

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 Indiana, Inc.

Docket Nos. ER07-445-000
ER07-445-001
ER07-445-002
ER07-1037-000

ORDER ACCEPTING PROPOSED RATE SCHEDULE

(Issued July 30, 2007)

1. In this order, we accept for filing Duke Energy Indiana, Inc.'s (Duke) new Power Coordination Agreement (New Agreement) between Duke and the Indiana Municipal Power Agency (Indiana Municipal). Waiver of the 60-day notice requirement¹ is granted and the New Agreement is accepted for filing effective August 1, 2007. We also accept Duke's Notice of Termination of the prior Power Coordination Agreement between PSI Energy, Inc. (PSI Energy), Cinergy Services, Inc. (Cinergy) and Indiana Municipal, effective June 1, 2007.²

I. Docket No. ER07-445-000

2. On January 19, 2007, in Docket No. ER07-445-000, Duke Energy Shared Services, Inc., as agent for Duke Energy Indiana, Inc. submitted a Notice of Termination for Duke's Rate Schedule FERC No. 234, a Power Coordination Agreement between PSI Energy, Cinergy and Indiana Municipal (Initial Agreement). Duke states that pursuant to section 13.01 of the Initial Agreement, the initial term of the Initial Agreement ended on January 1, 2007, but the Initial Agreement remains effective until PSI Energy or Indiana Municipal provides a written notice of termination to the other at least five years before the date of termination set forth in such notice. Duke states that, on May 28, 2002, it provided written notice to Indiana Municipal that the Initial Agreement would terminate on May 31, 2007.

¹ 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.3 (2007).

² Duke states that Duke Energy Shared Services, Inc. and Duke Energy Indiana, Inc. are the successor companies to Cinergy Services, Inc. and PSI Energy, Inc., respectively.

3. Pursuant to an August 27, 1982 Ownership Agreement referenced in the Initial Agreement, Indiana Municipal owns a 24.95 percent undivided interest as a tenant in common in Duke's 650 MW coal-fired Gibson generating Unit No. 5 (Gibson Unit No. 5) located at Duke's Gibson Generating Station in Gibson County, Indiana.

A. Notice of Filings and Responsive Pleadings

4. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 4,256 (2007), with interventions and protests due on or before February 9, 2007.

5. On February 7, 2007, as amended on February 8, 2007, Indiana Municipal filed a motion to intervene and limited protest. Indiana Municipal states that termination of the Initial Agreement would be unjust and unreasonable absent the filing and acceptance of a replacement coordination agreement between Indiana Municipal and Duke that would allow Indiana Municipal to continue to effectively use the energy from its ownership stake in Gibson Unit No. 5. Indiana Municipal also states that Indiana Municipal and Duke are in the process of negotiating and drafting a replacement agreement, which, if not executed by the parties and placed into effect by the Commission prior to June 1, 2007, would create a serious gap in the contractual provisions governing Indiana Municipal's use of a crucial generating resource.

6. On April 12, 2007, Commission Staff issued a data request asking Duke to explain how Indiana Municipal's 24.95 percent ownership interest in Duke's 650 MW coal-fired generating Gibson Unit No. 5 would be affected by the termination of the Initial Agreement. Duke stated, in its May 14, 2007 response, that Duke and Indiana Municipal had executed a New Agreement on April 26, 2007, which will replace the Initial Agreement, and that the New Agreement would be filed with the Commission in the near future. Notice of Duke's May 14 response was published in the *Federal Register*, 72 Fed. Reg. 29,149 (2007), with interventions and protests due on or before June 4, 2007. No interventions or protests were filed.

7. On May 31, 2007, Duke filed a supplemental response to Staff's data request, stating that on May 24, 2007, Duke and Indiana Municipal entered into an Interim Power Coordination Agreement (Interim Agreement) under Duke's market-based rate tariff. Duke states that the Interim Agreement is intended to establish rates, terms and conditions for service that are identical, from a commercial and operational perspective, to the rates, terms and conditions of the New Agreement. Duke states that the Interim Agreement will take effect on June 1, 2007 and remain in effect until the New Agreement is filed with the Commission and placed into effect.

8. Notice of Duke's May 31 supplemental response was published in the *Federal Register*, 72 Fed. Reg. 33,478 (2007), with interventions and protests due on or before

June 21, 2007. On June 4, 2007 comments were filed by Indiana Municipal. Indiana Municipal states that it agreed to the measure of executing the Interim Agreement to provide a backstop until a new agreement with cost support is filed with the Commission and becomes effective. Indiana Municipal also reiterates its position that termination of the Initial Agreement should not occur until Duke has filed, and the Commission has accepted, a new agreement.

B. Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. We find these issues have been rendered moot by the agreed to Interim Coordination Agreement to cover the period June 1, 2007 to July 31, 2007, and our acceptance of the New Agreement filed in Docket No. ER07-1037-000, as discussed below, and therefore need not be addressed here. We will accept Duke's Notice of Termination.

II. Docket No. ER07-1037-000

11. On June 14, 2007, in Docket No. ER07-1037-000, Duke submitted for filing a new mutually-executed agreement between Indiana Municipal and Duke dated April 26, 2007 (New Agreement). Duke requests that the Commission waive the 60-day prior notice requirement and make the New Agreement effective on August 1, 2007.³ The rates in the New Agreement are unchanged from the rates for the parallel services in the Initial Agreement. Under the New Agreement, Duke shall sell to Indiana Municipal, and Indiana Municipal shall purchase from Duke, reserve energy during periods that Gibson Unit No. 5 is not available due to forced outages, scheduled maintenance and other operational issues which may arise from time to time.

12. Although the New Agreement continues Gibson Unit No. 5 reserve capacity and energy from the Initial Agreement, the other services are proposed to be discontinued effective May 31, 2007. For example, section 2.05 of the New Agreement provides that "As of June 1, 2007, Duke Energy Indiana shall transfer to [Indiana Municipal], and [Indiana Municipal] shall accept, the obligation to serve [Indiana Municipal's] members in Duke Energy Indiana's Operating Area and, without limitation because of

³ 16 U.S.C. § 824d (2000); 18 C.F.R. § 35.3 (2007).

enumeration, Service Schedule D of the Original Power Coordination Agreement shall no longer be applicable.”⁴

A. Notice of Filing and Responsive Pleadings

13. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 35,456 (2007), with interventions and protests due on or before July 5, 2007.

14. On June 25, 2007, Indiana Municipal filed a motion to intervene and comments, stating that the rate to be charged under the New Agreement is currently \$6.94/kW/month, which is the same rate the Commission approved in the Initial Agreement. Indiana Municipal further states that its support for the timely acceptance and implementation of the New Agreement should not be interpreted as a complete endorsement of the cost support information submitted by Duke, which Indiana Municipal states purports to justify a rate as high as \$8.79/kW/month. Indiana Municipal requests that the Commission accept the New Agreement and place it into effect as of August 1, 2007, but require that Duke, in any future filing in which Duke may seek to increase the rate, bear the burden of showing that the new rate is just and reasonable and fully cost-supported, and not rely upon the Commission’s acceptance of the New Agreement as having established the justness and reasonableness of Exhibit 1 or any of its components.

B. Discussion

15. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. We will accept the New Agreement for filing. Since the New Agreement does not represent a change in rates, and since Duke has presented cost data supporting the rate, we find the New Agreement to be just and reasonable. To the extent Duke seeks to change the rates, in the future, it must make a filing pursuant to section 205 of the FPA, and must meet the requirements of section 205 of the FPA with respect to cost support. Because the New Agreement does not represent a change in rates and because both parties have agreed to the requested effective date, waiver of the 60-day notice requirement is granted⁵ and the New Agreement, designated as Rate Schedule FERC No. 269, is accepted for filing effective August 1, 2007.

⁴ Duke Energy Indiana, Inc., Rate Schedule FERC No. 269, Original Sheet Nos. 11-12.

⁵ *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,339 (1992).

The Commission orders:

(A) Duke's Notice of Termination is hereby accepted effective June 1, 2007, as discussed in the body of the order.

(B) The New Agreement is hereby accepted for filing, to become effective August 1, 2007, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.