

136 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

PPL Electric Utilities Corporation

Docket No. ER09-1148-000

ORDER REJECTING FORMAL CHALLENGE
AND ACCEPTING 2010 UPDATE

(Issued August 15, 2011)

1. Pursuant to the terms of its 2009 Settlement¹ and the governing provisions of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT),² on May 14, 2010, PPL Electric Utilities Corporation (PPL) made an informational filing³ detailing its Annual Update (2010 Update) to its transmission rates based on the 2009 Settlement's formula (formula rate).⁴ On December 15, 2010, the Eastern Pennsylvania Power Group (EPPG) Boroughs⁵ filed a Formal Challenge pursuant to the Formula Rate

¹ *PPL Electric Utilities Corp.*, 128 FERC ¶ 61,178 (Order Approving Uncontested Settlement) (2009).

² PJM OATT Attachment H-8 – Annual Transmission Rates -- PPL Group for Network Integration Transmission Service, 2.0.0.

³ *PPL Electric Utilities Corp.*, Docket No. ER09-1148-000 (Mar. 19, 2010) (delegated letter order) (March 2010 Order) (noting that the OATT provide specific procedures for notice, review, and challenges to the Annual Updates).

⁴ PJM OATT Attachment H-8G – PPL Electric Utilities Corporation Formula Rate, 2.0.0 (formula rate).

⁵ For the purposes of this proceeding, 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.

Implementation Protocols (Protocols),⁶ disputing PPL's 2010 Update. As discussed below, with a single exception, we will reject the Formal Challenge and accept the 2010 Update for filing, subject to that single item being addressed in PPL's next true-up adjustment.

Background

2. In 2009, the Commission accepted an uncontested 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.⁷ The 2009 Settlement established not only a formula rate for PPL (contained in Attachment H-8G of PJM's OATT), but also Protocols detailing how PPL's formula transmission rate would be updated annually and the update reviewed by customers (the Protocols are contained in Attachment H-8H of PJM's OATT).

3. The formula rate, among other things, establishes PPL's base return on equity (ROE) after June 1, 2010 at 11.18 percent and provides for an Annual Update pursuant to sections I.B and II of the Protocols. In the Annual Update, PPL is limited to adjustments to formula values and inputs, and also performs a true-up for under- or over-recovery of the previous year's rates. (The rate formula itself cannot be modified in an Annual Update, as we discuss below.) Inputs to the formula generally use FERC Form No. 1 data. Under the Protocols, PPL submits its Annual Update as an informational filing to the Commission every May 15.⁸ Pursuant to the Protocols, during the next 180 days, 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. Formal Challenges are limited to the eleven avenues of inquiry listed in section VI.A.(1) of the Protocols, as discussed in full below. Further, section II.B of the Protocols expressly prohibits requesting

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

⁷ 2009 Settlement, 128 FERC ¶ 61,178 at P 5.

⁸ As explained in the March 2010 Order, absent the filing of a Formal Challenge, the Commission will not act on annual informational filings such as the 2010 Update; the 2010 Update takes effect pursuant to the terms of the Protocols without any need for the Commission to accept it for filing.

modifications to the formula rate in an Annual Update or a Formal Challenge, stating that such requests must be made in a Federal Power Act section 205 or section 206 proceeding.

4. On May 14, 2010, as corrected on May 18, 2010, PPL submitted its 2010 Update as an informational filing in the present docket. On June 2, 2010, EPPG Boroughs filed a motion to intervene and a request for hearing regarding the 2010 Update. On June 15, 2010, PPL filed an answer opposing the request for hearing, arguing that its formula rate was a filed rate which cannot be modified in an Annual Update, that a hearing was inappropriate, and that EPPG Boroughs should instead seek to address any concerns through the informal meeting and the Formal Challenge method established in the Protocols. On June 17, 2010, EPPG Boroughs filed an answer to PPL's answer. On January 27, 2011, EPPG Boroughs again filed a request for hearing regarding the 2010 Update, along with a request for extension of time to file an answer. PPL answered this request the following day, stating that it opposed the request for hearing, and it did not oppose EPPG Boroughs filing an answer, but believed that the Commission did not need to act on the request formally.

5. On December 15, 2010, EPPG Boroughs filed a Formal Challenge pursuant to the Protocols. The Formal Challenge focuses on numerous line items in the 2009 Settlement formula, as detailed below. EPPG Boroughs state that they challenge the accuracy of PPL's data, the consistency of the formula rate with the 2010 Update, the prudence of PPL's projected costs as such are used in the formula rate, and the prudence of PPL's actual costs.⁹ EPPG Boroughs' main argument is that PPL is using the formula rate's General and Intangible (G&I) Plant and Administrative and General (A&G) Expenses inputs as "two big black boxes," and using the formula rate's allocation factors "to include costs which may not relate to transmission."¹⁰ Further, EPPG Boroughs contend that PPL refused to provide details and/or answer questions related to certain costs and expenses which are needed to assure that there is no over and/or double recovery of costs due to PPL's different treatment of several costs and expenses at the retail and wholesale levels. In total, EPPG Boroughs seek to reduce the 2010 Annual Transmission Revenue Requirement by \$25.6 million (or 16 percent of the 2010 Update net revenue requirement). On December 16, 2010, PPL filed a motion for an extension of time for its response, which a December 22, 2010 Commission notice granted through January 24, 2011.

⁹ EPPG Boroughs Formal Challenge at 6.

¹⁰ *Id.* at 7.

6. On January 4, 2011, PPL filed a motion to establish procedures and request for expedited action. On the same day, PPL also filed a motion to dismiss multiple issues raised in EPPG Boroughs' Formal Challenge on the grounds that they were beyond the scope of a Formal Challenge. On January 24, 2011, PPL filed its substantive answer to the remainder of EPPG Boroughs' Formal Challenge. EPPG Boroughs answered PPL's motion to establish procedures and request for expedited action on January 6, 2011, answered the motion to dismiss on January 18, 2011, and answered the answer to the Formal Challenge on February 8, 2011.

7. On February 11, 2011, PPL filed a notice stating that it intended to file an answer to EPPG Boroughs' February 8, 2011 answer. On February 18, 2011, EPPG Boroughs filed a notice stating that if PPL did file such an answer, that they would oppose the filing. On February 23, 2011, PPL filed the expected answer to the February 8, 2011 answer. On March 17, 2011, EPPG Boroughs responded to PPL's answer. On July 14, 2011, EPPG Boroughs filed a motion for expedited action. On July 26, 2011, PPL filed an answer, stating that it does not object to the request. On July 28, 2011, EPPG Boroughs answered PPL's answer.

Discussion

Procedural Matters

8. On June 1, 2010, EPPG Boroughs filed an untimely motion to intervene, which PPL did not oppose. Pursuant to Rule 214(d), we will grant late intervention to EPPG Boroughs, as granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. In their motion, EPPG Boroughs concede that, because they were not a party to the 2009 Settlement, they are obligated to "work under the framework of the Settlement ... to the maximum extent possible."¹¹

9. Pursuant to Rule 214(d)(1), late interveners must accept the record as it was developed prior to the late intervention.¹² In this respect, we note that in the March 2010 Order in this docket, the Commission explained that, pursuant to the 2009 Settlement, Annual Updates were not rate changes, but were informational filings only, and that the Commission would not act on them except as required under the Protocols contained in the PJM OATT.

¹¹ EPPG Boroughs June 2, 2010 Motion at 3.

¹² 18 C.F.R. § 385.214(d)(3)(ii) (2011).

10. As summarized above, EPPG Boroughs and PPL have each filed multiple answers to answers in this docket. 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,¹³ and the Commission accordingly rejects all of these pleadings, which are not needed to aid the Commission in its disposition of this proceeding. In addition, we dismiss the motions raising interim procedural matters, including the motion for expedited action, as moot.

PPL's Motion to Dismiss Formal Challenge

11. Section VI.A (1) of the Protocols identifies eleven specific areas of inquiry that Formal Challenges to the Annual Update may challenge, namely:

- (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;
- (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;

¹³ 18 C.F.R. § 385.213(a)(2) (2011).

- (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.¹⁴

12. In its January 4, 2011 motion to dismiss, PPL requests that we dismiss several specific items contained in EPPG Boroughs' Formal Challenge on the grounds that the items fall outside the scope of an acceptable challenge as enumerated in the above list. In response, EPPG Boroughs argue that all of their challenges are permissible under the Formal Challenge process. They specifically rely on areas of inquiry (h) and (i) of section VI of the Protocols (listed above).

13. EPPG Boroughs also argue 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." EPPG Boroughs claim that Article 5.11 sets forth a valid criterion for evaluating the 2010 Update apart from the Protocols.¹⁵

14. As a preliminary matter, we will deny PPL's motion to dismiss several aspects of the Formal Challenge. First, we find that areas of inquiry (h) and (i) of the Protocols allow customers to bring to the Commission unresolved issues involving the prudence of the specific inputs that were updated. Thus, we believe that it is appropriate for us to adjudicate the parties' dispute regarding those items that EPPG Boroughs denote as "prudence" challenges. In doing so, we will review EPPG Boroughs' allegations using the Commission's established standards for prudence.¹⁶ However, we emphasize that challenging the prudence of an individual input or value used in the Annual Update to a formula rate is distinguishable from challenges to, or proposals to modify, the formula rate *per se*, which is beyond the scope of the Formal Challenge process.

¹⁴ PJM Tariff at Attachment H-8H, Section VI.A (1).

¹⁵ EPPG Boroughs Answer to Motion to Dismiss at 3.

¹⁶ We discuss the Commission's prudence standard in P 19, *infra*.

15. Second, we find that EPPG Boroughs raise colorable questions of the proper application of the formula rate and the accuracy of data in the 2010 Update. In short, we find that the areas of inquiry specified in the Protocols are sufficiently broad as to permit us to examine the merits of EPPG Boroughs' Formal Challenge. For these reasons, we deny PPL's motion for summary dismissal.

16. We now turn to EPPG Boroughs' argument that Article 5.11 of the 2009 Settlement provides a basis, apart from the Protocols, for challenging whether a specific cost is related to transmission. The core of this contention is rooted in Article 5.11's statement that the signatories had designed the formula rate "to include only expenses that are directly or indirectly related to transmission service and not those related to retail service."

17. We reject 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 reasonably read as the signatories' statement of their intent with respect to the formula rate's design, and not as creating additional areas of inquiry for a Formal Challenge beyond those specified in the Protocols themselves. Article 5.11 simply describes the function of the formula transmission rate itself, which is designed to recover transmission-related costs, both direct and indirect. Therefore, in this proceeding, EPPG Boroughs' Formal Challenge must be limited to the specific areas of inquiry specified in the Protocols, and they cannot rely on Article 5.11's language as a "catch-all" provision for their challenges.

18. With respect to EPPG Boroughs' contentions that PPL is using the formula rate's G&I Plant and A&G Expenses accounts as "two big black boxes," and that the formula's use of allocation factors for those accounts permits the inclusion of non-transmission costs in the rate,¹⁷ we find that contentions amount to a challenge to the structure of the formula rate itself, which is beyond the scope of a Formal Challenge. The formula rate, including its specific accounts and allocation factors, is the rate on file with the Commission, and section II.B of the Protocols prohibits challenges to the rate on file as part of a Formal Challenge. In any event, even if we were to permit EPPG Boroughs to seek to modify the formula rate's use of allocation factors for A&G expenses or G&I plant, we would not find the formula rate to be unjust and unreasonable for that reason. The use of allocation factors for these general accounts is both traditional and

¹⁷ EPPG Boroughs Formal Challenge at 7. This contention appears to be related to EPPG Boroughs' reliance on Article 5.11 for the assertion that only transmission-related costs can be included in the formula rate, even though formula rate specifically authorizes the use of allocation factors for A&G costs.

appropriate, given that these costs do not readily avail themselves to a direct assignment process.¹⁸

19. Against this background, we will consider each individual challenge paragraph in EPPG Boroughs' Formal Challenge. Most of the individual challenges involve the accuracy of the data used and whether PPL properly applied the formula rate, while some also involve the sufficiency of PPL's response to EPPG Boroughs' questions. For those individual challenges in which EPPG Boroughs raise issues of prudence, we examine them within the context of the Commission's well-established prudence standard, which is based on the "reasonable person" test.¹⁹

Individual Challenges

20. In paragraphs 15 through 30 of the Formal Challenge, EPPG Boroughs individually enumerate and discuss the items that they are challenging. For convenience's sake, we will refer to these paragraph numbers in this order.

Challenge Paragraph 15

21. In paragraph 15 of the Formal Challenge, EPPG Boroughs dispute PPL's inclusion of \$178,987 of Pennsylvania Capital Stock Tax. Specifically, EPPG Boroughs state that this amount relates to the years 2003-04 and should therefore be excluded.²⁰

¹⁸ *Consumers Energy Co.*, 86 FERC ¶ 63,004, at 65,029 (1999), *aff'd*, Opinion No. 456, 98 FERC ¶ 61,333 (2002) ("The Company observes that some base items will be 100 percent inapplicable to transmission, while others will be 100 percent applicable to transmission. The use of an allocation factor should balance out the inequities.... While the gross plant allocation factor may not achieve perfection in determining the precise amounts ... allocable to transmission, it is a time-tested and reasonable approach.") (citing *Pacific Gas & Electric Co.*, 16 FERC ¶ 63,004, at 65,015 (1981), *aff'd*, 20 FERC ¶ 61,340 (1982)).

¹⁹ The Commission's prudence test is described in detail in *New England Power Co.*, 31 FERC ¶ 61,047, at 61,084 (1985), *aff'd sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986) (quoted in, e.g., *Dakota Gasification Co.*, Opinion No. 410, 77 FERC ¶ 61,271, at 61,271 (1996), and *Entergy Services, Inc.*, Opinion No. 505, 130 FERC ¶ 61,023, at P 51 (2010)).

²⁰ EPPG Boroughs Formal Challenge at 8.

22. PPL responds that this amount is not related to years 2003 and 2004. Specifically, PPL states that a settlement of certain tax appeals on January 23, 2009 resulted in a reduction of PPL's 2003 capital stock by \$60,000 and an increase in its 2004 capital stock expense of \$118,987. The result was a net Pennsylvania Capital Stock Tax of \$58,987. However, PPL states, after the application of the Net Plant Allocator as provided for in the formula rate template,²¹ the actual amount included in the 2010 Update was \$13,276.

23. 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" would be excluded from the formula rate. PPL further explains that the formula rate template was accepted by the Commission to be effective November 1, 2008.²² Therefore, PPL argues, all prior period adjustments made in the 2009 Annual Update and any subsequent Annual Update are allowable.²³

24. 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. Thus, we find that PPL has properly applied its formula rate, and we reject this challenge.

Challenge Paragraph 16

25. In paragraph 16 of the Formal Challenge, EPPG Boroughs argue that PPL refused to respond to their data request regarding the estimated costs of new Transmission Plant Additions and revisions thereto. EPPG Boroughs contend that this information is needed to ascertain cost overruns and reasonableness and prudence of such cost overruns.²⁴

26. PPL responds that it did not refuse to provide the information requested; rather, it objected to EPPG Boroughs' request for "all cost estimates" associated with projects costing over \$1 million that PPL expected to go into service during 2010 because that request was unduly burdensome. PPL states that it did provide cost estimates for each of

²¹ The formula rate template is the cost of service template and associated attachments contained in Attachment H-8G. See Attachment H-8H Formula Rate Implementation Protocols.

²² PPL January 24, 2011 Answer at 13 (citing Order Approving Uncontested Settlement at P 10).

²³ *Id.* at 12-13.

²⁴ EPPG Boroughs Formal Challenge at 8.

the identified projects from its 2009 and 2010 business plan. PPL further responds that it does not maintain what it calls “unofficial” estimates for capital projects, and the business plans provide the best information available for tracking changes in project costs. In addition to this supplied information, PPL notes that EPPG Boroughs have access to the PJM Regional Transmission Expansion Plan (RTEP) annual report, which includes estimated costs for each project included in the PJM RTEP.²⁵ PPL states that the identified projects could not be constructed until they were included in the PJM RTEP and thus, the RTEP is the appropriate starting point for any consideration of the prudence of a transmission project’s construction expense. For these reasons, PPL states that EPPG Boroughs’ challenge should be rejected.

27. EPPG Boroughs do not dispute that PPL provided information in response to their request; rather, they dispute the level of detail of the information provided. PPL’s response consisted of cost estimates for each project from its 2009 and 2010 Business Plan. In addition, PPL notes that EPPG Boroughs have access to the PJM RTEP annual reports on PJM’s website, which include estimated costs for each project included in the PJM RTEP. Therefore, we find that PPL reasonably satisfied its obligation to respond to EPPG Boroughs’ request, and we reject this challenge.

Challenge Paragraph 17

28. In paragraph 17 of the Formal Challenge, EPPG Boroughs contend that PPL failed to answer their information request pertaining to any regulatory expenses being included in Account 923, Outside Services Employed. EPPG Boroughs argue that this information is needed to avoid the regulatory expenses which are either not intended to be recovered or not related to Transmission Service in the formula rate.

29. PPL maintains that it did not refuse to answer the information request, but rather objected to the request as vague and overbroad and therefore inconsistent with the standard for information requests allowed under the Protocols. In addition, PPL clarifies that it did not include any regulatory expenses in Account 923 in 2009. Rather, PPL explains, Account 923 includes the fees and expenses of professional consultants and others for general services, which are not applicable to a particular operating function or to other accounts.²⁶ PPL argues that it has reasonably applied the formula rate for this account.

²⁵ PPL January 24, 2011 Answer at 14.

²⁶ *Id.* at 16.

30. We find that PPL has reasonably answered EPPG Boroughs' question by clearly stating that it did not include any regulatory expense in Account 923 and also properly applied the formula rate for this account. Therefore, we reject this challenge.

Challenge Paragraph 18

31. In paragraph 18 of the Formal Challenge, EPPG Boroughs challenge PPL's inclusion in Account 190, Accumulated Deferred Income Taxes (ADIT), related to contributions in aid of construction (CIAC), of \$21,519,517. EPPG Boroughs argue that PPL receives CIAC from those specific customers for whom PPL installs certain facilities, and there is no reason for any other customers to pay any costs associated with CIAC.²⁷

32. In response, PPL explains that plant associated with CIAC received is in fact excluded from its plant in service for ratemaking purposes, but that it must pay income taxes on CIAC in the year that it receives the CIAC. Therefore, PPL states that these taxes are recovered as a deferred tax asset, and it recovers this asset in future periods through tax depreciation deductions. PPL further explains that, in 2009, the deferred tax asset in Account 190 was \$21,519,517, which amount represents the cumulative net amount of taxes paid by PPL on transmission related CIAC received, less the cumulative tax benefit resulting from tax depreciation on CIAC related to plant.²⁸ PPL explains that, because it is taxed on payments received from CIAC-paying customers, the resulting deferred tax asset must be included as an offsetting regulatory asset to the total ADIT recorded in Accounts 282, Accumulated Deferred Income Taxes-Other Property, and Account 283, Accumulated Deferred Income Taxes-Other, to give proper effect to the treatment of deferred taxes for ratemaking purposes and to allow PPL to receive the appropriate return on its revenue requirement. Further, PPL asserts that, although EPPG Boroughs imply that the CIAC in question is associated with "mostly distribution facilities," the ADIT is for transmission-related income. Therefore, PPL argues that EPPG Boroughs' challenge is without merit and should be rejected.

33. Based on PPL's explanation, we find that PPL's inclusion of ADIT in the amount of \$21,519,517 to be appropriate. The proper rate base treatment of deferred income taxes includes Accounts 282 and 283 in addition to Account 190. Thus, we find that PPL has properly applied the formula rate, and we accordingly reject this challenge.

²⁷ EPPG Boroughs Formal Challenge at 9.

²⁸ PPL January 24, 2011 Answer at 17-18.

Challenge Paragraph 19

34. In paragraph 19 of the Formal Challenge, EPPG Boroughs contend that PPL should not include the costs of certain projects that were not completed in 2010 in the formula rate. EPPG Boroughs claim that projects B55101, B50019, and B70039 should be excluded from the formula rate template; the total exclusion would be \$726,204 which would reduce the Annual Transmission Revenue Requirement (ATRR) for the formula rate by \$99,926.²⁹

35. PPL responds by stating that the formula rate allows for the prospective recovery of transmission plant expected to be placed into service in the upcoming year. With respect to the three specific projects challenged by EPPG Boroughs, PPL explains that project B55101 was placed into service on December 15, 2010, project B50019 was placed into service on October 5, 2010, and project B70039 is scheduled to be placed into service in November 2012. PPL further notes that that the true-up adjustment for the 2011 Annual Update will resolve any discrepancy between each project's expected service date included in the instant 2010 Update and its actual in-service date, and customers will receive an appropriate credit with interest.³⁰ Therefore, customers will only pay for a new facility from the time that the facility is actually placed into service.

36. 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." The formula rate also includes a true-up adjustment that resolves any differences between projected and actual costs and in-service dates, such that in this instance, customers will receive an appropriate credit with interest in the following year's formula rate Annual Update. We find that PPL has followed the language of the formula rate by its treatment of the costs for these projects; thus, we reject this challenge.

Challenge Paragraph 20

37. In paragraph 20 of the Formal Challenge, EPPG Boroughs argue that there are discrepancies between the data used in PPL's 2010 Update and in its recent Pennsylvania Retail Rate Case (PA Retail Rate Case), Docket No. R2010-2161694. In sub-paragraphs (a) through (h) of paragraph 20, EPPG Boroughs list the various ways in which the PA Retail Rate Case uses different numbers than the 2010 Update. EPPG Boroughs acknowledge PPL's response that the two rates are derived from different methodologies,

²⁹ EPPG Boroughs Formal Challenge at 9.

³⁰ PPL January 24, 2011 Answer at 19.

but still contend that these differences should not result in large cost differences, and may represent instances of over-recovery.

38. In response, PPL argues that data used in the PA Retail Rate Case and in the 2010 Update are not directly comparable to each other for two principal reasons. First, PPL explains that the 2010 Update and the PA Retail Rate Case are each governed by unique accounting and ratemaking rules which are designed for different purposes. Specifically, the 2010 Update is governed by the formula rate template, as well as the Commission's Parts 35 and 101 regulations and the Commission's precedent for developing wholesale transmission rates, whereas the PA Retail Rate Case is governed by the Pennsylvania Public Utility Commission's (Pennsylvania PUC) own accounting and ratemaking regulations and its own precedent for developing bundled retail rates. PPL states that, as one example, while the Pennsylvania PUC's rules and regulations do not allow for the recovery of Land Held for Future Use, this Commission and, thus, PPL's Commission-approved formula rate template, do authorize such recovery.³¹

39. Second, PPL explains that the 2010 Update and the PA Retail Rate Case costs are based on different test years and data sets. Specifically, the 2010 Update was based upon actual data from 2009 contained in PPL's FERC Form No. 1, while the PA Retail Rate Case costs (which EPPG Boroughs highlight in paragraphs 20(a) through (h) of the Formal Challenge) were part of a test year based on projected and normalized 2010 costs. In addition, PPL states that the ultimate distribution-related cost of service approved by the Pennsylvania PUC was the product of a "black box" settlement; thus, the supposedly differing amounts EPPG Boroughs cite are not the amounts actually used to establish PPL's retail cost of service.³²

40. We are persuaded by PPL's explanation and find that EPPG Boroughs' arguments about the discrepancies between the PA Retail Rate Case and the 2010 Update are without merit. In addition to the differences discussed in the preceding paragraph, the 2010 Update is 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 is a rate change application that requires PPL to project changes to its historical 2009 plant and expenses to produce projected 2010 amounts which are then

³¹ *Id.* at 20-21.

³² *Id.* at 22.

further adjusted by normalization and annualization processes. For these reasons, we reject this challenge.

Challenge Paragraph 21

41. In paragraph 21 of the Formal Challenge, EPPG Boroughs challenge PPL's decision to allocate a portion of G&I Plant to transmission through the Wages and Salaries Allocator factor, alleging that the costs pertain to services unrelated to transmission service.³³ EPPG Boroughs also argue that PPL refused to provide additional information on this allocation when they sought it. EPPG Boroughs request that a disallowance of these amounts, which will reduce the ATRR by approximately \$389,000.

42. PPL responds that this challenge to its use of the Wages and Salary Allocator for G&I Plant, which is required by the formula rate template, is outside the scope of allowable challenge under the Protocols. In any event, PPL argues, the use of the Wages and Salary Allocator for this account is consistent with well-established Commission policy and precedent.

43. We reject EPPG Boroughs' challenge and their request for disallowance. PPL's use of the Wages and Salary Allocator is expressly prescribed by the formula rate template. We find that PPL has applied the formula rate properly here. Further, as we explained above, the use of an allocation factor for this plant account is fully consistent with long-standing Commission precedent.³⁴ Finally, to the extent that this challenge is premised on EPPG Boroughs' belief that the use of allocation factors as required by the formula rate is not appropriate because some non-transmission expenses may be included, they are improperly relying on the language of Article 5.11 as the basis for a Formal Challenge and seeking to modify the formula rate itself, which is beyond the scope of a Formal Challenge.

Challenge Paragraph 22

44. In paragraph 22 of the Formal Challenge, EPPG Boroughs contest that PPL improperly 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. EPPG Boroughs claim that the software may be related to distribution plant and not transmission plant. EPPG

³³ EPPG Boroughs Formal Challenge at 13.

³⁴ See P 18 & n.18, *supra*.

Boroughs argue that because PPL refused to address whether this software covers transmission lines outages, the amount should be excluded.

45. PPL responds by explaining that its formula rate requires the use of the Wages and Salary Allocator to allocate all G&I Plant to transmission. PPL states that EPPG Boroughs have not provided any support for their claim that the investment was improper or imprudent, other than challenging the formula rate's allocation method.

46. We reject this challenge. Under the formula rate, all G&I plant costs are allocated using the same allocation factor. Thus, the same amount would be allocated to transmission. Based on PPL's explanation, we find that PPL is including only those plant costs which the formula allows to be included. Further, to the extent that EPPG Boroughs' objection to the use of an allocation factor *per se* is rooted in their belief that such allocation results in some non-transmission costs being allocated to transmission customers, we have previously found that this argument is not only beyond the scope of a permissible Formal Challenge, but also is inconsistent with traditional rate-making principles.

47. Further, while EPPG Boroughs claim that the investment was imprudently undertaken, they provide no evidence how or why the investment was imprudent. Given that EPPG Boroughs fail to explain how or why PPL's actions were in any way imprudent, we will reject their challenge on this issue.

Challenge Paragraph 23

48. In paragraph 23 of the Formal Challenge, EPPG Boroughs argue that PPL refused to ascertain to their satisfaction whether all the substations with secondary voltage of less than 69 kV listed as transmission facilities provide only transmission service. EPPG Boroughs claim that at least a part of the investment in these substations should be excluded from the transmission rate base.

49. PPL responds by stating that it recorded the plant located at each of the substations in accordance with both Pennsylvania state law and the Commission's Uniform System of Accounts,³⁵ separating and recording the transmission-related portion of the investment in the identified substations in transmission plant accounts and the remainder in distribution accounts. According to PPL, substation equipment used to enable a network path for the flow of electricity onto PPL's 69 kV and above transmission system is included in transmission plant accounts, while the substation equipment that provides a

³⁵ 18 C.F.R. Part 101 (2011).

path for the flow of electricity to directly serve customers on PPL's lower voltage system is included in the distribution plant accounts.³⁶

50. As PPL explains, the formula rate provides that substation equipment at 69 kV and above is to be included in transmission plant accounts. Specifically, Attachment H-8 states: "The annual transmission revenue requirement is equal to the sum of the individual annual transmission revenue requirements of the members of the Zone, which reflects the facilities within the Zone of 69 kV and higher voltages."³⁷ PPL has explained that its plant is recorded as either transmission or distribution, and that there is no need for further adjustment between transmission and distribution plant with respect to substations.

51. Based on PPL's explanation, we reject EPPG Boroughs' challenge, finding that PPL has properly followed the language of the formula rate with respect to this issue. To the extent that EPPG Boroughs are challenging the use of 69 kV for computation of the ATRR, that challenge, because it seeks to modify the formula rate, goes beyond the scope of a Formal Challenge to an Annual Update, and we reject it.

Challenge Paragraph 24

52. In paragraph 24 of the Formal Challenge, EPPG Boroughs challenge the increase in A&G Salaries and Wages from \$1,245,209 in 2008 to \$3,749,631 in 2009. According to PPL, EPPG Boroughs' comparison of the 2008 and 2009 amounts is flawed and there is no evidence that the increase was imprudent.

53. PPL explains that the increase is the result of the application of what are known as "time-off/non-productive loading" rates. In brief, these rates are applied to base payroll dollars to estimate employees' time off or non-productive time. At the end of each year, an adjustment compares the actual rates to the levels estimated earlier in the year. Any differences are then charged to projects in relation to how those accounts were charged each year.

54. PPL further explains that the difference of \$1.8 million that EPPG Boroughs challenge as an increase in wages and salaries is simply the actual time-off/non-productive time adjustment for 2009, not an increase in salaries and wages, as EPPG Boroughs claim. PPL further explains that an error in its 2008 FERC Form No. 1 which

³⁶ PPL January 24, 2011 Answer at 31-32.

³⁷ PJM OATT Attachment H-8 – Annual Transmission Rates -- PPL Group for Network Integration Transmission Service, 2.0.0, at section 1.

it recently uncovered would lower the adjustment from \$1.8 million to \$1.6 million. Of that latter amount, PPL states, \$900,000 is attributed to a higher loading rate adjustment in 2009, while \$700,000 is attributed to cost of living adjustments and an increase in the number of employees who work on administrative matters. In any event, PPL notes, because A&G Expenses are allocated through a Wage and Salary Allocator, as required by the formula rate, only 10 percent of the increase, or \$160,000, is included in the 2010 ATRR, not the \$1.8 million that EPPG Boroughs claim to be the case.

55. We find that PPL has satisfactorily explained the origin of the \$1.8 million adjustment, as well as why that amount is not, in fact, actually included in the ATRR. Based on this explanation, we find that PPL has properly applied the formula rate with respect to this issue. We also agree that EPPG Boroughs have not presented any evidence of imprudence with respect to salaries and wages. For these reasons, we reject EPPG Boroughs' challenge.

Challenge Paragraph 25

56. In paragraph 25 of the Formal Challenge, EPPG Boroughs dispute PPL's increase in Account 923, Outside Service Employed, related to civil litigation. Specifically, EPPG Boroughs argue that PPL refused to answer whether this "civil litigation" was related to PPL's retail sales under its Supplier Choice Program. EPPG Boroughs allege, "in all probability, the litigation involved retail sales and maybe PPL's anti-competition practices, it should not be allocated to transmission service."³⁸

57. PPL responds that the increase in Account 923 represents fees and costs associated with civil litigation and other proceedings. PPL states that, under the formula rate template, expenses in Account 923 are allocated to transmission as part of A&G Expenses using the Wages and Salary Allocator, as required by the formula rate.

58. The formula rate allows PPL to recover civil litigation costs as part of its Account 923 expenses without reference to the specific issue of the civil litigation. PPL properly employed the Wages and Salary Allocator to allocate Account 923 to the transmission function as specified in the formula rate. EPPG Boroughs do not dispute that the formula rate provides for a certain expense, and that PPL actually incurred that expense. The Protocols do not permit EPPG Boroughs to further investigate the type of civil litigation at issue, nor can EPPG Boroughs rely on Article 5.11 to question this account. Accordingly, we reject EPPG Boroughs' challenge on this issue.

³⁸ EPPG Boroughs Formal Challenge at 15.

Challenge Paragraph 26

59. In paragraph 26 of the Formal Challenge, EPPG Boroughs again dispute PPL's A&G salaries and benefits. Specifically, EPPG Boroughs argue that the proposed total benefits³⁹ exceed the direct salaries⁴⁰ by over 28 percent. EPPG Boroughs argue, "the extent of benefits in relation with the direct salaries is outrageous and by increasing all these salaries and benefits by huge amounts in one year adds insult to injury to customers." EPPG Boroughs propose to allow in the transmission rates benefits equal to 50 percent of the direct salaries and increases in all the direct salaries and benefits by 10 percent in 2009 over 2008 amounts.⁴¹

60. In response, PPL explains that the increases in Account 920 are largely due to increases in five major categories: (1) direct salaries, (2) executive incentive cash awards, (3) mini vacations, (4) amortization of restricted stock, and (5) amortization of stock options. PPL explains that these increases can be expected to occur from year to year within these categories of compensation expenses. PPL states that EPPG Boroughs provide no evidence to demonstrate that the increase from 2008 to 2009 is unreasonably larger than what is expected to occur. Finally, PPL notes that, once the Wages and Salary Allocator is applied to the total, the increase in A&G Salary expenses included in the 2010 ATRR is only approximately \$386,000.

61. PPL also clarifies that the categories of compensation expenses cited by EPPG Boroughs (executive incentive cash awards, amortization of restricted stock, and amortization of stock options) are not traditionally defined as benefits. Rather, these items, along with direct salaries, make up an employee's compensation package. PPL explains that decisions about employee compensation fall squarely within the broad discretion that the Commission affords utilities in making business decisions about their operations. PPL argues that EPPG Boroughs provide no evidence that such decisions were imprudent and therefore their challenge should be rejected.

62. We reject EPPG Boroughs' challenge. Against the background of PPL's explanation, we find that EPPG Boroughs have not provided any evidence that the

³⁹ Benefits include \$1.1 million for incentive cash awards, \$0.8 million for mini-vacations, \$1.8 million for amortization of restricted stock, and \$0.4 million for amortization of stock options, for a total of \$4.1 million.

⁴⁰ The A&G direct salaries amount is \$3.2 million.

⁴¹ EPPG Boroughs Formal Challenge at 16.

increase in salaries and benefits is imprudent, otherwise unreasonable or inaccurate, or that PPL failed to apply its formula rate improperly.

Challenge Paragraph 27

63. In paragraph 27 of the Formal Challenge, EPPG Boroughs argue that PPL's 2009 FERC Form No. 1 shows that PPL included \$235,854 as Environmental Remediation Cost and a payment from insurance related to such remediation in the amount of \$141,085 in the formula rate. EPPG Boroughs contend that PPL acknowledged that such cost is related to cleanup of its manufactured gas plant, which EPPG Boroughs call "totally unrelated to electric operations and transmission service."⁴² Therefore, EPPG Boroughs argue that the net amount should be excluded which will reduce ATRR by approximately \$10,000.

64. PPL responds that EPPG Boroughs do not challenge that these costs are properly recorded by PPL in Account 930.2, Miscellaneous General Expenses, which is included in A&G Expenses under the formula rate template, or argue that these costs have been imprudently incurred. PPL states that EPPG Boroughs are trying to improperly allocate expenses in disregard of the filed rate formula. PPL emphasizes that challenges to the use of the Wages and Salary Allocator to allocate those expenses to transmission are outside the scope of allowable challenges set forth in the Protocols. Therefore, PPL argues EPPG Boroughs' challenge should be rejected.

65. We are persuaded by PPL's explanation. PPL properly applied the formula rate's Wage and Salary Allocator to allocate a share of the Environmental Remediation Cost to transmission. EPPG Boroughs do not challenge that these costs are properly recorded by PPL in Account 930.2. Nor do EPPG Boroughs dispute that the formula rate provides for a certain expense, and that PPL actually incurred that expense. Anything further goes beyond the appropriate scope of a Formal Challenge. We reject this challenge.

Challenge Paragraph 28

66. In paragraph 28 of the Formal Challenge, EPPG Boroughs note that PPL stated that the increase in Property Insurance, Account 924, was due to a decrease in the insurance recoveries and an increase in insurance premiums. In addition, EPPG Boroughs note that PPL clarified that the increased Account 924 cost was related to storm damage. EPPG Boroughs argue that, since it is not clear whether the storm damage was to PPL's distribution or transmission facilities or both, the amount in Account 924 should

⁴² *Id.* at 17.

be excluded. EPPG Boroughs note that PPL has agreed to reduce Account 924 by \$2.5 million, but argue that the remaining \$1.5 million increase should also be excluded.

67. PPL explains that its insurance recoveries decreased in 2009 by approximately \$3.5 million, while its insurance premiums increased by approximately \$500,000. The net result is an increase in the amount of Property Insurance recorded in A&G Account 924 of approximately \$4 million, which results in an increase to PPL's total transmission operation and maintenance expense of approximately \$900,000. PPL argues that EPPG Boroughs do not challenge that these costs were properly recorded in Account 924 or that these costs were prudently incurred. Rather, PPL states, EPPG Boroughs challenge the allocation of these costs to transmission through the use of a Net Plant Allocator. PPL contends that, as is the case with the Wages and Salary Allocator, its use of the Net Plant Allocator to allocate expenses is required by the formula rate template and is not appropriately challenged in an Annual Update under the Protocols.

68. We agree with PPL that EPPG Boroughs cannot challenge the recovery of the increase in Account 924 under the Protocols. EPPG Boroughs do not dispute that the formula rate provides for a certain expense, and that PPL actually incurred that expense. Whether that expense involved some portion of PPL's distribution plant due to the use of an allocation factor is not properly part of a Formal Challenge. We reject this challenge.

69. However, we note that the insurance recoveries should offset a corresponding functional expense or plant account. Based on FERC Form No. 1 data, it appears that PPL has performed this offset for other accounts. Therefore, PPL should make an appropriate offset for these insurance recoveries in its next true-up adjustment, to the extent that there is a rate impact.

Challenge Paragraphs 29 and 30

70. In paragraphs 29 and 30 of the Formal Challenge, EPPG Boroughs argue that PPL's ROE should be reduced from the current 11.64 percent to 9.93 percent, inclusive of 50 basis points for RTO participation. EPPG Boroughs calculate that the use of 9.93 percent would reduce the ATRR by \$4.0 million at PPL's computed rate base and by \$3.3 million at the adjusted rate base.

71. PPL responds that, because the ROE is a fixed component of the formula rate template and is not revised as part of any Annual Update, this challenge is outside the scope of permissible challenges as set forth in the Protocols. In any event, PPL argues, EPPG Boroughs' discounted cash flow analysis has several flaws which include, but are not limited to, the following: (1) the analysis had no author; (2) EPPG Boroughs did not include workpapers or supporting documentation; (3) the proxy group members identified are not comparable to PPL; and (4) there is no indication that the dividend yields shown in Attachment 3 have been adjusted in the manner required by the Commission.

72. We find EPPG Boroughs' challenge to the ROE is outside the scope of allowable challenges to the Annual Update. Article 3 of the 2009 Settlement set forth stated ROE percentages for specific time periods, which the Commission approved and which PPL correctly applied. Therefore, we reject this challenge.

Remaining Matters

73. In line number 15 of Attachment 1 to EPPG Boroughs' Formal Challenge, EPPG Boroughs have identified an adjustment of \$924,048 which they have labeled "Exclusion of Employee Termination Costs," and apparently seek to exclude it from the 2010 Update.

74. PPL explains that it addressed this issue with EPPG Boroughs during the November 22, 2010 meeting, and there is no discussion in the Formal Challenge regarding employee termination costs. Further, PPL states that it cannot determine what, if any, concerns remain regarding the employee termination costs.⁴³ Therefore, PPL states that this challenge should be rejected.

75. We find EPPG Boroughs' challenge to the Exclusion of Employee Termination Costs is unsupported. There was no discussion of this item anywhere in the Formal Challenge; it just appears as a line item on a miscellaneous schedule, on EPPG Boroughs' Attachment 1 summary of adjustments. To the extent that this adjustment is actually part of EPPG Boroughs' Formal Challenge, we reject it.

76. Finally, EPPG Boroughs request an evidentiary hearing. The courts have established:

FERC's choice whether to hold an evidentiary hearing is generally discretionary. It is well established in the context of FERC proceedings that mere allegations of disputed facts are insufficient to mandate a hearing; petitioners must make an adequate proffer of evidence to support their claim.... Even when there are disputed factual issues, FERC does not need to conduct an evidentiary hearing if it can adequately resolve the issues on a written record.⁴⁴

⁴³ PPL January 24, 2011 Answer at 42.

⁴⁴ *Blumenthal v. FERC*, 613 F.3d 1142, 1144-45 (D.C. Cir. 2010) (citing *Cerro Wire & Cable v. FERC*, 677 F.2d 124, 128, 219 U.S. App. D.C. 273 (D.C. Cir. 1982)).

In the context of this proceeding, with its ample written record and detailed pleadings by both parties interpreting that record, we find that an evidentiary hearing is neither necessary nor useful. We therefore deny the motion for an evidentiary hearing.

The Commission orders:

The Formal Challenge is dismissed, and the 2010 Update is accepted for filing, subject to PPL offsetting insurance recoveries in its next true-up adjustment, as described in P 69.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.