

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Commonwealth Edison Company

Docket Nos. ER04-897-002

ORDER DENYING REHEARING

(Issued March 8, 2005)

1. On August 10, 2004, the Commission issued an order accepting the redesignation of 42 interconnection service agreements (Agreements) from Commonwealth Edison Company's (ComEd) Open Access Transmission Tariff (OATT) to PJM Interconnection, LCC's (PJM) OATT.¹ PPL University Park, LLC (PPL) filed a request for rehearing. As discussed below, the Commission denies PPL's rehearing request.

I. Background

2. In 2001, the Commission accepted ComEd's filing of the executed Agreement between ComEd and PPL (PPL Agreement).² This Agreement set forth the terms and conditions governing the interconnection of PPL's generation facility to ComEd's transmission system. In April 2003, the Commission approved the transfer of functional control of ComEd's transmission facilities to PJM and the cancellation of ComEd's OATT on the transfer date.³ On May 1, 2004, ComEd transferred control to PJM and its OATT was cancelled. On June 1, 2004, in compliance with Order No. 614,⁴ ComEd filed the 42 Agreements under PJM's OATT and designated them accordingly.

¹ *Commonwealth Edison Company*, 108 FERC ¶ 61,185 (2004) (August 10 Order).

² The original Agreement was accepted November 14, 2001 in Docket No. ER01-3143-000 (letter order issued pursuant to delegated authority).

³ *American Electric Power, et al.*, 103 FERC ¶ 61,008 (2003).

⁴ *Designation of Electric Rate Schedule Sheets*, 65 Fed. Reg. 18,221 (2000) (Order No. 614).

3. PPL protested ComEd's redesignation filing arguing that the Commission should find the PPL Agreement to be unjust and unreasonable because, contrary to Commission policy, the PPL Agreement failed to provide for transmission credits to reimburse PPL for its investment in network upgrades on ComEd's system. In the August 10 Order we denied PPL's protest finding it to be outside the scope of that proceeding and stated that the issues raised by PPL's protest would be more properly addressed in a complaint proceeding as provided for in Rule 206.⁵

4. On August 13, 2004, PPL filed a complaint in Docket No. EL04-122-000, arguing that the PPL Agreement was inconsistent with Commission policy because it failed to reimburse PPL for the investment it made in network upgrades to ComEd's transmission system. In response, the Commission found that the PPL Agreement required PPL to make a public interest showing in order to modify the Agreement to provide for the requested reimbursement.⁶ However, the Commission found that PPL failed to meet the public interest standard and thus dismissed PPL's complaint.

II. Rehearing Request

5. PPL argues that in requesting the redesignation, the 42 Agreements were, in essence being filed for the first time and under PJM's OATT they became new agreements. Therefore, PPL argues that as new agreements being filed with the Commission, the Commission is required to substantively review the agreements under the just and reasonable standard.⁷ PPL asserts the Commission erred in finding ComEd's filing purely ministerial thereby not requiring a substantive review of the terms within the Agreements. Additionally, PPL argues that redesignating the Agreements from ComEd's to PJM's OATT can change some of the terms of the Agreements, making ComEd's filing more than ministerial as the Commission concluded. For example, PPL argues that PJM's OATT contains a provision that in the event of inconsistency, the OATT provisions prevail over the contract provisions. PPL argues that by accepting the designation of the contract as a PJM contract, the Commission is thereby accepting a substantive change to the agreement in the event there is an inconsistency between the agreement and the OATT. PPL argues that, since ComEd's filing resulted in a substantive change in the agreements, the Commission is required to review all the terms of the Agreements to determine whether the Agreement is just and reasonable.

⁵ Section 206 of the Federal Power Act (FPA), 18 C.F.R. § 385.206 (2004).

⁶ *PPL University Park, LLC v. Commonwealth Edison Company*, 109 FERC ¶ 61,190 (2004), *reh'g denied*, 110 FERC ¶ 61,117 (2005).

⁷ PPL Rehearing Request at 5, *citing* section 205(a) of the FPA.

6. PPL asserts that when the Commission makes a substantive review of the PPL Agreement it will find that the underlying terms in the PPL Agreements are unjust, unreasonable and inconsistent with Commission policy. PPL argues that by denying PPL transmission credits for its investment in ComEd's transmission system the Agreement violates Commission policy. PPL asserts that the Commission has clearly articulated its policy that generators are to be reimbursed for constructing network upgrades on a transmission system. Consequently, PPL argues that since its Agreement does not include these provisions, it is unjust and unreasonable.

7. Finally, PPL argues that the lack of transmission credits in its Agreement results in "and" pricing since PPL has paid to construct the network upgrades (through direct assignment) and by using the grid is now paying for those same upgrades (through a transmission rate). Therefore, PPL argues that the PPL Agreement is unjust and unreasonable and the Commission erred in not substantively reviewing the Agreement and in not finding the Agreement to be unjust and unreasonable.

III. Discussion

8. Under ComEd's Tariff, PPL's Agreement was listed as Service Agreement No. 570, FERC Electric Tariff, Second Revised Volume No. 5. When ComEd transferred functional control to PJM, ComEd's service agreements needed to be listed under PJM's tariff. Therefore, ComEd filed to change the designation of the Agreement so that the Agreement would now be listed under PJM's OATT in proper sequential order as: Original Service Agreement No. C1053 under PJM FERC Electric Tariff, Sixth Revised Volume No. 1. This was the only modification that ComEd requested, and the Commission approved. Contrary to PPL's assertion, this redesignation does not make the PPL Agreement a new Agreement subject to a second substantive Commission review. ComEd only refiled these agreements so they would be correctly listed under PJM's tariff in accordance with Order 614.⁸

9. In accepting the redesignation, the Commission did not approve any substantive modification to the PPL Agreement. The only approved change to the PPL Agreement was its designation. The redesignation does not change the parties or the terms of the PPL Agreement, and, contrary to PPL's contention, PJM's OATT provisions will not change contract terms, even ones that may be inconsistent with the PJM OATT, without Commission action.. In short, the redesignation of the agreement accepted in this proceeding does not change PPL and ComEd's rights and responsibilities under the contract

⁸ *Designation of Electric Rate Schedule Sheets*, 65 Fed. Reg. 18,221 (2000) (Order No. 614).

10. Therefore, as we held in the August 10, 2004 Order, PPL's protest to the terms of the Agreement is outside the scope of this proceeding. PPL cannot use this proceeding to modify its Agreement so that it provides for transmission credits. Since the PPL Agreement is neither new nor substantively modified, it is not subject to a substantive review under section 205 of the FPA. The issue of transmission credits and reimbursement for network upgrades goes to the terms contained within the Agreement and is outside the scope of this proceeding. As we said in the August 10, 2004 Order, the complaint process contained in Rule 206, and not this ministerial filing, is the appropriate proceeding to determine the substantive issue of whether or not PPL's Agreement can and should be modified to provide for transmission credits as reimbursement for PPL's investment in ComEd's system.

The Commission orders:

PPL's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.