

104 FERC ¶ 61, 259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

PPL Electric Utilities Corporation

Docket No. EL03-16-001

ORDER ON REHEARING

(Issued September 10, 2003)

1. On January 27, 2003, the Borough of Olyphant, Pennsylvania (Olyphant) sought rehearing of the Commission's December 26, 2002 order issued in this proceeding.¹ For the reasons discussed below, we will deny rehearing.

Background

2. PPL Electric Utilities Corporation (PPL) filed a petition for a declaratory order in this proceeding concerning the scope of a Settlement Agreement entered into between PPL and Olyphant (a wholesale requirements customer of PPL) and PPL's other wholesale requirements customers.² Pursuant to the Settlement Agreement, PPL agreed to waive its wholesale stranded costs claims against its wholesale requirements customers. In return, PPL's wholesale requirements customers (Olyphant included) agreed to enter into new wholesale supply agreements with PPL. Meanwhile, in a separate proceeding filed by PPL before the Pennsylvania Public Utilities Commission (Pennsylvania Commission), PPL also litigated its retail stranded costs claims against its retail customers, including approximately 75 retail customers in the Mid-Valley Industrial Park (Industrial Park Customers).

¹ PPL Electric Utilities Corporation, 101 FERC ¶61,370 (2002) (December 26 Order).

²The Settlement Agreement was approved by the Commission in a letter order dated May 29, 1998 in Docket No. SC97-1-001.

3. In its petition, PPL requested an order from the Commission stating that if Olyphant secures the right to serve PPL's Industrial Park Customers (PPL's existing retail customers), the Settlement Agreement (which concerns only PPL's wholesale stranded costs claims) does not affect the obligations of the Industrial Park Customers to pay retail stranded costs pursuant to the retail stranded costs order issued by the Pennsylvania Commission.

4. In the December 26 Order, we granted PPL's petition. We noted that under the Settlement Agreement, the parties had agreed to limit PPL's entitlement to recover stranded costs only with respect to those entities who were parties to the Settlement Agreement. We held that because the parties to the Settlement Agreement were PPL's wholesale customers (who initiated the proceeding in which the Settlement Agreement was approved to pursue their rights to wholesale services), the Settlement Agreement could not be construed to apply to PPL's existing retail customers. We also noted that while we were not asked to address (and would not address) PPL's rights and obligations pursuant to the retail stranded costs order issued by the Pennsylvania Commission, Olyphant's interpretation of the Settlement Agreement would effectively nullify that state-issued order in a way not contemplated by the Settlement Agreement and not contemplated by our policies regarding the recovery of stranded costs under Order No. 888.³

Olyphant's Request for Rehearing

5. On rehearing, Olyphant raises a number of legal and procedural challenges to the December 26 Order. First, Olyphant argues that the Commission lacked jurisdiction to issue its order. Olyphant submits that the exclusive jurisdiction over the settlement interpretation issues presented by PPL's petition resides in a U.S. District Court where Olyphant is now litigating an antitrust action against PPL. In addition, Olyphant asserts that the Commission was barred from interpreting the scope of the Settlement Agreement

³ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in part and rev'd in part sub nom. Transmission Access Policy Study Group v. FERC, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom., New York v. FERC, 535 U.S. 1 (2002).

pursuant to Section 317 of the Federal Power Act (FPA).⁴ Finally, Olyphant submits that the Commission lacked jurisdiction to rule on PPL's petition for a declaratory ruling because the ruling sought by PPL required the Commission to vacate its prior order approving the Settlement Agreement. Olyphant asserts that the Commission is barred from vacating its prior order when no rehearing was filed in that proceeding and the order thus became final and non-appealable.

6. Olyphant further asserts that even assuming that the Commission did have jurisdiction to rule in this matter, the December 26 Order improperly construed and unlawfully modified the Settlement Agreement. Finally, Olyphant asserts as error the Commission's alleged interpretation of the retail stranded costs order issued by the Pennsylvania Commission.

Discussion

7. We will deny Olyphant's request for rehearing. First, we reject Olyphant's assertion that the Commission lacked jurisdiction in this case. In the December 26 Order, we were not required to decide and did not address any antitrust claims asserted by any party or any other issues other than those squarely presented within the four corners of the Settlement Agreement – a matter, which as we held in the December 26 Order, falls within our primary jurisdiction. Nor were we acting in contravention of Section 317 of the FPA by attempting to “enforce” a prior order or “enjoin” any party to that order. We did neither. Finally, Olyphant's argument that the Commission vacated its prior order, is misplaced. We did not vacate our prior order approving the Settlement Agreement.

8. We also reject Olyphant's assertion that the December 26 Order had the effect of modifying the Settlement Agreement. In fact, we held in the December 26 Order that we were only clarifying that the Settlement Agreement did not apply to non-parties to the Settlement Agreement and thus did not address PPL's ability to recover retail stranded costs from its existing retail customers. This clarification, moreover, was based on the express language of the Settlement Agreement, which (as we noted) limits PPL's rights to recover stranded costs only with respect to “parties to this Settlement Agreement.” Thus, we did not strike any provision from the Settlement Agreement, nor did we add any new provision, *i.e.*, we did not modify the Settlement Agreement.

9. Olyphant also asserts that the Commission erred in allegedly ruling that PPL can continue to impose retail stranded costs on its existing retail customers, even if these retail customers are subsequently annexed by Olyphant. In fact, however, we made no such ruling. To the contrary, we noted that PPL's entitlement to recover retail stranded costs from its existing retail customers was the subject of a separate proceeding before

⁴ 16 U.S.C. § 825p (2000) (enforcement of liabilities and duties).

the Pennsylvania Commission. We stated clearly that we were not asked to address (and would not address) PPL's rights and obligations under this state-issued order.

10. Olyphant also argues that in the December 26 Order, "the Commission effectively modifies the scope of the Settlement Agreement by ruling that it 'does not address—and thus would not limit or preclude—PPL's ability to recover retail stranded costs from its existing retail customers."⁵ According to Olyphant, any cost incurred by PPL to provide service to any retail customer that subsequently becomes a customer of Olyphant (by way of annexation) would be a wholesale stranded cost that would fall under the Settlement Agreement, not a retail stranded cost.

11. We disagree that the Settlement Agreement was intended to address PPL's stranded costs associated with its Industrial Park Customers. In Order No. 888, the Commission decided that it would allow state regulatory authorities to address any stranded costs occasioned by retail wheeling. The Pennsylvania Commission did so on August 27, 1998 in a proceeding relating to PPL and PPL's Industrial Park Customers. Accordingly, we stated in the December 26 Order that we were not asked to address (and do not address) PPL's obligations under the final order issued by the Pennsylvania Commission. As we explained, Olyphant's strained interpretation of the Settlement Agreement would effectively nullify that state-issued order in a way not contemplated by the Settlement Agreement and not contemplated by our policies regarding the recovery of stranded costs under Order No. 888.

12. Olyphant's attempt to interject into this proceeding the issue of whether the Settlement Agreement could be construed as applying not only to wholesale stranded costs associated with the wholesale requirements customers who were parties to the Settlement Agreement, but also to any wholesale stranded costs that may result from subsequent municipal annexations, is thus irrelevant. However we might resolve that issue, it would not change our conclusion in the December 26 Order that we were not asked to address (and do not address) PPL's obligations under the state-issued order.

⁵ See Request for Rehearing at 21.

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The Commission orders:

Olyphant's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.