

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

PSEG Fossil LLC
PSEG Nuclear LLC
PSEG Energy Resources & Trade LLC

Docket No. ER06-889-000

ORDER CONDITIONALLY GRANTING REQUEST FOR WAIVERS
OF CERTAIN FILING REQUIREMENTS

(Issued June 15, 2006)

1. In this order, we conditionally grant a request for waiver of certain accounting and reporting requirements of the Commission's regulations submitted on April 26, 2006 by PSEG Fossil LLC (PSEG Fossil), PSEG Nuclear LLC (PSEG Nuclear) and PSEG Energy Resources & Trade LLC (PSEG Energy) (collectively, the PSEG Power Companies).

I. Background

2. PSEG Fossil, PSEG Nuclear, and PSEG Energy are wholly-owned subsidiaries of PSEG Power, LLC. PSEG Fossil and PSEG Nuclear each sell solely under cost-based power sales contracts to their affiliate, PSEG Energy. PSEG Energy is a power marketer with market-based rate authority.

3. On November 20, 2001, the Commission issued an order on the request of PSEG Power Companies for waivers of the filing requirements of Part 35 Subparts B and C, except 35.12(a), 35.13(b), 35.15 and 35.16, and Parts 41, 101, and 141 of the Commission's regulations.¹ The Commission denied the request in part because PSEG Energy had been making sales under cost-based rate contracts to its affiliate, Public Service Electric and Gas Company (PSE&G), and to Old Dominion Electric Cooperative (ODEC). The Commission stated that customers under cost-based rates have a right to

¹ *PSEG Fossil LLC*, 97 FERC ¶ 61,211 (2001), *reh'g den.*, 98 FERC ¶ 61,169 (2002).

cost data so they may evaluate the ongoing reasonableness of their rates and use that information to file under section 206 of the Federal Power Act to change those rates when they believe that their rates are no longer reasonable.²

4. In their April 26, 2006 request for waiver, the PSEG Power Companies state that the full requirements contract with PSE&G expired on July 31, 2002, and the ODEC contract expired on December 31, 2004. PSEG Energy further explains that all wholesale sales made by PSEG Energy are now made, and in the future will be made, under its market-based rate tariff, except for one reliability service provided to PJM Interconnection, L.L.C. (PJM) under a cost of service rate, as provided under the terms of the PJM Tariff.³

5. Now that the contracts with PSE&G and ODEC have expired, the PSEG Power Companies request waiver of Part 35 Subparts B and C, except 35.12(a), 35.13(b), 35.15 and 35.16, and Parts 41, 101, and 141 of the Commission's regulations. The PSEG Power Companies seek these waivers to relieve them of the obligation to file reports that would otherwise be due for the second calendar quarter of 2006 and thereafter.

6. The PSEG Power Companies state that the entire output of the generation facilities owned by PSEG Fossil and PSEG Nuclear continue to be sold to PSEG Energy under a formulaic rate, but all of PSEG Energy's sales are at market-based rates or pursuant to the reliability provisions of the PJM Tariff. The PSEG Power Companies argue that the sales by PSEG Fossil and PSEG Nuclear constitute an internal corporate transfer and do not factor into the amounts paid by third parties to PSEG Energy.

7. The PSEG Power Companies contend that PSEG Energy is now in the same posture as other power marketers with market-based rate authority, and should be treated accordingly under the Commission's regulations. The PSEG Power Companies argue that there is no compelling reason to require the PSEG Power Companies to continue to file cost data used for cost-based ratemaking.

8. The PSEG Power Companies note that on July 1, 2005, the Commission issued an order that authorizes the merger of Exelon Corporation and Public Service Enterprise Group Incorporated, the PSEG Power Companies' ultimate parent company.⁴ The PSEG Power Companies state that after regulatory procedures are completed, this merger will result in PSEG Power Companies and Exelon Corporation merging into Exelon

² *PSEG Fossil LLC*, 97 FERC ¶ 61,211, at 61,921.

³ *PSEG Energy Resources & Trade LLC*, 113 FERC ¶ 61,213 (2005); *see also PSEG Energy Resources & Trade LLC*, 111 FERC ¶ 61,121 (2005).

⁴ *Exelon Corp.*, 112 FERC ¶ 61,011 (2005), *reh'g den.*, 113 FERC ¶ 61,299 (2005).

Generation Company, with some subsidiaries of the PSEG Power Companies continuing to exist as stand-alone subsidiaries of Exelon Generation Company, which has received the waiver being sought by the PSEG Power Companies.⁵

II. Notice of Filing

9. Notice of the PSEG Power Companies' filing was published in the *Federal Register*, 71 Fed. Reg. 27,491 (2006), with motions to intervene and protests due no later than May 17, 2006. None was filed.

III. Discussion

10. The Commission has granted the waivers requested herein to entities that are not subject to cost-based rate regulation. Because PSEG Energy's cost-based rate contracts have expired, we will grant the requested waiver for PSEG Energy consistent with the Commission's precedent granting these waivers to power marketers with market-based rates.⁶ Our grant is conditional, as discussed below.

11. The Commission has in the past, in limited circumstances and on a case-by-case basis, granted a public utility's request for waivers, including the Part 35 cost of service filing requirements and Parts 41, 101, and 141 accounting and reporting requirements, although that public utility made power sales at cost-based rates.⁷ In this circumstance, PSEG Fossil and PSEG Nuclear sell their entire output to an entity in the same corporate family; none is a utility with a franchised electric service territory; and the buyer, PSEG Energy, is not selling at cost-based rates. There is no third-party to a cost-based transaction that would need to evaluate the ongoing reasonableness of the rates of PSEG Fossil or PSEG Nuclear. Therefore, it is not necessary to impose the Commission's full

⁵ *Exelon Generation Co., L.L.C.*, 93 FERC ¶ 61,140 (2000).

⁶ We note that the Commission has rejected requests to rescind these waivers previously granted to applicants (when they received market-based rate authority) when those applicants entered into the reliability agreements of the type that PSEG Energy has with PJM. See *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,441, at P 43-44 (2005) (*PSEG Power*); *Milford Power Co., LLC*, 112 FERC ¶ 61,154, at P 40-41 (2005); *Consolidated Edison Energy Massachusetts, Inc.*, 112 FERC ¶ 61,263, at P 48 (2005). The Commission has held that those public utilities are still operating under their market-based rate authority. See *PSEG Power*, 110 FERC ¶ 61,441, at P 43.

⁷ *Nevada Sun-Peak Ltd. P'ship*, 86 FERC ¶ 61,243 (1999).

accounting and financial reporting requirements or the full filing requirements of Subparts B and C of Part 35 of the Commission's regulations on PSEG Fossil or PSEG Nuclear.

12. However, our grant is conditional. Should the PSEG Power Companies' circumstances change from those described herein, the PSEG Power Companies are directed to notify the Commission of any such change within 30 days so that the Commission may consider the applicability of the waiver under the changed circumstances. In particular, the PSEG Power Companies are directed to notify the Commission within 30 days if the PSEG Power Companies acquire a new customer under cost-based rates or if changes occur as a result of the merger, including but not limited to, a change in the terms of the contracts under which PSEG Energy purchases the entire output from PSEG Fossil and PSEG Nuclear.

13. PSEG Power Companies' request for waiver of Subparts B and C of Part 35 of the Commission's regulations requiring the filing of cost-of-service information, except for sections 35.12(a), 35.13(b), 35.15 and 35.16 is conditionally granted. PSEG Power Companies' request for waiver of Part 41, Part 101, and Part 141 of the Commission's regulations concerning accounting and reporting requirements is conditionally granted with the exception of 18 C.F.R. §§ 141.14 and 141.15. Notwithstanding the waiver of the accounting and reporting requirements granted here, PSEG Power Companies are expected to keep their accounting records in accordance with generally accepted accounting principles. The waivers granted herein go into effect for the second quarter of 2006, as requested.

The Commission Orders:

The PSEG Power Companies' request for waiver is hereby granted, with conditions, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.