

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.

Duke Power Company LLC
d/b/a Duke Energy Carolinas, LLC

Docket No. ER06-1353-000

ORDER ACCEPTING TRANSMISSION SERVICE AGREEMENT,
SUBJECT TO MODIFICATION

(Issued October 10, 2006)

1. On August 11, 2006, Duke Power Company LLC d/b/a Duke Energy Carolinas, LLC (Duke), filed a non-conforming transmission service agreement (TSA)¹ between Duke and North Carolina Municipal Power Agency No. 1 (NC Municipal). In this order the Commission accepts the TSA for filing, as modified below, to become effective October 1, 2006, and directs Duke to make a compliance filing removing section 10.0, which conditions NC Municipal's future rollover rights.

I. Description of Filing

2. Duke requests that we accept the TSA for filing, to be effective October 1, 2006. The TSA commits Duke to provide NC Municipal with transmission service for 50 MW of capacity, with service commencing October 1, 2006. Section 10.0 of the TSA is a non-conforming provision that restricts NC Municipal's rollover rights. Specifically, section 10.0 states that "the presence of higher-queued transmission requests may lead to the need to restrict rollover rights . . . for service beginning on or after January 1, 2015."² According to Duke, these "higher queued" transmission requests "are six OASIS requests for 1000 MWs each to six different interfaces on Duke's system, all with start dates of

¹ The TSA has been specifically designated as Service Agreement No. 365 under Duke Power Company LLC FERC Electric Tariff Third Revised Volume No. 4.

² Duke's August 11 Filing at 1.

January 1, 2015 and continuing through January 1, 2025.”³ Duke explains further that it “has been unable to study these higher-queued transmission requests due to the presence of a higher-queued interconnection request. Until the interconnection points for the higher-queued interconnection request are determined, a load flow study to determine the feasibility of the 1000 MW transmission requests cannot be performed.”⁴ Section 10.0 further provides that “once the interconnection points are determined, the 1000 MW transmission requests can be studied,” and that when “the transmission study results are available . . . the availability of rollover rights after January 1, 2015 can be determined.”⁵ Section 10.0 concludes by providing that the TSA “will be amended after such determination is made if there is a need to restrict rollover rights.”⁶

3. Duke argues that section 10.0 is consistent with Commission policy, which according to Duke, allows transmission providers to restrict rollover rights due to a reasonably forecasted need at the time the contract is executed.⁷ Duke states that this requirement is met because there are six “higher-queued” transmission service requests in Duke’s queue for 1000 MW each, some or all of which could prevent Duke from providing NC Municipal rollover service after January 1, 2015.

II. Notice, Intervention and Protest

4. Notice of Duke’s filing was published in the *Federal Register*,⁸ with interventions and protests due on or before September 1, 2006. No interventions or protests were filed.

³ *Id.* “SWE” is listed as the customer for all six requests. Duke is listed as the Point of Receipt for all six requests, while each request has a unique Point of Delivery (which is the same as the Sink): SOCO, PJM, CPLE, TVA, SCEG, and SC. The source for all six requests is listed as Cherokee.

⁴ *Id.* at 1-2.

⁵ *Id.* at 1-2.

⁶ *Id.* at 2.

⁷ *Id.*

⁸ 71 Fed. Reg. 51,600 (2006).

III. Discussion

5. The Commission has consistently stated that a transmission provider can deny a customer the ability to roll over its long-term firm point-to-point transmission service agreement only if the transmission provider includes in the original service agreement a specific limitation based on reasonably forecasted native load needs for the transmission capacity provided under the contract at the end of the contract term,⁹ or if the transmission provider has a pre-existing contract obligation that commences in the future.¹⁰ For example, if the transmission provider knows at the time of the execution of the original service agreement that available transfer capability to serve the customer will only be available for a particular period of time, after which it is already committed to another transmission customer under a previously-confirmed transmission request (*i.e.*, an agreement under which service would commence at sometime in the future), the transmission provider can reflect those obligations in the long-term firm point-to-point transmission service agreement and thereby limit the prospective transmission customer's rollover rights.¹¹ In order to make this demonstration, a transmission provider must identify the pre-existing contracts that commence in the future or show that native load growth projections are sufficiently supported in the record at the time of the original transmission service agreement.¹²

6. We will reject Duke's proposed rollover restriction, and require Duke to remove section 10.0 from the TSA. Duke justifies its attempt to limit NC Municipal's rollover rights by claiming that the six transmission requests constitute a reasonably forecasted need, present at the time of the TSA's execution, and that section 10.0 is thereby consistent with Commission precedent. Duke's argument, however, combines and misapplies our tests for permitting rollover limitations, as we discuss below.

7. First, while our precedent allows transmission providers to limit a customer's rollover rights if the agreement contains a specific limitation based on reasonably

⁹ *Nevada Power Company*, 112 FERC ¶ 61,072, at P 8 (2005) (*Nevada Power*); *Public Service Company of New Mexico v. Arizona Public Service Company*, 99 FERC ¶ 61,162, at 61,667 (2002); *Constellation Power Source, Inc. v. American Electric Power Corporation and Southwest Power Pool, Inc.*, 100 FERC ¶ 61,157, at P 34 (2004).

¹⁰ *Nevada Power*, 112 FERC ¶ 61,072 at P 8.

¹¹ *Id.*

¹² *Id.* at P 9.

forecasted native load growth, Duke has neither asserted, nor presented the Commission with any evidence, that the six transmission requests are necessary to serve reasonably forecasted native load growth.

8. Second, the six transmission requests do not constitute a pre-existing contract obligation commencing in the future. Under Commission precedent, transmission providers may limit rollover rights in new long-term agreements if they have a pre-existing contract obligation commencing in the future.¹³ This is not the case here. Here, the six requests are just that: “requests.”¹⁴ Duke has presented no evidence that it has entered into service agreements for the six 1000 MW requests prior to entering into the TSA with NC Municipal. To the contrary, section 10.0’s language emphasizes the preliminary nature of the six 1000 MW requests. As Duke states, “due to the presence of a higher-queued interconnection request,” Duke has not studied the higher-queued requests, and “until the interconnection points for the higher-queued interconnection request are determined, a load flow study to determine the feasibility of the 1000 MW transmission requests cannot be performed.”¹⁵ Nor, we note, has Duke confirmed the requests on its OASIS. Instead, all six requests are listed on Duke’s OASIS as “pending.”¹⁶ Therefore, Duke cannot justify section 10.0 on the grounds that the 1000 MW are pre-existing contract obligations commencing in the future.

9. Therefore, we will accept the TSA, as modified to remove the proposed section 10.0, to be effective October 1, 2006, as requested. We direct Duke to make a compliance filing, within 30 days of the date of this order, removing section 10.0 from the TSA.

The Commission orders:

(A) Duke’s TSA with NC Municipal is hereby accepted for filing, as modified above, to be effective October 1, 2006.

¹³ *Id.* at P 8.

¹⁴ Duke’s August 11 Filing at 1.

¹⁵ *Id.* at 1-2.

¹⁶ In contrast, Duke’s OASIS lists NC Municipal’s 50 MW transmission request as “confirmed.”

(B) Duke is hereby directed to submit a revised TSA, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.