

151 FERC ¶ 61,029
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Philip D. Moeller, Cheryl A. LaFleur,
Tony Clark, and Colette D. Honorable.

PJM Interconnection, L.L.C.,
Duke Energy Ohio, Inc. and
Duke Energy Kentucky, Inc.

Docket Nos. ER12-91-008
ER12-92-008

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued April 16, 2015)

1. On October 30, 2014, Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (collectively, the “Duke Companies”) submitted a settlement agreement (October 30, 2014 Settlement) and related documents that resolve all issues in this proceeding.¹ On December 10, 2014, the presiding Administrative Law Judge certified the October 30, 2014 Settlement as uncontested.² In this order, we approve the October 30, 2014 Settlement.

I. Procedural History

2. On October 14, 2011, PJM Interconnection, L.L.C. (PJM) and the Duke Companies jointly filed proposed modifications to the PJM Open Access Transmission Tariff (Tariff) in connection with the Duke Companies’ move from the Midcontinent Independent System Operator, Inc. (MISO) Regional Transmission Organization (RTO) to the PJM RTO, pursuant to section 205 of the Federal Power Act (FPA).³ PJM and the

¹ The settling parties in these proceedings include the Duke Companies, American Municipal Power, Inc. (AMP) and its members, City of Hamilton, Ohio (Hamilton), Buckeye Power, Inc. (Buckeye) and its members, The Dayton Power & Light Company (Dayton), East Kentucky Power Cooperative, Inc. (East Kentucky) and its members, Indiana Municipal Power Agency (IMPA), and the Village of Blanchester, Ohio (collectively, the Settling Parties).

² *Duke Energy Ohio, Inc., et al.*, 149 FERC ¶ 63,020 (2014).

³ 16 U.S.C. § 824d (2012).

Duke Companies' proposed modifications to the PJM Tariff related to establishing and recovering the Duke Companies' transmission revenue requirement, including formula rate protocols to recover Legacy MISO Transmission Expansion Plan (MTEP) Costs,⁴ MISO Exit Fees,⁵ Long-Term Firm Transmission Rights (LTTR) Exit Charge,⁶ and PJM Integration Costs from wholesale transmission customers.⁷ PJM and the Duke Companies also proposed modifications to the Amended and Restated Operating Agreement of PJM, the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, and the Consolidated Transmission Owners Agreement (collectively, the PJM Agreements). PJM and the Duke Companies requested an effective date of January 1, 2012. On December 27, 2011, and on February 24, 2012, the Duke Companies requested a deferral of action to allow the Duke Companies additional time to attempt to settle the issues raised in protests.

3. On April 5, 2012, the Duke Companies and IMPA filed a settlement agreement in this proceeding that resolved all issues between the Duke Companies and IMPA (April 5, 2012 Settlement), and on April 24, 2012, the Commission issued an order, in which the Commission approved the April 5, 2012 Settlement, and rejected in part, and accepted in part, the proposed modifications to the PJM Tariff and Agreements.⁸ The Commission denied the Duke Companies' request to recover Legacy MTEP Costs and PJM Transition Costs and Internal Integration Costs from wholesale transmission customers, without

⁴ Legacy MTEP Costs are costs of certain projects identified in the MTEP and approved by the MISO Board of Directors prior to the Duke Companies' integration into PJM.

⁵ The MISO Exit Fee compensates MISO for certain long-term costs that MISO incurs in connection with the service it provides.

⁶ LTTR Exit Charge addresses the adverse effects on the feasibility of LTTR resulting from the Duke Companies withdrawal from MISO.

⁷ PJM Integration Costs are PJM charges in connection with the transition to PJM.

⁸ *PJM Interconnection, L.L.C., et al.*, 139 FERC ¶ 61,068 (2012). (April 24, 2012 Order).

prejudice.⁹ The Commission also established hearing and settlement judge procedures pursuant to section 206 of the FPA with respect to the Duke Companies' return on equity with a refund effective date of April 24, 2012. On May 24, 2012, PJM and the Duke Companies filed revised tariff records to comply with the Commission's April 24, 2012 Order. The revised tariff records were accepted on June 29, 2012, effective January 1, 2012.¹⁰ On the same date, the Duke Companies filed a request for rehearing in Docket Nos. ER12-91-004 and ER12-92-004 of the Commission's April 24, 2012 Order. On February 4, 2013, the Duke Companies, AMP, and the AMP Members filed a settlement (February 4, 2013 Settlement),¹¹ and on September 19, 2013, the Commission, raising concerns that the February 4, 2013 Settlement resolved issues beyond matters set for hearing and settlement judge procedures without notice to customers, rejected the settlement, without prejudice.¹² The Commission's September 19, 2013 Order remanded the proceeding for further hearing and settlement judge procedures. On October 18, 2013, AMP filed a request for rehearing in Docket Nos. ER12-91-007 and ER12-92-007 of the Commission's September 19, 2013 Order.

4. On December 17, 2013, the Duke Companies provided notice to all PJM transmission customers with load in the DEOK zone that settlement discussions in this proceeding had resumed and that settlement discussions might address transmission rate matters beyond the return of equity issue specifically set for hearing and settlement judge procedures in the April 24, 2012 Order. The notice provided for customers to file late interventions in the proceeding. The Chief Judge granted late motions to intervene submitted by The Dayton Power and Light Company, Buckeye Power, Inc. and East Kentucky Power Cooperative, Inc.

⁹ PJM Transition Costs include the MISO Exit Fee, LTTR Exit Charge, and PJM Integration Costs. Internal Integration Costs are the internal administrative cost incurred by the Duke Companies to accomplish their move from MISO to PJM.

¹⁰ *PJM Interconnection, L.L.C., et al.*, Docket Nos. ER12-91-003 and ER12-92-003 (June 29, 2012)(delegated letter order).

¹¹ The February 4, 2013 Settlement provided for recovery of Legacy MTEP Costs, and PJM Transition Costs and Internal Integration Costs from all wholesale transmission customers, together with a reimbursement to AMP and the AMP Members for 75 percent of the Legacy MTEP Costs and 100 percent of the PJM Transition Costs. The February 4, 2013 Settlement also provided for a reduction in the Duke Companies' ROE from 12.38 percent to 10.88 percent, plus 50 basis points for membership in an RTO.

¹² *PJM Interconnection, L.L.C., et al.*, 144 FERC ¶ 61,217 (2013). (September 19, 2013 Order).

5. On October 30, 2014, the Duke Companies submitted the current settlement. The Duke Companies also assert that the October 30, 2014 Settlement will replace the April 5, 2012 Settlement between the Duke Companies and IMPA.¹³ The Duke Companies also assert that upon approval of the Settlement by the Commission, the Duke Companies and AMP will withdraw their respective pending requests for rehearing in this proceeding.

II. October 30, 2014 Settlement

6. The October 30, 2014 Settlement provides that, effective January 1, 2012, the Duke Companies' revenue requirement for wholesale transmission service provided by PJM for electrical load in the DEOK Zone shall exclude 100 percent of PJM Transition Costs and Internal Integration Costs, and that the 100 percent exclusion of such costs shall not be subject to change at any time or for any reason.

7. The October 30, 2014 Settlement states that during the period beginning January 1, 2012 and through the day before the date the October 30, 2014 Settlement becomes effective, the charges for wholesale transmission service for electrical load in the DEOK Zone shall exclude 100 percent of Legacy MTEP Costs, which shall not be subject to change at any time or for any reason.

8. The October 30, 2014 Settlement provides that on and after the date the October 30, 2014 Settlement becomes effective and continuing for so long as the Duke Companies remain subject to Legacy MTEP Costs, the charges for wholesale transmission service for electrical load in the DEOK Zone shall exclude 70 percent of any Legacy MTEP Costs, and shall include 30 percent of any Legacy MTEP Costs. This shall be reflected in the Duke Companies' tariff records and shall not be subject to change at any time or for any reason.

9. The October 30, 2014 Settlement states that nothing in the settlement shall affect the payment obligation of a Wholesale Transmission Customer with respect to PJM Regional Transmission Expansion Plan (RTEP) Costs included in the charges for wholesale transmission service that PJM provides in the DEOK Zone, nor shall anything in the October 30, 2014 Settlement obligate the Duke Companies to provide reimbursement to any Wholesale Transmission Customer for all or any portion of PJM RTEP Costs included in the charges for wholesale transmission service that PJM provides in the DEOK Zone.

¹³ The Duke Companies assert that because of this replacement, Attachment H-22C to the PJM Tariff is no longer necessary and is being eliminated as of January 1, 2012.

10. The October 30, 2014 Settlement provides that on and after the date the October 30, 2014 Settlement becomes effective and continuing until changed by order of the Commission, the return on equity (ROE) in the Duke Companies' revenue requirement for wholesale transmission service shall be a total of 11.38 percent, consisting of a 10.88 percent base cost of common equity and a 0.5 percent ROE adder for participation in a regional transmission organization (Base/RTO ROE). In addition, the October 30, 2014 Settlement provides that neither the Duke Companies nor the Settling Parties shall make a unilateral filing seeking a change in the Base/RTO ROE that would become effective before June 1, 2017.

11. The October 30, 2014 Settlement becomes effective upon (a) the issuance of an order accepting or approving the settlement without condition(s) or modification(s), or (b) the issuance of an order approving the settlement with condition(s) or modification(s), if no Settling Party files notice with the Commission within 15 days of the approval of the settlement stating that it objects to such condition(s) or modification(s). The October 30, 2014 Settlement provides that no later than 30 days after the date that the settlement becomes effective, the Duke Companies shall submit tariff records included as part of the settlement through two eTariff compliance filings. The tariff record included as Attachment B to the October 30, 2014 Settlement will be submitted to become effective January 1, 2012, and replace and supersede the tariff records included in PJM Tariff Attachments H-22 and JJ that were filed on October 14, 2011, and May 24, 2012. The tariff record included as Attachment C to the October 30, 2014 Settlement will be submitted to become effective the date that the settlement is approved by the Commission and will replace and supersede the tariff records included as Attachment B to the settlement.

12. The October 30, 2014 Settlement provides that the Duke Companies and AMP will withdraw, respectively, their May 24, 2012 and October 18, 2013 requests for rehearing upon Commission approval of the settlement.

13. The October 30, 2014 Settlement provides that unless the Settling Parties otherwise agree in writing, any modification to this Settlement proposed by one of the Settling Parties after the Settlement has become effective, as between them, be subject to the public interest application of the just and reasonable standard of review.¹⁴ Any modification proposed by the Commission acting *sua sponte* or by a non-Settling Party shall be subject to the just and reasonable standard.

¹⁴ See *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010); *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008); *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

III. Discussion

14. We approve the October 30, 2014 Settlement. The October 30, 2014 Settlement disposes of all disputes between the parties in the above-referenced proceedings. The Settlement appears to be fair, reasonable, and in the public interest, and is uncontested. Further, the October 30, 2014 Settlement presents no issues of first impression, affects no other Commission proceedings in a manner contrary to the public interest, and does not implicate any Commission policies. The Commission's approval of the October 30, 2014 Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Consistent with the provisions of the October 30, 2014 Settlement, the Duke Companies, no later than 30 days after the date that the settlement becomes effective, shall submit tariff records implementing the settlement through eTariff compliance filings.

The Commission orders:

The October 30, 2014 Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.