

134 FERC ¶ 61,235
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.

Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. Docket Nos. ER10-1562-001
ER10-2254-001

ORDER DENYING REHEARING

(Issued March 25, 2011)

1. American Municipal Power, Inc. (American Municipal) filed a request for rehearing of the Commission's order providing initial authorization for Duke Energy Ohio, Inc. (Duke Ohio) and Duke Energy Kentucky, Inc. (Duke Kentucky) (collectively, Duke) to terminate Duke's existing obligations to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), subject to conditions.¹ In addition, the Commission's order accepted Duke's proposed Fixed Resource Requirement Integration Plan (FRR Integration Plan) and its requested waivers, subject to conditions. In this order, we deny rehearing.

Background

2. In June 2010, Duke submitted a proposal in Docket No. ER10-1562-000 to withdraw operational control of its transmission facilities from Midwest ISO and to integrate its transmission facilities into PJM Interconnection, L.L.C. (PJM) effective January 1, 2012, the date that Duke Ohio's current Ohio rate plan expires (RTO Realignment). Duke stated that its filing was the first step of its proposed move from Midwest ISO to PJM. It explained that the move would trigger the need for generation and load connected to the Duke Ohio and Duke Kentucky transmission systems to realign their operations from Midwest ISO to PJM. Duke further explained that complete integration into PJM's Reliability Pricing Model process cannot occur on January 1, 2012 because the Base Residual Auctions for the 2011-2012, 2012-2013, and 2013-2014

¹ *Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058 (2010) (October Order).

Delivery Years already have occurred. Duke therefore sought to integrate the Duke Energy Zone load into PJM's Reliability Pricing Model auctions process for the 2014-2015 Delivery Year.

3. Duke asked the Commission to issue an order that: (1) found that the proposed RTO Realignment meets the standard for withdrawal from an RTO (subject to future filings); and (2) approved load and resources' participation in the Duke footprint in the spring 2011 PJM Reliability Pricing Model auction, which will result in commitments for the 2014-2015 Delivery Year. Duke also submitted an Agreement to Implement Expansion of PJM Region for Duke Energy Ohio and Duke Energy Kentucky, executed on June 11, 2010, which sets forth the technical implementation plan for integration into PJM.

4. In August 2010, Duke filed in Docket No. ER10-2254-000 (August 16 Filing) its proposed FRR Integration Plan as the second step of its proposed move from Midwest ISO to PJM. Specifically, Duke detailed its plan to meet PJM resource adequacy requirements from January 1, 2012 (the date of transmission system integration) until June 1, 2014 (the date of Duke's full participation in PJM's capacity market). Duke explained that Duke Ohio is obligated to obtain capacity resources in an amount that would satisfy the criteria for an FRR Alternative Plan with respect to the entire Duke Energy Zone,² including Duke Ohio's retail load, alternative retail electric suppliers (alternative retail suppliers) serving switched retail load, and other wholesale loads. To satisfy this obligation, Duke proposed to adhere to the existing Reliability Assurance Agreement³ provisions governing FRR Alternative plans, except in certain limited respects related to the out-of-time nature of the RTO integration context. Duke Ohio also sought approval for the limited provisions of the Duke FRR Integration Plan that depart from the FRR Alternative contemplated by Schedule 8.1 of the Reliability Assurance Agreement.

5. Duke explained that Duke Ohio will serve the FRR capacity needs of alternative retail suppliers at the Reliability Pricing Model price, unless an alternative retail supplier supplies its own capacity under an election and commitment made under Section D.9 of Schedule 8.1. Alternative retail suppliers may elect to self-supply on a Delivery Year basis, which Duke called the "opt-out" option.

² In the August 16 Filing, Duke explained that only Duke Ohio has FRR obligations, because only it has an integrated transmission system. Duke August 16 Filing at 11 n.15.

³ PJM Reliability Assurance Agreement, Rate Schedule FERC No. 44 (Reliability Assurance Agreement).

6. Duke stated that other wholesale loads can choose to take supply from Duke Ohio at the Reliability Pricing Model price or can choose between two self-supply options: (1) enter into a traditional FRR Integration plan, or (2) with the Commission's permission, which Duke sought on such load's behalf, enter into an out-of-time FRR Integration Plan designed to last through the twenty-nine months before load can participate in Reliability Price Model auctions, with all of the waivers⁴ and adjustments that Duke sought in its August 16 Filing.

7. In response, American Municipal requested that Duke clarify whether load-serving entities would be permitted to submit an FRR Plan for a portion of their load, and whether they would be permitted to alter their participation in the Duke FRR Plan from one Delivery Year to the next.⁵ In its September Answer, Duke explained that the Reliability Assurance Agreement allows an alternative retail supplier to opt out for all of its load, but does not specify whether an alternative retail supplier may opt out for part of its load.⁶ Therefore, Duke proposed to allow alternative retail suppliers to opt out for partial loads to promote flexibility. As for other wholesale loads, Duke stated that they may self-supply by entering into their own FRR plan under the terms set forth in the Reliability Assurance Agreement. Duke further stated that it did not request any waivers that would permit load serving entities serving wholesale load to submit an FRR plan for a partial portion of their capacity or for a plan to run less than 29 months. Duke asserted that the waiver requests that it did make were intended to be helpful rather than to constrain the ability of independent FRR entities⁷ to make alternative waiver requests on their own behalf.

8. In its October Order, the Commission authorized Duke to terminate its existing obligations to Midwest ISO, subject to several conditions.⁸ In addition, the Commission found that the use of the FRR Integration Plan provides an appropriate basis for the Duke Energy Zone to be integrated into PJM's capacity markets, and accepted the plan and

⁴ Duke requested waiver of Sections C.1, C.2, D.1, E.2 and E.4.

⁵ American Municipal September 7 Comments at 6-7.

⁶ Duke September 22 Answer at 14 15.

⁷ Duke defined independent FRR entities as eligible wholesale loads that elect to enter into their own FRR plans under one of the two self-supply options. Duke August 16 Filing at 15.

⁸ October Order, 133 FERC ¶ 61,058 at P 15-16.

granted the waivers subject to a compliance filing.⁹ The Commission also accepted Duke's proposal to allow alternative retail suppliers to opt out for partial loads in a particular delivery year to promote flexibility for these resources.¹⁰ The Commission also stated that other wholesale loads may self-supply by entering into their own FRR Integration Plans as outlined in Duke's proposal.

Request for Rehearing

9. American Municipal requests rehearing on two issues. First, it argues that the Commission erred by accepting Duke's proposal to allow alternative retail suppliers to opt out of the Duke FRR Integration Plan, while not providing the same flexibility to other wholesale loads. It argues that there is no justification for discriminating between alternative retail suppliers and other wholesale loads, that such undue discrimination violates the Federal Power Act, and that the Commission should allow other wholesale loads to partially participate in Duke's FRR Integration Plan on the same terms as alternative retail suppliers.

10. Second, American Municipal argues that the Commission erred by failing to extend waivers to other wholesale loads of the relevant provisions in the Reliability Assurance Agreement that would allow them to partially participate in the Duke FRR Integration Plan, similar to alternative retail suppliers. It contends that the Commission has the authority to extend its approval of a waiver to entities not otherwise included in the initial request for waiver. American Municipal states that if the Commission does not grant these waivers, then other wholesale loads will be forced to submit individual requests for waiver of the relevant provisions of the Reliability Assurance Agreement. It argues that the Commission's failure to provide a blanket waiver, one that would cover other wholesale loads that seek to partially self-supply, on a basis equivalent to alternative retail suppliers, imposes an undue burden on other wholesale loads. It states that filing individual waiver requests will force them to incur expenses and devote resources to an undertaking that could be avoided now with the grant of an appropriately broad waiver.

⁹ The Commission accepted Duke's compliance filing. *Duke Energy Ohio, Inc.*, Docket Nos. ER10-1562-002 & ER10-2254-002 (Dec. 27, 2010) (unpublished letter order).

¹⁰ *Id.* P 118 & n.90 (citing *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249, at P 85 (2009), *order on reh'g*, 130 FERC ¶ 61,171 (2010)).

Discussion

11. American Municipal first argues that Duke is adversely discriminating against “other wholesale loads” by not allowing such loads the option to self-supply on the same or equivalent terms as alternative retail suppliers, including the option to self-supply on a delivery year basis and for partial load. We do not find this argument persuasive.

12. Under the Reliability Assurance Agreement, all loads have the option to self-supply. The Reliability Assurance Agreement states that certain eligible entities, such as American Municipal, may elect to self-supply by entering into their own FRR Alternative plan.¹¹ Schedule 8.1D sets forth the applicable rules that apply to FRR Alternative plans, including the minimum time period for such a plan¹² and the requirement that the plan satisfy all of an entity’s load, including all expected load growth.¹³

13. Alternative retail suppliers are not eligible to enter into FRR Alternative plans;¹⁴ instead, these entities have an option to self-supply under Section D.9 of Schedule 8.1D. Under Section D.9, alternative retail suppliers may elect to self-supply on a Delivery Year basis. The tariff is silent as to whether alternative retail suppliers may self-supply for part of their load, but the Commission has accepted Duke’s proposal to allow alternative retail suppliers this option to promote flexibility. As noted above, Schedule 8.1D is not silent as to whether an entity that elects to enter into a FRR Alternative plan may self-supply for part of its load.¹⁵ Thus, to the extent that alternative retail suppliers and other wholesale loads have different means for self-supplying, those differences reflect the Commission-accepted Reliability Assurance Agreement and not any disparate treatment sought by Duke.

¹¹ Section B of Schedule 8.1D sets forth the requirements under which an entity is eligible to select the FRR Alternative. An entity is eligible “if it (a) is an [investor owned utility]; Electric Cooperative, or Public Power Entity; and (b) demonstrates the capability to satisfy the Unforced Capacity obligation for all load in an FRR Service Area, including all expected load growth in such area, for the term of such [entity’s] participation in the FRR Alternative.”

¹² Section C.1 of Schedule 8.1D provides that the election of an alternative FRR “shall be for a minimum of five consecutive Delivery Years.”

¹³ Section B.2. of Schedule 8.1D permits an entity to self-supply for only part of its load if its satisfies certain requirements.

¹⁴ See *supra* note 9.

¹⁵ See *supra* note 10.

14. As Duke noted in its September Answer,¹⁶ independent FRR entities have the option of requesting additional waivers of PJM's tariff on their own behalf, and we agree that nothing in Duke's proposal constrains their ability to do so. Thus, American Municipal fails to demonstrate that Duke's proposal is unjust, unreasonable or unduly discriminatory, and we deny American Municipal's rehearing request.

The Commission orders:

American Municipal's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ Duke September 22 Answer at 15 (“We note that the waiver requests we made on behalf of [I]ndependent FRR [E]ntities were intended to be helpful, not to constrain the ability of [I]ndependent FRR [E]ntities to make alternative waiver requests on their own behalf.”).