

149 FERC ¶ 61,195
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

PJM Interconnection, L.L.C.

Docket No. ER15-29-000

Duke Energy Progress, Inc.

Docket No. ER15-32-000

ORDER ACCEPTING AMENDED AND RESTATED JOINT OPERATING
AGREEMENT

(Issued December 2, 2014)

1. On October 3, 2014, PJM Interconnection L.L.C. (PJM) and Duke Energy Progress, Inc. (DEP) (collectively, the Filing Parties) filed pursuant to section 205 of the Federal Power Act¹ proposed revisions to their Amended and Restated Joint Operating Agreement Among and Between PJM Interconnection, L.L.C., and Duke Energy Progress, Inc. (DEP-PJM JOA) in Docket No. ER15-29-000 (October 3rd Filing). That same day, DEP filed a Certificate of Concurrence and a Concurrence Tariff Record in Docket No. ER15-32-000. The Filing Parties request an effective date of December 3, 2014, for both filings. Because both filings address the same proposed revisions to the DEP-PJM JOA, we will discuss them both in this order. In this order, the Commission accepts the proposed revisions to the DEP-PJM JOA filed in Docket No. ER15-29-000 and also accepts DEP's Concurrence Tariff Record filed in Docket No. ER15-32-000, both effective December 3, 2014, as requested.

¹ 16 U.S.C. § 824d (2012).

I. Background

2. On February 2, 2010, PJM and Carolina Power & Light Company (Carolina Power) filed a proposed JOA² with the Commission to replace their 2005 JOA, which governed congestion management (the DEP-PJM JOA). In the DEP-PJM JOA, PJM and Carolina Power proposed to use a dynamic schedule to coordinate power exchange and manage congestion, pricing those transactions based on the non-ISO pricing provisions of the PJM Open Access Transmission Tariff (PJM Tariff or OATT), and incorporating make-whole provisions.³ The Commission accepted the DEP-PJM JOA, explaining that requiring a congestion management agreement for directly connected balancing authorities allows for these balancing authorities to “obtain more advantageous pricing,” and for “PJM ‘to identify loop flows,’ and otherwise account for the effect of neighboring balancing authorities’ dispatch on PJM.”⁴

3. On October 3, 2014, the Filing Parties proposed two categories of revisions to the DEP-PJM JOA in Docket No. ER15-29-000. First, the Filing Parties propose to include a new Appendix B, which lists DEP-PJM interconnected transmission facilities and their associated uniform line identifiers, in compliance with the North American Electric Reliability Corporation’s (NERC) reliability standard TOP-002-2.1b, requirement R18 and measure M10.⁵ Second, the Filing Parties seek to revise the DEP-PJM JOA to update references to DEP’s current legal name. The Filing Parties explain that, on July 2, 2012, Progress Energy Inc. completed its merger with Duke Energy Corporation; as part of that merger, Carolina Power changed its name to DEP.⁶ Therefore, the Filing Parties propose to replace references to Carolina Power in the DEP-PJM JOA with references to

² *PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,181, at P 3 (2010), *order on compliance and clarification*, 134 FERC ¶ 61,048 (2011).

³ *Id.* P 6.

⁴ *Id.* P 20 (citing *PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,101, at PP 23, 33, 35 (2009)).

⁵ PJM Interconnection, L.L.C. and Duke Energy Progress, Inc. Oct. 3, 2014 Filing at 2 (PJM-DEP Filing) (citing North American Electric Reliability Corporation, *Reliability Standards for the Bulk Electric Systems of North America*, TOP-002-2.1b, R18 and M10 (Sept. 17, 2014), *available at* <http://www.nerc.com/pa/Stand/Reliability%20Standards%20Complete%20Set/RSCompleteSet.pdf>).

⁶ PJM-DEP Filing at 3.

DEP. In addition to these two categories of revisions, the Filing Parties also propose three ministerial changes to the DEP-PJM JOA: (1) revise the titles of the DEP and PJM representatives in section 20.11 and on the signature page; (2) delete section 20.14, which was erroneously added; and (3) remove a typographical error in the title of Appendix A.

4. Also on October 3, 2014, DEP filed a Certificate of Concurrence and a Concurrence Tariff Record in Docket No. ER15-32-000 to reflect its concurrence in the proposed revisions to the DEP-PJM JOA filed in Docket No. ER15-29-000. DEP explains that the Concurrence Tariff Record supersedes and replaces DEP Rate Schedule No. 188.⁷

II. Notice of Filing and Responsive Pleadings

5. Notice of the PJM-DEP Filing in Docket No. ER15-29-000 was published in the *Federal Register*, 79 Fed. Reg. 61,627 (2014), with comments, interventions, and protests due on or before October 24, 2014.

6. Notice of the DEP Filing in Docket No. ER15-32-000 was published in the *Federal Register*, 79 Fed. Reg. 61,857 (2014), with comments, interventions, and protests also due on or before October 24, 2014.

7. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (Market Monitor) filed a timely motion to intervene, protest, and motion for hearing in Docket No. ER15-29-000.

8. The North Carolina Electric Membership Corporation (NCEMC), and the North Carolina Utilities Commission collectively with the Public Staff of the North Carolina Utilities Commission (the North Carolina Agencies), filed out-of-time motions to intervene in Docket Nos. ER15-29-000 and ER15-32-000.

9. The Filing Parties submitted a motion for leave to answer and answer in response to the Market Monitor's protest.

III. Protests and Answer

10. In its protest in Docket No. ER15-29-000, the Market Monitor argues that the Filing Parties, in the October 3rd Filing, did not meet their burden under section 205 of the Federal Power Act⁸ to demonstrate that the proposed revisions to the DEP-PJM JOA

⁷ Duke Energy Progress, Inc. Oct. 3, 2014 Filing at 1 (DEP Filing).

⁸ 16 U.S.C. § 824d (2012).

are just and reasonable. The Market Monitor contends that the Commission should not approve the revised agreement and should, instead, direct PJM and DEP to apply interface pricing consistent with the PJM Tariff and their obligations under the DEP-PJM JOA.⁹

11. The Market Monitor explains that section 2.6A of Schedule 1 to the PJM Operating Agreement establishes “default prices for transactions from or to PJM and all points to the south of PJM” to prevent market participants from gaming “price differences between interface pricing points by scheduling transactions that do not reflect true system flows.”¹⁰ Special agreements for dynamic pricing of sales to PJM, however, are allowed under section 2.6A so long as there are no sales or purchases from other neighboring areas.¹¹ The DEP-PJM JOA is one such agreement for dynamic pricing. The Market Monitor further explains that after the 2012 merger of the parent companies of DEP and Duke Energy Carolinas (DEC),¹² the two companies became public utility affiliates and entered into a Joint Dispatch Agreement (JDA) to operate their combined generation resources.¹³

12. The Market Monitor states that the DEP-PJM JOA only accounts for the dispatch with the balancing authorities that are parties to the agreement. The DEP-PJM JOA does not account for interchange flows between DEP and any neighboring non-PJM balancing authority that may occur simultaneously with interchange flows between DEP and PJM. DEC, a subsidiary of Duke Energy Corporation before and after the merger, is one such non-PJM balancing authority.¹⁴ DEP and DEC continue to exist as separate public utilities and separate balancing authorities. The JDA provides for continual joint optimization of the dispatch between them.¹⁵

⁹ Monitoring Analytics, LLC October 27, 2014 Protest at 2, 8 (Market Monitor Protest).

¹⁰ Market Monitor Protest at 2.

¹¹ Market Monitor Protest at 2–3.

¹² Progress Energy, Inc. and Duke Energy Corporation, respectively.

¹³ Market Monitor Protest at 4–5.

¹⁴ Market Monitor Protest at 4.

¹⁵ Market Monitor Protest at 5.

13. The Market Monitor further states that, because the JDA provides for joint optimization between the DEP and DEC balancing authorities, there is, by definition, a continuous flow of energy transactions between the balancing authorities. The ongoing operation of the DEP balancing authority in a manner that jointly optimizes dispatch costs between DEP and DEC, a neighboring balancing authority, constitutes transactions. The Market Monitor asserts that section 2.6A was designed to suspend the special JOA pricing during any hour when there are third party interchange flows, and this plainly occurs at any time that dispatch in DEP is modified in compliance with the JDA. Such modified dispatch presumably occurs for most if not all hours. Thus, the Market Monitor claims the JDA effectively nullifies the value of dynamic pricing under the DEP-PJM JOA's Energy Settlement Process.¹⁶

14. The Market Monitor asserts that the merger plainly creates material changes to the circumstances reflected in the DEP-PJM JOA, yet there is no indication that any negotiation has occurred. The Market Monitor claims that the assumptions reflected in the current DEP-PJM JOA no longer apply, and that the proposed revisions are not an adequate response. The Market Monitor recommends that PJM immediately provide the required 12-month notice to DEP to unilaterally terminate the DEP-PJM JOA. This approach would assure correct pricing under section 2.6A and open the way to a new joint operating agreement that would cover DEP and DEC as they now operate under the JDA.¹⁷

15. The Market Monitor further asserts that the DEP-PJM JOA should not be approved as submitted in the October 3rd Filing, and PJM and DEP should instead be directed to: (1) apply the terms of section 2.6 of Schedule 1 of the PJM Operating Agreement to interface pricing whenever joint optimized dispatch between DEP and DEC occurs under the JDA; and (2) attempt to negotiate in good faith, consistent with Article 3.3 of DEP-PJM JOA, a new agreement that reflects changed circumstances.¹⁸

16. The Filing Parties state in their answer that the Market Monitor's protest is beyond the scope of the narrow revisions contained in the October 3rd Filing and that the main purpose of the Filing Parties' October 3rd Filing is intended to include new Appendix B in the JOA to comply with measurement requirements in the NERC Reliability

¹⁶ Market Monitor Protest at 5–6.

¹⁷ Market Monitor Protest at 8.

¹⁸ Market Monitor Protest at 8.

Standards¹⁹ and to also make ministerial changes to the JOA, such as revising references to DEP's legal name.²⁰ The Filing Parties further explain that the way in which DEP and PJM operate or price transactions under the JOA will not be changed by the proposed revisions contained in their October 3rd Filing.²¹

17. The Filing Parties also argue in their answer that the Market Monitor's protest is an impermissible collateral attack on the Commission's 2010 order approving the JOA.²² The Filing Parties note that the Commission found in its 2010 order that the pricing provisions of the JOA were not unduly discriminatory. The Filing Parties further contend that the Market Monitor's argument that the JDA nullifies JOA provisions that are unrelated to the October 3rd Filing is also an impermissible collateral attack, in particular on the Commission's order approving the merger and the JDA.²³

18. Finally, in their answer, the Filing Parties argue that the Market Monitor's protest is an attempt to circumvent the proper complaint processes provided by section 206 of the Federal Power Act,²⁴ and that the Filing Parties submitted the instant filing to make straightforward changes to the JOA in a Federal Power Act section 205 proceeding.²⁵

¹⁹ PJM-DEP Filing at 2.

²⁰ PJM Interconnection, L.L.C. and Duke Energy Progress, Inc. November 12, 2014 Answer at 2–3 (PJM-DEP Answer).

²¹ PJM-DEP Answer at 3.

²² PJM-DEP Answer at 6 (citing *PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,181 (2010), *order on compliance and clarification*, 134 FERC ¶ 61,048 (2011)).

²³ PJM-DEP Answer at 9 (citing *Duke Energy Corp.*, 139 FERC ¶ 61,193, at P 5 (2012)).

²⁴ 16 U.S.C. § 824e (2012).

²⁵ PJM-DEP Answer at 10–11.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁶ the Market Monitor's timely, unopposed motion to intervene serves to make it a party to the proceeding in Docket No. ER15-29-000.

20. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,²⁷ the Commission will grant NCEMC's and the North Carolina Agencies' late-filed motions to intervene in Docket Nos. ER15-29-000 and ER15-32-000 given their interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority.²⁸ We will accept the Filing Parties' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

22. As discussed below, the Commission accepts the proposed revisions to the DEP-PJM JOA filed in Docket No. ER15-29-000, and also accepts DEP's Concurrence Tariff Record filed in Docket No. ER15-32-000, both effective December 3, 2014, as requested. We deny the Market Monitor's motion for a hearing as the ministerial revisions proposed to the DEP-PJM JOA are just and reasonable. The only issue before the Commission in this filing is whether to accept the revisions to the JOA. The Market Monitor is protesting unchanged portions of the tariff, which goes beyond the scope of this filing. The only revisions to the JOA that the Filing Parties propose are to reflect consistency in entity names, to make other minor ministerial changes, and to confirm uniformity in transmission line identifiers. The Market Monitor is not precluded from filing a complaint, pursuant to section 206 of the Federal Power Act,²⁹ which demonstrates how the JDA renders the DEP-PJM JOA unjust and unreasonable.

²⁶ 18 C.F.R. § 385.214 (2014).

²⁷ 18 C.F.R. § 385.214(d) (2014).

²⁸ 18 C.F.R. § 385.213(a)(2) (2014).

²⁹ 16 U.S.C. § 824e (2012).

23. With respect to PJM and DEP's proposed Appendix B, NERC Reliability Standard TOP-002-2.1b Requirement R18 states that "Neighboring Balancing Authorities, Transmission Operators, Generator Operators, Transmission Service Providers and Load Serving Entities shall use uniform line identifiers when referring to transmission facilities of an interconnected network."³⁰ Similarly, Measure M10 of that Reliability Standard states that:

Each Balancing Authority, Transmission Operator, Generator Operator, Transmission Service Provider and Load Serving Entity shall have and provide upon request evidence that could include, but is not limited to, a list of interconnected transmission facilities and their line identifiers at each end or other equivalent evidence that will be used to confirm that it used uniform line identifiers when referring to transmission facilities of an interconnected network.³¹

24. We accept PJM and DEP's proposed Appendix B. While we will not opine here whether the proposed Appendix B is sufficient to demonstrate compliance with NERC Reliability Standard TOP-002-2.1b Requirement R18 and Measure M10, we find nothing unjust or unreasonable in publishing a list of uniform line identifiers for the facilities that comprise the DEP-PJM interconnection.

The Commission orders:

(A) The proposed revisions to the DEP-PJM JOA filed in Docket No. ER15-29-000 are accepted, effective December 3, 2014, as requested.

³⁰ North American Electric Reliability Corporation, Standard TOP-002-2.1b — Normal Operations Planning at http://www.nerc.com/files/TOP-002-2_1b.pdf.

³¹ North American Electric Reliability Corporation, Standard TOP-002-2.1b — Normal Operations Planning at http://www.nerc.com/files/TOP-002-2_1b.pdf.

(B) The proposed Concurrence Tariff Record filed in Docket No. ER15-32-000 is accepted, effective December 3, 2014, as requested.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.