

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Electric Utilities Corporation

Docket No. ER04-843-001

ORDER ON REHEARING

(Issued March 7, 2005)

1. On August 2, 2004, PPL Electric Utilities Corporation (PPL) and PJM Interconnection, L.L.C. (PJM) sought rehearing of a Commission letter order issued on July 2, 2004.¹ In addition, PJM submitted a motion to intervene out-of-time for the purpose of seeking rehearing. For the reasons discussed below, we will grant PPL's request for rehearing. We will deny PJM's request for late intervention.

Background

2. On May 14, 2004, PPL submitted for filing, pursuant to section 205 of the Federal Power Act (FPA),² a two-page Letter Agreement entered into by PPL and Waymart Wind Farm L.P. (Waymart). Pursuant to the Letter Agreement, PPL acts as Waymart's agent in submitting hourly integrated plant MWhr output data from Waymart's generation facility to PJM, a service for which PPL collects a monthly service fee of \$150. The facility at issue was connected to PJM's transmission system pursuant to an Interconnection Service Agreement submitted for filing by PJM in separate proceeding.³ PJM was not a party to the instant proceeding and no responsive pleadings were filed.

3. In the July 2 Order, the Commission accepted PPL's submission for filing, subject to the filing of a revised Letter Agreement by PJM under PJM's Open Access Transmission Tariff (OATT). The July 2 Order reasoned that PJM was required to be a

¹ *PPL Electric Utilities Corporation*, Docket No. ER04-843-000, July 2, 2004 (unpublished letter order) (July 2 Order).

² 16 U.S.C. § 824d (2000).

³ *PJM Interconnection, L.L.C.*, Docket No. ER03-1125-000, September 24, 2003 (unpublished letter order).

contracting party to the Letter Agreement because pursuant to its express terms PJM would be required to “perform all interchange accounting settlements” for all data supplied by PPL.⁴ The July 2 Order further reasoned that the Letter Agreement should be filed with the Commission, based on the Commission’s policy of requiring similar agreements to be filed with the Commission under the applicable OATT (in this case the PJM OATT).⁵ Finally, the July 2 Order found that PJM, not PPL, was required to make the filing at issue, pursuant to the section 205 filing rights settlement agreement entered into between PJM and PJM’s transmission owners in Docket Nos. OA97-261-006, *et al.*⁶

Requests for Rehearing

4. On rehearing, PPL asserts as error the Commission’s determination that PJM is required to be a party to the Letter Agreement. PPL concedes that the reference made to PJM in the Letter Agreement (regarding PJM’s performance of its interchange accounting settlements) was inartful and may have given the false impression that PJM’s rights and obligations were intended to be addressed by the Letter Agreement. PPL asserts, however, that the Letter Agreement’s reference to PJM was only informational in nature, alluding only to PJM’s rights and obligations under the PJM OATT. Specifically, PPL asserts that PJM will be required to perform the settlements to which the Letter Agreement refers, even in the absence of the Letter Agreement, because PJM is required to do so under its OATT and related agreements. As such, PPL argues that the July 2 Order erred in its assumption that PJM’s settlement adjustments will be performed pursuant to the Letter Agreement and further erred in its conclusion that PJM, based on this erroneous assumption, must be a party to the Letter Agreement.

5. PPL also asserts as error the July 2 Order’s reliance on *SPP*. PPL notes that while in *SPP*, the Commission required that all interconnection agreements be filed as service agreements under the applicable OATT, the Letter Agreement is not an interconnection agreement. PPL also challenges the July 2 Order’s finding that the *Filing Rights Settlement Order* requires that PJM, not PPL, file the Letter Agreement with the

⁴ See Letter Agreement at P 3.

⁵ July 2 Order at P 3, *citing Southwest Power Pool, Inc.*, 92 FERC ¶ 61,109 (2000) (*SPP*) (order accepting amendments to the OATT of Southwest Power Pool, Inc. regarding the interconnection of new generation and increased capacity of existing generation).

⁶ See *Pennsylvania-New Jersey-Maryland Interconnection*, 108 FERC ¶ 61,032, *order denying reh’g*, 105 FERC ¶ 61,294 (2004) (*Filing Rights Settlement Order*) (order approving the parties’ agreement to allocate to PJM filing rights authority over terms and conditions of the PJM OATT, while allocating to PJM’s transmission owners the right to file rate design and related rate proposals).

Commission. PPL argues that while the *Filing Rights Settlement* Order addresses the parties' respective filing rights under the PJM OATT, the Letter Agreement, by contrast, addresses neither the design of PJM's rates, nor the terms and conditions of PJM' OATT or any other PJM operating agreement.

6. Finally, PPL notes that the Commission has previously accepted for filing four other letter agreements in substantially the same form as the Letter Agreement at issue here, each of which contain statements to the effect that PJM will perform all interchange accounting adjustments. PPL states that the Commission accepted each of the letter agreements without requiring PJM to become a party.

Discussion

A. Procedural Matters

7. As noted above, PJM seeks to intervene out-of-time in this proceeding for the purpose of requesting rehearing of the July 2 Order. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, the movant bears a higher burden to demonstrate good cause for granting such late intervention.⁷ PJM has not met this higher burden here. As such, we will deny PJM's motion to intervene out-of-time. In addition, because PJM lacks standing to seek rehearing under the FPA and the Commission's regulations,⁸ we will dismiss PJM's request for rehearing.

B. Analysis

8. We will grant PPL's request for rehearing. We agree with PPL that under the Letter Agreement PPL acts as an agent for Waymart for purposes of submitting Waymart's hourly output data to PJM. Absent this Letter Agreement, the data at issue would be required to be supplied to PJM by Waymart as a PJM market participant. The PJM OATT and the PJM Operating Agreement expressly permit entities that interact with

⁷ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250 at P 7 (2003).

⁸ 16 U.S.C. § 8251(a) (2000); 18 C.F.R. § 385.713(b) (2004).

PJM, *i.e.*, entities such as Waymart, to act through agents.⁹ As contemplated by this allowance, PJM is not required to be a party to such an agreement. Accordingly, we accept the Letter Agreement for filing, as designated, without modification or condition.

The Commission orders:

(A) PPL's request for rehearing is hereby granted.

(B) PJM's motion to intervene out-of-time is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁹ See PJM OATT definition 1.9 (designated agent); PJM Amended and Restated Operating Agreement, Schedule 1, PJM Interchange Energy Market, section 1.7.3, Agents, and Schedule 11, PJM Capacity Credit Markets in PJM Region, section 5.3, Agents.