

121 FERC ¶ 61,169
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pepco Holdings, Inc.

Docket No. ER08-10-000

ORDER ACCEPTING REVISED TARIFF SHEETS

(Issued November 16, 2007)

1. On October 1, 2007, Pepco Holdings, Inc. (PHI), on behalf of its transmission-owning public utility affiliates, Atlantic City Electric Company (ACE), Delmarva Power and Light Company (Delmarva) and Potomac Electric Power Company (Pepco) (collectively, the PHI Affiliates), filed revised tariff sheets to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) pursuant to section 205 of the Federal Power Act (FPA)¹ to implement a transmission rate incentive – a 50-basis point adder – to PHI Affiliates’ authorized return on equity (ROE) in recognition of their membership in PJM in accordance with Order Nos. 679 and 679-A.² For the reasons discussed below, we authorize a 50-basis point ROE adder for continued membership in PJM.

I. Background

2. Delmarva and ACE are wholly owned subsidiaries of Conectiv which in turn is a wholly owned subsidiary of PHI. Pepco is a wholly owned subsidiary of PHI. The PHI Affiliates provide electric transmission, distribution and gas distribution services to several states along the Atlantic seaboard and are regulated by the Commission and various state commissions.³

¹ 16 U.S.C. § 824d (2000).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, 72 Fed. Reg. 1,152 (January 10, 2007), FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

³ Transmittal Letter at 2.

3. On January 31, 2005, in Docket No. ER05-515-000, the PHI Affiliates and Baltimore Gas and Electric Company (BG&E) (collectively, the Transmission Owners) filed revised tariff sheets to PJM's OATT seeking to implement a formula rate for wholesale transmission service. In that filing, the Transmission Owners explained that the conversion to a formula rate within their rate zones would better reflect changes in their transmission revenue requirements, track increases and decreases in expenses to prevent under- or over-recovery of costs, avoid the need for frequent rate adjustment filings, and harmonize the treatment of new facility costs with embedded transmission revenue requirements. On May 31, 2005, the Commission issued an order that accepted the formula rate filing with a nominal suspension period, made it effective June 1, 2005, subject to refund, and initiated a hearing.⁴

4. On March 20, 2006, the PHI Affiliates and BG&E filed a Settlement Agreement regarding their formula rates. The Settlement Agreement established: (i) an initial ROE of 10.80 percent for all transmission facilities placed in-service prior to January 1, 2006; (ii) an 11.30 percent ROE for all transmission facilities placed in-service on or after January 1, 2006; (iii) a "base" ROE of 10.80 percent onto which any ROE adder would be added; and (iv) the PHI Affiliates' right to make filings at any time to implement any rate incentive mechanisms.⁵ The Commission approved the uncontested Settlement Agreement on April 19, 2006.⁶

5. PHI notes that consistent with the PHI Affiliates' formula rate implementation protocols that were approved as part of the Settlement Agreement, PHI proposes to incorporate the ROE adder in its next annual informational formula rate update to be filed by May 15, 2008, for implementation on June 1, 2008. The proposed 50-basis point ROE adder for RTO participation will not impact customer charges until June 1, 2008, despite the ROE adder having a requested effective date of December 1, 2007. Thus, PHI states that there will be no need for interim mid-year billing adjustments.⁷

⁴ *Allegheny Power System Operating Cos.*, 111 FERC ¶ 61,308 (2005), *order on reh'g*, 115 FERC ¶ 61,156 (2006) (*Allegheny Order*).

⁵ *See* Settlement Agreement, §§ 3.1 - 3.4.

⁶ *Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006).

⁷ The formula rate implementation protocols are appended to each PHI Affiliates' formula rates in PJM's OATT in Attachments H-1B (ACE), H-3E (Delmarva) and H-9B (Pepco), respectively.

II. Notice, Interventions, and Protests

6. Notice of PHI's October 1, 2007 filing was published in the *Federal Register*,⁸ with interventions and comments due on or before October 22, 2007. A notice of intervention and timely motions to intervene were filed by: Public Service Commission of Maryland, Dominion Resources Services, Inc., Exelon Corporation, Maryland Office of People's Counsel, Office of People's Counsel of the District of Columbia, Old Dominion Electric Cooperative, PPL Electric Utilities Corporation, Public Service Electric and Gas Company, and Southern Maryland Electric Cooperative, Inc.

7. On October 22, 2007, the Delaware Municipal Electric Corporation, Inc. (DEMEC) and the Public Power Association of New Jersey (PPANJ) filed motions to intervene and protests.

8. On October 30, 2007, PHI filed a motion for leave to answer and answer on behalf of the PHI Affiliates.

III. Discussion

1. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.⁹

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to an answer or protest, unless otherwise ordered by the decisional authority.¹⁰ In this case, we are not persuaded to permit PHI's answer, and, accordingly, reject it.

2. 50-Basis Point ROE Adder for RTO Membership

a. PHI's Proposal

11. PHI requests a 50-basis point incentive adder to its authorized ROE of 10.80 percent in recognition of its membership in PJM. PHI states that the 50-basis point adder is consistent with the Commission's policies concerning RTO membership and its

⁸ 72 Fed. Reg. 57,550 (2007).

⁹ 18 C.F.R. § 385.214 (2007).

¹⁰ *Id.* § 385.213(a)(2) (2007).

treatment of similarly situated transmission owners in PJM and other RTOs.¹¹ PHI submitted testimony by William E. Avera, Ph.D., with a discounted cash flow analysis calculating an ROE zone of reasonableness for the PHI Affiliates. Dr. Avera states that the 50-basis point incentive falls within its proposed ROE zone of reasonableness of 7.7 percent to 16.1 percent and is below the midpoint of 11.9 percent. PHI notes that the Settlement Agreement preserves the right to make transmission incentive filings and allows for an 11.30 percent ROE for facilities placed in service on or after January 1, 2006. Based on these factors, PHI contends that allowing the 50-basis point adder for RTO membership in PJM is just and reasonable.

12. Finally, PHI provides illustrative examples of the impact of the 50-basis point ROE adder on the annual revenue requirement for each of the PHI Affiliates. PHI states that the annual revenue requirement will be increased by the following: ACE - \$0.63 million; Delmarva - \$0.81 million; and Pepco - \$1.01 million.

b. Protests

13. DEMEC protests PHI's request for a 50-basis point ROE adder for RTO membership in PJM and states that the proposed rates may be excessive, and therefore unjust and unreasonable. DEMEC claims that PHI's citation to other incentive rate filings is inappropriate because incentive rate proposals should be evaluated on a stand alone, case-by-case basis. DEMEC states that PHI must justify a higher ROE under Order No. 679-A's nexus test, and justify where in the zone of reasonableness that return should lie. Further, DEMEC states that all of the analysis presented by PHI for its proposed 50-basis point ROE adder is flawed and does not support PHI's requested ROE adder. DEMEC requests that the Commission deny the 50-basis point ROE adder, or in the alternative, set it for hearing to determine whether the adder is just and reasonable.¹²

14. PPANJ does not currently protest whether the 50-basis point ROE adder is appropriate, but objects to PHI's illustrative application of the adder, claiming it is unsubstantiated, nearly illegible and premature. PPANJ states that the impact of the

¹¹ Transmittal Letter at 3-4 (*citing, e.g.,* UGI Utilities, Inc., Docket Nos. ER06-1445-000 and ER06-1445-001 (Dec. 13, 2006) (unpublished letter order); *Duquesne Light Co.*, 118 FERC ¶ 61,087 at P 50 (2007); *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 at P 72 & 77 (2007); and, *Baltimore Gas and Electric Co.* 120 FERC ¶ 61,084 at P 31 (2007) (*BG&E Order*)).

¹² DEMEC Protest at 12.

proposed ROE adder for ACE is misstated, and reserves its right to review and protest the actual rate filing during the annual rate review process agreed to in the Settlement Agreement.

c. Commission Determination

15. We find that PHI's proposal to increase its ROE by 50-basis points for continued participation in PJM is just and reasonable and not unduly discriminatory. The ROE, inclusive of the RTO membership adder, will be 11.30 percent for all transmission facilities irrespective of the in-service date. We have previously approved the 11.30 percent ROE for transmission facilities placed in service after January 1, 2006.¹³ Thus, we find that the 11.30 percent ROE resulting from the 50 basis-point adder for all transmission facilities is consistent with the ROE we approved in the Settlement Agreement. Therefore, we reject DEMEC's requests to deny PHI the 50-basis point ROE adder or, in the alternative, to set it for hearing. First, as we stated in Order No. 679-A, we will authorize incentive-based rate treatment for public utilities that continue to be a member of an RTO.¹⁴ Section 219 of the FPA specifically provides that the Commission shall provide for incentives to each transmitting utility that joins a Transmission Organization. The consumer benefits, including reliable grid operation, provided by such organizations are well documented and consistent with the purpose of section 219. The best way to ensure that these benefits are spread to as many consumers as possible is to provide member utilities of an RTO with incentives for joining and remaining a member.

16. As explained in Order No. 679-A, the decision to provide incentives for participation in an RTO is a policy one, aimed at promoting particular policy objectives, unrelated to any particular project. DEMEC's protest that PHI Affiliates should not be rewarded for its continued membership in PJM is inconsistent with Order No. 679-A; thus, we deny the relief requested in its protest. We further note that the level of the requested incentive, 50-basis points, is the same as that approved for similar utilities, such as Duquesne Light Company¹⁵ and Commonwealth Edison Company.¹⁶ In addition,

¹³ *Baltimore Gas & Electric Co.*, 115 FERC ¶ 61,066 (2006).

¹⁴ Order 679-A at P 86.

¹⁵ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007).

¹⁶ *Commonwealth Edison Co.*, 119 FERC ¶ 61,238 (2007).

the Settlement Agreement provides that the PHI Affiliates may make filings at any time to implement transmission incentives.¹⁷

17. Lastly, we dismiss PPANJ's concerns over PHI's illustrative applications of the ROE adder. As set forth in the PHI Affiliates' formula rate implementation protocols in PJM's OATT, any interested party may challenge annual updates, which are informational filings submitted to the Commission and posted on the PJM web site. Parties may make such challenges first with the transmission owners¹⁸ and then with the Commission,¹⁹ over whether the PHI Affiliates have properly applied the formula rate. However, such challenges may not seek to modify the formula rate, including the approved RTO membership adder which is a part of the formula rate.²⁰ Modifications to the formula rate – including return on equity – will require an FPA section 205 or 206 filing, as applicable. Therefore, PPANJ's concerns, so long as they follow the formula rate implementation protocols in PJM's OATT, may be appropriate to raise during the annual rate review process following PHI Affiliates' annual update filings in May.

18. We accept PHI Affiliates' revised tariff sheets²¹ to PJM's OATT effective December 1, 2007, as requested.

3. Request for Waivers

19. PHI requests waivers of certain provisions of section 35.13 of the Commission's regulations²² ("Filing of Changes in Rate Schedules"), as may be necessary, including: (i) waiver of the requirement to determine if, and the extent to which, a proposed change constitutes a rate increase based on Period I/Period II rates and billing determinants;²³

¹⁷ See Settlement Agreement, §§ 3.3 – 3.4.

¹⁸ See PJM OATT, Attachments H-1B (ACE), H-3E (Delmarva), and H-9B (Pepco), § 2.

¹⁹ See *id.* § 3.

²⁰ See *id.* § 1(f)(v).

²¹ First Revised Sheet No. 298E; First Revised Sheet No. 300I; and First Revised Sheet No. 310E under PJM's FERC Electric Tariff, Sixth Revised Volume No. 1.

²² 18 C.F.R. § 35.13 (2007).

²³ *Id.* § 35.13(a)(2)(iv).

(ii) waiver of information relating to the effect of the rate schedule change;²⁴ (iii) waiver of the full Period I/Period II data requirements;²⁵ and, (iv) waiver of cost of service statements and accompanying testimony.²⁶ PHI states that its request for waivers is consistent with the Commission's recent decision authorizing the RTO membership incentive for BG&E²⁷ and the approval of the PHI Affiliates' formula rates.²⁸

20. Consistent with our prior approval of PHI Affiliates' formula rates,²⁹ we grant the requested waivers.

The Commission orders:

(A) PHI's revised tariff sheets to the PJM OATT are hereby accepted for filing, to become effective on December 1, 2007, as requested.

(B) PHI's requests for waivers are hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁴ *Id.* § 35.13(c).

²⁵ *Id.* § 35.13(d), with the exception of § 35.13(d)(6).

²⁶ *Id.* §§ 35.13(e), 35.13(h).

²⁷ *See BG&E Order*, 120 FERC ¶ 61,084 at P 73.

²⁸ *See Allegheny Order*, 111 FERC ¶ 61,308 at PP 55-56.

²⁹ *See BG&E Order*, 120 FERC ¶ 61,084 at P 73. *See also, Allegheny Order*, 111 FERC ¶ 61,308, at P 55-56; *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007).