

130 FERC ¶ 61,181  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Duke Energy Carolinas, LLC  
Progress Energy Carolinas, Inc.

Docket Nos. OA08-50-004  
OA08-51-003

ORDER GRANTING REHEARING

(Issued March 15, 2010)

1. On July 20, 2009, Duke Energy Carolinas, LLC (Duke) and Progress Energy Carolinas, Inc. (Progress) filed a joint request for rehearing of the Commission's June 18, 2009 Order<sup>1</sup> in this proceeding. For the reasons set forth below, we grant the request for rehearing.

**I. Background**

2. In an order issued September 18, 2008,<sup>2</sup> the Commission accepted, subject to further compliance filings, Duke and Progress' joint transmission planning process as proposed attachments to their respective Open Access Transmission Tariff (OATT) to comply with the nine transmission planning principles and other requirements of Order

---

<sup>1</sup> *Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc.*, 127 FERC ¶ 61,281 (2009) (June 2009 Order).

<sup>2</sup> *Duke Energy Carolinas, LLC and Progress Energy Carolinas, Inc.*, 124 FERC ¶ 61,267 (2008) (September 2008 Order).

No. 890.<sup>3</sup> Duke's and Progress' transmission planning process includes a regional process called the North Carolina Transmission Planning Collaborative process (NCTPC Process) and an inter-regional transmission planning process called the Southeast Inter-Regional Participation Process (SIRPP). Duke and Progress included the NCTPC and SIRPP processes as part of their OATTs.

3. In the September 2008 Order, the Commission, among other things, directed Duke and Progress to modify their OATTs to remove the requirement that stakeholders obtain authorization from the Commission to access Critical Energy Infrastructure Information (CEII) contained in FERC Form No. 715 before the stakeholders are permitted access to confidential information and CEII related to the transmission planning process.<sup>4</sup> On December 17, 2008, Duke and Progress submitted, among other things,<sup>5</sup> revisions to SIRPP provisions of their OATTs to comply with this directive, but also included the following new language:

---

<sup>3</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). We note that the transmission planning processes for Duke and Progress are identical and included as attachments to their respective OATTs.

<sup>4</sup> September 2008 Order, 124 FERC ¶ 61,267 at P 23.

<sup>5</sup> We note that the Commission did not specifically direct Duke and Progress to revise sections 9.2 (Identification of Confidential Information) and 9.3.3 (Availability of Confidential Information) of their regional transmission planning processes. However, on August 17, 2009, Duke and Progress amended these sections to comply with the June 2009 Order requirement that no confidential information needed to participate in the transmission planning process and/or to replicate transmission planning studies can be withheld. For example, in section 9.2 Duke and Progress replaced “[t]he NCTPC Participant or TAG participant providing Confidential Information *must indicate whether the Confidential Information is permitted to be released to the representatives of TAG that have abided by the procedures of section 9.4.3*” with “[t]he NCTPC Participant or TAG participant providing Confidential Information *acknowledges that such Confidential Information may be released to representatives of TAG participants that have abided by the procedures of section 9.4.3.*” Duke Energy Carolinas, LLC, FERC Electric Tariff, Fifth Revised Vol. No. 4, Second Substitute Original Sheet No. 497V-497W (emphasis added).

Resource-specific data shall not be made available by the Participating Transmission Owners if the data has been designated confidential by the data provider or if the data can be used to (a) Determine security constrained unit commitment or economic dispatch of resources; or (b) Perform an economic evaluation of costs and benefits.<sup>6</sup>

4. In the June 2009 Order, the Commission found that the new SIRPP language that forbids Participating Transmission Owners from disclosing certain resource-specific data unreasonably restricts access to data that stakeholders may need for participation in or evaluation of studies produced by the SIRPP. Accordingly, the Commission directed Duke and Progress to revise the SIRPP language to “require that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies.”<sup>7</sup>

5. On July 20, 2009, Duke and Progress filed the instant request for rehearing concerning disclosure of confidential competitive information to merchant function personnel.<sup>8</sup>

## **II. Request for Rehearing**

6. Although Duke and Progress revised their OATTs in their August 17, 2009 compliance filing to delete the language restricting the availability of resource-specific data, as directed in the Commission’s June 2009 Order, they seek assurance in their request for rehearing that confidential competitive information that is needed for stakeholders to replicate planning studies and to participate in the planning process need not be disclosed to the merchant function personnel of such stakeholders. Duke and Progress argue that the June 2009 Order, when read with the Commission’s Order in *Southwest Power Pool, Inc.*,<sup>9</sup> will cause wholesale markets to be compromised by a

---

<sup>6</sup> Duke Energy Carolinas, LLC, FERC Electric Tariff, Fifth Revised Vol. No. 4, Substitute Original Sheet No. 497HH-2.; Carolina Power & Light Company, FERC Electric Tariff, Fourth Revised Vol. No. 3, Original Sheet No. 259CC-1.

<sup>7</sup> June 2009 Order, 127 FERC ¶ 61,281 at P 30.

<sup>8</sup> On August 17, 2009, pursuant to the June 2009 Order, Duke and Progress submitted their joint compliance filing regarding their transmission processes, deleting, as directed, the language discussed above restricting availability of resource-specific data.

<sup>9</sup> 127 FERC ¶ 61,271, at P 41 (2009). In that order, the Commission rejected the same restrictions in Southwest Power Pool, Inc.’s OATT as inconsistent with the

(continued...)

possible requirement to disclose confidential competitive information to merchant function personnel. They state that their concern is “limited to a subset of confidential information, such as resource-specific data concerning individual resources (e.g., heat rates, fuel cost data) or data that is particularly commercially sensitive (e.g., the order of a load serving entity’s economic generation dispatch stack) ....”<sup>10</sup> They express concern that the release of confidential competitive information to personnel engaged in competitive activities in the wholesale power markets could harm such markets and be used for anticompetitive purposes.<sup>11</sup>

7. Duke and Progress argue that stakeholders will generally be able to replicate studies and otherwise participate in the planning process without the use of confidential competitive information. Duke and Progress state that they are seeking assurance that, if a situation arises where it is necessary to release confidential competitive information, such information need not be disclosed to merchant function personnel.<sup>12</sup> In support of their argument, Duke and Progress cite Order Nos. 890 and 890-A, where the Commission stated that confidentiality agreements may appropriately restrict the sharing of sensitive information with customer personnel that are involved only in transmission functions, as opposed to merchant functions.<sup>13</sup>

8. On August 4, 2009 E.ON U.S. LLC, together with and on behalf of its subsidiaries, Louisville Gas and Electric Company and Kentucky Utilities Company, (E.ON) submitted an answer in support of the request for rehearing.

---

transparency principle of Order No. 890, which requires that stakeholders have sufficient information to replicate all transmission planning studies.

<sup>10</sup> Duke and Progress Rehearing Request at 2.

<sup>11</sup> *Id.*

<sup>12</sup> Duke and Progress state that a Merchant Function or Competitive Duty Person is commonly defined as one whose duties include: (i) the marketing or sale of electric power at wholesale, (ii) the purchase or sale of electric power at wholesale, (iii) the direct supervision of any employee with such responsibilities, or (iv) the provision of electricity marketing consulting services to entities engaged in the sale or purchase of electric power at wholesale. *Id.* at 8 n.19.

<sup>13</sup> *Id.* at 4, *citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 276 n.177 and Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 92 n.48.

### III. Discussion

9. As discussed below, we grant Duke's and Progress' request for rehearing.<sup>14</sup>

10. The directive in the June 2009 Order is that resource-specific data in the planning process be disclosed by Participating Transmission Owners, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies. This directive was not intended to require the disclosure of confidential competitive information to merchant function personnel. As Duke and Progress correctly point out, the Commission previously stated in Order Nos. 890 and 890-A that confidentiality agreements may restrict the availability of confidential competitive information and data in the transmission planning process such that it is available only to customer personnel that are involved in transmission functions, as opposed to merchant functions.<sup>15</sup> The Commission's requirement that Participating Transmission Owners disclose certain resource-specific information, under applicable confidentiality provisions, if the information is needed to participate in the transmission planning process and/or to replicate transmission planning studies does not overturn these previous findings. Accordingly, confidentiality agreements may restrict the availability of certain resource-specific confidential competitive information that is needed to participate in the transmission planning process and/or replicate transmission studies to stakeholder personnel that are involved only in transmission functions, as opposed to merchant functions.

#### The Commission orders:

The request for rehearing of Duke and Progress is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>14</sup> Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2009), bars answers to rehearing requests. Thus, we will reject E.ON's answer.

<sup>15</sup> See *supra* note 13.