

125 FERC ¶ 61,141
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.

Duquesne Light Company

Docket No. ER08-194-003

ORDER DENYING CLARIFICATION AND REHEARING

(Issued November 5, 2008)

1. Requests for clarification or, in the alternative, rehearing of the Commission's April 18, 2008 order are sought by: (i) Constellation Energy Commodities Group, Inc. and its affiliate,¹ Mirant Energy Trading, LLC and its affiliates,² and PPL Companies and its affiliates³ (collectively, Constellation, *et al.*); and (ii) Allegheny Power and its affiliate, Allegheny Energy Supply Company (collectively, Allegheny).⁴ For the reasons discussed below, we deny clarification and rehearing of the April 18 Order.

Background

2. On November 8, 2007, Duquesne Light Company (Duquesne) filed a petition requesting that the Commission approve a conditional request to withdraw from PJM Interconnection, L.L.C. (PJM). In an order issued January 17, 2008, the Commission found that Duquesne will satisfy the withdrawal requirements set forth in PJM's operating agreements, subject to conditions.⁵

¹ Constellation NewEnergy Inc.

² Mirant Mid-Atlantic, LLC, Mirant Chalk Point, LLC, and Mirant Potomac River, LLC.

³ PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Bruner Island, LLC, PPL Holtwood, LLC, PPL Martins Creek, LLC, PPL Montour, PPL Susquehanna, LLC, PPL University Park, LLC, and Lower Mount Bethel Energy, LLC.

⁴ *Duquesne Light Company*, 123 FERC ¶ 61,060 (2008) (April 18 Order).

⁵ *Duquesne Light Company*, 122 FERC ¶ 61,039 (2008) (January 17 Order).

3. The January 17 Order also addressed Duquesne's withdrawal obligations as a departing load serving entity, including Duquesne's capacity procurement obligations under PJM's Reliability Pricing Model (RPM) and Duquesne's obligation to participate in PJM RPM auctions applicable to future delivery years, i.e., to delivery years arising following Duquesne's intended withdrawal from PJM.⁶ The Commission held that, subject to submission of Duquesne's written commitment to withdraw from PJM prior to the 2011-2012 delivery year, i.e., prior to the delivery applicable to PJM's May 2008 RPM auction, Duquesne would not be obligated to participate in this auction (or any future auctions) and that, as such, PJM would be required to remove, from this auction (and all future auctions), the Duquesne zone load in its entirety.⁷

4. On March 18, 2008, the PJM Power Providers Group filed a request for clarification regarding the treatment of Duquesne zone capacity resources in the PJM May 2008 RPM auction, as affected by Duquesne's plans to withdraw from PJM. Specifically, the PJM Power Providers Group sought clarification as to whether these capacity resources would be regarded as internal, or external, to PJM (given that the rules applicable to each vary).

5. In an order issued April 18, 2008, the Commission clarified that Duquesne zone capacity resources must be treated as external to PJM for purposes of the May 2008 RPM auction, given Duquesne's commitment to withdraw from PJM as of the delivery year applicable to this auction.⁸ However, the Commission also held that under the deliverability requirement applicable to PJM's load serving entities (i.e., under schedule 10 of the PJM Reliability Assurance Agreement), external resources, while required to have in place firm transmission service to the metered boundaries of the PJM region, are not required to secure these commitments as a prerequisite for bidding into the RPM auction. The Commission concluded that, as such, PJM's deliverability requirement applies only to the delivery year at issue and thus is not a prerequisite for bidding into the RPM auction.⁹

⁶ See PJM Open Access Transmission Tariff (OATT) at Attachment DD.

⁷ January 17 Order, 122 FERC ¶ 61,039 at P 142. Duquesne submitted its notice, as required, on February 1, 2008. The January 17 Order did not otherwise address the implications of this withdrawal as it relates to the eligibility of capacity resources located in the Duquesne zone to participate in the May 2008 RPM auction (or subsequent RPM auctions).

⁸ April 18 Order, 123 FERC ¶ 61,060 at P 15 and P 17.

⁹ *Id.* P 18.

6. The April 18 Order also addressed the potential uncertainty presented by this tariff provision. Specifically, the Commission noted that, given the time differential between the RPM auction date and the corresponding RPM delivery year, a Duquesne zone generator that has not secured a firm transmission commitment for this RPM capacity, prior to the conduct of the RPM auction, would not know with any certainty at the time the auction is held that it will be able to obtain firm transmission service to the border of PJM as of the applicable delivery year. The Commission further noted, however, that this uncertainty can be avoided, here, because PJM, as the current transmission provider for the Duquesne zone, is authorized under its tariff to offer firm point-to-point service with a future reservation date, if requested. The Commission further found that under Commission policy, such a service agreement would be honored as a grandfathered agreement should Duquesne proceed to join the Midwest Independent Transmission System Operator (Midwest ISO), as Duquesne planned.¹⁰

Requests for Clarification or Rehearing

7. Constellation, *et al.* request clarification, or rehearing, that under the PJM Open Access Transmission Tariff (OATT) a request for point-to-point transmission service is subject to: (i) placement in PJM's study queue, as required by section 13.2; and (ii) an available transfer capability (ATC) analysis, as required by section 19.1, including, as relevant here, a consideration of deliverability issues applicable to the 2011-12 delivery year and beyond, when the resources at issue will be external to PJM. Constellation, *et al.* assert that clarification is necessary regarding the applicability of these procedures in order to disavow the assumptions made by PJM in a web posting, issued April 25, 2008 (PJM Allocation Plan), in which PJM addressed anticipated requests applicable to the Duquesne zone.¹¹

¹⁰ *Id.* P 19 (noting that should Duquesne join the Midwest ISO, the Midwest ISO has already indicated its willingness to honor such contracts). On May 30, 2008, PJM submitted two such agreements for future-year, point-to-point service agreements. In a letter order issued July 28, 2008, the Commission accepted these agreements, subject to revision, to become effective July 29, 2008. *See PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,099 (2008) (*Point-to-Point Service Order*).

¹¹ In the PJM Allocation Plan, PJM stated the Duquesne zone generators currently deliver to PJM under network service arrangements that will remain in effect following Duquesne's migration to the Midwest ISO and that analyses regarding available transfer capacity will not be required in order to accommodate a request for point-to-point service because the service at issue would not be a new service.

8. Constellation, *et al.*, argue that in addition to the PJM Allocation Plan being contrary to the PJM OATT and inappropriate from an engineering perspective, it would also be unduly preferential to the Duquesne zone generators and unduly discriminatory to every other capacity resource within and outside PJM. Specifically, Constellation, *et al.* argue that on February 22, 2008, Constellation submitted two transmission service requests over the very same path that would be used by Duquesne zone generators to deliver capacity resources to PJM in connection with the 2011-12 delivery year and that on this same date, PPL requested the same transmission service. Constellation, *et al.* point out that each of these requests was denied due to insufficient network capability.

9. Allegheny seeks the same clarifications requested by Constellation, *et al.*, noting that it also concurs with Constellation, *et al.*'s arguments. Allegheny clarifies, however, that some generation in Duquesne zone already has grandfathered point-to-point transmission rights in PJM. Allegheny submits that these existing grandfathered commitments must be respected in any future award by PJM of firm point-to-point service from the Duquesne zone to the future border with PJM.¹²

Answers

10. Answers to Constellation, *et al.*'s and Allegheny's requests for clarification or rehearing were filed by Reliant Energy, Inc., on May 1, 2008, and by PJM and FirstEnergy Service Company, on May 2, 2008. On May 5, 2008, Allegheny filed an answer to PJM's answer. Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a) (2008), prohibits an answer to a request for rehearing and an answer to an answer unless otherwise permitted by the decisional authority. We are not persuaded to accept the above-noted answers and will, therefore, reject them.

Discussion

11. We deny Constellation, *et al.*'s and Allegheny's requests for a generic clarification as to the exact procedures that must be applied to each request for service. Establishing generic procedures is not appropriate because, under the PJM OATT, each such request for service must be judged individually. Because the PJM Allocation Plan is not before us, we cannot rule on any proposed aspects of this plan. We therefore find that the most

¹² Specifically, Allegheny states that West Penn Power d/b/a Allegheny Power has contracted to purchase electricity and capacity from the AES Beaver Valley generation station in Monaca, Pennsylvania in the Duquesne zone. Allegheny states that AES Beaver Valley's output should be deemed fully deliverable in PJM after Duquesne's withdrawal.

appropriate procedure, and one that we already have followed, is to analyze the particular service agreements into which PJM has entered or will enter prior to Duquesne's withdrawal.¹³

12. In addition, we disagree with Constellation, *et al.*'s and Allegheny's position that PJM would be violating its OATT if it fails to conduct an individualized study of every such project submitted. Section 17.5 of the PJM OATT provides that PJM has the discretion to decide whether a study is needed in a given case to grant firm point-to-point transmission service.¹⁴ Under this provision, a study may not be required, in a given case, should PJM determine that a firm point-to-point service will involve no usage of the system over and above the current network services already being provided, or that transmission service under the requested service agreements will have no adverse impact on PJM's operation of its system or on the functioning of its markets.¹⁵

13. Similarly, section 19.1 of the PJM OATT does not require that a study of transfer capacity be performed.¹⁶ Like section 17.5, the need for such a study will depend on the individual circumstances of the request for service.¹⁷

¹³ See *PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,099 (2008) (accepting two such service agreements filed by PJM).

¹⁴ Section 17.5 of the PJM OATT states as follows:

With respect to Long-Term Firm Point-to-Point Transmission Service, the Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing an Initial Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to section 19.1.

¹⁵ In fact, PJM relied on just such a rationale in granting the two point-to-point transmission service agreements accepted by the Commission. 124 FERC ¶ 61,099 at P 6. Neither Constellation, *et al.* nor Allegheny sought rehearing of this order.

¹⁶ Section 19.1 states:

Notice of Need for Initial Study: After receiving a request for service, the Transmission Provider shall determine on a non-discriminatory basis whether an Initial Study is needed. The purpose of the Initial Study shall be to assess whether the

(continued...)

14. Finally, Constellation, *et al.* assert that the clarifications they seek are warranted because granting a point-to-point service request applicable to the Duquesne zone, without following the study procedures set forth at sections 13.2 and 19.1 of the PJM OATT, would be unduly preferential or discriminatory *vis a vis* certain prior requests that have been denied by PJM. However, we need not decide the merits of this claim here on a generic basis applicable to our prior order, particularly given our findings, above, regarding PJM's authorized discretion under its OATT.

15. Regarding Allegheny's request for clarification that existing grandfathered commitments be respected, we note that the AES Beaver Valley agreement has been filed as a grandfathered agreement under the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff in Docket No. ER08-1370-000. The AES Beaver Valley agreement will be addressed in that proceeding.

The Commission orders:

Clarification and rehearing of the April 18 Order are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Transmission System has sufficient available capability to provide the requested service. If the Transmission Provider determines that an Initial Study is necessary to evaluate the requested service, it shall so inform the Eligible Customer, as soon as practicable.

¹⁷ For example, the Commission found no study was necessary for the point-to-point service contracts into which PJM has entered, because no usage of the system is contemplated over and above the current network services already being provided. 124 FERC ¶ 61,099 at P 10.