, the Commission finds that the concerns of the Consumer Advocates are fully addressed.

**2. Challenges to Annual Update**

**a. Proposal**

33. PPL's proposed protocols establish a process for review of inputs to the formula rate, and define time limits for raising preliminary and formal challenges to the application of the formula rate, including challenges related to material accounting changes, and resolution of challenges.<sup>21</sup> Under PPL's proposed protocols, parties have an opportunity to challenge the calculations and cost support, including the prudence of the costs and the accuracy of the data. Specifically, parties will have 150 days from the date the calculations and cost support are published on PJM's website to review the data. If necessary, the parties may submit preliminary written challenges to PPL. Further, the protocols provide that during the review period, parties will have 120 days to serve "reasonable" information requests on PPL and PPL will make a good faith attempt to respond to such requests within 15 days. If a preliminary challenge is made, the protocols provide that parties will have a 21-day period to resolve the dispute regarding the formula inputs. However, if parties are unable to resolve the dispute, the protocols provide that they have an additional 21 days to file a complaint with the Commission pursuant to FPA section 206. Subsection 4(d) further provides:

Subject to judicial review of FERC orders, each annual update shall become final and no longer subject to challenge pursuant to these Annual Review Protocols or by any other means by FERC or any other entity on the later to occur of (i) passage of the twenty-one

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<sup>21</sup> FERC Electric Tariff, Sixth Revised Volume No. 1, Attachment H-8H, Sheets No. 309VVV- XXX, Sections 3 and 4.

(21) day period (or extended period, if applicable) following the Review Period for making a Formal Challenge if no such challenge has been made and FERC has not initiated a proceeding to consider the Annual Update, or (ii) a final FERC order issued in response to a Formal Challenge or a proceeding initiated by FERC to consider the Annual Update.

**b. Protest and Answer**

34. Joint Customers contend that section 4(d) is directly contrary to the Commission's order in *VEPCO*,<sup>22</sup> and requests that the Commission direct PPL to remove the provision from its protocols.

35. In its answer, PPL offers to submit a compliance filing to address this concern, in light of the Commission's findings in *PSE&G* and *AEP*.<sup>23</sup> In the compliance filing, PPL states that it will amend section 4.e [sic] of its protocols to eliminate the cut-off date by which parties must file a complaint or the omission may institute a complaint pursuant to section 206 of the FPA.

**c. Commission Determination**

36. As we stated in *VEPCO*, *PSE&G* and *AEP*, the courts have recognized that FPA section 206 permits customers to challenge formula rates.<sup>24</sup> The Commission's long-standing precedent is that, under formula rates, parties have the right to challenge the inputs to or the implementation of the formula at whatever time they discover errors in the inputs to or implementation of the formula.<sup>25</sup> Indeed, customers may not uncover

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<sup>22</sup> Joint Customers Protest at 28, *citing VEPCO*, 123 FERC ¶ 61,098 at P 46.

<sup>23</sup> *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303 (2008) (*PSE&G*); *American Elec. Power Co.*, 124 FERC ¶ 61,306 (2008) (*AEP*).

<sup>24</sup> *Citing Public Utilities Commission of California v. FERC*, 254 F.3d 250, 258 (D.C. Cir. 2001) ("Because relief can be sought pursuant to section 206 in the event a pass through of ... costs results in unjust and unreasonable rates, the Commission's acceptance of the ISO's formula rate without additional section 205 filings does not leave the [state public utilities commission] or ratepayers without any statutory recourse.").

<sup>25</sup> *North Carolina Electric Membership Cooperative v. Carolina Power & Light Co.*, 57 FERC ¶ 61,332, at 62,065 (1991) (rejecting the utility's efforts to limit the period of review to the prior 12 months by stating "[w]hile prompt identification of disputes is certainly a reasonable goal to strive for, the Commission cannot allow utilities to recover excessive rates through automatic adjustment clauses because the customer did not

errors in data or imprudent or otherwise inappropriate costs until well after the challenge period.<sup>26</sup> Accordingly, we will require PPL to make a compliance filing within 30 days of the date of this order to revise the protocols so that they do not limit a customer's or the Commission's rights with respect to challenges to the inputs into the formula rate.

#### **D. Informational Filing**

37. Section 1.b. of PPL's proposed protocols provides that PPL file its Annual Update,<sup>27</sup> with supporting documentation, with the Commission on or before May 15 of each year. The provision states:

The submission of such information filing with FERC shall not be noticed nor require any action by the agency.

38. Although PPL states that its proposed formula is "virtually identical" to numerous formula rates approved by the Commission for other utilities in PJM,<sup>28</sup> the Commission finds that the language is a deviation from the language approved as part of the formula rates for other utilities in PJM. In all of the formula rates contained in PJM's OATT, the tariff language specifies that the utility will make an information filing with the Commission and that the filing will not require Commission action. PPL's proposed language, without explanation, restricts the Commission's ability to notice the Annual Updates when they are filed. This Commission will not bind future Commissions from noticing an Annual Filing. Therefore, PPL is required to make a compliance filing within 30 days of the date of this order to delete the words "be noticed nor" from section 1.b. of its proposed protocols.

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complain in as prompt a manner as the company believes the customer should have.""). The Commission has held repeatedly that it may order refunds for past periods where a utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate. *See Appalachian Power Co.*, 23 FERC ¶ 61,032, at 61,088 (1983); *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062, at P 28 (2005); *Quest Energy, L.L.C. v. The Detroit Edison Co.*, 106 FERC ¶ 61,227, at P 21 (2004).

<sup>26</sup> *See, e.g., Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 (1992) (allowing review of potentially imprudent costs charged to customers in prior-year formula rates).

<sup>27</sup> FERC Electric Tariff, Sixth Revised Volume No. 1, Attachment H-8H, Sheet No. 309SSS, Section 1.b.

<sup>28</sup> PPL Exhibit No. PPL-100 at 6-7.

### **E. Hearing and Settlement Judge Procedures**

39. Although we are setting issues relating to the formula rate inputs, including ROE, 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 the 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.<sup>29</sup> 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.<sup>30</sup> The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, 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.

### **F. Waiver Requests**

40. PPL requests waiver of the following sections of the Commission's regulations: section 35.13(d)(1)-(2) (requiring submission of Period I and Period II data for Statements AA through BL);<sup>31</sup> section 35.13(d)(5) (requiring submission of workpapers related to Period I and Period II data);<sup>32</sup> and section 35.13(h) (requiring cost of service statements).<sup>33</sup> In addition, PPL requests a limited waiver of the requirements under section (c)(7) of Schedule 12 of the PJM OATT in order to coordinate the timing of the annual filing under that section with the annual updates under the proposed formula rates. In Statement BM, PPL also requests waiver of section 35.25(c)(4) (forward looking Allocation ratios),<sup>34</sup> and section 35.25(g) (anticompetitive procedures).<sup>35</sup>

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<sup>29</sup> 18 C.F.R. § 385.603 (2008).

<sup>30</sup> 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 days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

<sup>31</sup> 18 C.F.R. § 35.13(d)(1)-(2) (2008).

<sup>32</sup> *Id.* § 35.13(d)(5).

<sup>33</sup> *Id.* § 35.13(h), except Statement BM, 18 C.F.R. § 35.13(h)(38).

<sup>34</sup> *Id.* § 35.25(c)(4).

41. Joint Consumers contends that PPL should be required to file the Period I and Period II data required by section 35.13 of the Commission's regulations. Joint Consumers state that this information will assist the Commission and parties in the evaluation of overall system costs and in the allocation of costs to PPL's transmission function. The Commission grants PPL the requested waivers. The waiver of the Period I and Period II filing requirements does not preclude parties from requesting additional information on cost inputs and supporting documentation as part of the hearing and settlement judge proceedings.

The Commission orders:

(A) PPL's revised tariff sheets to the PJM OATT are accepted for filing, as discussed in the body of this order, and suspended for a nominal period to be effective November 1, 2008, subject to refund.

(B) PPL is ordered to file revised tariff sheets to PJM's OATT within 30 days of this order, 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, particularly sections 205 and 206 thereof, 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 PPL's proposed formula rate filing. 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 Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2008), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the 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.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and with 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

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<sup>35</sup> *Id.* § 35.25(g).

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.

(F) 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 this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such 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.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

Appendix

Tariff Sheets Accepted and Suspended  
Subject to Condition and Subject to Refund  
Effective November 1, 2008

PJM Interconnection, L.L.C.  
FERC Electric Tariff  
Sixth Revised Volume No. 1

Sixth Revised Sheet No. 26  
Seventh Revised Sheet No. 245  
Thirteenth Revised Sheet No. 247  
Third Revised Sheet No. 270E.08b  
Second Revised Sheet No. 307  
First Revised Sheet No. 308  
Original Sheet No. 309AAA  
Original Sheet No. 309BBB  
Original Sheet No. 309CCC  
Original Sheet No. 309DDD  
Original Sheet No. 309EEE  
Original Sheet No. 309FFF  
Original Sheet No. 309GGG  
Original Sheet No. 309HHH  
Original Sheet No. 309III  
Original Sheet No. 309JJJ  
Original Sheet No. 309KKK  
Original Sheet No. 309LLL  
Original Sheet No. 309MMM  
Original Sheet No. 309NNN  
Original Sheet No. 309OOO  
Original Sheet No. 309PPP  
Original Sheet No. 309QQQ  
Original Sheet No. 309RRR  
Original Sheet No. 309SSS  
Original Sheet No. 309TTT  
Original Sheet No. 309UUU  
Original Sheet No. 309VVV  
Original Sheet No. 309WWW  
Original Sheet No. 309XXX