

123 FERC ¶ 61,139
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.

Duquesne Light Company

Docket Nos. EL06-109-000,
EL06-109-001, EL06-109-002,
ER06-1549-000, ER06-1549-
002 and ER06-1549-003

ORDER ACCEPTING UNCONTESTED SETTLEMENT
AND COMPLIANCE FILING

(Issued May 9, 2008)

1. In this order, we address an uncontested Settlement filed on October 9, 2007 by the Duquesne Light Company (Duquesne), the Pennsylvania Public Utility Commission (Pennsylvania Commission) and the Pennsylvania Office of Consumer Advocate (PaOCA) (collectively, the Settling Parties). The Settlement establishes a return on equity to be used by Duquesne in its formula rates and resolves related issues for which hearing and settlement judge procedures were established by the Commission in its initial order issued in this proceeding.¹ The Settlement also resolves all pending requests for rehearing.² For the reasons discussed below, we accept the uncontested Settlement without modification.

2. In this order, we also address a compliance filing submitted by Duquesne in response to the February 6 Order. In its compliance filing, Duquesne addresses its eligibility under Order No. 679 to recover, in its formula rates, certain transmission investment rate incentives applicable to its Transmission Owner Identified (TOI) upgrades.³ For the reasons discussed below, we accept Duquesne's compliance filing.

¹ *Duquesne Light Co.*, 118 FERC ¶ 61,087 (2007) (February 6 Order).

² The Pennsylvania Commission was the only entity seeking rehearing of the February 6 Order.

³ *See Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Background

3. On September 29, 2006, Duquesne filed a petition for declaratory order seeking a determination that it is eligible to recover certain transmission investment rate incentives under Order No. 679 in connection with a proposed transmission project it plans to construct in the vicinity of Pittsburgh, Pennsylvania (Duquesne Transmission Enhancement Plan). The Duquesne Transmission Enhancement Plan consists of 22 individual upgrades consisting of eight “Baseline” upgrades (i.e., a required upgrade, as identified by PJM) and 14 TOI upgrades (i.e., an upgrade undertaken by the transmission owner for its own reasons).⁴ In a companion filing, Duquesne sought to adopt a formula rate to recover its revenue requirement for all transmission facilities turned over to the operational control of PJM Interconnection, L.L.C. (PJM), including incentive rates for the transmission upgrades that Duquesne proposes to construct as part of the Duquesne Transmission Enhancement Plan.

4. In its petition, Duquesne requested a finding that it is eligible to recover the following transmission investment rate incentives: (i) an upward adjustment of 150 basis points to its authorized base-level return on equity; (ii) inclusion of its construction work in progress (CWIP) in rate base; (iii) recovery of its prudently incurred pre-commercial operations costs in its current rates; and (iv) recovery of its abandonment costs if its project is cancelled due to factors beyond Duquesne’s control. In its rate filing, Duquesne submitted a proposed cost-of-service formula rate to recover its revenue requirement, including its proposed transmission investment rate incentives and an additional rate incentive of 50 basis points for its continued membership in the PJM regional transmission organization (RTO).

5. In the February 6 Order, the Commission accepted Duquesne’s proposed formula rate subject to nominal suspension and conditions, to become effective December 1, 2006, and set for hearing and settlement judge proceedings Duquesne’s proposed return on equity, the recovery of the capital costs attributable to Duquesne’s project, and additional accounting issues.⁵ The Commission also granted Duquesne’s request for rate incentives for the Duquesne Transmission Enhancement Plan,⁶ subject to Duquesne

⁴ See PJM Manual 14-C at p. 36.

⁵ February 6 Order, 118 FERC ¶ 61,087 at P 70 and P 77-78.

⁶ The Commission approved a 100-basis point return on equity adder for Duquesne, rather than the 150-basis point return on equity adder that Duquesne requested.

making a compliance filing providing additional information showing that its TOI upgrades satisfy the requirements of Order No. 679 by ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.⁷

Duquesne's Compliance Filing

6. On March 8, 2007, Duquesne made its compliance filing consisting of the affidavit of John F. Rosser, Duquesne's director of transmission (the Duquesne official responsible for transmission system expansion planning). In his affidavit, Mr. Rosser states that each of the TOI upgrades included by Duquesne in the Duquesne Transmission Enhancement Plan is supported by a forward-looking, peer-reviewed engineering study demonstrating that these upgrades are necessary to maintain reliable transmission service to Pittsburgh and surrounding areas. Mr. Rosser states that these reliability findings were made applying reliability criteria developed by the North American Reliability Council and the East Central Area Reliability Council.

7. Mr. Rosser also states that recent history confirms that these upgrades are necessary given the record peak experienced by Duquesne in August 2006 (an occurrence not anticipated by Duquesne's prior planning assumptions). In addition, Mr. Rosser states that Duquesne's 2006 FERC Form No. 715 filing shows that Duquesne's TOI upgrades are necessary to resolve the concerns identified by Duquesne's system models. Finally, Mr. Rosser states that certain of Duquesne's TOI upgrades will eliminate the need to assign "reliability must run" status to Duquesne zone generation facilities located at Brunot Island (outside Pittsburgh).

8. Notice of Duquesne's compliance filing was published in the *Federal Register* with interventions and protests due on or before March 29, 2007.⁸ A protest was timely filed by PaOCA.⁹

⁷ *Id.* P 68 (noting that "Duquesne's proffer of evidence may include, but need not be limited to: (i) an engineering affidavit attested to by a responsible company official; (ii) a study performed by Duquesne showing the effects of each of these upgrades on reliability or the delivered cost of power; and/or (iii) state siting approvals with accompanying needs assessments for each upgrade.").

⁸ 72 Fed. Reg. 16,667 (2007).

⁹ Under section 10.3 of the Settlement, discussed below, all comments, protests and requests for rehearing are deemed withdrawn.

Proposed Settlement and Responsive Pleadings

9. The Settlement, as noted above, was filed on October 9, 2007. The Settlement provides for revised formula rates to become effective December 1, 2006 (for the initial rate period ending May 31, 2007) and revised formula rate protocols applicable to Duquesne's annual formula rate updates. The Settlement also establishes a revenue requirement for Network Integration Transmission Service and provides for a base-level return on equity of 10.9 percent, a five-year rate moratorium applicable to merger-related costs, and recovery of costs associated with post-employment benefits other than pensions (PBOPs). In addition, the Settlement provides that, subject to the Commission's acceptance of Duquesne's March 8, 2007 compliance filing in Docket No. E06-109-001, *et al.*, Duquesne's formula rates will reflect the following rate incentives: (i) a 50 basis points incentive for continued RTO membership; (ii) a 100 basis point incentive applicable to the Duquesne Transmission Enhancement Plan (including all TOI upgrades); (iii) inclusion of CWIP in rate base; (iv) recovery of prudently-incurred pre-commercial operations cost in current rates; and (v) recovery of abandonment costs in the event the Duquesne Transmission Enhancement Plan is canceled for reasons beyond Duquesne's control.

10. Comments generally supporting the Settlement were filed by FirstEnergy Service Company (FirstEnergy) and the Commission's Trial Staff (Staff). In addition, FirstEnergy requests that the Commission condition its acceptance of the Settlement on a reexamination of its terms if, and when, Duquesne withdraws from PJM (including the Commission's acceptance, in the February 6 Order, of a 50 basis points incentive rate for continued RTO membership and rate incentives applicable to the Duquesne Transmission Enhancement Plan).¹⁰ Staff seeks clarification regarding Duquesne's filing requirements as they relate to CWIP expenses and PBOPs. With respect to CWIP, Staff asks the Commission to clarify its policy as to whether the annual informational filing requirements contemplated by the Settlement are sufficient, or whether a Federal Power Act (FPA) section 205 filing is required to include the CWIP balances in rates.¹¹ With respect to PBOPs, Staff asks the Commission to reconcile its recent precedents with its authorization, in the February 6 Order, regarding the permitted inclusion in Duquesne's

¹⁰ Duquesne's proposal to withdraw from PJM was addressed by the Commission in *Duquesne Light Company*, 122 FERC ¶ 61,039 (2008) (Duquesne Withdrawal Order), *reh'g pending*.

¹¹ 16 U.S.C. § 824d (2000).

formula rates (without a section 205 filing) of PBOP-related changes falling below a stated threshold.¹²

11. On November 5, 2007, Duquesne filed reply comments in which it submits that the Settlement is supported or not opposed by all parties in this case as well as by Staff. Duquesne also urges the Commission to deny FirstEnergy's requested condition regarding the alleged changed circumstances that may be presented by Duquesne's future migration to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Duquesne asserts, among other things, that FirstEnergy's concerns are not ripe for consideration and should not be addressed by the Commission here, or at this time, prior to Duquesne's submission of its proposed Midwest ISO integration filing in Docket No. ER08-194-000, i.e., in the Duquesne RTO withdrawal proceeding.

12. With respect to Staff's requested policy determinations, Duquesne asserts that the policy considerations at issue represent a collateral attack of the February 6 Order and do not otherwise warrant revision of a negotiated settlement that, by its terms, establishes no precedent or policy binding on the Settling Parties or the Commission. Duquesne also asserts that, on the merits, Staff's requested CWIP clarifications should be rejected because the Commission has accepted annual informational filings as sufficient to include CWIP balances in annual formula rate updates.¹³ Finally, Duquesne submits minor corrections to the formula rate template and completed template as submitted in the Settlement.

13. On November 6, 2007, the Settlement Judge certified the Settlement as uncontested.

Discussion

14. The Settlement is fair, reasonable, and in the public interest and is hereby approved. The standard of review for any modifications to this settlement not agreed to by the parties, including modifications by the Commission acting *sua sponte*, shall be the

¹² Staff cites two cases issued after the February 6 Order that it says may be inconsistent with this authorization. See *Commonwealth Edison Co.*, 119 FERC ¶ 61,238, at P 91 (2007) and *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, *order on reh'g and compliance filing*, 121 FERC ¶ 61,009 (2007).

¹³ Duquesne reply at 9, *citing Northeast Utilities Service Co.*, 114 FERC ¶ 61,089, at P 23 (2006) and *Boston Edison Co.*, 111 FERC ¶ 61,266, at P 12 (2005).

“just and reasonable” standard of review. The tariff sheets contained in the Settlement (as corrected by Duquesne in its Settlement reply comments) are in compliance with Order No. 614 and are made effective as set forth in the Settlement.¹⁴ Our acceptance of the Settlement does not constitute approval, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of FPA section 206.¹⁵

15. FirstEnergy, as noted above, does not contest the Settlement. However, FirstEnergy seeks a commitment, in the form of a Settlement condition, that we will reconsider (and possibly revise) the rate incentive authorizations included in Duquesne’s formula rates based on an asserted change of circumstances that has not yet occurred, i.e., based on Duquesne’s contemplated migration to the Midwest ISO.¹⁶ Under these circumstances, we decline to prejudge this issue here.

16. We also reject Staff’s requested clarifications. The February 6 Order accepted Duquesne’s proposed filing obligations as they relate to CWIP and PBOP changes. These authorizations are also reflected in the Settlement. While Staff asserts that these authorizations may not fully reflect subsequent Commission rulings in similar cases, at least as to PBOPs, we are not persuaded that the February 6 Order authorizations should be reconsidered here in the context of a negotiated uncontested Settlement that binds neither the Settling Parties nor the Commission with respect to the Commission’s future policy determinations.

17. Finally, we accept Duquesne’s compliance filing. Duquesne’s compliance filing, as noted above, provides evidentiary support regarding the application of Duquesne’s rate

¹⁴ See *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000).

¹⁵ 16 U.S.C. § 824e (2000).

¹⁶ As noted above, the Commission addressed Duquesne’s conditional request to withdraw from PJM in the Duquesne Withdrawal Order. However, the Commission noted in that order that Duquesne’s authorization to withdraw from PJM was subject, among other things, to a subsequent filing consisting of proposed RTO replacement arrangements. See Duquesne Withdrawal Order, 122 FERC ¶ 61,039 at P 5. This filing has not been made to date.

incentives to its TOI upgrades (a component of the Duquesne Transmission Enhancement Plan). The Settlement, as we also note above, extends Duquesne's rate incentives to each of the TOI upgrades, subject to the Commission's acceptance of Duquesne's compliance filing. We agree that in the affidavit of Mr. Rosser, Duquesne has sufficiently supported its position that the TOI upgrades will ensure reliability or reduce the cost of delivered power by reducing transmission congestion.

The Commission orders:

- (A) The Settlement is hereby approved, as discussed in the body of this order.
- (B) Duquesne's compliance filing is hereby accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.