

120 FERC ¶ 61,142  
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 Energy Carolinas, LLC

Docket No. ER07-1022-000

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENT

(Issued August 7, 2007)

1. In this order, we conditionally accept Duke Energy Carolinas, LLC's ("Duke Energy") proposed amendment to its market-based rate tariff ("MBR Tariff") for the reasons discussed herein.

**Background**

2. Duke Energy has market-based rate authority in markets other than its home control area.<sup>1</sup> According to Duke Energy, potential customers beyond its mitigated control area are interested in additional power supply options. These potential customers have asked Duke Energy to agree to deliver energy under a dynamic schedule rather than through a traditional block schedule. Duke Energy asserts that this dynamic scheduling would enable such customers to reduce their exposure to imbalance charges imposed by their host transmission provider. Duke Energy's application includes a proposed tariff amendment under which Duke Energy claims it could provide such service in a manner fully compatible with Commission policy.

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<sup>1</sup> While for purposes of this order we refer to "control area," we note that the Commission adopted the use of "balancing authority area" instead of "control area" in *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 72 Fed. Reg. 39,904 (July 20, 2007), FERC Stats. & Regs. ¶ 31,252, at P 252 (2007).

**Proposed Amendment to Market-Based Rate Tariff**

3. On June 8, 2007, Duke Energy submitted for filing a proposed amendment to its MBR Tariff that is designed to permit it to deliver energy to certain customers under a dynamic schedule.<sup>2</sup> To this end Duke Energy proposes to add the following provision to the section of the MBR Tariff entitled “Prohibition on Sales in Duke Carolinas Control Area:”

This prohibition [against market-based rate sales within the Duke Energy Carolinas control area] shall not apply to sales for which Seller has made dynamic scheduling arrangements to deliver energy to a Buyer that is not in the Duke Carolinas Control Area, as long as such dynamic scheduling arrangements do not provide for the Buyer’s load to be electronically included in the Duke Carolinas Control Area.

Duke Energy requests an effective date of August 7, 2007.

**Notice of Filing and Responsive Pleadings**

4. Notice of Duke Energy’s filing was published in the *Federal Register*,<sup>3</sup> with motions to intervene and protests due on or before June 29, 2007. North Carolina Electric Membership Corporation (NCEMC) filed a timely motion to intervene without substantive comment.

**Discussion**

**A. Procedural Issue**

5. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure,<sup>4</sup> NCEMC’s timely, unopposed motion to intervene serves to make it a party to this proceeding.

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<sup>2</sup> According to Duke Energy, “[t]he MBR Tariff currently limits sales at market-based rates to buyers outside Duke Energy’s control area.” See Transmittal Letter at 2.

<sup>3</sup> 72 Fed. Reg. 33,998 (2007).

<sup>4</sup> 18 C.F.R. § 385.214 (2007).

## **B. Dynamic Transfer Arrangements**

6. Duke Energy states that, like traditional block schedules,<sup>5</sup> dynamic transfer arrangements are forms of interchange transactions between control areas. However, unlike traditional block schedules, dynamic transfer arrangements allow entities to enter into transactions where a power supplier delivers energy to a customer in another control area based on the customer's load at a given moment.<sup>6</sup>

7. Duke Energy asserts that the industry, as well as the Commission, has used the term “dynamic scheduling” broadly to describe various types of dynamic power transfer arrangements. However, Duke Energy points out that the North American Electric Reliability Corporation (NERC) defines the two distinct dynamic transfer arrangements: (1) pseudo-ties and (2) dynamic schedules.<sup>7</sup>

8. Although the term “dynamic scheduling” has been used to refer to both types of transfer arrangements, Duke Energy argues that the two types of arrangements are significantly different. According to Duke Energy, a pseudo-tie transfers jurisdiction over a load that is physically located in one control area (defined by NERC as the “native” control area) to the control area where the seller is located (defined by NERC as the “attaining” control area). Under a pseudo-tie, Duke Energy asserts that even though the customer’s load is not physically in the attaining control area the load is incorporated into the attaining control area as though it were a load being served from a substation in that control area, and the native control area becomes electrically blind to that load’s moment-to-moment fluctuations. Thus, Duke Energy argues, under a pseudo-tie the

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<sup>5</sup> In *Allegheny Power Service Corp.*, Opinion and Order Affirming Initial Decision, 85 FERC ¶ 61,275 at 62,118 n. 26 (1998), the Commission said:

Block scheduling refers to the common electric utility practice of scheduling generation (energy) in fixed hourly blocks. For example, a customer who forecasts its load at the beginning of an hour to be 50 MW and its load at the end of the hour to be 150 MW would schedule energy equal to 100 MWhs (the average load during the hour) which, at times, will be less than the customer's actual moment-to-moment load.

<sup>6</sup> Transmittal Letter at 4-5.

<sup>7</sup> Transmittal Letter at 2, n.4, (*citing* Att. C., NERC, Dynamic Transfer Reference Document, Version 1.1, at 3 (Nov. 29, 2004)). *See also* May 2, 2007 NERC Glossary of Terms Used in Reliability Standards, available at <http://www.nerc.com>.

attaining control area authority assumes responsibility for ensuring that the load is properly balanced moment-to-moment, for planning for the load, and for providing various ancillary services, including balancing service. Duke Energy points out that the Commission has addressed the impact of pseudo-tie arrangements in the context of market-based rates.<sup>8</sup>

9. Duke Energy distinguishes the proposed transfer arrangements at issue here from *Tampa Electric* stating that its proposal uses dynamic schedules and will not electronically move load from one control area to another consequently the native control area where the load is physically located retains control area jurisdiction, and therefore responsibility, over the load. Duke Energy asserts that dynamic scheduling does not create jurisdictional transfers it “simply allows energy to be transferred between control areas in a manner where, using telemetered information, the power delivered varies in real-time to match the customer's load signal.”<sup>9</sup>

### **C. Commission Determination**

10. Duke Energy asserts that its proposal is consistent with Commission policy because *Tampa Electric* determined that sales that provide for a customer's load to be "electronically included" in a control area (*i.e.* “pseudo-ties”) must be treated as sales in that control area for purposes of market power mitigation. Duke Energy states that its proposal would permit sales only to customers that remain electronically in a control area in which Duke Energy has market-based rate authority.

11. Although Order No. 888 stated that “[i]n effect, dynamic scheduling electronically moves load out of the control area in which it is physically located and into another

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<sup>8</sup> Duke Energy cites *Tampa Electric Co.*, 113 FERC ¶ 61,159 (2005) (*Tampa Electric*), where, among other things, the Commission rejected Tampa’s proposal to exempt from the requirement for prior Commission approval of any sale into the Tampa Electric control area, two wholesale customers physically located in a non-mitigated first-tier market but electronically included in Tampa Electric’s mitigated control area. The Commission said “as long as these customers, or any others, are dynamically scheduled as part of Tampa Electric’s control area, they must be covered by any mitigation applicable to that control area.” *Id.* at P 31.

<sup>9</sup> Transmittal Letter at 6.

control area,”<sup>10</sup> we agree that the electricity market has evolved to justify the distinction made by NERC in 2004 where it distinguished two types of dynamic transfer arrangements: “pseudo-ties,” which electronically move load among control areas, and “dynamic schedules,” which do not. Accordingly, we will accept Duke Energy’s proposal to amend its MBR Tariff to permit the described dynamic scheduling arrangements provided that the customer’s load does not become electronically part of Duke Energy’s control area, effective August 7, 2007 as requested, and as conditioned below.

12. We find that the proposed tariff language is overbroad. As proposed, the tariff provision could be interpreted to permit market-based rate sales anywhere within the mitigated market. The Commission’s current policy prohibits any market-based rate sales by a mitigated seller within a mitigated market (*i.e.*, where the title transfers within the mitigated control area).<sup>11</sup> Therefore, we conditionally accept Duke Energy’s proposed amendment to its MBR tariff and direct Duke Energy to make a compliance filing, within 30 days of the date of issuance of this order, to revise its proposed MBR tariff provision to make clear that any market-based rate sales, including those discussed herein must occur outside the mitigated market.

13. In addition, the Commission notes that it has recently modified its policy and determined that it will allow a mitigated seller to make market-based rate sales on the mitigated side of the metered boundary between a seller’s mitigated market and a market

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<sup>10</sup> *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. ¶ 31,036 at 31,709-10 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. and Regs. ¶ 31,048, *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>11</sup> *See* Order No. 697 at P 817.

where the seller has market-based rate authority subject to certain conditions and the adoption of the required tariff provision as set forth in Order No. 697.<sup>12</sup> If Duke Energy wishes to avail itself of this authority, it may file a proposal under section 205 of the Federal Power Act<sup>13</sup> in that regard.

14. As discussed above, we conditionally accept, effective August 7, 2007, Duke Energy's proposal to amend its MBR Tariff to permit the described dynamic scheduling arrangements provided that the customer's load does not become electronically part of Duke Energy's control area, and direct Duke Energy to make a compliance filing, within 30 days of the date of issuance of this order, as discussed above.

The Commission orders:

(A) Duke Energy's proposed amendment to its market-based rate tariff is hereby conditionally accepted for filing, to become effective August 7, 2007, as requested.

(B) Duke Energy is directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order, to revise its proposed MBR tariff provision to make clear that any market-based rate sales, including those discussed herein must occur outside the mitigated market.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>12</sup> See Order No. 697, FERC Stats. & Regs. ¶ 31,252 at P 830 and Appendix C.

<sup>13</sup> 16 U.S.C. § 824d (2000).