UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Exelon Corporation

Docket No. EL05-49-001

v.

PPL Electric Utilities Corporation

and

PJM Interconnection, LLC

ORDER DENYING REHEARING, REJECTING SETTLEMENT AND ESTABLISHING HEARING PROCEEDINGS

(Issued March 21, 2006)

1. On May 18, 2005, PPL Electric Utilities Corporation (PPL) filed a request for rehearing of the Commission's April 18, 2005 Order establishing hearing and settlement judge procedures in a complaint regarding congestion charges that were misapplied by the PJM Interconnection, LLC (PJM) State Estimator.[1] On September 14, 2005, Exelon Corporation (Exelon), on behalf of its wholly owned subsidiary PECO Energy Company (PECO) and PPL filed a settlement agreement intended to resolve all outstanding issues in this proceeding. Several parties contested the settlement. In this order, we deny PPL's request for rehearing, reject the settlement agreement, and establish hearing proceedings.

[1] *Exelon Corporation v. PPL Electric Utilities Corporation and PJM Interconnection, LLC*, 111 FERC ¶ 61,065 (2005) (April 18, 2005 Order).

Background

2. On December 23, 2004, Exelon Corporation (Exelon), on behalf of its wholly owned subsidiary PECO Energy Company (PECO), filed a complaint against PPL and PJM for reimbursement of more than $39 million for energy taken by PPL from the Elroy substation in Bucks County, Pennsylvania, but erroneously charged to PECO through the PJM State Estimator.

3. On April 18, 2005, the Commission determined that PECO is entitled to reimbursement for the congestion charges erroneously billed to it at the PPL Elroy substation as a result of an error in the PJM State Estimator coding and that PECO is entitled to reimbursement for the filed rate amount improperly charged. The Commission established hearing and settlement judge proceedings to determine the amount to which Exelon/PECO is entitled and the person(s) responsible for such payment.

Discussion

A. Request for Rehearing

4. On May 18, 2005, PPL filed a request for rehearing of the April 18, 2005 Order. Exelon/PECO filed an answer to PPL's request for rehearing on June 2, 2005.

5. Pursuant to Rule 713(d) and Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,[2] answers to requests for rehearing are not permitted. Therefore, the Commission will reject Exelon/PECO's answer to PPL's request for rehearing.

PPL's Request for Rehearing

6. PPL argues that the April 18, 2005 Order erred in finding a violation of the filed rate and states that the Commission confused the issue in concluding that a tariff violation had occurred under sections 3.2.4 and 3.2.1 of Attachment K Appendix to the PJM Open Access Transmission Tariff (OATT). PPL states that the April 18, 2005 Order erroneously assumes that the Elroy substation misallocation should be treated as a misdirected bill that can be corrected by shifting charges from one market participant to another. Rather, PPL contends that the Commission ignored PJM's statement that the congestion charges were assessed using the State Estimator in compliance with Schedule 1, sections 2.2, 2.3, 2.5 and 3.2 of the PJM Operating Agreement, and thus,

[2] 18 C.F.R. § 385.713(d) and § 385.213(a)(2) (2005).

did not constitute a violation of the tariff or the filed rate. PPL states that, due to the complex nature of the State Estimator, participants in PJM's market accept the margin of error and risk of such errors in agreeing to use the State Estimator to calculate congestion charges. According to PPL, the April 18, 2005 Order ignored this evidence in finding a violation of the filed rate.

7. PPL also contests the finding in the April 18, 2005 Order that PECO had no way of knowing of the misallocation and subsequent overcharging by PJM. PPL states that the Commission ignored the plain language of the PJM bills sent to PECO directing PECO to the detailed charges of the monthly bills available on the PJM website. PPL asserts that PECO had all the information readily available to discover the financial impact of the misattribution of the Elroy substation. According to PPL, the April 18, 2005 Order ignores PECO's admission that it knew of the error by early January 2001. PPL states that the April 18, 2005 Order also erroneously concludes that the PJM Tariff does not limit the time in which billing errors may be disputed. PPL states that section 15.1.3 of the PJM Operating Agreement requires that members must make full and timely payment of all bills.

8. PPL argues further that, if the Commission finds that reimbursement is appropriate, then the Commission must order that the markets be re-run with the correct information in the State Estimator. PPL contends this is the only legal remedy. PPL argues that if the Commission requires PJM or PPL to pay for past errors without re-running the entire PJM market for the affected time period, such action would constitute a violation of the filed rate. Similarly, PPL argues that, if the Commission requires PPL and PJM to reimburse PECO for the Elroy misallocation, then the Commission must examine all the other errors of the State Estimator to determine the effect that all the other errors had on the PJM markets. PPL states that it is unfair to require retroactive billing for one particular error in the State Estimator without evaluating the effect of all the other errors. Furthermore, if the Commission permits retroactive billing, then PPL and all other market participants are denied the opportunity to avoid the congestion charges now billed. PPL asserts that it is within the Commission's discretion to deny refunds if it is deemed impractical and inequitable.

9. PPL argues that it is entitled an opportunity to prove, through discovery and a full hearing, that granting PECO's reimbursement would violate PPL's right to hedge congestion. At the very least, PPL argues, any relief granted to PECO should be limited to account for both PECO's and PPL's lost opportunities to hedge congestion using financial transmission rights.

10. PPL also states that the April 18, 2005 Order fails to address PJM's responsibility for the error. PPL argues that PJM was the party in the best position to discover and remedy the error, especially after PECO notified PJM about the misallocation in the

State Estimator. However, PPL argues that the Commission ignored the issue of PJM's responsibility in the April 18, 2005 Order.

11. Finally, PPL argues that the April 18, 2005 Order improperly ignored PPL's March 15, 2005 answer filed in response to Exelon's answer.

Commission Determination

12. PPL claims that the April 18, 2005 Order violates the filed rate doctrine because it ignored PJM's statement that no tariff violation occurred since the congestion charges were assessed in compliance with Schedule 1 sections 2.2, 2.3, 2.5 and 3.2 of the PJM Operating Agreement. We disagree.

13. Under the filed rate doctrine, PJM can claim no rate as the legal rate other than the filed rate.[3] The issue here is whether the filed rate in PJM's OATT was applied to the appropriate party – the party incurring the congestion charges. No party disputes that there was an error in the software coding that attributed the Elroy substation in the State Estimator model to Exelon rather than PPL. PJM's OATT also requires that congestion charges be billed to the party incurring the charges, stating: "Each Network Service User shall be charged for the increased cost of energy incurred by it during each constrained hour …" (emphasis added).[4] Charging a customer for congestion costs it did not incur is, therefore, a violation of PJM's OATT. Just because PJM's billing system is more complex than simple application of a tariff rate to a transaction, does not mean that billing errors should not be corrected.

14. Correcting improperly billed invoices does not violate the ban on retroactive ratemaking, as alleged by PPL, because it does not result in a change to a prior rate, but rather is enforcing the filed rate. In a similar situation, the court in *IDACORP Energy L.P. v. FERC* described an argument much like PPL's as "sound[ing] more like retroactive invoicing than retroactive ratemaking."[5] As the Court explained:

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[3] *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U.S. 246 at 251 (1951); *Pacific Gas & Electric Company v. FERC, et al.*, 373 F. 3d 1315 at 1319 (D.C. Cir. 2004) *citing Arkansas Louisiana Gas Company v. Hall*, 453 U.S. 571 at 578 (1981).

[4] PJM OATT, Attachment K, Appendix section 5.1.3.

[5] 433 F.3d 879 (D.C. Cir. 2006).

> The ban on retroactive ratemaking, however, imposes no obstacle to amending invoices; in fact, the prohibition on retroactive ratemaking may well require an amended invoice if the original invoice deviated from the tariff."[6]

Contrary to PPL's assertions, it would not be appropriate under the filed rate doctrine or PJM's OATT to charge Exelon/PECO for congestion costs from the Elroy substation that it did not in fact incur.

15. PPL argues that the April 18, 2005 Order erroneously found that PECO had no way of knowing that it was being overcharged by PJM. As discussed above, regardless of who may have been best able to discover the misattribution of the Elroy substation, a billing error was made which needs to be corrected. Certainly, nothing in this record suggests that PECO was so culpable that equity would require that the billing error not be reasonably corrected. The invoice received by PECO did not specifically identify that congestion costs were attributed to the Elroy substation. Indeed, when PECO discovered the misattribution of the Elroy substation, it notified PJM. PJM then conducted an investigation and, in June 2003, PJM corrected the misallocation and correctly attributed the Elroy substation to PPL.

16. Moreover, as we found in the April 18, 2005 Order, PJM's tariff, and particularly section 15.1.3 of the Operating Agreement cited by PPL, does not require PECO to absorb the costs of the billing error. Section 15.1.3 of the PJM Operating Agreement discusses the requirement to make full and timely payment of the bill or risk default. It does not require that a billing error that misallocates a substation to the wrong party must be raised within 45 days of receipt of the monthly invoice.[7] As PPL itself recognizes, the 45-day period does not appear in the Operating Agreement itself,[8] nor does the Operating Agreement provide that failure to raise a claim within the 45-day period precludes the customer from challenging an invoicing error. In fact, section 15.1.3 specifically provides that timely payment of a bill does not waive the members' right to dispute a charge.[9]

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[6] *Id. citing Maislin Indus., U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116 (1990).

[7] *See* PJM Operating Agreement, § 15.1.3.

[8] PPL Rehearing Request, at 22 (recognizing that it appears only in the billing statement).

[9] *Id.*

17. PPL also argues that parties within PJM accept the risk of modeling inherent in the State Estimator used to calculate congestion costs. For instance, it cites to a statement by PECO's witness, Dr. Henderson, that the State Estimator involved a "margin of error that the market participants have established for themselves in estimating day-ahead load."[10] But having to anticipate a margin of error in predicting the results of a computer model is wholly different from having to accept the result of a simple data entry error that attributes a substation to the wrong party. The former represents an inability to predict the outcome of a complex computer algorithm, while the latter is a simple typographical mistake, no different than an ordinary utility inadvertently billing the wrong customer.

18. PPL further contends that if the Commission revisits this particular part of the State Estimator, PJM should review all the thousands of changes to the State Estimator made over the years by PJM that have not resulted in rebilling. It cites to a prior Commission decision in *Bangor-Hydro Electric Co. v. ISO New England, Inc.*[11] in which it alleges the Commission did not allow rebilling as a result of an admitted error in implementing dispatch software.

19. PPL does not point out other specific changes in the State Estimator model that it alleges are similar to the billing error made here, so it is not possible to evaluate whether any of these other changes are comparable or constitute a violation of PJM's tariff. This proceeding involves only the single billing error alleged by PECO.

20. Moreover, as pointed out above, there is a vast difference between correcting on a prospective basis errors in a complex computer algorithm and a simple data entry error. Changes to a computer algorithm are more in the nature of a change to the method or structure by which a rate is calculated pursuant to the tariff, as opposed to the question of which party should be billed based on the computer model that is in place. PPL itself recognizes that parties may have to accept a margin of error in the outcome of the computer model. But that is not the same as accepting a mere billing error where the amount calculated by the model is simply billed to the wrong party. The *Bangor-Hydro* case is not comparable since the Commission there found that ISO-New England, Inc.'s (ISO-NE) electronic dispatching software did not violate its tariff and the programming error involved reflected a change to the methodology by which the rate was structured, as opposed to a mere change in which party is billed on the basis of the outcome of the computer model. In *Bangor-Hydro*, the Commission rejected the request for retroactive

[10] PPL Rehearing Request, at 17.

[11] 97 FERC ¶ 61,339 (2001) (*Bangor-Hydro*).

correction of clearing prices because ISO-NE's clearing prices were established in accordance with ISO-NE's market rules and therefore did not violate the filed rate doctrine. As the Commission stated: "although, as ISO-NE concedes, the dispatch software gave rise to clearing prices that were, in certain situations, inconsistent with the "Dispatch Principles" of Market Rule 2.3.1 (*i.e.*, the dispatch software did not minimize the system energy production costs), this does not mean that these clearing prices were implemented in a manner that violated its market rules…. [T]he clearing prices that were calculated for the period in question were the result of a formula that was prescribed by the market rules and applied as intended by them, and therefore the clearing prices comply with ISO-NE's tariff."[12] Unlike this case involving which of two parties should be properly billed for congestion costs, the *Bangor-Hydro* case involved a challenge to the model being used to determine prices, rather than the determination as to which party should be billed based on the model.

21. PPL states that, if the Commission finds that reimbursement is appropriate, then the Commission should order that the entire market for the time period of the error be re-run both to account for this billing error and to correct for other alleged, but unspecified changes in the State Estimator. The Commission found that this issue cannot be resolved on the pleadings and set for hearing the question of whether the State Estimator needs to be re-run to correctly determine the bills for PECO and PPL. Therefore, because a final order with respect to the method for calculating reimbursement and identifying who should reimburse PECO has not been issued, PPL's request for rehearing with respect to re-running the market is premature.

22. However, as discussed previously, this case involves only the question of the correct billing with respect to PECO's complaint regarding billing for the Elroy substation. Contentions about other alleged changes or errors in the State Estimator are beyond the scope of this proceeding.

23. PPL asserts that the Commission ignored PJM's responsibility for the billing error. PJM is a non-profit organization that runs the market on behalf of PPL as well as Exelon/PECO. PJM itself did not receive energy for which it did not pay. PPL, however, is free to raise at the hearing whether any actions or inactions by PJM should result in its bearing any of the costs of the billing error.

24. PPL claims that if it is required to reimburse PECO for the misallocated charges, then it will be denied the opportunity to hedge the congestion charges. PPL argues that, if their bill from PJM included congestion charges for the Elroy substation, then they

[12] 97 FERC ¶ 61,339 at 62,589-90.

would have had an incentive to mitigate those congestion charges, such as procuring a financial transmission right (FTR) for that path.

25. It is not clear why PPL did not have an incentive to hedge congestion from the Elroy substation, since all parties assumed that power to the Elroy substation would be billed to PPL. Since PPL would have expected that it would be receiving power at the Elroy substation, it could have used the congestion information provided by PJM to determine whether hedging would be financially expedient for transactions involving this point.[13] Nonetheless, PPL is free to raise at the hearing the issue of whether ability to hedge should be taken into account in determining any additional amount it should be required to pay.

26. PPL also argues that the Commission improperly ignored its March 15, 2005 answer in response to Exelon's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure[14] states that answers to answers are not permitted unless ordered by the Commission. Thus, PPL had no right to raise issues in an Answer. Its right, to which it availed itself here, is to seek rehearing of the Commission's order.

B. Proposed Settlement and Hearing Proceedings

27. On September 14, 2005, Exelon, on behalf of PECO, and PPL filed a settlement agreement intending to resolve all outstanding issues in this proceeding. The proposed settlement agreement is neither supported nor opposed by PJM. Several parties contested the proposed settlement agreement.

28. The proposed settlement outlines a payment of $40 million to Exelon/PECO through two separate charges assessed by PJM. The first charge is assessed to PPL only for $0.1154 per kW/month, to total $33 million, plus interest under Attachment H-8B of the PJM Tariff. The second charge is assessed to generation providers and customers using point-to-point and network integration service of $0.0014 times the total quantity in megawatt hours of energy delivered to the load, for a total of $7.5 million, plus interest under Schedule 14 of the PJM Tariff. The settlement agreement provides that PJM will remit all revenues received from both charges to Exelon/PECO as monthly credits on its billing statements.

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[13] Since PECO assumed that it would not be billed for power delivered to the Elroy substation, it would have been the party that would not have had an incentive to hedge against possible congestion for transactions to the Elroy substation.

[14] 18 C.F.R. § 385.213(a)(2) (2005).

29. Several parties contested the proposed settlement agreement arguing that they could not support a settlement that transfers responsibility for payment of over $7.5 million, plus interest, of the reimbursement costs to PJM market participants because such a transfer would be unjust and unreasonable. While the protestors recognize that PJM is a not-for-profit entity, they argue that it is unjust and unreasonable for PJM to resolve a billing dispute (where PJM bears some of the responsibility) by imposing a significant portion of the costs of resolving that dispute on entities that are not parties to the dispute. Many protestors state that there is no basis to support a conclusion that PJM members should be obligated to contribute to the reimbursement of Exelon/PECO.

30. On October 27, 2005, the Chief Judge filed an order terminating the settlement judge proceedings, because the Settlement Judge is precluded from certifying a contested settlement to the Commission. The Chief Judge stated that he would await final Commission action on the contested settlement before designating a presiding judge in this proceeding.

31. We find that the contested settlement agreement involves material issues of fact that the Commission cannot decide without further information. Therefore, we reject the proposed settlement agreement, and direct the Chief Judge to set this matter for hearing proceedings on the issues set for hearing in the April 18, 2005 Order and in this order. We direct the Chief Administrative Law Judge, or his designee, to appoint a presiding judge to convene a conference no later than fifteen days from the date of this order. Within 15 days of designation by the Chief Administrative Law Judge, such presiding judge shall convene a prehearing conference in this proceeding 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.

The Commission orders:

(A) PPL's request for rehearing is hereby denied, as discussed in the body of this order.

(B) The Chief Administrative Law Judge is directed to commence hearing proceedings in this case and assign a presiding judge to oversee those hearing proceedings, as discussed in this order and the April 18, 2005 Order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.