

132 FERC ¶ 61,135  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Allegheny Energy, Inc.

Docket No. ER10-1475-000

ORDER DISMISSING REQUEST FOR WAIVER OF CERTAIN AFFILIATE  
RESTRICTION REQUIREMENTS

(Issued August 16, 2010)

1. On June 17, 2010, Allegheny Energy, Inc. (Allegheny), on behalf of itself and its affiliates<sup>1</sup> (collectively, Allegheny Companies) filed a request for waiver of the prohibition on sharing fuel procurement employees by franchised public utilities with captive customers and their market-regulated power sales affiliates. In this order, the Commission dismisses Allegheny's request for waiver in light of the fact that the Commission recently granted an extension of time to comply with this prohibition<sup>2</sup> until such time as the Commission issues a final rule in the Market Based Rate Affiliate Restrictions Notice of Proposed Rulemaking (NOPR) proceeding.<sup>3</sup>

**I. Background**

2. In an order issued on April 15, 2010, the Commission addressed the Compliance Working Group's request for clarification of the market-based rate affiliate restrictions, among other things, providing guidance and clarifying that franchised public utilities with

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<sup>1</sup> The affiliates of Allegheny who are requesting waiver are Monongahela Power Company (Mon Power), Allegheny Generating Company (Allegheny Generating), and Allegheny Energy Supply Company, LLC (AE Supply).

<sup>2</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services By Public Utilities*, 132 FERC ¶ 61,014 (2010) (July 2 Order).

<sup>3</sup> *Market-Based Rate Affiliate Restrictions*, 75 Fed. Reg. 20,796 (Apr. 21, 2010), Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,657 (2010) (Market-Based Rate Affiliate Restrictions NOPR).

captive customers are prohibited from sharing employees that engage in fuel procurement or resource planning with their market-regulated power sales affiliates.<sup>4</sup> In the Market Based Rate Affiliate Restrictions NOPR, which was issued concurrently with the April 15 Clarification Order, the Commission proposed to revise its regulations on those affiliate restrictions in order to reflect that franchised public utilities with captive customers are prohibited from sharing employees that determine the timing of scheduled outages, or that engage in economic dispatch, fuel procurement or resource planning with their market-regulated power sales affiliates. On July 2, 2010, the Commission granted an extension of time to comply with the guidance provided in the April 15 Clarification Order regarding employees that engage in fuel procurement or resource planning until such time as the Commission issues a final rule in the Market-Based Rate Affiliate Restrictions NOPR proceeding.<sup>5</sup> The Commission explained that affected entities must continue to comply with the currently effective market-based rate affiliate restrictions adopted in Order No. 697 and as clarified in Order No. 697-A.<sup>6</sup>

3. In its waiver request, Allegheny argues that the Commission should grant its request for waiver of the prohibition on sharing fuel procurement employees by franchised public utilities with captive customers and their market-regulated power sales affiliates because granting waiver of this restriction will create no risk of cross-subsidization, improper transfer of benefits, or harm to regulated ratepayers. Allegheny further argues that sharing fuel procurement employees will in fact benefit Allegheny's ratepayers by ensuring continued efficient operations and the advantages of greater economies of scale.<sup>7</sup> Allegheny provides information regarding its fuel procurement process, and explains that in order to maximize efficiency in its fuel procurement operations, Allegheny continues to maintain a single fuel procurement group, which is responsible for the purchase and delivery of fuel required by Allegheny's generating fleet, including both regulated and unregulated facilities. Allegheny states that protections for captive customers exist in the form of independent approvals for purchases by both the regulated and unregulated utilities, and that the Public Service Commission of West Virginia is responsible for ensuring that there is no cross

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<sup>4</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services By Public Utilities*, 131 FERC ¶ 61,021 (2010) (April 15 Clarification Order).

<sup>5</sup> July 2 Order, 132 FERC ¶ 61,014.

<sup>6</sup> *Id.* P 5.

<sup>7</sup> Allegheny June 17, 2010 Request for Waiver at 2 (citing *Allegheny Energy, Inc.*, 119 FERC ¶ 61,025 at P 20, 25 (2007)).

subsidization between Allegheny's subsidiaries, Mon Power, and its unregulated affiliate, AE Supply.

## **II. Notice of Filing and Responsive Pleadings**

4. Notice of Allegheny's filing was published in the *Federal Register*, 75 Fed. Reg. 36,648 (2010), with interventions and protests due on or before July 8, 2010. A timely motion to intervene was filed by American Municipal Power, Inc. A notice of intervention and comments in support of the requested waiver were filed by the Public Service Commission of West Virginia.

## **III. Discussion**

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

6. We will dismiss Allegheny's request for waiver of the prohibition on sharing fuel procurement employees in light of the fact that in the July 2 Order, the Commission granted an extension of time to comply with the guidance provided in the April 15 Clarification Order regarding employees that engage in fuel procurement or resource planning until such time as the Commission issues a final rule in the Market-Based Rate Affiliate Restrictions NOPR proceeding.<sup>8</sup> We therefore find that Allegheny's request for waiver is unnecessary at this time.

7. Allegheny must continue to comply with the currently effective market-based rate affiliate restrictions adopted in Order No. 697 and as clarified in Order No. 697-A,<sup>9</sup> including the prohibition against the sharing of market information between a franchised public utility with captive customers and its market-regulated power sales affiliate.<sup>10</sup> In addition, the extension of time to comply granted in the July 2 Order does not change the

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<sup>8</sup> July 2 Order, 132 FERC ¶ 61,014 at P 5.

<sup>9</sup> *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, at P 253 (2008).

<sup>10</sup> See 18 C.F.R. § 35.39(d)(1) (2010) ("A franchised public utility with captive customers may not share market information with a market-regulated power sales affiliate if the sharing could be used to the detriment of captive customers, unless simultaneously disclosed to the public.").

Commission's findings in prior orders clarifying the market-based rate affiliate restrictions.<sup>11</sup>

The Commission orders:

Allegheny's request for waiver is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>11</sup> July 2 Order, 132 FERC ¶ 61,014 at P 5; Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 at P 253.