

131 FERC ¶ 61,278
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Allegheny Power

Docket No. ER10-1152-000

ORDER ACCEPTING TARIFF AMENDMENT, SUBJECT TO CONDITIONS

(Issued June 29, 2010)

1. On April 30, 2010, Allegheny Power (Allegheny) filed proposed amendments¹ to Attachment H-11 of PJM Interconnection, L.L.C.'s (PJM) Open Access Transmission Tariff (tariff). Allegheny states that the proposed tariff amendments provide the rate for network integration transmission service for Old Dominion Electric Cooperative's (ODEC) newly acquired load (Acquired Load), which will receive service at existing delivery points not previously used by ODEC in the Allegheny Power zone (AP Zone). In addition, Allegheny requests a waiver of the 60-day prior notice requirement² to allow an effective date of June 1, 2010 for the proposed tariff revisions. The Commission accepts Allegheny's proposed amendments to Attachment H-11, effective June 1, 2010, as requested, subject to the conditions below.

Background

A. Hold Harmless Provision

2. The network integration transmission service rates and the hold harmless mechanism in Attachment H-11 were established pursuant to a settlement agreement in Docket No. RT01-98, *et al.*,³ when Allegheny joined PJM. In its application requesting authorization to join PJM, Allegheny proposed to convert its load ratio share calculation

¹ PJM Interconnection, L.L.C., FERC Electric Tariff, Sixth Revised Volume No. 1, First Revised Sheet Nos. 312 and 313.

² 16 U.S.C. § 824d (2006); 18 C.F.R. § 35.3(a) (2009).

³ Allegheny Power, Offer of Settlement, Docket Nos. RT01-98-002 and RT01-98-004 (May 21, 2002) (Settlement).

for determining its network rate to a unit rate using a 1994 test-year rate denominator. However, to the extent that Allegheny had experienced an increase in network load and firm point-to-point reservations since the 1994 test-year, use of the 1994 test-year demand data would increase the per-unit network service charges and revenues above those levels achieved with the rolling load ratio share allocation used by Allegheny at the time of the application. At the time, Allegheny stated that its intent was to create a rate conversion mechanism for its existing wholesale customers that was revenue neutral.

3. On July 12, 2001, the Commission conditionally approved Allegheny's request to join PJM⁴ and directed Allegheny to submit a compliance filing proposing a mechanism to "hold existing network customers harmless from the conversion to a 1994 test-year rate denominator."⁵ The Commission also urged Allegheny to confer with its affected customers in preparation of its compliance filing to arrive at a satisfactory hold harmless mechanism.⁶

4. In accordance with the July 12 Order, Allegheny proposed a hold harmless mechanism that maintained revenue neutrality in the conversion based on calendar year 2000 revenue and determinants for the wholesale class. However, several of Allegheny's wholesale customers protested Allegheny's proposed mechanism. On January 30, 2002, the Commission, among other things, accepted and suspended Allegheny's hold harmless mechanism and made it effective subject to refund and the outcome of a hearing on whether the mechanism was adequate given objections from certain customers arguing that maintaining revenue neutrality for the wholesale class was not holding harmless individual customers (i.e., certain wholesale customers would be better off while others would be worse off from the conversion).⁷

5. Allegheny's Settlement contained a reduction in the network service rate for all customers of Allegheny "designed to hold them harmless from the conversion from a load ratio share method to a unit rate method."⁸ Allegheny stated that the "Settlement fulfills [Allegheny's] pledge and the Commission's directive to provide a 'hold harmless' rate mechanism for [Allegheny's] existing network customers" and that the agreement

⁴ *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,060, at 61,221 (2001) (July 12 Order).

⁵ *Id.*

⁶ *Id.*

⁷ *See generally PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,072, at 61,204 (2002).

⁸ *See Settlement, Explanatory Statement at P 1.*

did not present a case of first impression for the Commission.⁹ Attachment 1 to the Settlement established a specific credit to be applied to each of the listed wholesale customers, which reduced the rate for network integration transmission service in the AP Zone (Attachment H-11 of PJM's tariff). Attachment H-11 shows the hold harmless rate for ODEC as a credit of \$7,095 per megawatt per year, which results in an effective rate of \$10,800 per megawatt per year. The Settlement was uncontested. The Commission approved the Settlement by letter order dated July 23, 2002.¹⁰

B. Details of Allegheny's Filing

6. In its current filing, Allegheny states that it agreed to sell its Virginia electric distribution assets to two member cooperatives of ODEC. Allegheny asserts that, upon consummation of the sale, ODEC will be responsible for arranging network integration transmission service to deliver energy and capacity for the Acquired Load which Allegheny formerly served, at existing delivery points in the AP Zone. In other words, ODEC rather than Allegheny would now be serving the Acquired Load using the distribution assets and at the AP Zone delivery points which the two ODEC members purchased from Allegheny. Allegheny requests that the Commission waive the 60-day prior notice requirement and accept the proposed tariff revisions to become effective on June 1, 2010, because the sale of the distribution assets to ODEC's members was scheduled to occur on that date.

7. Allegheny states that Attachment H-11 to the PJM tariff sets forth the transmission revenue requirement and network integration transmission service rates applicable to the AP Zone of the PJM Control Area. Allegheny proposes revisions to paragraphs 4(a) and 4(b) of Attachment H-11 as follows:

4(a) For Network Transmission Service in the AP Zone to each of the wholesale customers listed in this paragraph for delivery points to such customers existing on April 1, 2002, a credit will be applied, reducing the effective rate. The credit for each customer [including ODEC] and the resulting effective rate are listed in this paragraph.

...

4(b) For Network Integration Transmission Service to all other customers in the AP Zone and to customers in paragraph (a) served at delivery points formerly served by Allegheny Power prior to June 1, 2010, a

⁹ *Id.*

¹⁰ *PJM Interconnection, L.L.C.*, 100 FERC ¶ 61,088 (2002).

credit of \$2,499 per megawatt per year will be applied, reducing the effective rate to \$15,396 per megawatt per year.

Allegheny argues that the above revisions to paragraphs 4(a) and 4(b) of Attachment H-11 will result in the application of the existing network integration transmission service rate in paragraph 4(b) to the Acquired Load at the delivery points that the two ODEC members purchased from Allegheny. Allegheny states that this rate will be the same rate previously paid by Allegheny, as a load serving entity, for service to the same load at those same delivery points. Allegheny claims that the sale of the Allegheny distribution assets will not result in any increased network integration transmission service provided under Attachment H-11 or any increased transmission revenues to Allegheny from that service because, under the proposed tariff revisions, the Acquired Load will be subject to the same rate after the sale as it was before the sale (namely, the paragraph 4(b) rate).

8. Allegheny asserts that its proposed tariff revisions provide that the network integration transmission service rate applicable to the Acquired Load at the newly transferred delivery points is the rate calculated in accordance with paragraph 4(b). As such, Allegheny contends that the paragraph 4(a) rate will not apply because the Acquired Load was previously served by Allegheny as a load serving entity and does not involve any load served by ODEC for which Allegheny was directed to establish a customer-specific settlement rate in the Commission's July 12 Order. Allegheny argues that the customers comprising the Acquired Load were not harmed by Allegheny's conversion to a unit rate because they were not customers of any ODEC member in calendar year 2000.

9. Finally, Allegheny contends that, although the derivation of the Settlement rates is not specified in the Settlement, the rates were based upon each existing customer's load and revenue at the time that Allegheny joined PJM. Allegheny argues that the paragraph 4(a) rates are structured as credits from the base rate for network integration transmission service and are specific to each customer, consistent with the customer's contribution to load and Allegheny's revenue in calendar year 2000. Accordingly, Allegheny states that ODEC was held harmless when Allegheny joined PJM through the \$7,095 per megawatt per year credit listed on Attachment H-11.

Notice of Filing and Responsive Pleadings

A. Notice and Interventions

10. Notice of Allegheny's filing was published in the *Federal Register*, 75 Fed. Reg. 26,209 (2010), with interventions and protests due on or before May 21, 2010. Timely motions to intervene were filed by Allegheny Electric Cooperative, Blue Ridge Power Agency, and the City of Hagerstown and Town of Thurmont. PJM filed a timely motion to intervene and comments. ODEC and the City of Chambersburg (Chambersburg) filed timely motions to intervene and protests. On June 3, 2010,

Allegheny filed an answer to the protests of Chambersburg and ODEC. On June 4, 2010, ODEC filed an answer to Allegheny's answer.

B. Comments and Protests

11. Chambersburg protests that Allegheny now seeks to modify unilaterally the Settlement by imposing new conditions on the currently effective hold harmless rates and that Allegheny's proposed language should be rejected by the Commission. Chambersburg alleges that nothing in the Settlement limits the rate protections guaranteed for Allegheny's transmission customers to only those delivery points that existed on April 1, 2002. Chambersburg is concerned that Allegheny's proposed changes would deny Chambersburg hold harmless rate protection in the event that economic or reliability factors make it necessary for Chambersburg to use or add a new delivery point to serve its existing load. Finally, Chambersburg contends that such a change would violate the *Mobile-Sierra* doctrine.¹¹

12. In its protest, ODEC claims that Attachment 1 to the Settlement contains specific credits and rates for Allegheny's listed wholesale customers, as well as a credit and rate for all other customers in the AP Zone. ODEC asserts that the rates have no foundation other than Allegheny's contentions that the Settlement rates were based upon each customer's load and revenue at the time of the Settlement. ODEC states that the Settlement provides, in pertinent part:

Terms of Offer

The network service rate *applicable to current network customers* of Allegheny Power under the PJM OATT shall be revised as indicated on Attachment 1. The Attachment 1 rates are designed to implement an agreed upon hold harmless mechanism for the various wholesale customers on an individual basis.

The rates on Attachment 1 will become effective on April 1, 2002. Refunds, if any, from the rates actually applied commencing on April 1, 2002 shall be given to customers in accordance with the requirements of 18 C.F.R. § 35.19(a).

The rates on Attachment 1 shall continue to apply until such time as Allegheny files a rate change request based upon a

¹¹ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

revision to its revenue requirement. Allegheny's current rates were set on the basis of a filing which utilized a 1994 test period.¹²

ODEC asserts that the Settlement further provides that "[e]ach of the provisions of this Offer of Settlement is in consideration for each and every other provision"¹³ so Allegheny's customers are entitled to their bargained-for benefits. ODEC also contends that the Settlement provides that it will receive a credit of \$7,095 per megawatt per year, which results in an effective rate of \$10,800 per megawatt per year.

13. ODEC claims the Settlement is clear and there is no limitation in the Settlement on ODEC's entitlement to the filed credit and rate. ODEC argues that, when a settlement is clear on its face, the Commission must give effect to the parties' intent as expressed in the agreement, and the fact that the parties might later disagree on its meaning does not render the contract ambiguous.¹⁴ ODEC further asserts that, pursuant to the *Mobile-Sierra* doctrine, rate filings cannot supersede the express terms of settlement agreements.¹⁵

14. ODEC contends that if parties had intended to limit the Settlement rates to only the load or delivery points that existed at the time of the agreement, the Settlement would have so stated. ODEC states that its load has increased since the time of the Settlement and Allegheny has not heretofore sought to impose a higher rate on the additional load. Moreover, ODEC claims that Allegheny's belief that the Settlement allows it to modify the filed rate by simply adding language to charge one rate to delivery points that existed as of April 1, 2002, and a different rate for all other delivery points, is contrary to the Settlement's language that the rate shall apply until such time as Allegheny files a rate change request based upon a revision to its revenue requirement.

15. ODEC also asserts that approval of Allegheny's filing will result in a rate increase for ODEC which will violate the hold harmless provision in the Settlement. ODEC states that, through this filing, Allegheny will force a rate change for any customer who has added or will add a delivery point after April 1, 2002. ODEC claims that the change will

¹² Settlement at P 1 (emphasis provided).

¹³ *Id.* P 2, para. 3.

¹⁴ See *Dominion Transmission, Inc. v. FERC*, 533 F.3d 845, 852 (D.C. Cir. 2008); see also *Office of Consumers Counsel v. FERC*, 783 F.2d 206, 235 (D.C. Cir. 1986).

¹⁵ See *supra* note 12; see also *Columbia Gas Transmission Corp.*, 69 FERC ¶ 61,274 (1994).

result in a rate increase for its existing load, because under its cost-of-service rate formula, ODEC allocates to its members their respective share of ODEC's total cost. ODEC argues that, based on the difference between the Settlement rate for ODEC in Attachment H-11 (\$10,800 per megawatt per year) and the rate that Allegheny proposes to charge for the Acquired Load (\$15,396 per megawatt per year), ODEC and its members will experience an annual increase in transmission rates of approximately \$3 million.

16. ODEC further argues that, if the Commission does not reject Allegheny's filing outright for violation of the Settlement, the Commission should: 1) reject Allegheny's request for waiver of the 60-day prior notice requirement; 2) grant the maximum suspension period; and 3) establish an evidentiary hearing to determine the just and reasonable Attachment H-11 rates based on updated revenue requirements for Allegheny.

17. In its comments, PJM states that the Commission decision should be made in time to become effective on June 1, 2010 so that it may have certainty with regard to its network integration transmission service bills to ODEC, thereby avoiding the possibility of having to make retroactive billing adjustments. PJM asserts, however, that it does not take a position with respect to the differing views of ODEC and Allegheny regarding the appropriate rate to charge for the service.

C. Answers

18. In response to Chambersburg, Allegheny states that it is not seeking to increase its rates to the load served by its existing network customers at the time of the Settlement, regardless of whether the load is served at a delivery point that existed at the time of the 2002 settlement effective date or would be served at new delivery points established within its service territory. Allegheny also asserts that, if Chambersburg (or any other wholesale customer with a rate specified in the Settlement) requests a new delivery point to serve customers within its service territory, Allegheny expressly disavows any intent to change the rates agreed to in the Settlement.

19. In response to ODEC, Allegheny asserts it is not seeking to modify the Settlement rates unilaterally. Instead, Allegheny argues that it is revising Attachment H-11 to address an ambiguity in the Settlement and to ensure that the Settlement rates for the customers served by Allegheny in place at the time of settlement, such as ODEC's Acquired Load, continue to be enforced. Allegheny argues that, when interpreting a settlement, the Commission applies "the traditional rules of contract construction" and ascertains "the intent of the parties by considering the language of the document itself, its purpose, and the circumstances of its execution and performance."¹⁶ Allegheny alleges

¹⁶ *Amerada Hess Pipeline Corp.*, 74 FERC ¶ 61,318, at 62,006 (1996).

that a settlement is ambiguous if it is “reasonably susceptible of different constructions and interpretations.”¹⁷ Allegheny states that ODEC’s interpretation ignores the language of the Settlement and the intent of the parties.

20. In addition, Allegheny states that, while ODEC contends it will suffer an approximately \$3 million increase in transmission rates, the converse is that the transfer of load at the delivery points used by Allegheny in 2002 would result in \$3 million less revenue to Allegheny for transmission service if the load is charged at the lower, ODEC-specific paragraph 4(a) rate. Allegheny states the filing is revenue neutral and is necessary to preserve its ability to collect its revenue requirement based on the 1994 test-year, which is the value that Allegheny received pursuant to the Settlement.

21. Finally, Allegheny contends that it is not increasing rates and that any rate increase suffered by ODEC and its customers is a product of ODEC’s own rate design. Allegheny argues that ODEC’s rate design is not an issue before the Commission in this proceeding and that, if ODEC believes the Settlement adversely impacts its preexisting load, ODEC should revise its cost allocation methodology to reallocate costs.

22. In reply to Allegheny’s answer, ODEC states that most of the arguments in Allegheny’s answer are defeated by the plain language of the Settlement. ODEC argues that, contrary to Allegheny’s assertions, the Settlement requires that ODEC continue to receive the credit and rate set forth on Attachment 1 of the Settlement for its entire load, and that Allegheny is wrong in its contention that the Settlement requires Allegheny to receive its 1994 revenue requirement.

Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,¹⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

24. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits answers to protests and answers unless otherwise ordered by the decisional authority. We will accept Allegheny’s and ODEC’s answers because they have provided information that assisted us in our decision-making process.

¹⁷ See *Transcontinental Gas Pipe Line Corp.*, 130 FERC ¶ 61,043 (2010).

¹⁸ 18 C.F.R. § 385.214 (2009).

B. Substantive Matters

25. As we explain below, we find that Allegheny is correct that the Acquired Load should continue to receive the hold harmless paragraph 4(b) rate, and not the lower, ODEC-specific hold harmless paragraph 4(a) rate, simply because two ODEC members purchased certain distribution assets and pre existing delivery points from Allegheny. We do not read the Settlement as authorizing the transfer of load from one hold harmless rate to the other hold harmless rate in the event of an acquisition. We, therefore, accept Allegheny's proposed tariff revisions to Attachment H-11 of PJM's tariff, to become effective June 1, 2010, as requested, subject to conditions as discussed below.

26. We find that the Settlement is ambiguous with regard to which rate should be applied to load previously served by Allegheny and now served by ODEC as a result of an asset acquisition. ODEC maintains the contract is unambiguous, but the only specific contract provision to which it cites is the term in Provision 1 stating the Settlement applies to "current network customers" along with its applicable paragraph 4(a) hold harmless rate. However, in the administrative context in which this Settlement arose we do not find that this language is sufficient to establish the parties' unambiguous intent with respect to the rate charged for load when Allegheny sells assets to a wholesale customer.¹⁹ No other clause of the agreement deals explicitly with the sale of assets to a wholesale customer.²⁰ Because two of ODEC's members have, in the time since the Settlement was negotiated and approved, acquired distribution assets from Allegheny and thus ODEC's configuration has changed from that which was current at the time of the Settlement, we need to determine whether the Settlement contemplated such an acquisition, and if so, whether the load served through the acquired assets should continue to receive the paragraph 4(b) rate or now receive the lower paragraph 4(a) rate. We must ascertain the intent of the parties by considering the language of the document itself, its purpose, and the circumstances of its execution and performance.²¹ As part of

¹⁹ See *Columbia Gas Transmission Corp.*, 27 FERC ¶ 61,089 (1984) ("Where, however, it is evident that circumstances have changed substantially since the document was written, ambiguity may more easily arise and interpretation may then be aided by reference to the factual context surrounding the original formulation of the language").

²⁰ See *Bradley v. Washington, Alexandria & Georgetown Steam Packet Co.*, 38 U.S. 89, 97 (1839) ("in giving effect to a written contract, by applying it to its proper subject matter, extrinsic evidence may be admitted to prove the circumstances under which it was made; whenever, without the aid of such evidence, such application could not be made in the particular case").

²¹ See *Pennzoil Co. v. FERC*, 645 F.2d 360, 388 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1981).

this inquiry, we must look to the language of the Settlement and its regulatory context to clarify the meaning of the language of the agreement.²²

27. At the time Allegheny sought to join PJM, the Commission and the parties sought a hold harmless mechanism that was revenue neutral to Allegheny and would protect Allegheny's then-existing wholesale customers from a rate increase resulting from the use of Allegheny's 1994 test-year rate denominator.²³ To accomplish this, the Commission directed Allegheny "to propose, in a compliance filing, a mechanism to hold existing network customers harmless in making the conversion Allegheny proposes."²⁴ The Commission encouraged Allegheny and its affected customers to work together on an appropriate hold harmless mechanism.²⁵ Allegheny proposed a credit applicable to all its network customers; however, certain customers objected, arguing that, while the proposal lowered the rate in general, it did not operate to hold individual municipal or cooperative customers harmless. The Commission set this issue for hearing, and Allegheny and the specific signatories to the Settlement, including ODEC, entered into an agreement that provided for specific credits for each of the listed wholesale customers, which produced customer-specific discounted rates (the paragraph 4(a) rates) that differed from (and are lower than) the general discounted rate paid by the remainder of Allegheny's other wholesale customers in the AP Zone (the paragraph 4(b) rate). It is uncontroverted that the delivery points that the two ODEC members recently acquired from Allegheny initially fell under the higher paragraph 4(b) rate.

28. The Settlement thus established both the customer-specific paragraph 4(a) rates and the general paragraph 4(b) rate, both designed to hold customers harmless²⁶ from the use of 1994 data, while also allowing Allegheny to recover its revenue requirement for network integration transmission service based on that same test-year.

29. Given these facts, we find it would be inconsistent with the purposes of the Settlement to rule that the sale of Allegheny's Virginia distribution assets to two ODEC members warrants moving the Acquired Load from the paragraph 4(b) rate to ODEC's

²² See *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,365, at 63,582 (1993)

²³ See July 12 Order, 96 FERC at 61,221 (Allegheny was directed "to propose, in a compliance filing, a mechanism to hold existing network customers harmless in making the conversion Allegheny proposes.").

²⁴ *Id.*

²⁵ *Id.*

²⁶ Settlement at P 1.

customer-specific paragraph 4(a) rate. At the time of the Settlement, these distribution assets were owned by Allegheny, and it is not a reasonable interpretation of the Settlement that the load served at these delivery points is now entitled to receive the benefits of ODEC's lower paragraph 4(a) rate; the load was expected to receive only the benefits of the paragraph 4(b) rate. The issue the Commission set for hearing, which ultimately led to the development of the paragraph 4(a) rates, including ODEC's, was the individual rate impact on *specific* customers, such as ODEC, based on their prior rates and load; the Commission did not set for hearing the rate to be paid by future load that might be acquired from Allegheny by ODEC through a member's asset purchase.

30. Moreover, the rate applicable to the Acquired Load on the purchased distribution assets will not change; they took service at paragraph 4(b) rates before the asset acquisition, and, as we find here, should continue to do so after. The Acquired Load was not served by ODEC at the time of the Settlement; no party to the Settlement could have reasonably had an expectation that ODEC's paragraph 4(a) rate would be applied to any load that ODEC might acquire from Allegheny in the future. Furthermore, the purpose of the Commission-required hold harmless provision was to maintain the status quo rate for the existing configuration of ODEC and the other signatory wholesale customers. In fact, the Settlement rates were based on the existing load for each listed wholesale customer, and were designed to ensure that the total amount paid by each listed wholesale customer remained the same as it was prior to the Settlement based on the load at the time.²⁷ We conclude that, in the regulatory setting here, the Settlement did not guarantee ODEC a lower rate for any load served over subsequently purchased distribution assets. Indeed, transferring the Acquired Load from the paragraph 4(b) rate to the lower paragraph 4(a) rate would go beyond the scope of the relief that the Commission's hold harmless requirement (as implemented through the Settlement) sought to provide, i.e., beyond holding customers harmless, and instead would, in fact, operate to reduce the rate from the rate charged before the asset acquisition.²⁸ Therefore, we find that the Settlement does not operate as a bar to Allegheny's section 205 filing, and we also conclude that

²⁷ Under ODEC's interpretation of the Settlement, for example, the City of Hagerstown could sell the delivery points for its entire load to the Town of Thurmont and thus achieve a rate reduction of \$2,520 per MW per year by applying Thurmont's lower rate to Hagerstown's former customers. We find that the Settlement was not designed to permit such acquisitions to lower customer rates.

²⁸ ODEC asserts that, under its rate design, it charges a single rate to all of its customers, so that its existing customers will experience a rate increase as a result of the application of the paragraph 4(b) rate to the load at the distribution points. But this is a function solely of the manner in which ODEC designs its own rates. It does not affect the wholesale rates charged by Allegheny to the load at the distribution points in question.

Allegheny's section 205 filing is just and reasonable given that it merely continues the existing just and reasonable rate for the load using the purchased facilities.

31. Based on our analysis of the intended operation of the Settlement, we do agree with Chambersburg that the customer-specific paragraph 4(a) would continue to apply in the event that an existing listed wholesale customer utilizes a *new* delivery point to serve its *existing* load (including load growth), as opposed to load acquired from Allegheny through an asset purchase. Allegheny has clarified that its proposed tariff revisions do not change the Settlement under these circumstances.²⁹ We will require Allegheny to revise its tariff language to make this distinction clear.

32. Allegheny requests a waiver of the 60-day prior notice requirement to allow an effective date of June 1, 2010 for the proposed tariff revisions. Pursuant to 18 C.F.R. § 35.11, the Commission may waive the 60-day prior notice requirement for good cause shown.³⁰ ODEC, citing *Central Hudson*,³¹ states that the circumstances for waiver are not met because the filing is protested and approval of the filing will result in a rate increase. The Commission can and has granted waivers despite the objections of a party.³² Here, we find good cause to grant the waiver and allow a June 1, 2010 effective date because the parties have entered into a sale of distribution assets effective June 1, 2010, and the waiver will merely continue at the same level the rate treatment for ODEC's Acquired Load that was in effect prior to June 1, 2010. Accordingly, the Commission finds good cause to waive the 60-day prior notice requirement.

The Commission orders:

(A) Allegheny's request for waiver of the 60-day prior notice requirement is hereby granted as discussed in the body of this order.

²⁹ ODEC in its protest concedes that its load has increased since the time of the settlement and that Allegheny has not sought to impose a higher rate on the additional load growth, but has continued to use ODEC's customer-specific paragraph 4(a) rate. Allegheny's practice is consistent with our interpretation of the intent of the Settlement.

³⁰ See 18 C.F.R. § 35.11 (2009).

³¹ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338-39, order on reh'g, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

³² See, e.g., *Northeast Utilities Service Co.*, 52 FERC ¶ 61,097 (1990); see also *Public Service Company of New Mexico*, 43 FERC ¶ 61,469 (1988) (Commission granted waivers over the objections of one of the parties).

(B) The proposed tariff revisions are hereby accepted, to be effective June 1, 2010, as requested, subject to conditions as discussed in the body of the order.

(C) Allegheny is hereby directed to make a compliance filing within 30 days of the date of this order with respect to those conditions.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.