

120 FERC ¶ 61,157
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Wallingford Energy LLC and
PPL EnergyPlus, LLC

Docket No. ER03-421-012

ORDER REJECTING COMPLIANCE FILING

(Issued August 13, 2007)

Introduction

1. On September 29, 2006, PPL Wallingford Energy LLC and PPL EnergyPlus, LLC (collectively, PPL) filed a Settlement Offer (Settlement) on behalf of itself; ISO New England Inc. (ISO-NE); the Connecticut Department of Public Utility Control; the Connecticut Office of Consumer Counsel; and Northeast Utilities Service Company on behalf of its operating company affiliate The Connecticut Light and Power Company (collectively, the Settling Parties) for a cost-of-service Reliability Must Run (RMR) agreement between PPL and ISO-NE (RMR Agreement). The Commission issued an order on March 23, 2007 accepting the Settlement subject to the condition that any review of the RMR Agreement will be under the “just and reasonable” standard of review.¹ In this order, we reject the proposed compliance filing, as discussed below.

Background

2. On January 16, 2003, PPL filed with the Commission under section 205 of the Federal Power Act (FPA)² the RMR Agreement.³ On May 16, 2003, the Commission issued an order rejecting PPL’s RMR Agreement,⁴ based on its announced preference for use, on a temporary basis, of a special high safe harbor bid option, announced by the

¹ *PPL Wallingford Energy LLC*, 118 FERC ¶ 61,242 (2007) (March 23 Order).

² 16 U.S.C. § 824d (2000).

³ The Commission sought additional information from PPL, and PPL submitted a response on March 31, 2003.

⁴ *PPL Wallingford LLC*, 103 FERC ¶ 61,185 (2003) (May 16 Order).

Commission in *Devon Power LLC*,⁵ called the Peaking Unit Safe Harbor Bid (PUSH). On December 22, 2003, the Commission denied rehearing of the May 16 Order.⁶ PPL sought review in the U. S. Court of Appeals for the District of Columbia (D.C. Circuit Court). In a decision issued August 9, 2005, the D.C. Circuit Court vacated the Commission's orders relating to PPL and remanded the case for further proceedings.⁷ On April 6, 2006, the Commission issued an Order on Remand conditionally accepting the RMR Agreement effective February 1, 2003, subject to refund, and setting the case for hearing and settlement judge procedures.⁸ The Settlement resolved all matters in the above captioned docket. The Commission found it to be fair and reasonable and in the public interest and granted a conditional approval.

3. As originally filed, the Settlement provided that the standard of review the Commission shall apply when acting on proposed modifications to the Settlement shall be the "public interest" standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956), but also provided that the "just and reasonable" standard of review shall apply to filings to terminate or modify the RMR Agreement or certain filings otherwise authorized by the RMR Agreement.⁹

⁵ *Devon Power LLC*, 103 FERC ¶ 61,082 (2003).

⁶ *PPL Wallingford Energy LLC, Devon Power LLC*, 105 FERC ¶ 61,324 (2003).

⁷ *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005).

⁸ *PPL Wallingford Energy LLC*, 115 FERC ¶ 61,015 (2006), *order on clarification*, 116 FERC ¶ 61,089 (2006) (April 16 Order).

⁹ Section B.8 of the Settlement states that the "public interest" standard of review shall apply to proposed modifications of the Settlement, provided, however, that, as also stipulated in section A.3 of the Settlement, if the RMR Agreement has not terminated due to PPL's ability to participate in ISO-NE's Locational Forward Reserves Market (LFRM) by July 1, 2007, as of that date the "just and reasonable" standard of review shall apply to complaints to terminate the RMR Agreement under conditions set forth in sections A.3 and B.8. Further, section B.8 provides that ISO-NE has the right to make section 206 filings to modify the RMR Agreement under the "just and reasonable" standard of review, provided that PPL has the right in any such proceeding to file pursuant to section 205 under the "just and reasonable" standard of review to seek to recover any additional costs associated with modifications required by changes sought by ISO-NE in such section 206 filing. Finally, section B.8 provides that nothing in the Settlement is intended to impose the "public interest" standard of review with respect to future section 205 or 206 filings made pursuant to certain specified provisions of the RMR Agreement.

4. The Settling Parties agreed to a *Mobile-Sierra* “public interest” standard however, the Commission declined to be bound by such a standard.¹⁰ Therefore, the Commission directed the Settling Parties to file a revised RMR Agreement that provides that the Commission will be bound to the “just and reasonable” standard and not the “public interest” standard within 30 days of the issuance of the March 23 Order.¹¹

Compliance Filing

5. On April 12, 2007, the Settling Parties filed a proposed change to the conditionally accepted Settlement Offer that revised the RMR Agreement. In that compliance filing, the Settling Parties proposed to revise section 9.5.1 (a) to state the following:

9.5.1 (a) Except as set forth in PP 7-8 of the Commission's March 23, 2007 order in *PPL Wallingford Energy LLC et al.*, 118 FERC ¶ 61,242, in which case the “just and reasonable” standard shall apply, the standard of review that the Commission shall apply when acting on proposed modifications to this Agreement shall be the “public interest” standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956);

Notice and Responsive Filings

6. Notice of the Settling Parties’ compliance filing was published in the *Federal Register*, 72 Fed. Reg. 20,112 (2007), with motions to intervene and protests due on or before May 3, 2007. None were filed.

Discussion

7. We find that the proposed revision does not comply with the March 23 Order. Parties to the RMR agreement are free to subject each other to the “public interest” standard of review with regard to changes they would propose to their agreements. The “public interest” standard applies here to Commission review of proposed changes by the parties to the agreement to the extent that they have agreed in the settlement and/or RMR Agreement

¹⁰ March 23 Order, 118 FERC ¶ 61,242 at P 7-8, where the Commission stated “Because of the uniquely broad applicability of RMR agreements to markets and market participants alike, we find that it would be inconsistent with our duty under the Federal Power Act to be bound to the higher “public interest” standard when reviewing RMR agreements.”

¹¹ *Id.* at P 8.

that such changes will be subject to the “public interest” standard. However, any review by the Commission *sua sponte* of the RMR Agreement shall be under the “just and reasonable” standard of review and not the “public interest” standard. In addition, consistent with the recent orders in *Milford*¹² and *PSEG*,¹³ we clarify that any challenges under section 206 of the FPA to the RMR Agreement by non-parties to the RMR Agreement shall be reviewed under the “just and reasonable” standard of review. However, the proposed language on compliance is unclear. In particular, the proposed compliance filing does not remove language stating that the standard of review that the Commission shall apply when acting on proposed modifications to the RMR Agreement *sua sponte* shall be the “public interest” standard. Furthermore, the proposed compliance filing does not provide for the “just and reasonable” standard when non-parties seek modifications to the RMR Agreement.

8. Therefore, we direct the Settling Parties to remove all references to Commission review of the RMR Agreement *sua sponte* under the “public interest” standard and clearly state that Commission review of the RMR Agreement by the Commission acting *sua sponte* shall be under the “just and reasonable” standard. We also direct the Settling Parties to state clearly that any challenges under section 206 of the FPA to the RMR Agreement by non-parties to the RMR Agreement shall be reviewed under the “just and reasonable” standard of review.

The Commission orders:

The Settling Parties are hereby directed to make a compliance filing consistent with this order within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² *Milford Power Company, LLC*, 119 FERC ¶ 61,167 at P 31 (2007).

¹³ *PSEG Power Company, LLC*, 119 FERC ¶ 61,168 at P 25 (2007).