

126 FERC ¶ 61,166
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.

Docket No. ER09-369-000

ORDER DENYING EXPEDITED REQUEST FOR TEMPORARY RELIEF

(Issued February 24, 2009)

1. Progress Energy Carolinas, Inc., (Progress) and Duke Energy Carolinas, LLC (Duke) move for expedited relief, requesting that the Commission require PJM Interconnection, L.L.C. (PJM) to restore bilateral agreements between PJM and each requesting party regarding export and import interface pricing, until such time as the Commission rules on PJM's tariff sheets proposing a new interface pricing system. The Commission, finding the complained-of actions lawful, rejects the request for expedited relief.

Background

2. On December 2, 2008, PJM submitted tariff sheets revising the PJM Open Access Transmission Tariff (OATT) and Amended and Restated Operating Agreement. Specifically, PJM proposes to add provisions describing a new method by which PJM would establish pricing points at interfaces between PJM and adjacent control areas in which PJM will calculate the locational marginal prices (LMP) for each pricing point.

3. Commission Staff issued a delegated letter order on January 30, 2009 finding PJM's submission deficient (January 30 Letter). The January 30 Letter directed PJM to submit a form of notice of amendment to the filings, pursuant to section 35.8 of the Commission's regulations (18 C.F.R. § 35.8(b) (2008)), in order to be granted a filing date.¹

¹ The January 30 Letter remains in force, pending a response from PJM due March 2, 2009, and is not altered by this order's resolution of the expedited relief request.

4. Duke and Progress filed on February 2, 2009, for expedited relief. Since 2006, bilateral agreements had established the protocol for determining import and export pricing between Duke and PJM and between Progress and PJM. Duke and Progress assert that, some time prior to the institution of this docket, PJM provided each of them with 90 days' notice that it would terminate their existing bilateral agreements effective January 31, 2009. They concede that "PJM has the contractual right to terminate the bilateral agreements" effective January 31.²

5. Rather, Duke and Progress argue that the pricing protocol that PJM has been using in place of the terminated agreements effective February 1, 2009, is unauthorized. PJM is applying a protocol known as SOUTHIMP/SOUTHEXP, which combines data from a vast swath of PJM's southern and western borders to produce default prices for all external entities to the south of PJM that wish to import to or export from the PJM region.

6. Duke and Progress state that "since October 2006, PJM has been applying SOUTHIMP/SOUTHEXP to border transactions, although that arrangement had not been filed for Commission review and approval."³ Shortly thereafter, Duke and Progress entered into the now-terminated bilateral agreements that generally avoid SOUTHIMP/SOUTHEXP and instead set a single price based on the average LMP of each company's respective generation fleets.⁴

7. Duke and Progress note that SOUTHIMP/SOUTHEXP was among the pricing protocols included in PJM's deficient tariff filing in this docket, and was not explicitly approved in any previous Commission order. Therefore, Duke and Progress conclude, SOUTHIMP/SOUTHEXP is unauthorized, and the appropriate solution is to restore the terminated contracts until such time as the Commission can rule on the tariff sheets in this docket.

Notice of Filings and Responsive Pleadings

8. The Commission gave notice of PJM's tariff filing on December 8, 2008. Interventions and comments were due on December 23, 2008. The Commission gave notice of Duke and Progress's filing on February 3, 2009. In order to consider the request in an expedited fashion, interventions and replies to the relief request were due February 6, 2009.

² Duke and Progress February 2, 2009 Request at 2.

³ *Id.* at 1-2.

⁴ The Duke Agreement and Progress Agreement are appended to the Duke and Progress Request.

9. Prior to or on December 23, 2008, the Allegheny Energy Companies, Ameren Services Company, American Municipal Power - Ohio, Inc., Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Duke, Duquesne Light Company, Long Island Power Authority, the North Carolina Utilities Commission, Old Dominion Electric Cooperative, Pepco Holdings, Inc., and Progress filed timely motions to intervene.

10. After the December 23, 2008 comment date but before Duke and Progress's request was noticed, the Commission received out-of-time motions to intervene from Cargill Power Markets LLC (Cargill), DTE Energy Trading Inc., Monitoring Analytics LLC (PJM Market Monitor), North Carolina Electric Membership Corporation, and the North Carolina Municipal Power Agency #1 (NCMPA #1). Subsequent to the request for temporary relief, American Electric Power Service Corporation filed to intervene.

Answer of PJM

11. PJM confirms that it terminated its bilateral agreements with Duke and Progress and that it is applying SOUTHIMP/SOUTHEXP, but argues that SOUTHIMP/SOUTHEXP is a non-discriminatory application of its pre-existing tariff authority that it has been applying since 2006. In particular, PJM cites section 3.3.1(d) in Schedule 1 of its existing Operating Agreement, which states:

A Market Seller shall be paid for Real-time sales of Spot Market Energy to the extent of its hourly net deliveries to the PJM Region of energy in excess of amounts scheduled in the Day-ahead Energy Market from the Market Seller's resources. For pool External Resources, the Office of the Interconnection shall model, based on an appropriate flow analysis, the hourly amounts delivered from each such resource to the corresponding interface point between adjacent Control Areas and the PJM Region.⁵

12. PJM explains that it has been applying SOUTHIMP/SOUTHEXP by default to all market participants transacting anywhere on PJM's southern borders. PJM notes that, even under its bilateral agreements, Duke and Progress were subject to

⁵ PJM Operating Agreement, Schedule 1, Third Revised Rate Schedule FERC No. 24, Third Revised Sheet No. 118 (Issued August 3, 2006).

SOUTHIMP/SOUTHEXP during the hours when the data they exchanged with PJM did not conform with PJM's own measurements of cross-border power flows.⁶

13. PJM argues that Commission precedent confirms that ISO/RTOs with such Commission-accepted tariff language may update their external nodes without the Commission reviewing the particular result.⁷ PJM states that, following the procedures in section 3.3.1(d), its power flow analysis determined that its pre-2006 pricing points required updating, and that SOUTHIMP/SOUTHEXP would more properly reflect power flows.

Comments and Protest of Cargill

14. Cargill on February 6 submitted comments and a protest in response to the expedited request. Cargill is a power marketer that conducts transactions across PJM's southern border, using the SOUTHIMP/SOUTHEXP pricing system. Cargill protests that protecting Duke's and Progress's preexisting bilateral agreements would be unfair, because PJM has refused Cargill's request to receive the same pricing structure as Duke and Progress. Regardless of how the Commission rules on the proposed tariff sheets, Cargill urges that the Commission should not restore the contested agreements, because these agreements give Duke and Progress unwarranted preferential treatment over entities that make analogous transactions but follow the SOUTHIMP/SOUTHEXP pricing protocol.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Commission will grant the out-of-time interventions made prior to the date of the issuance of this order, but late interveners must accept the record of the proceeding as the record was developed prior to the late intervention.

⁶ PJM February 6, 2008 Answer at 1 & n.2 (citing Progress Agreement at P 4, 6, 7; Duke Agreement at P 4, 5, 6).

⁷ PJM Answer at 2 (citing *New England Power Pool*, 104 FERC ¶ 61,052, at P 11-12 (2003)).

⁸ 18 C.F.R. § 385.214 (2008).

Substantive Matters

16. The Commission denies the request by Duke and Progress to reinstate their previous bilateral agreements with PJM. As Duke and Progress concede, PJM properly exercised its right under those agreements to terminate them. Upon termination, PJM is required to apply the provisions of its existing tariff, which includes section 3.3.1(d) quoted above.⁹ That provision specifies that “the Office of the Interconnection shall model, based on an appropriate flow analysis, the hourly amounts delivered from each such resource to the corresponding interface point between adjacent Control Areas and the PJM Region.” This tariff provision provides PJM with the authority to apply a pricing approach based on a flow analysis, and PJM explains that it has implemented this provision since its acceptance through SOUTHIMP/SOUTHEXP.¹⁰ Indeed, Cargill points out that SOUTHIMP/SOUTHEXP is the pricing approach that PJM has, and is using, with respect to Cargill’s flows from the same area as Duke and Progress. PJM also states that SOUTHIMP/SOUTHEXP was used in part in the terminated contracts. We therefore find that PJM is not violating its tariff in applying SOUTHIMP/SOUTHEXP to Duke and Progress. Further, since Duke and Progress are now subject to the same pricing system as any other external entity, PJM’s actions have no undue discriminatory effect. For the reasons stated above, the expedited request for temporary relief is denied.

17. We encourage all parties in this matter to settle their disputes. An appropriate settlement would be of benefit to all parties. Establishing an appropriate price for imported energy increases imports and lowers LMPs within PJM, while ensuring suppliers have the appropriate incentive to export power to PJM. The Commission’s Dispute Resolution Service is available to assist the parties in their efforts to achieve a settlement.

⁹ See PJM August 3, 2006 Transmittal, Docket No. EL06-55-002 (proposing current version of section 3.3.1(d)); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,169 (2006) (accepting current version of section 3.3.1(d)).

¹⁰ Any challenge to section 3.3.1(d) should have been raised at the time the provision was proposed and accepted. Once the provision is accepted, it can be changed only pursuant to section 206 of the Federal Power Act, 16 U.S.C §824(e) (2006).

The Commission orders:

The expedited request for temporary relief is hereby denied.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.