

127 FERC ¶ 61,187
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Duquesne Light Co.	Docket No. ER08-194-006
Midwest Independent Transmission System Operator, Inc. and Duquesne Light Co.	Docket No. ER08-1235-003
Midwest Independent Transmission System Operator, Inc. and Duquesne Light Co.	Docket No. ER08-1309-001
PJM Interconnection, L.L.C.	Docket No. ER08-1339-003
PJM Interconnection, L.L.C.	Docket No. ER08-1345-003
Midwest Independent Transmission System Operator, Inc. and Duquesne Light Co.	Docket No. ER08-1370-001

ORDER ON REHEARING

(Issued May 28, 2009)

1. The Pennsylvania Public Utility Commission (Pennsylvania Commission) seeks rehearing of a Commission order issued in this proceeding on January 29, 2009.¹ For the reasons discussed below, we deny rehearing.

Background

2. In the January 29 Order, the Commission approved a Settlement Agreement entered into by Duquesne Light Company (Duquesne), PJM Interconnection, L.L.C. (PJM), and 15 intervenors in the above-captioned proceedings,² proposing to withdraw

¹ *Duquesne Light Company*, 126 FERC ¶ 61,074 (2009) (January 29 Order).

² FirstEnergy Service Company (FirstEnergy); AES Beaver Valley; Allegheny

(continued...)

from Commission consideration Duquesne's prior conditional request to: (i) terminate its membership in the PJM regional transmission organization (RTO); and (ii) establish membership in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The Settlement Agreement provided that Duquesne would remain a member of PJM.

3. The Settlement Agreement further provided that Duquesne would be permitted to participate in PJM's upcoming Reliability Pricing Model (RPM) auctions and to satisfy all capacity commitments as set forth in PJM's RPM protocols. Finally, the Settlement Agreement provided that Duquesne's prior filings in the above-captioned proceedings would be withdrawn.

Request for Rehearing

4. On rehearing, the Pennsylvania Commission asserts as error the Commission's acceptance of the Settlement Agreement in the absence of a cost/benefits analysis weighing the competing merits of Duquesne's decision to remain a member of PJM, on the one hand, versus requiring Duquesne to join the Midwest ISO, on the other hand. The Pennsylvania Commission also renews arguments it made previously, namely, that the Settlement Agreement fails to identify from which sources and at what cost Duquesne will acquire generation capacity needed to reenter PJM in the 2011-12³ capacity delivery year, the cost of Duquesne's efforts to integrate Duquesne into the Midwest ISO grid and markets, the cost of reintegrating Duquesne back into PJM markets, how Duquesne intends to recover the costs of the Settlement Agreement, and the prudence of costs incurred by Duquesne. Further, the Pennsylvania Commission asserts that, in accepting the Settlement Agreement, the Commission did not make the necessary findings of fact and law because it did not find the Settlement Agreement either "just and reasonable" or "in the public interest."

Energy Supply Company, LLC; the Consolidated Edison Company; Constellation Energy; The Dayton Power and Light Company; Dominion Resources Services, Inc.; Duke Energy Corporation; Edison Mission Energy; Exelon Corporation; FPL Energy; the Mirant Companies; the PJM Power Providers Group; the PSEG Companies; and Reliant Energy, Inc.

³ The Pennsylvania Commission refers to the 2012-13 capacity delivery year (Pennsylvania Commission Request for Rehearing at 4). However, it appears that the Pennsylvania Commission intended to refer to the 2011-12 capacity delivery year. Under the terms of the Settlement Agreement, Duquesne will participate in the May 2009 RPM auction in order to meet its capacity requirements for the 2012-13 capacity delivery year.

5. On March 17, 2009, answers to the Pennsylvania Commission's request for rehearing were filed by Duquesne and FirstEnergy. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁴ prohibits an answer to a request for rehearing unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by Duquesne and FirstEnergy and therefore reject them.

Discussion

6. We deny rehearing of the January 29 Order. The Pennsylvania Commission's rehearing request assumes, incorrectly, that the Commission's approval of the Settlement Agreement, including the terms and conditions applicable to Duquesne's continued membership in PJM, required the Commission to consider the relative merits of Duquesne's PJM membership versus Duquesne's potential membership in the Midwest ISO. The Pennsylvania Commission suggests, in effect, that the Commission could and should have considered whether Duquesne should be compelled to transfer control of its facilities to the Midwest ISO. However, as the Commission made clear in the January 29 Order, Duquesne's membership in PJM is a status to which it is both entitled and obligated, as a PJM transmission owner, under the PJM Consolidated Transmission Owner Agreement.⁵ Moreover, RTO membership is voluntary and thus the Commission cannot mandate that Duquesne join the Midwest ISO.⁶

7. Were Duquesne seeking to pursue its initial request to join the Midwest ISO, we would be required to evaluate Duquesne's existing, Commission-approved arrangements, under PJM's operating documents, along with any proposed integration plan involving the Midwest ISO. However, in the absence of such a request, we will not assume the existence of an integration plan that has not been negotiated, agreed to by the parties, or otherwise submitted for our review.

8. Nor was the Commission required to consider each and every rate impact attributable to Duquesne's continued existence in PJM. Instead, the Commission noted that the Pennsylvania Commission would have an appropriate forum to challenge any such costs at such time as these costs become known and at such time as Duquesne requested recovery of these costs.⁷ The Commission further noted that the Settlement

⁴ 18 C.F.R. § 385.213(a)(2) (2008).

⁵ January 29 Order, 126 FERC ¶ 61,074 at P 34.

⁶ *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282, at P 29 (2006).

⁷ January 29 Order, 126 FERC ¶ 61,074 at P 39 and P 40.

Agreement does not address Duquesne's potential liability to the Midwest ISO with respect to its Midwest ISO Transmission Owners Agreement obligations. However, the Commission found that this issue does not prevent the Commission from approving the Settlement Agreement as it relates to Duquesne's participation in PJM. The Commission found that the Midwest ISO or other affected parties may, if they wish, pursue this issue in a separate proceeding before the Commission, or in an appropriate judicial forum.⁸

9. The Pennsylvania Commission contends the Commission failed to make an explicit finding that the settlement provisions are just and reasonable. When the Commission approved the Settlement Agreement after due consideration of the protests of the Pennsylvania Commission and others, it found the settlement terms to be just and reasonable, and we explicitly make that finding here.

The Commission orders:

The Pennsylvania Commission's request for rehearing of the January 29 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁸ *Id.* P 41.