

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

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

Docket No. EL05-49-000

ORDER ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEEDINGS

(Issued April 18, 2005)

1. On December 23, 2004, Exelon Corporation (Exelon), on behalf of its wholly owned subsidiary PECO Energy Company (PECO), filed a complaint against PPL Electric Utilities Corporation (PPL) and PJM Interconnection, L.L.C. (PJM) for reimbursement of over \$39 million for energy taken by PPL but erroneously charged to PECO through PJM's State Estimator. In this order, we find that Exelon/PECO is entitled to reimbursement, but we set for hearing and settlement judge proceedings the issue of how much reimbursement PECO is entitled to, including interest, and how much each party shall pay, based on each party's responsibility for the erroneous charges. This order benefits customers, because it ensures that parties who receive energy actually pay for that energy and that all parties are compensated for their actions.

I. Background

A. Exelon and PECO's complaint

2. 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 erroneous charges as a result of a billing error. Exelon's complaint alleges that from April 1, 1998 through May 31, 2003, PJM charged PECO more than \$39 million for energy that was delivered to PPL due to PJM's State Estimator mistakenly identifying PPL's Elroy 69 kV substation and transformer (Elroy substation) located in Bucks County, Pennsylvania as belonging to PECO.

3. PECO claims it was improperly charged, during periods of congestion, for the energy PPL withdrew at the Elroy substation. According to the PJM Tariff, Transmission Congestion Charges (TCCs) are “attributable to the increased cost of energy delivered at a given load bus when the transmission system serving that load bus is operating under constrained conditions.”¹ Therefore, PECO claims, during periods of congestion, PJM erroneously charged PECO for the energy estimated at the Elroy substation that belongs to PPL and PPL received that energy at no charge.

4. PECO asserts that it did not realize it was being charged for energy that PPL accepted because the monthly bills that PECO and PPL receive from PJM did not specify the charges bus-by-bus. Rather, the false charges were an unspecified subpart of the catch-all charge listed as “transmission congestion.”

5. In early 2001, PECO noticed that PJM incorrectly attributed another Elroy transformer to PECO rather than PPL. Upon discovering this, PECO notified PJM via email that the Elroy substation was a PPL facility and requested PJM to correct the error.²

6. In March 2003, PECO wrote to PJM and requested that PJM conduct an investigation into why PECO’s aggregate levels of its TCCs were so high.³ As a result of that investigation, PJM discovered the billing error and corrected the error prospectively beginning on June 1, 2003. PJM also calculated that amount that PECO was overcharged for energy that should have been charged to PPL.

7. Although PJM corrected the error prospectively beginning on June 1, 2003, PJM did not issue a refund to PECO for the erroneous charges, nor did it collect the undercharged amount from PPL. Exelon’s complaint seeks reimbursement from PPL of over \$39 million in overcharges plus interest. Exelon states that it seeks no recovery from PJM independent of the pass-through of PPL’s payment.

8. Exelon states that both informal negotiations and formal mediation have already been undertaken through the PJM Dispute Resolution Procedures under Schedule 5 of the Operating Agreement. PECO, PPL and PJM participated in mediation, however the mediation process was recently terminated after the parties failed to resolve the dispute.

¹ PJM Tariff, Attachment K – Appendix, section 1.3.34.

² See Tabs 3 through 9 of Exelon’s Complaint filed in Docket No. EL05-49-000 on December 23, 2004. PECO submitted several electronic messages to PJM from January 19, 2001 to October 17, 2002, as a part of PJM’s semi-annual facility ratings review, stating that the Elroy transformer is a PPL transformer.

³ See Tab 2 of Exelon’s Complaint filed in Docket No. EL05-49-000 on December 23, 2004.

B. Notice of Exelon's Filing

9. Notice of Exelon's complaint was published in the *Federal Register*⁴, with interventions, comments and protests due on or before January 12, 2005. On January 3, 2005, PPL filed an unopposed motion for extension of time to file its answer to Exelon's complaint. The Commission granted PPL's motion and the deadline to file answers, interventions or protests was extended to February 11, 2005. Both PPL and PJM filed answers to Exelon's complaint. Allegheny Power and Allegheny Energy Supply Company, LLC (collectively, Allegheny) filed a motion to intervene out of time. Exelon filed an answer to Allegheny's motion to intervene out-of-time.

C. PPL's Answer

10. On February 11, 2005, PPL filed an answer to Exelon's complaint arguing that Exelon/PECO is not entitled to reimbursement since its complaint seeks to reopen bills that have long since closed pursuant to the PJM Tariff. PPL argues that Exelon's complaint fails to demonstrate any violation of the PJM Tariff. PPL claims that the bills sent by PJM to Exelon, PPL, and all the other PJM market participants state that any dispute with respect to the bill must be raised within 45 days.

11. PPL affirmatively defends against Exelon's complaint arguing that Exelon and PECO bear a large part of the responsibility for the billing error. PPL claims that Exelon and PECO failed to take advantage of several opportunities to discover the billing error and taking the necessary actions to correct the error. PPL points to evidence that Exelon first discovered the error in PJM assigning the Elroy substation to PECO instead of PPL in 2001, but claims that PECO failed to act to ensure that PJM remedied the error.

12. PPL also argues that, if the Commission finds that PECO is entitled to reimbursement, PPL should not be singled out to bear the entire burden of PECO's reimbursement. PPL claims that there is no bilateral relationship between PECO and PPL and that the effects of the billing error flowed through PJM's interrelated markets to affect many market participants. Therefore, PPL asserts that the only equitable remedy, should PECO be entitled to reimbursement, is to re-run the entire markets for the time period of the billing error and rebill the entire PJM market. PPL continues on to state that re-running and rebilling the entire market would undermine the market stability and upset the finality of the markets.

⁴ 70 Fed. Reg. 343 (2005).

D. PJM's Answer

13. Also on February 11, 2005, PJM filed an answer to Exelon's complaint denying any responsibility or fault for the misattribution of the Elroy substation to PECO. PJM also denies any allegations that it did not follow or acted in violation of the PJM Tariff or Operating Agreement. PJM claims that it did not improperly bill PECO or PPL. Rather, PJM answers that it determined the payments based upon the load at each load bus, including the Elroy substation, as determined by the PJM State Estimator, as required by the PJM Tariff and Operating Agreement.

E. Exelon's Response to PPL's Answer

14. On February 28, 2004, Exelon submitted an answer to the answer of PPL and PJM. Exelon reiterates the central fact of its complaint that PJM mistakenly charged PECO for the energy at the Elroy substation that belongs to PPL. Exelon asserts that PPL received that energy at no charge and now refuses to reimburse PECO for those charges.

15. Exelon counters PPL's argument that reimbursement would be a violation of the PJM Tariff by stating that the misattribution of the Elroy substation was not part of PJM's filed rate, as PPL suggests. Instead, the tariff rate was billed to the wrong party and the error has now been corrected and the proper party is being billed under the filed rate.

16. Exelon admits that PECO could have corrected the mistake from the misattribution of the Elroy bus within 45 days of receiving the bills, however, Exelon states that nothing in PJM's Tariff or Operating Agreement limits the time to raise billing errors to 45 days. Exelon argues that imposing statute of limitation when none exists in the tariff constitutes a change in the filed rate.⁵

17. Exelon answers PPL's assertion that PECO bears the blame for the billing error by stating that PECO's reimbursement of overcharges does not turn on an issue of which party is at fault. Exelon points out that PPL had the same opportunities to uncover the error as PECO and PJM. Furthermore, due to the break out of the billing statement, Exelon asserts it was extremely difficult to discern a misapplied charge in the bulk 'transmission congestion' charge listed on the bill.

18. In response to PPL's argument that the markets need to be re-run to determine the proper reimbursement, Exelon states that the error led to a direct, one-to-one correlation between the amount PECO was overcharged and the amount that PPL was undercharged when both the PECO and PPL zones were congested. Therefore, Exelon answers, there

⁵ Exelon Answer at 27.

is no need to re-run the entire market. Furthermore, Exelon agrees with PPL that market certainty is vitally important. However, Exelon argues that market certainty is enhanced when market participants are required to pay for the energy they take, and not overcharged for the energy that another party uses.

F. PJM's Response to PPL's Answer

19. PJM also filed an answer to PPL's answer on February 28, 2005. PJM's answer asserts that the only reason that it is a party to this proceeding is to implement PECO's refund from PPL. PJM states that no other party has asserted a claim against PJM.

20. PJM specifically denies any fault for misattribution of the Elroy substation and denies any fault for the failure to correct the error. PJM shared the information regarding the State Estimator with the transmission owners and relied on each transmission owner, including PECO and PPL, to alert PJM to any errors in the attribution of facilities in the State Estimator.

21. PJM also objects to PPL's assertion that PJM should re-run the markets in order to obtain the recovery from all market participants. PJM agrees with PPL that re-running the markets would upset the market stability.

II. Discussion

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motion to intervene serve to make the parties that filed them parties to this proceeding. We will grant Allegheny's untimely intervention, since we find that doing so at this early stage of this proceeding will not unduly disrupt the proceeding or place an undue burden on the parties.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2004), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Exelon and PJM's answers to PPL's answer because they have provided information that assisted us in our decision-making process.

24. The Commission finds that PECO is entitled to reimbursement for the congestion charges that PJM erroneously billed to it at the Elroy substation. All parties recognize that these charges were improperly billed due to an error in the State Estimator coding.⁶

⁶ As PPL acknowledges, "we all know now that there was an error in the software coding that attributed the Elroy [substation] in the State Estimator model to Exelon rather than PPL. See PPL's Answer Exhibit 1 Testimony of Jeffery Tranen On Behalf of PPL Electric Utilities Corporation at 15.

PECO also had no way of knowing through the bills issued by PJM that it was being improperly charged, since the bills contained only a single statement of congestion charges, not attributed to any specific locations. Since PECO was overcharged and had no way of knowing that they were being charged for energy properly attributable to PPL, we find that PECO is entitled to reimbursement of the overcharged amount.

25. PPL contends that, other than a section dealing with the time limit to correct metering errors, the PJM Tariff does not contain any explicit provisions that address the time limit in which PJM can reconcile other billing errors. PPL argues that, since the Tariff is silent on the issue of when billing errors can be corrected, PECO, as the PJM market participant here, was responsible for raising any questions or disputes regarding its bill within the 45-day time frame set forth by PJM on the billing statements.

26. This dispute involves a billing error resulting from PJM's incorrect attribution of the Elroy substation to PECO, rather than PPL. This error must be corrected to ensure that each customer pays the appropriate tariff rate for service taken. We find, absent any specific tariff provision establishing a time frame to dispute such errors, that no specific time frame exists within which to dispute this billing error. In response to PPL's assertion that the 45-day time limitation should apply, we find that PJM's Tariff and Operating Agreement do not contain language establishing a 45-day limit on providing notice of a billing dispute. Since PJM's Tariff and Operating Agreement do not contain a time limit to complain about billing errors, the 45-day time frame mentioned on a billing statement cannot preclude PECO from seeking a correction of this error.

27. Furthermore, based on the billing statement, PECO would have had no knowledge that it was being overcharged until PJM completed its investigation in 2003. The invoice did not specify that congestion charges for the Elroy substation were involved in the bill. Neither the OATT nor the invoice indicate that the 45-day limit was intended to apply to a situation like this, in which PECO could not have determined from the bill that it was charged for congestion at the Elroy substation. We cannot hold PECO responsible for failing to dispute a charge within 45 days when the evidence indicates that PECO did not know that they were being overcharged.

28. PECO claims it was overcharged in violation of the filed rate in PJM's tariff. PPL maintains that the filed rate in this case includes the misattribution of the meter as determined by the state estimator, and that, therefore, PJM charged PECO the appropriate filed rate. PECO counters that they were billed for congestion charges due to an error attributing the Elroy substation. PECO argues that error is not the equivalent of a modeling or estimation function of the state estimator that is embedded in the filed rate.

29. The Commission concludes that the filed rate in PJM's OATT requires that PJM apply congestion charges only to the party actually incurring the charges.⁷ In cases of billing errors, the Commission permits correction of these errors to ensure that the customer pays only the filed rate.⁸ That is precisely what Exelon seeks here. The filed rate was misapplied to Exelon due to a billing error; they are entitled to reimbursement for the filed rate amount improperly overcharged.

30. Having found that PECO is entitled to reimbursement of overcharges, the Commission, however, will set for settlement judge proceedings and hearing the question of how much PECO was overcharged and which parties were undercharged, and by how much. PPL has raised a material issue of fact with respect to how to determine the parties that were undercharged that the Commission cannot determine on this record. Exelon proposes to re-calculate the billing error that occurred due to the misapplication of the filed tariff, by multiplying the real-time load determined by the State Estimator model at Elroy times the real-time locational marginal prices during periods when both the PECO and PPL zones were congested. This approach only addresses the hours in which both zones were congested during the period of June 1, 2000 to May 31, 2003.⁹ PPL, on the other hand, maintains that the only legal and equitable way to adjust Exelon's bills retroactively would be to re-run the entire market for the full five-year plus the period of the error. However, PPL acknowledges that "this massive rebilling cannot be done accurately, and the cost and time involved to do so would be prohibitive."¹⁰ PPL further states that re-running the PJM market would be a long and costly process that could undermine market stability and confidence.¹¹ In the hearing procedures ordered below,

⁷ See PJM OATT, Attachment K, Appendix sections 3.2.4 & 3.4.1 ("each [market buyer or transmission customer] shall be charged and credited for Transmission congestion charges.")

⁸ *Louisiana Public Service Commission*, 106 FERC ¶ 61,228 at P.89 (2004), citing *Southwestern Public Service Company*, 68 FERC ¶ 61,184 (1994); *Philadelphia Electric Company*, 57 FERC ¶ 61,147 at 61,566 (1991); *Northern Natural Gas Company*, 110 FERC ¶61,253 (2005); *Alabama Electric Cooperative, Inc.*, 5 FERC ¶ 61,274 (1978).

⁹ See *PJM Interconnection, L.L.C.*, 91 FERC ¶ 61,148 (2000). There, the Commission accepted revision to the two-settlement system that incorporated increment and decrement bids into the day-ahead energy market effective May 31, 2000. Thus, Exelon's time period coincides with the start of the two-settlement system in PJM's energy markets.

¹⁰ See PPL's Answer at 5.

¹¹ See PPL's Answer at 5-6.

the ALJ should determine an appropriate calculation method for assigning overcharges and undercharges due to the misapplication of the Elroy substation under PJM's Tariff and Operating Agreement.

31. In conclusion, we find that that PECO is entitled to reimbursement for the amounts it was overcharged as a result of the misattribution of the Elroy substation to PECO in the PJM State Estimator. However, the Commission finds that question of who should reimburse PECO and for what amount is a material issue of fact in dispute. Therefore, we are setting the issues of how much Exelon is entitled to for reimbursement and who is responsible for payment for hearing and settlement judge procedures.

32. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute 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.¹² 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.¹³ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order 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.

The Commission orders:

(A) Exelon is entitled to reimbursement for the amount that it was overcharged as a result of the misattribution of the Elroy substation to PECO instead of the proper attribution to PPL in the PJM State Estimator.

(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, 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

¹² 18 C.F.R. § 385.603 (2004).

¹³ 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 – click on Office of Administrative Law Judges).

held concerning who should reimburse PECO and for what amount. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2004), 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 in writing or by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and 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 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.

(E) If the 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 these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, 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.

Linda Mitry,
Deputy Secretary.