

122 FERC ¶ 61,234
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.

Public Service Electric and Gas Company

Docket No. EL08-19-000

ORDER GRANTING REQUEST
FOR DECLARATORY ORDER

(Issued March 20, 2008)

1. On December 6, 2007, Public Service Electric and Gas Company (PSE&G), pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,¹ submitted a petition seeking a declaratory order (Petition) confirming that its to-be-constructed 69 kV transmission facilities and related facilities are properly classified as transmission assets subject to the Commission's jurisdiction. On February 4, 2008, PSE&G submitted an amendment to its Petition (Amended Petition) modifying its initial request and including additional projects in its request. This order grants the request for a declaratory order.

I. PSE&G's Petitions

A. December 6, 2007 Petition

2. On December 6, 2007, PSE&G filed the Petition seeking a declaratory order that specific, to-be-constructed 69 kilovolt (kV) electric transmission circuits and related facilities are properly classified as transmission assets for jurisdictional and rate making purposes pursuant to Order No. 888.² PSE&G explains that it is set to embark on a series of 69 kV transmission system construction projects scheduled to begin in early 2008 to

¹ 18 C.F.R. § 385.207 (2007).

² *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

enhance reliability, improve transfer capability across the PSE&G system, and enhance its ability to handle load growth. PSE&G states that the projects involve the installation of new circuits and associated facilities that will create 69 kV systems in a transmission configuration. PSE&G explains that it plans to install approximately 150 circuit miles of transmission within its service territory with construction proceeding in several phases.

3. PSE&G advises that the locally-planned projects are necessary to maintain and improve system reliability. PSE&G states that its existing 69 kV system is nearing its capacity limits, which, together with anticipated load growth, creates the need to network among multiple switching stations. According to PSE&G, the most logical solution is to create 69 kV systems in a networked transmission configuration. PSE&G emphasizes that the projects allow transmission expansion on existing roadways utilizing existing overhead construction standards, and virtually eliminating the need to acquire new rights-of-way. PSE&G explains that 69 kV is a transmission voltage level that is common to many utilities, including most of the PJM transmission owners.

4. PSE&G contends that these planned 69 kV circuits satisfy the classification criteria for transmission assets subject to the Commission's jurisdiction pursuant to Order No. 888's seven-factor test,³ and the Commission's orders interpreting that test. However, because PSE&G has certain older 69 kV circuits that it has historically classified as distribution assets, it seeks a declaratory order from the Commission confirming that these new 69 kV circuits and facilities and other similarly-configured projects are transmission assets. In support of its Petition, PSE&G provided circuit configurations of four "typical projects" for illustrative purposes and a chart depicting the results of PSE&G's seven-factor analysis. PSE&G contends that the chart demonstrates that these 69 kV circuits satisfy the criteria for Commission-jurisdictional transmission assets under the seven-factor test.

5. PSE&G notes that the Commission has ruled that it will defer to the findings of the state utility commissions as to the jurisdictional determination under the seven-factor test in instances of unbundled retail wheeling that occurs as result of a state retail access

³ Order No. 888 set out seven indicators, a combination of functional and technical tests, to assist companies and state commissions with separating local distribution facilities from Commission jurisdictional transmission facilities on a case-by-case basis. The seven factors are as follows: (1) Local distribution facilities are normally in close proximity to retail customers; (2) Local distribution facilities are primarily radial in character; (3) Power flows into local distribution systems; it rarely, if ever, flows out; (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market; (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area; (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system; and (7) Local distribution systems will be of reduced voltage. Order No. 888 at 31,771.

program. PSE&G advises that such deference is not applicable to the instant matter because PSE&G is not seeking to reclassify any existing assets.

B. February 4, 2008 Amended Petition

6. On February 4, 2008, PSE&G filed the Amended Petition, in which it provides detailed information regarding three additional 69 kV projects, including a seven-factor analysis. PSE&G states that these three additional 69kV circuits, along with the four identified in the Petition, constitute the entire 69 kV project that it plans to construct.

7. PSE&G also clarified that its request is limited to the seven projects identified in the Petition and Amended Petition, and it is no longer seeking a finding that all similarly-configured circuits and assets that it may construct and place into service in the future are transmission facilities for jurisdictional and ratemaking purposes.

II. Procedural Matters

Notice, Interventions, Protest and Answer

8. Notice of PSE&G's Petition was published in the *Federal Register*, 72 Fed. Reg. 72,692 (2007), with interventions and protests due on or before January 7, 2008. Notice of PSE&G's Amended Petition was published in the *Federal Register*, 73 Fed. Reg. 8,655 (2008), with interventions and protests due on or before February 25, 2008.

9. The New Jersey Board of Public Utilities (NJBPU) filed a notice of intervention and protest. Timely motions to intervene were filed by PJM Interconnection, L.L.C. and Exelon Corporation. On January 8, 2008, motions to intervene out-of-time were filed by Rockland Electric Company (Rockland) and FirstEnergy Service Company - on behalf of Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (together, the Designated FirstEnergy Affiliates); and on January 16, 2008, Pepco Holdings, Inc. Companies (PHI Companies)⁴ filed a motion to intervene out-of-time. On January 23, 2008, PSE&G filed a motion to file an answer to NJBPU's protest. On February 4, 2008, NJBPU filed to withdraw its protest.

⁴ The PHI Companies are Potomac Electric Power Company, Delmarva Power and Light Company, and Atlantic City Electric Company.

III. Commission Determination

A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Given the early stage of the proceeding, its interests, and the absence of undue prejudice or delay, we will grant the late motions to intervene of the PHI Companies, Rockland, and the Designated FirstEnergy Affiliates.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁶ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the NJBPU's request for withdrawal of its protest and reject PSE&G's answer as moot in light of the protest being withdrawn.

B. Petition for Declaratory Order

13. In Order No. 888, the Commission stated that it would take advantage of state regulatory expertise concerning facilities that they regulate.⁷ Accordingly, the Commission stated that it would defer to recommendations by state regulatory authorities concerning where to draw the jurisdictional line under the Commission's test for local distribution facilities, and how to allocate costs for such facilities for inclusion in rates, provided such recommendations are consistent with the essential elements of the seven-factor test. Further, the Commission recognized that the seven-factor test may not be dispositive, and that states may find other technical factors that may be relevant.⁸

14. PSE&G's Petition, as amended, includes seven specific circuits that constitute the entire 69 kV project that it plans to construct. These to-be-constructed 69 kV facilities will connect with facilities that are already classified as transmission.⁹ NJBPU has

⁵ 18 C.F.R. § 385.214 (2007).

⁶ 18 C.F.R. § 385.213(a)(2) (2007).

⁷ Order No. 888 at 31,783-84.

⁸ *Pacific Gas and Electric Company*, 77 FERC ¶ 61,077 (1996) (Commission ruling on a petition for a declaratory order on classification of transmission and distribution facilities pursuant to Order No. 888 after state determination). *See also MidAmerican Energy Company*, 90 FERC ¶ 61,105 (2000).

⁹ To the extent that the to-be-constructed facilities connect with distribution facilities, PSE&G does not seek to reclassify any existing facilities at this time.

advised the Commission that it concurs with PSE&G that the seven specific projects for which PSE&G seeks a declaratory order are properly classified as transmission facilities under the seven-factor test for jurisdictional and ratemaking purposes.

15. We have reviewed PSE&G's seven-factor analysis, the circuit configurations of the seven projects, and PSE&G's justifications for why the projects qualify for transmission classification. We agree with the NJBPU that PSE&G has provided adequate justification for why these projects are reasonably classified as transmission and should be included in PJM's jurisdictional rates.¹⁰ Accordingly, we will grant the request for a declaratory order for the seven projects identified in PSE&G's Petitions.

The Commission orders:

PSE&G's request for a declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁰ PSEG's jurisdictional transmission rates are included in the PJM Interconnection, L.L.C.'s Open Access Transmission Tariff.