

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.

PJM Interconnection, L.L.C., and  
Duquesne Light Company

Docket Nos. ER05-85-003,  
ER05-85-004, and  
ER05-85-005

PJM Interconnection, L.L.C.

Docket No. ER05-106-001

ORDER DENYING REHEARING, ACCEPTING PARTIAL  
SETTLEMENT AND DISMISSING COMPLIANCE FILING

(Issued November 1, 2006)

1. On May, 4, 2006, Duquesne Light Company (Duquesne) and AES Beaver Valley LLC (AES) (collectively, the Settling Parties), submitted a partial settlement addressing: (i) a request for rehearing of an order issued by the Commission on December 20, 2004;<sup>1</sup> and (ii) a pending compliance filing. For the reasons discussed below, we will accept the partial settlement, without modification, deny rehearing, as to the remaining, unsettled issues, and dismiss the compliance filing.

**Background**

**A. The Duquesne Integration Filing**

2. On October 28, 2004, PJM Interconnection, L.L.C. (PJM) and Duquesne (collectively the Filing Parties), submitted tariff revisions proposing to integrate Duquesne into PJM. Separately, on November 19, 2004, the Filing Parties proposed to treat, as a grandfathered agreement, a transmission agreement between Duquesne and AES (AES Agreement).<sup>2</sup> In support of its request to treat the AES Agreement as a grandfathered contract, Duquesne asserted that AES would not be responsible for

---

<sup>1</sup> *PJM Interconnection, L.L.C. and Duquesne Light Company*, 109 FERC ¶ 61,299 (2004) (December 20 Order).

<sup>2</sup> The AES Agreement was accepted by the Commission in Docket No. ER86-196-000 and became effective on August 28, 1985.

multiple transmission charges following Duquesne's integration into PJM and that, as such, Commission policy supports the continuation of the contract.<sup>3</sup> Duquesne further stated that PJM was willing to implement firm grandfathered service for AES using PJM's congestion charge and auction revenue rights (ARR) procedures.

3. AES protested the Filing Parties' proposal. AES asserted that following the integration of Duquesne into PJM, continued service under the AES Agreement would replicate a network transmission service (including an allocation of ARRs) already provided by PJM to the purchaser of AES' output, *i.e.*, to Allegheny.<sup>4</sup> AES argued that because Duquesne's integration into PJM will allow Allegheny to secure the transmission and delivery of AES's output to Allegheny free of any congestion costs, under its network contract, and to do so all the way back to the AES plant, the AES Agreement covering only a portion of that path, *i.e.*, transmission from the AES plant to the Duquesne/Allegheny interconnect, is unnecessary. AES also raised a second issue, in its December 14, 2004 answer, regarding Duquesne's ability to honor AES's rights under the AES Agreement. Specifically, AES asserted that it was not clear how Duquesne intends to perform certain energy banking and balancing services, as required by the AES Agreement.

#### **B. The December 20 Order**

4. In the December 20 Order, the Commission denied AES's request to abrogate the AES Agreement, subject to conditions. First, the Commission noted that in a number of recent orders, it had found that the integration of a utility into a regional transmission organization (RTO), such as PJM, does not constitute a sufficient basis for abrogating a pre-existing service agreement where the transmission customer continues to receive service commensurate with the service to which it has been entitled under its pre-existing

---

<sup>3</sup> See Amended Filing at 3, note 2, *citing* Potomac Electric Power Company, 83 FERC ¶ 61,162 at 61,688-89 (1998) (*PJM Restructuring Order*), *order on reh'g*, 93 FERC ¶ 61,111 at 61,314-15 (2000), *rev'd in part on other grounds*, *Atlantic City Electric Company v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

<sup>4</sup> AES noted that it had entered into a separate agreement with Allegheny for the supply output attributable to the AES plant. Following Allegheny's integration into PJM, Allegheny's transmission of that output over its own facilities, *i.e.*, beyond the Duquesne/Allegheny interconnection was converted into a PJM network service agreement.

contract.<sup>5</sup> The Commission further noted that in the *PJM Restructuring Order*, it had declined to abrogate bilateral contracts where the transmission customer, following integration, was not required to pay multiple charges. The Commission noted that a point-to-point transmission contract held by a generator to serve a utility would not be treated as if the utility is the single customer, paying multiple charges. The Commission also noted that in this case, AES pays only the rate for its firm transmission service and that this service permits AES to transmit the output of its facility from its point of interconnection with Duquesne to the Duquesne/Allegheny border. The Commission concluded that AES was not entitled to abrogate its contract simply because its customer, Allegheny, also pays network access charges under a separate agreement.

5. In addition, the Commission found that its findings in two orders, in which the Commission had eliminated pancaked rates *between* RTOs (*i.e.*, between PJM and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO)) did not justify abrogation of the AES Agreement.<sup>6</sup> The Commission found that in those orders it had only addressed *inter*-RTO pancaked rates, not *intra*-RTO transactions, and, in any event, had applied its rulings on a prospective basis only to agreements under the transmission tariff of the RTO. The Commission noted that, as such, it had not abrogated payment obligations of the sort required under a grandfathered agreement.<sup>7</sup>

6. The Commission also found, however, that grandfathered treatment of the AES Agreement requires that AES receive service commensurate with the service to which it is entitled under the AES Agreement but that the parties had not adequately addressed how these obligations would be carried out. Accordingly, the Commission accepted and suspended the Filing Parties' integration proposal, subject to refund and a compliance filing. The Commission required the Filing Parties' compliance filing to address, among other things, AES' contractual rights that: (i) it not be required to pay congestion costs

---

<sup>5</sup> December 20 Order at P 22, *citing PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,253, at P 40-41 (2004) (*ComEd Integration Order*); *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,246, at P 32-33 (2004) (*AEP/DPL Integration Order*); *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012 at P 57 (2004) (*Dominion Integration Order*).

<sup>6</sup> *See Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 (2004) (*Midwest ISO Order*) and *Ameren Services Company*, 105 FERC ¶ 61,216 at P 32 (2003) (*Ameren Order*).

<sup>7</sup> December 20 Order at P 24, *citing Midwest ISO Order*, 109 FERC ¶ 61,168 at P 61 and *Ameren Order*, 105 FERC ¶ 61,216 at P 32.

with respect to power transmitted over the path specified in the AES Agreement; and (ii) it continue to receive an energy banking and balance service following Duquesne's integration into PJM.

**C. Rehearing and Compliance Issues**

7. On rehearing, AES asserts that the Commission erred in according grandfathered treatment to the AES Agreement. AES's arguments in support of its request for rehearing are discussed below.

8. In their filing submitted in compliance with the December 20 Order, the Filing Parties confirm that AES will not be assessed congestion charges. To implement these rights, the Filing Parties propose to allocate ARRs, or FTRs, to Allegheny covering its entire network path as it will exist after Duquesne's integration into PJM, *i.e.*, from Allegheny's zonal load all the way back to the AES facility, *i.e.*, over the contract path designated in the AES Agreement covering Duquesne's transmission facilities. The Filing Parties' compliance filing also explains how Duquesne's obligations under the AES Agreement could be honored on a going-forward basis with respect to Duquesne's obligation to provide an energy banking and balancing service to AES.<sup>8</sup>

**D. Partial Settlement**

9. The Settling Parties state that the partial settlement, if approved, will address AES's rights, under the AES Agreement, to an energy banking and balancing service and thus resolve the disputed issue left open by the Filing Parties' compliance filing. For the reasons discussed below, however, the partial settlement does not address AES's rehearing petition, *i.e.*, the issue of whether the Commission erred when it accepted, subject to condition, grandfathered treatment of the AES Agreement.

10. With respect to energy banking and balancing, the Settling Parties state that under the proposed settlement, the AES Agreement will be amended to implement a financial banking arrangement to manage over-deliveries and under-deliveries. The Settling Parties state that this financial banking arrangement will be provided in lieu of physical banking and will replace the existing banking provisions under section 7 of the AES Agreement.<sup>9</sup> In addition, the Settling Parties state that the proposed settlement will amend a second agreement, *i.e.*, a supply agreement, to which AES and West Penn (Allegheny's subsidiary) are parties (AES/West Penn Agreement). Specifically, the

---

<sup>8</sup> This issue, as noted below, is addressed by the proposed partial settlement.

<sup>9</sup> The Settling Parties note that as result of Duquesne's integration into PJM, physical banking can no longer occur.

Settling Parties state that the AES/West Penn Agreement will be amended to: (i) clarify the provision for delivery of capacity and energy from the delivery point near AES's generator to West Penn and its loads following Duquesne's integration into PJM and (ii) facilitate the agreement between AES and Duquesne for the agreed financial banking arrangement.<sup>10</sup>

### **Notices and Responsive Pleadings**

11. Notice of the Filing Parties' compliance filing was published in the *Federal Register* with interventions and protests due on or before February 9, 2005.<sup>11</sup> AES filed a timely motion to intervene and a protest. On February 24, 2005, Duquesne filed an answer. On April 1, 2005, AES filed an answer to Duquesne's answer. Notice of the partial settlement was published in the *Federal Register* with interventions and protests due on or before October 12, 2006.<sup>12</sup> None was filed.

### **Discussion**

#### **A. Partial Settlement and Compliance Filing**

12. As noted above, the partial settlement addresses AES' rights under the AES Agreement, while reserving the issue raised by AES on rehearing, *i.e.*, the issue of whether the AES Agreement should be grandfathered or, instead, terminated. We will accept the uncontested partial settlement, without modification. Under the terms of the settlement, AES will be entitled to receive, from Duquesne, an energy banking and balance service that will preserve AES' rights under the existing provisions of the AES Agreement. The settlement ensures that AES will continue to receive the benefits of this service within the context of Duquesne's integration into PJM. We find this proposed arrangement to be appropriate and consistent with the conditions specified by the Commission in the December 20 Order. Since the settlement resolves the issues addressed by the compliance filing, we will dismiss the compliance filing.

---

<sup>10</sup> The Settling Parties note that the amendment to the AES/West Penn Agreement is appended to the proposed settlement for information purposes only. The Settling Parties note that because AES is a Qualified Facility under the Federal Power Act, as amended by PURPA, the AES/West Penn Agreement is not subject to the Commission's jurisdiction.

<sup>11</sup> 70 Fed. Reg. 5,639 (2005).

<sup>12</sup> 71 Fed. Reg. 57,497 (2006).

**B. Rehearing**

13. We will deny rehearing of the December 20 Order. In the December 20 Order, we stated that the integration of a utility into an RTO does not constitute a sufficient basis for abrogating a pre-existing service agreement, “provided that the customer continues to receive service commensurate with the service to which it is entitled under [its] contract.”<sup>13</sup> Here, the parties have reached an uncontested settlement establishing the service to which AES is entitled under the AES Agreement, thus satisfying the requirement applicable to our conditional acceptance of the AES Agreement as a grandfathered contract.

14. AES argues to the contrary that its obligations under the AES Agreement should be terminated, not grandfathered, because Allegheny, its customer under a separate agreement, is already paying for network service within PJM. AES argues that, as such, it would constitute a multiple charge for both AES, under the AES Agreement, and Allegheny, as an existing PJM customer, to both pay for a firm transmission service when only one service is required. We disagree that these facts warrant abrogation of the AES Agreement. In the *PJM Restructuring Order*, the Commission made clear that it would not terminate a transmission service contract simply because a party to that contract could also avail itself of another transmission arrangement covering the transmission need at issue.<sup>14</sup> The *PJM Restructuring Order* found that the transmission customer, in this instance, would not be paying “multiple charges” of the sort that could warrant contract abrogation.<sup>15</sup> Specifically, the Commission stated that “different parties to a transaction chain would [not] be treated as if they were one.”<sup>16</sup>

15. Here, AES seeks to terminate its contract with Duquesne on the grounds that AES and Allegheny are part of a single transaction chain, thus rendering the AES Agreement unnecessary, *i.e.*, unnecessary from the standpoint of AES. However, the *PJM*

---

<sup>13</sup> December 20 Order at P 22, *citing ComEd Integration Order*, 106 FERC ¶ 61,253 at P 40-41 (2004) and *Dominion Integration Order*, 109 FERC ¶ 61,012 at P 57.

<sup>14</sup> 83 FERC ¶ 61,162 at 61,688-89.

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

<sup>16</sup> *Id.* The Commission thus rejected the requests made by Atlantic City Electric Company (Atlantic City) and American Ref-Fuel of Delaware County, L.P. (ARC) that: (i) they be treated as one customer for purposes of the pancaked rates issue presented; and (ii) PECO Energy Company be ordered to eliminate its charges to ARC given Atlantic City’s obligation to pay network service charges under the PJM tariff.

*Restructuring Order* expressly found (and we reiterate here) that AES is not paying a multiple charge under these facts. Rather, AES is paying the single charge it is required to pay under the AES Agreement.

16. Our precedents, in this regard, are consistent. In fact, in each of our orders addressing the integration of new members into PJM, the Commission has declined to abrogate any existing point-to-point transmission agreement, even where the contract at issue has not been required to provide service in the expanded RTO.<sup>17</sup> AES, in this sense, will be treated fairly and equally.

17. AES insists that the AES Agreement should not be accorded grandfathered treatment because Duquesne, following its integration into PJM, will be collecting charges from AES for a transmission service it will no longer be providing. We disagree that the applicable standard in this case is the manner or extent of effort required of Duquesne to carry out its obligations under the AES Agreement. Regardless, AES will continue to receive firm transmission service under the AES Agreement, including those rights as implemented pursuant to the partial settlement approved here.

18. Duquesne, moreover, is entitled to the benefits of its bargain. In Order No. 888 (as well as Order No. 636), the Commission found that in implementing industry restructurings, customers would not be permitted to cancel or reduce contract levels, because that would result in utilities under-recovering their costs-of-service and possibly shifting costs to other customers.<sup>18</sup> Here, too, permitting AES to terminate its contract would serve to reduce Duquesne's revenue expectations and possibly shift costs to other Duquesne customers. In these circumstances, then, where Duquesne is prepared and able to honor its contractual obligations, as provided in the parties' settlement, we find no basis to allow contract termination.

19. AES next argues that the Commission erred in the December 20 Order in relying on an asserted distinction between inter-RTO and intra-RTO transactions, *i.e.*, in relying

---

<sup>17</sup> See *ComEd Integration Order*, 106 FERC ¶ 61,253 at P 40-41; *AEP/DPL Integration Order*, 108 FERC ¶ 61,246 at P 32-33; and *Dominion Integration Order*, 109 FERC ¶ 61,012 at P 57.

<sup>18</sup> See *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. and Regs., Regulations Preambles [Jan. 1991-June 1996] ¶ 31,036 at 31,663-64 (1996); *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation*, FERC Stats. and Regs., Regulations Preambles [1991-1996] ¶ 30,950 at 30,637 (1992).

on the *PJM Restructuring Order* (involving an intra-RTO transaction) and not applying the more recent precedents found in the *Midwest ISO Order* and the *Ameren Order* (involving inter-RTO transactions). AES argues that the Commission is bound by these two, more recent cases and points out that in both orders, the Commission determined that charges for through-and-out transmission by a utility that bordered an RTO constituted rate pancaking and were not just and reasonable.

20. We reject AES's assertion that the *Midwest ISO Order* and *Ameren Order* warrant our abrogation of the AES Agreement. These orders addressed only the need to adjust the rate designs under the OATTs of the two RTOs and the individual companies to eliminate through-and-out rates.<sup>19</sup> They did not address the abrogation of point-to-point service contracts within individual RTOs, and as discussed previously, the Commission has not abrogated internal RTO point-to-point contracts upon customers joining an RTO.<sup>20</sup> Moreover, the *Midwest ISO Order* and *Ameren Order* did not modify the rates, terms or conditions of transmission service under grandfathered transmission service agreements such as the contract AES proposes to modify here. Were customers taking service over the PJM system pursuant to such a grandfathered contract to supply a load serving entity in the Midwest ISO, the *Midwest ISO Order* and the *Ameren Order* would not have eliminated rate pancaking resulting from the charges under the grandfathered through and out transmission service contract (*i.e.*, the transaction would still be subject to both a transmission service charge for network or point-service under the Midwest ISO OATT plus the charge under the grandfathered contract). Thus, we find no inconsistency in these orders.

21. AES also asserts that the Commission, in considering these issues, failed to determine whether the rates payable under the AES Agreement are governed by the just and reasonable standard, as AES claims, or under the *Mobile-Sierra* public interest

---

<sup>19</sup> See *Alliance Cos.*, 100 FERC ¶ 61,137 at P 50 (2002) (instituting section 206 investigation of through-and-out rates under the Midwest ISO and PJM OATTs); *Midwest Independent Transmission System Operator*, 104 FERC ¶ 61,105 at PP 39-40 (2002) (finding through-and-out rates under the RTO OATTs unjust and unreasonable when applied to transactions sinking in the combined Midwest ISO-PJM region); *Ameren Order*, 105 FERC ¶ 61,216 at PP 14, 32 and 46 (finding through-and-out rates under individual company OATTs unjust and unreasonable when applied to transactions sinking in the combined Midwest ISO-PJM region).

<sup>20</sup> See, *e.g.*, *Louisville Gas & Electric Co.*, 109 FERC ¶ 61,330 at P 29-32 (2004) (with respect to grandfathered contract, customer would be required to pay appropriate rate under the contract plus the Midwest ISO through-and-out rate).

standard of review.<sup>21</sup> AES asserts that a just and reasonable standard is appropriate in this case because under the AES Agreement, Duquesne expressly reserved for itself the right to file for unilateral rate increases under the just and reasonable standard. AES further asserts that applying this standard, the Commission should determine that the appropriate rate for a service that will not be provided following Duquesne's integration into PJM is zero.

22. We need not decide here whether AES's request to modify the AES Agreement is governed by the just and reasonable standard of review, pursuant to FPA section 206, or the *Mobile-Sierra* public interest standard of review. Regardless of which standard applies, AES has not demonstrated that an abrogation of the parties' agreement would be warranted where, as here, AES will continue to receive the service to which it is entitled under its agreement.

The Commission orders:

(A) Rehearing of the December 20 Order is hereby denied, as discussed in the body of this order.

(B) The settlement is hereby accepted, without modification, as discussed in the body of this order.

(C) The compliance filing is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

---

<sup>21</sup> See *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) (*Mobile*) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).