

142 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Electric Utilities Corporation

Docket No. ER09-1148-000

ORDER ON FORMAL CHALLENGE, ESTABLISHING HEARING AND  
SETTLEMENT JUDGE PROCEDURES, AND  
CONSOLIDATING PROCEEDINGS

(Issued February 26, 2013)

1. Pursuant to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT),<sup>1</sup> on May 11, 2012, PPL Electric Utilities Corporation (PPL) made an informational filing detailing its Annual Update (2012 Annual Update) to its transmission rates based on the 2009 Settlement's formula (formula rate).<sup>2</sup> On December 18, 2012, the Eastern Pennsylvania Power Group Boroughs (EPPG)<sup>3</sup> filed a Formal Challenge (2012 Formal Challenge) pursuant to the Formula Rate Implementation Protocols (Protocols).<sup>4</sup> EPPG disputes PPL's 2012 Annual Update, and requests that the Commission set it for hearing and settlement judge procedures. EPPG also requests that the Commission consolidate the 2012 Annual Update with the ongoing proceeding on the 2010 and 2011 Annual Updates. As discussed below, we will set the 2012 Annual

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

<sup>2</sup> PJM OATT Attachment H-8G – PPL Electric Utilities Corporation Formula Rate, 2.0.0 (formula rate).

<sup>3</sup> For the purposes of this proceeding, EPPG consists of the Pennsylvania municipalities of Blakely, Catawissa, Duncannon, Goldsboro, Hatfield, Kutztown, Lansdale, Leighton, Lewisberry, Middletown, Mifflinburg, Quakertown, Schuylkill Haven, St. Clair, Watsontown, and Weatherly.

<sup>4</sup> PJM OATT Attachment H-8H – Formula Rate Implementation Protocols, 2.0.0 (Protocols).

Update for hearing and settlement judge procedures and consolidate it with the ongoing proceeding on the 2010<sup>5</sup> and 2011<sup>6</sup> Annual Updates.<sup>7</sup>

## **I. Background**

### **A. Formula Rate and Protocols**

2. In 2009, the Commission approved an uncontested settlement<sup>8</sup> (2009 Settlement) developed by PPL and several of its customers, with the consent of several state government agencies. The 2009 Settlement established not only a formula rate, but also Protocols detailing how PPL's formula rate would be updated annually and how it would be challenged.

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

4. Under the Protocols, PPL must submit its update by May 15 annually. During the next 180 days, the Protocols establish a process by which PPL is to respond to any concerns, requests for discovery, or other preliminary challenges by customers. If these challenges cannot be resolved promptly and satisfactorily, then the customer may file a Formal Challenge with the Commission in order to resolve the dispute, pursuant to sections I.E and VI of the Protocols. Formal Challenges are limited to the eleven avenues

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<sup>5</sup> PPL, Docket No. ER09-1148-000, Informational Filing of 2010 Formula Rate Update (May 14, 2010) (2010 Annual Update).

<sup>6</sup> PPL, Docket No. ER09-1148-000, Informational Filing of 2011 Formula Rate Update (May 13, 2011) (2011 Annual Update).

<sup>7</sup> *PPL Electric Utilities Corp.*, 140 FERC ¶ 61,231 (2012) (September 2012 Order). In this order, the Commission granted rehearing in part and set specific issues in the 2010 and 2011 Annual Updates for hearing and settlement judge procedures.

<sup>8</sup> *PPL Electric Utilities Corp.*, 128 FERC ¶ 61,178 (2009) (Order Approving 2009 Settlement).

of inquiry listed in section VI.A (1) of the Protocols (as discussed in the September 2012 Order).<sup>9</sup>

5. Under the 2009 Settlement and the Protocols adopted therein, annual updates are informational filings, which, once formally challenged, the Commission may rule on summarily or set for hearing and settlement judge procedures.<sup>10</sup> Further, section II.B of the Protocols expressly prohibits requesting modifications to the formula rate itself either in an Annual Update or a Formal Challenge, stating that such requests must be made in a separate FPA section 205 or section 206 proceeding.

## **B. Procedural History**

6. On May 15, 2010, PPL submitted its 2010 Annual Update. On December 15, 2010, EPPG filed their 2010 Formal Challenge. On January 24, 2011, PPL submitted its answer to EPPG's 2010 Formal Challenge. On August 15, 2011, the Commission issued an order rejecting the Formal Challenge.<sup>11</sup> On August 30, 2011, EPPG filed a request for rehearing of the Commission's August 2011 Order.

7. On May 13, 2011, PPL submitted its 2011 Annual Update. On December 7, 2011, EPPG filed their 2011 Formal Challenge.

8. The Commission's September 2012 Order granted rehearing of its order on the 2010 Annual Update, and also addressed the 2011 Annual Update. The Commission set a number of issues raised in both the 2010 and 2011 Annual Updates for hearing and settlement judge procedures.<sup>12</sup>

9. EPPG's 2012 Formal Challenge focuses on numerous line items in the 2012 Annual Update, as discussed below. PPL filed its response on January 28, 2013. On February 11, 2013, EPPG filed a response to PPL's response.

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<sup>9</sup> 140 FERC ¶ 61,231 at P 11.

<sup>10</sup> Absent the filing of a Formal Challenge, the Commission will not act on these annual informational filings and they may take effect pursuant to the terms of the Protocols without any need for the Commission to accept them for filing.

<sup>11</sup> *PPL Electric Utilities Corp.*, 136 FERC ¶ 61,101 (2011) (August 2011 Order).

<sup>12</sup> On October 22, 2012, PPL requested rehearing, consideration of which is pending.

## II. Discussion

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>13</sup> prohibits an answer to an answer unless otherwise ordered by the decisional authority, and the Commission accordingly rejects EPPG's February 11th pleading, which is not needed to aid the Commission in its disposition of this proceeding.

11. Except as otherwise noted below, because EPPG in its 2012 Formal Challenge raises genuine issues of material fact that are more appropriately resolved through an evidentiary hearing or settlement judge procedures, we will set for hearing and settlement judgment procedures the 2012 Annual Update and Formal Challenge as ordered below. In particular, we set for hearing and settlement judge procedures, and consolidate with the ongoing proceedings on the 2010 and 2011 Annual Updates, the issues that EPPG raises in Challenge Nos. 1(salaries and wages), 2 (Applicability of the 2010 and 2011 Formal Challenges to the 2012 Update), 4 (intangible plant additions), and 5 (Account 190 calculation). Further, given the existence of common issues of fact and law between the disputed issues in the 2012 Annual Update and Formal Challenge and those earlier set for hearing and settlement judge procedures, we will grant the motion to consolidate the 2012 Annual Update and Formal Challenge with the earlier updates and challenges.

### A. Challenge No. 2: Applicability of the 2010 and 2011 Formal Challenges to the 2012 Update

12. EPPG argues that nine issues under Challenge No. 2, which it had previously raised regarding the 2010 and 2011 Annual Updates, are equally applicable to the 2012 Annual Update. Of those nine issues, EPPG briefly lists five (cost of new facilities related to distribution, line outage management software, cost of five substations, intangible plant items, and general plant additions) and provides more detailed arguments on four (Challenge Nos. 2(a) (federal tax prepayments), 2(b) (gas plant remediation), 2(c) (Account 923 expenses), and 2(d) (Account 190 Accumulated Deferred Income Tax related to Contributions in Aid of Construction)). EPPG requests that the Commission direct PPL to agree to apply the results of the final resolution of the 2010 and 2011 Formal Challenges to the 2012 Annual Update.

13. In response, PPL argues that it is not possible to apply generically the final resolution of the issues raised in the 2010 and 2011 Formal Challenges to the 2012 Annual Update. PPL argues that, while EPPG provided a list of issues that it believes are applicable to the 2012 Annual Update, it offers no explanation for how or why these issues are relevant to the 2012 Annual Update. PPL states, nevertheless, that it agrees with EPPG that, if as part of the proceeding regarding the 2010 and 2011 Formal

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<sup>13</sup> 18 C.F.R. § 385.213(a)(2) (2012).

Challenges, the Commission determines that PPL improperly administered the formula rate or did not properly follow the Uniform System of Accounts, such determinations could affect the 2012 Annual Update.

14. Given that there is an ongoing hearing on the 2010 and 2011 Annual Updates and Formal Challenges, and that we are consolidating the 2012 Annual Update and Formal Challenge with the ongoing hearing, which is in its earliest stages, we do not believe that it would be appropriate to pre-judge the resolution of any of these disputed factual issues and the applicability of such resolutions to other Annual Updates. We therefore decline to grant EPPG's request to apply generically the final resolution of the issues raised in the 2010 and 2011 Formal Challenges to the 2012 Annual Update. However, we find that the individual substantive issues that EPPG raises in Challenge No. 2 present genuine issues of material fact that are best resolved through hearing and settlement judge procedures, and accordingly set these matters for hearing and settlement judge procedures.

**B. Challenge No. 3: Erroneous Booking of Expenses**

15. EPPG states that PPL acknowledged that it incorrectly booked \$185,106 to Account 561.2, relating to PPL's Provider of Last Resort Loads, and that these amounts should have been booked to Account 561.4, which is not included in the formula rate.

16. In its response, PPL states that it has committed to make an adjustment in its true-up for the 2013 Annual Update to remove this amount from its formula rate. Further, PPL states that it will identify any amounts from prior years improperly recorded in Account 561.2 instead of Account 561.4 and will include any resulting refunds, with interest, in the 2013 Annual Update.

17. Accordingly, we find that this Challenge No. 3 has been resolved, pending PPL's submission of the true-up adjustments in a future filing.

**C. Hearing and Settlement Judge Procedures**

18. The Commission may opt for hearing and settlement judge procedures rather than rule summarily when presented with a Formal Challenge under the previously approved settlement and the Protocols adopted therein. Here, as noted above, EPPG's challenges (with the exceptions described above) raise genuine issues of material fact. Accordingly, consistent with the 2009 Settlement and the Protocols, we will set them for hearing and settlement judge procedures.

The Commission orders:

(A) EPPG's 2012 Formal Challenge is hereby granted in part, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning PPL's 2012 Annual Update and EPPG's 2012 Formal Challenge, as discussed in the body of this order.

(C) The hearing and settlement judge procedures ordered for the 2012 Annual Update and Formal Challenge are hereby consolidated with those previously ordered for the 2010 and 2011 Annual Updates and Formal Challenges, for purposes of settlement, hearing, and decision.

(D) The previously-designated settlement judge or presiding judge, as appropriate, shall determine the procedures best suited to accommodate the consolidation ordered herein.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.