

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.

Exelon Corporation

Docket No. EL05-49-002

v.

PPL Electric Utilities Corporation and
PJM Interconnection, L.L.C.

ORDER APPROVING UNCONTESTED OFFER OF SETTLEMENT

(Issued March 20, 2007)

1. In this order, we approve an uncontested offer of settlement and settlement agreement (Settlement) between Exelon Corporation (Exelon), on behalf of itself and its wholly-owned subsidiary PECO Energy Company (PECO), and PPL Electric Utilities Corporation (PPL) (together, the Settling Parties). The Settlement is in compliance with our November 9, 2006 Order, which conditionally accepted a settlement regarding energy delivered to PPL, but erroneously billed to PECO, resulting from an error in PJM Interconnection, LLC's (PJM) State Estimator, subject to its elimination of a proposed monthly charge for "network transmission service."¹ Accordingly, the Commission approves the Settlement.

¹ *Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, 117 FERC ¶ 61,176 (2006) (November 9 Order).

Background

2. On December 23, 2004, Exelon, on behalf of its wholly-owned subsidiary, PECO, filed a complaint against PPL and PJM for reimbursement of over \$39 million, plus interest, for energy taken by PPL, but erroneously billed to PECO through PJM's State Estimator. Following an Order issued on April 18, 2005 finding that PECO is entitled to reimbursement,² the Commission established settlement judge proceedings to determine who should reimburse PECO and for what amount.
3. On September 14, 2005, the Settling Parties filed their first proposed settlement agreement that included, among other things, a \$7.5 million, plus interest, payment assessed to PJM market participants. Several PJM market participants objected to the settlement, claiming it was unjust and unreasonable to assess charges to entities that were not parties to this dispute. The Commission issued an Order that rejected the First Proposed Settlement Agreement and directed the Chief Judge to set the matter for further hearing proceedings.³
4. On March 30, 2006, the Settling Parties submitted a second offer of settlement that included a monthly charge for network transmission service assessed to all customers receiving network service in the PPL Zone, as set forth in Attachment H-8B of the PJM Tariff. The Commission concluded in its November 9 Order that the monthly charge constitutes retroactive ratemaking due to current and future customers being charged based on past amounts related to prior transactions. Accordingly, the November 9 Order accepted the Second Offer of Settlement conditioned on the replacement of the proposed monthly charge under Attachment H-8B with a lump sum payment by PPL to PJM, who would in turn credit the payment to PECO.⁴
5. On December 11, 2006, the Settling Parties submitted a revised settlement, which incorporates the Commission's conditions as set forth in the November 9 Order.

² *Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, 111 FERC ¶ 61,065 (2005) (April 18 Order).

³ *Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, 114 FERC ¶ 61,298 (2006) (March 21 Order).

⁴ November 9 Order, at P 61,876.

Notice of Filing and Response

6. Notice of the Settlement was published in the *Federal Register*, 72 Fed. Reg. 770 (2007), with interventions and protests due on or before January 11, 2007. On January 11, 2007, the PP&L Industrial Customer Alliance and PJM Industrial Customer Coalition filed limited comments raising no issues. No adverse comments or protests were filed.

Terms of the Settlement

7. The Settlement revises language contained in the Second Offer of Settlement to include a single, lump sum payment of \$38.3 million, plus interest, from PJM to PECO, which shall constitute full settlement of the Exelon complaint. Interest will accrue from September 14, 2005, according to the Commission's regulations.⁵ PECO will receive this payment in the form of a single credit applied to PJM's monthly billing statement to PECO for charges under the PJM Tariff and PJM Operating Agreement. The payment will be executed with respect to the month during which the Commission accepts the Settlement.

8. The Settlement states that any charges established pursuant to the revised Settlement shall be subject to change solely by written amendment executed by the Settling Parties. In addition, the Commission's authority to change or establish any charges related to the issues raised in this proceeding will be limited to the *Mobile-Sierra* public interest standard applicable to fixed-rate agreements.

Discussion

9. The Settlement eliminates the \$0.1162/kV-month charge under Attachment H-8B of the PJM Tariff as proposed in the Second Offer of Settlement and, alternatively, includes a single lump-sum payment from PPL to PJM who will, in turn, credit the payment to PECO. The Settlement thus complies with the November 9 Order.

10. The Settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or interest in this proceeding. The settlement states that the charges established pursuant to the Settlement shall be subject to change solely by written amendment executed by the Settling Parties. The standard of review for

⁵ 18 C.F.R. § 35.19a (2005).

changes, other than those agreed to by the Settling Parties, will be the *Mobile-Sierra* public interest standard.⁶

11. Additionally, it should be noted that PJM has modified its Tariff and Operating Agreement to limit the time period for billing adjustment proposals on a prospective basis.⁷

12. This order terminates Docket Nos. EL05-49-000, EL05-49-001, and EL05-49-002.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Philis J. Posey,
Acting Secretary.

⁶ The “public interest” standard is set forth in *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case we find that the public interest standard should apply.

⁷ On November 13, 2006, in Docket No. ER06-1497-000, PJM Interconnection, L.L.C.’s proposal to impose a two-year limit on when a party can seek a billing adjustment and on when PJM can make a billing adjustment was accepted under delegated authority.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Corporation

Docket No. EL05-49-002

v.

PPL Electric Utilities Corporation and
PJM Interconnection, L.L.C.

(Issued March 20, 2007)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement have specified that the standard of review for any future change to the settlement considered by the Commission shall be the *Mobile-Sierra* “public interest” standard. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or by the Commission acting *sua sponte*, I do not believe the Commission should approve such a contract provision.

Accordingly, I must respectfully dissent in part from this order.

Suede G. Kelly

¹ *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61, 232 (2006).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Exelon Corporation

v.

Docket No. EL05-49-002

PPL Electric Utilities Corporation and
PJM Interconnection, L.L.C.

(Issued March 20, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of the case law on the applicability of the “public interest” standard.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).