

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Allegheny Energy, Inc.,  
Monongahela Power Company,  
Potomac Edison Company,  
Allegheny Energy Supply Company, LLC, and  
Allegheny Energy OVEC Supply Company, LLC

Docket Nos. EC05-104-001  
and ER05-1212-001

ORDER ON CLARIFICATION

(Issued March 7, 2006)

1. On November 21, 2005, West Virginia Energy Users Group (WVEUG) filed a request for clarification of the Commission's order issued October 21, 2005.<sup>1</sup> WVEUG requests that the Commission clarify that acceptance of certain jurisdictional contracts related to the proposed transaction is conditioned upon the West Virginia Public Service Commission's (West Virginia Commission) approval of a settlement between various parties regarding outstanding retail issues. The Commission grants such clarification.

**Background**

2. On July 13, 2005, Allegheny Energy, Inc. (Allegheny Energy), Monongahela Power Company (Mon Power), Potomac Edison Company (PE), Allegheny Energy Supply Company, LLC (AE Supply), and Allegheny Energy OVEC Supply Company, LLC (AEOS) (collectively, Applicants) requested Commission authorization of a proposal to restructure generation ownership and contractual arrangements within the Allegheny Energy holding company system. As a result, AE Supply will have transferred 593 MW more generation capacity to Mon Power than Mon Power will have transferred to AE Supply, and assigned to Mon Power its obligation to serve PE's West Virginia load requirements. According to Applicants, Commission approval of the

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<sup>1</sup> *Allegheny Energy, Inc.*, 113 FERC ¶ 61,077 (2005) (October 21 Order).

proposed transaction would establish the foundation for the construction and financing, through state-approved securitization, of flue gas desulfurization units (scrubbers) and related pollution control equipment at the Fort Martin Generating Station (Fort Martin Station) located in West Virginia.<sup>2</sup>

3. In support of the proposed transaction, Applicants also argued that Commission approval would facilitate resolution of long-standing state issues resulting from West Virginia's abandoned retail competition initiative.<sup>3</sup> Applicants stated that the transaction was intended to assist in the implementation of a settlement that Allegheny expected to file with the West Virginia Commission once final agreement was reached with the West Virginia Commission Staff, the West Virginia Consumer Advocate and the WVEUG.<sup>4</sup> Applicants stated that "[t]his settlement would include a request that the West Virginia Commission provide all necessary approvals for the Transaction."<sup>5</sup> Applicants stated that it would make application for approval of the transaction at the West Virginia Commission, which would have the ability to take any necessary steps to protect its own jurisdiction.<sup>6</sup>

4. Applicants claimed that the proposed transaction did not raise market power concerns and did not adversely impact rates or regulation and that Commission approval of the proposed transaction was in the public interest; they requested Commission approval by October 31, 2005.<sup>7</sup>

5. On October 21, 2005, the Commission issued an order authorizing Applicant's proposed transaction as consistent with the public interest and conditionally accepting the related jurisdictional contracts.<sup>8</sup>

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<sup>2</sup> Applicants' July 13, 2005 filing at 1.

<sup>3</sup> *Id.* at 4.

<sup>4</sup> *Id.* at 15.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 41.

<sup>7</sup> *Id.* at 2, 35-41.

<sup>8</sup> *See supra* note 1.

**Discussion**

6. WVEUG requests clarification that the Commission's conditional acceptance of certain jurisdictional contracts is conditioned upon the West Virginia Commission's approval of a final settlement resolving outstanding retail market restructuring issues between Allegheny Energy, the West Virginia Commission's Staff, the West Virginia Consumer Advocate Division (WV CAD), and the WVEUG (collectively, West Virginia parties). WVEUG expresses concern that the clarification is necessary to prevent any misconception that, by virtue of the October 21 Order, Allegheny Energy may circumvent ongoing settlement discussions in West Virginia. The Commission grants clarification. The Commission clarifies that, consistent with the applicant's request, the effectiveness of the jurisdictional contracts conditionally accepted in the October 21 Order is contingent upon the West Virginia Commission's approval of a settlement between the various parties regarding outstanding retail issues. The October 21 Order noted that the Applicants had stated that the contracts would not become effective until the restructuring received approval from the West Virginia Commission.<sup>9</sup> The Applicants committed that the contracts would have no effect and would not become effective until such time as the West Virginia Commission approved the restructuring.

**The Commission orders:**

The request for clarification is hereby granted.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>9</sup> October 21 Order, 113 FERC ¶ 61,077 at P 23.