

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Corporation

Docket No. ER06-120-000

ORDER ACCEPTING AND SUSPENDING FILING SUBJECT TO CONDITIONS  
AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued December 30, 2005)

1. In this order, we accept the filing made on November 1, 2005, by Duke Power (Duke), a division of Duke Energy Corporation. Duke filed two agreements between Duke and the Piedmont Municipal Power Agency (PMPA). These agreements are the Catawba Nuclear Station Joint Ownership Support Agreement (Joint Ownership Agreement) and the McGuire Reliability Exchange Agreement (Reliability Exchange Agreement).<sup>1</sup> Duke also filed a notice of cancellation of the Catawba Nuclear Station Interconnection Agreement between Duke and PMPA (Interconnection Agreement).<sup>2</sup> We will accept the filing for filing, subject to conditions and suspend it for a nominal period, to become effective January 1, 2006, as requested, subject to refund and further Commission review.

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<sup>1</sup> Duke Energy Corporation, FERC Electric Rate Schedule No. 313, Original Sheet Nos. 1 – 68, and Duke Energy Corporation, FERC Electric Rate Schedule No. 314, Original Sheet Nos. 1 – 74.

<sup>2</sup> Duke Power Company, First Revised Rate Schedule FERC No. 276, Original Sheet No. 1.

**Background**

2. Since the early 1980's, Duke, PMPA, and three other parties<sup>3</sup> have jointly owned the Catawba Nuclear Station (Catawba) in York County, South Carolina within Duke's home control area. PMPA, with ten municipal electric utility members in the northwest portion of South Carolina, is the owner of 25 percent of Unit 2 of Catawba, which is operated by Duke. McGuire Nuclear Station is also located within Duke's home control area and is operated by Duke.

3. On November 1, 2005, Duke filed the Joint Ownership Agreement, Reliability Exchange Agreement, and the notice of cancellation of the Interconnection Agreement. Duke states that PMPA gave notice on December 18, 1997 that it will terminate its Interconnection Agreement effective January 1, 2006. Duke also states that PMPA plans to obtain its supplemental power needs from a competing source as of January 1, 2006. Duke indicates that although supplemental power will no longer be supplied by Duke, many other services and arrangements reflected in the Interconnection Agreement will be continued. These non-transmission services are contained in the Joint Ownership Agreement and Reliability Exchange Agreement.

4. Duke states that the Joint Ownership Agreement is intended generally to reflect terms and conditions relating to certain aspects of the joint ownership of Catawba and, in particular, the exchange of Catawba capacity. Thus, the Joint Ownership Agreement will terminate on the date on which the last Catawba unit is retired. Duke further states that the core provision of the Joint Ownership Agreement is Article 6, which addresses the continuation of the existing exchange of 50% of the capability and output of Catawba Unit 1 for 50% of the capability and output of Catawba Unit 2 and vice versa.

5. Duke states that the Reliability Exchange Agreement reflects PMPA's and Duke's desire to continue the exchange of power between Catawba and the McGuire plant that existed under the Interconnection Agreement. Thus the Reliability Exchange Agreement may last until the last Catawba or McGuire unit is retired, but it can be terminated by either party on three-years' notice. Duke states that the core provision of the Reliability Exchange Agreement is the exchange of certain kilowatts out of Catawba for an equal number of kilowatts out of McGuire.

6. Both the Joint Ownership Agreement and the Reliability Exchange Agreement require PMPA to have generator balancing service arrangements in place and describes the

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<sup>3</sup> North Carolina Municipal Power Agency Number 1, Saluda River Electric Cooperative, Inc., and North Carolina Electric Membership Corporation.

default arrangement for service if it is not obtained from a third party. The default generation balancing arrangement provides that if “Energy Available” is less than the “Scheduled Quantity” for an hour and PMPA does not have a balancing arrangement in effect pursuant to section 3.3 of the Joint Ownership Agreement (or pursuant to section 3.2 of the Reliability Exchange Agreement), or PMPA’s balancing arrangement does not fully compensate for the difference between the Energy Available and the Scheduled Quantity, PMPA is deemed to have made an after-the-fact purchase of “Replacement Energy” from Duke. The pricing of Replacement Energy is determined pursuant to a formula that considers system incremental cost, arm’s length hourly wholesale transactions, and a “Daily Market Index” which is defined as “the arithmetic average of the “weighted average index” for the “Cinergy”, “Entergy”, “SOCO”, “PJM-West” and “TVA” hubs applicable for the delivery day that is reported in the Intercontinental Exchange, Inc. – North American Power Price Alert.

7. Duke further states that PMPA’s transmission needs will be provided under the Duke OATT, and that it plans to file a Network Integration Transmission Service Agreement (Transmission Service Agreement) between PMPA and Duke Electric Transmission, a division of Duke Energy Corporation.

8. The major differences between the Interconnection Agreement, and Joint Ownership Agreement and Reliability Exchange Agreement are that Duke will no longer be providing transmission service and selling supplemental energy, which it did under the Interconnection Agreement, and will include a new service, generation balancing.

9. On December 21, 2005, the Director, Division of Tariffs and Market Development – South, acting pursuant to delegated authority, issued a data request seeking additional information relating to Duke’s submittal.

### **Notice of Filing and Responsive Pleadings**

10. Notice of the November 1, 2005 filing was published in the *Federal Register*, 70 Fed Reg. 69,334 (2005), with interventions or protests due on or before November 22, 2005. None were filed.

### **Discussion**

11. Duke states that the purpose of the proposed agreements primarily is to reflect the rates, terms, and conditions for services formerly provided under the Interconnection Agreement that are being preserved after the restructuring of the Duke-PMPA relationship. The Commission notes that Duke states that PMPA previously gave notice that it will terminate its Interconnection Agreement effective January 1, 2006. However, as evidenced by the data request issued under delegated authority on December 21, 2005, we

are not satisfied that Duke has made the requisite showing that the rates, terms, and conditions are just and reasonable. Our preliminary analysis indicates that Duke's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

12. In consideration of the expiration of the Interconnection Agreements and the uncertainty that would result from not having a replacement agreement in place, we will accept Duke's proposed rate schedules for filing, suspend them for a nominal period, and make them effective January 1, 2006, subject to further Commission review and a future Commission order.

13. The refund effective date will be January 1, 2006, the date the rate schedules become effective.

The Commission orders:

The Commission accepts the notice of cancellation of the Interconnection Agreement to become effective on January 1, 2006. The Commission also accepts and suspends the Joint Ownership Agreement and the Reliability Exchange Agreement to become effective January 1, 2006, subject to further review and refund as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.