

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Duke Energy Progress, Inc. and)	
PJM Interconnection, L.L.C.)	Docket No. ER15-29-000
)	
)	

**PROTEST AND MOTION FOR HEARING OF
THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rule 211 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”),² submits this protest to the filing submitted in the above captioned proceeding by Duke Energy Progress, Inc. (“Duke Progress”) (f.k.a. Progress Energy Carolinas) and PJM Interconnection, L.L.C. (“PJM”) on October 3, 2014 (“October 3rd Filing”).³ In the October 3rd Filing, PJM and Duke Progress propose revisions to the Amended and Restated Joint Operating Agreement Among and Between PJM Interconnection, L.L.C., and Duke Energy Progress, Inc. (the “PJM-Duke Progress JOA”). Specifically, PJM and Duke propose to revise the PJM- Duke Progress JOA to include a new Appendix B, which includes a table describing facilities that interconnect PJM’s and Duke Progress’ transmission systems,

¹ 18 CFR § 385.211 (2014).

² Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff (“OATT”).

³ Progress Energy Carolinas, Inc., formally known as Carolina Power & Light Company, was and is a subsidiary of Progress Energy, Inc. Progress Energy, Inc. became a subsidiary of Duke Energy Corporation in a 2012 merger.

update references to Duke Progress' current legal name, and incorporate other ministerial revisions.

The October 3rd Filing has not met the burden under section 205 of the Federal Power Act to show that the PJM-Duke Progress JOA is just and reasonable. The changes are not sufficient to adapt the PJM-Duke Progress JOA to current circumstances, the revised agreement should not be approved, and PJM and Duke Progress should be directed to apply interface pricing consistent with the tariff and their obligations under the PJM-Duke Progress JOA.

I. BACKGROUND

Consistent with Section 2.6A of Schedule 1 to the PJM Operating Agreement ("Section 2.6A"), PJM has established default prices for transactions from or to PJM and all points to the south of PJM, including Duke-Progress, at the SouthIMP/SouthEXP interface pricing point.⁴ A single pricing point on PJM's southern border was established in order to avoid the potential for market participants to game price differences between interface pricing points by scheduling transactions that do not reflect true system flows.⁵

In order to ensure that special agreements for dynamic pricing, such as the PJM-Duke Progress JOA, are limited to generation internal to Duke Progress, for example, and do not permit imports to receive the special pricing, Section 2.6A allows specific pricing

⁴ See Monitoring Analytics, LLC, 2012 Quarterly State of the Market Report for PJM: January through March (May 17, 2012) at 135 ("Figure 8-10 illustrates the reduction in the previously persistent difference between scheduled and actual power flows at PJM's southern interfaces (PJM/TVA and PJM/EKPC to the west and PJM/CPLW, PJM/CPLW and PJM/DUK to the east) that grew to its largest volumes through the summer of 2006. A portion of the historic loop flows were the result of the fact that the interface pricing points (Southeast and Southwest) allowed the opportunity for market participants to falsely arbitrage pricing differentials, creating a mismatch between actual and scheduled flows. On October 1, 2006, PJM modified the southern interface pricing points by creating a single import pricing point (SouthIMP) and a single export interface pricing point (SouthEXP).").

⁵ *Id.*

only when there are no sales or purchases from other systems.⁶ In other words, special dynamic pricing applies between PJM and a neighboring balancing authority only when the neighboring balancing authority is not engaged in sales or purchases from neighboring areas.

PJM and Duke Progress entered the PJM-Duke Progress JOA on July 27, 2005,⁷ and filed a revised version, effective June 1, 2010.⁸ The revised PJM-Duke Progress JOA was intended to allow special dynamic pricing as permitted under Section 2.6A.⁹ PJM and Duke Progress now propose to revise the PJM-Duke Progress JOA, effective December 3, 2014. The PJM-Duke Progress JOA “provides for the exchange of energy through a dynamic schedule, the management and coordination of congestion between PJM and the Carolina Power [i.e. Duke Progress] eastern balancing authority area, pricing refinements consistent

⁶ See PJM Operating Agreement Schedule 1 § 2.6A(b)(1)(B) (“Such pricing point and pricing methodology shall be provided only to the extent the external balancing authority area or sub-area provides or causes to be provided to PJM real-time telemetered load, generation and similar data for such area or sub-area demonstrating that the transaction receiving such pricing sources, or sinks as appropriate, in such area or sub-area. Such data shall be of the type and in the form specified in the PJM Manuals. If such data is provided, any transaction, regardless of participant, sourcing or sinking in such area will be priced in accordance with section (A) above. During any hour in which any entity makes any purchases from other external areas outside of such area or sub-area (other than delivery of external designated Network Resources or such other exceptions specifically documented for such area or sub-area in the PJM Manuals) at the same time that energy sales into PJM are being made, or purchases energy from PJM for delivery into such area or sub-area while sales from such area to other external areas are simultaneously implemented (subject to any exceptions specifically documented for such area or sub-area in the PJM Manuals), pricing will revert to the applicable import or export pricing point that would otherwise be assigned to such external area or sub-area.”).

⁷ See PJM/Progress Joint Filing, ER10-713-000 (February 2, 2010) at 1–2.

⁸ See *PJM Interconnection, L.L.C. and Carolina Power & Light Company*, 131 FERC ¶ 61,181 (May 28, 2010).

⁹ *Id.*

with the [OATT], and make whole provisions that ensure that Carolina Power does not lose money by following the dynamic schedule.”¹⁰

The PJM-Duke Progress JOA provides for dynamic pricing at a special CPLEIMP/CPLEEXP interface pricing point at PJM interface with Duke Progress. The PJM-Duke Progress JOA is supposed to provide, but does not in fact provide, a basis for pricing actual exports and imports between PJM and Duke Progress.¹¹

The PJM-Duke Progress JOA only accounts for the dispatch with the balancing authorities that are parties to the agreement. The PJM-Duke Progress JOA does not account for interchange flows between Duke Progress and any neighboring non-PJM balancing authority that may occur simultaneously with interchange flows between Duke Progress and PJM. Duke Energy Carolinas (DEC), a subsidiary of Duke Energy Corporation before and after the merger, is one such non-PJM balancing authority.

Effective July 2, 2012, the parent companies of Duke Progress and DEC merged and Duke Progress and DEC became public utility affiliates. In connection with the merger, a

¹⁰ *Id.* at 2.

¹¹ *Id.* at PP 17–18 (“PJM Market Monitor avers that the “ultimate goal of congestion management agreements . . . is to get the prices right,” which it states means getting the prices as close as possible to the prices resulting from a single least cost dispatch across the two systems. [footnote omitted] PJM Market Monitor contends that the proposed Joint Operating Agreement does not fulfill the directives set forth in the Commission’s May 1, 2009 Order[footnote omitted] for a congestion management agreement because the May 1, 2009 Order clearly states that the congestion management agreement meant coordination of dispatch on both sides of the interface, not just the PJM side.[footnote omitted] PJM Market Monitor contends that the sole focus of the proposed Joint Operating Agreement is on the prices that PJM applies to Carolina Power, and the accuracy of those settlement prices is compromised by the preferential treatment accorded to Carolina Power. [footnote omitted] Moreover, PJM Market Monitor contends that the proposed Joint Operating Agreement should be modeled after the PJM and Midwest Independent Transmission System Operator, Inc. congestion management protocol (PJM/Midwest ISO CMP), which PJM Market Monitor states is the current best practice for interregional congestion management.[footnote omitted] Additionally, PJM Market Monitor believes that PJM should attempt to develop a comprehensive solution for all parties at its southern interfaces rather than negotiating bilateral arrangements. [footnote omitted]”).

Joint Dispatch Agreement (“JDA”) was filed for Duke Progress and DEC “in order to permit the more efficient operation of their combined generation resources.”¹² Duke Progress 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.

Because the JDA provides for joint optimization between the Duke Progress and DEC balancing authorities, there is, by definition a continuous flow of energy transactions between the balancing authorities. The ongoing operation of the Duke Progress balancing authority in a manner that jointly optimizes dispatch costs between Duke Progress and

¹² *Duke Energy Corporation, Progress Energy, Inc.*, 139 FERC ¶ 61,193 at P 5 (2012). The Commission further explains the JDA’s purpose (at PP 6–8):

Applicants state that the purpose of the JDA is to allow Duke Energy Carolinas and CP&L to achieve efficiencies by jointly dispatching their generation facilities to serve their loads. Applicants further state that the savings from joint dispatch – in fuel, purchased power, and related savings – will go directly to retail and wholesale customers in North Carolina and South Carolina. [footnote omitted] They state that Duke Energy Carolinas will act as “Joint Dispatcher” and will conduct merit dispatch of the companies’ generation resources to meet load requirements and contractual commitments, subject to reliability and contractual requirements.

Applicants state that the joint dispatch costs will be allocated hourly on an after-the-fact basis. They explain that Duke Energy Carolinas’ and CP&L’s native load customers will be deemed to have received service from the lowest cost resources, while the remaining cost resources will be deemed to have served off-system sales. Applicants state that the JDA also provides for payments between the two companies to compensate them for the energy purchased and sold between them in accordance with joint dispatch. To fulfill this requirement, the Joint Dispatcher will calculate the payments for each hour on an after-the-fact basis and determine the cost each company would have incurred if it had operated on a stand-alone basis.

Applicants explain that the JDA is limited to joint dispatch and is not intended to provide for system integration or combination of any other utility operations. They also note that the JDA does not provide for joint operation of Duke Energy Carolinas’ and CP&L’s transmission systems or balancing authority areas, or provide for joint resource planning.[footnote omitted]

DEC, a neighboring balancing authority, constitutes transactions. 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 Duke Progress is modified in compliance with the JDA. Such modified dispatch presumably occurs for most if not all of hours. Thus, the JDA effectively nullifies the value of dynamic pricing under the PJM-Duke Progress JOA's Energy Settlement Process.¹³

The affiliation of Duke Progress and DEC as a result of the 2012 merger raises significant issues about the continued form and administration of the PJM-Duke Progress JOA, particularly regarding how the JDA affects the continued viability of the PJM-Duke Progress JOA. It is not clear that PJM and Duke have properly administered the PJM-Duke Progress JOA subject to Section 2.6A, which would effectively prohibit dynamic pricing under the Energy Settlement Process. If suspension of dynamic pricing under the Energy Settlement Process has not occurred as required (most, if not all of the time), faulty tariff administration has occurred and rebilling may be required. Continued implementation of a joint operating agreement between PJM and Duke needs to be reconciled with the affiliation of Duke Progress and DEC as of July 2, 2012, and the establishment of the JDA. The October 3rd Filing does not address this significant issue or indicate that it has even been considered.

II. PROTEST

The proposed revisions to the PJM-Duke Progress JOA are inadequate to address the significant changed circumstances that have occurred since the agreement was signed. The merger of Duke Progress' and DEC's corporate parents as of July 2, 2012, has resulted in more than a change to Duke Progress' legal name and the other revisions included in the October 3rd Filing.

¹³ See PJM-Progress JOA § 14.5.

The merger has brought under common control much of electrical system in North Carolina, which previously had been divided between Duke Progress in the East and DEC in the West. Implementation of the JDA means that the systems are jointly dispatched and continually engage in interchange transactions while Duke Progress and DEC remain separate balancing authorities and separate public utilities. The PJM-Duke Progress JOA was not designed to apply to the joint dispatch of the Duke Progress and DEC systems, as now occurs routinely under the JDA.

PJM explained when it filed revisions to the PJM-Duke Progress JOA on February 2, 2010, that the dynamic scheduling approach to congestion management “is tailored to [PJM’s and Duke Progress’] unique operational relationship and provides a much more practical, and relevant, approach to managing system congestion.”¹⁴ The JDA changes this unique operational relationship, and raises an issue as to whether provisions for dynamic pricing under the Energy Settlement Process is still the most practical and relevant approach.

PJM later explained in the same 2010 proceeding:

Article 3.3 of the proposed JOA recognizes that the terms and conditions of the bilateral agreement among PEC and PJM are grounded in an appreciation of their respective systems as they exist at the time of the effective date of the JOA, but they fully expect that evolving circumstances, protocols and requirements will require that they negotiate, in good faith, a response to such changes.¹⁵

¹⁴ PJM and Progress Joint Filing, Docket No. ER10-713-000 (February 2, 2010) at 6.

¹⁵ Joint Motion for Leave to Answer and Answer of PJM Interconnection, L.C.C. and Progress Energy Carolinas, Inc., Docket No. ER10-713-000 (March 10, 2010) at 2. Section 3.3 of the PJM-Progress JOA reads in its entirety:

The Parties have agreed to the terms and conditions of this Agreement as their respective systems exist and are contemplated as of the Effective Date. The Parties expect that these systems and technology applicable to those systems and to the collection and exchange of data will change from time to time throughout

The merger plainly creates material changes to the circumstances reflected in the PJM-Duke Progress JOA, yet there is no indication that any negotiation has occurred. The assumptions reflected in the current PJM-Duke Progress JOA no longer apply, and the proposed revisions are not an adequate response. The Market Monitor has recommended that PJM immediately provide the required 12-month notice to PEC to unilaterally terminate the PJM-Duke Progress JOA.¹⁶ This approach would have assured correct pricing under Section 2.6A and opened the way to a new joint operating agreement that would cover Duke Progress and DEC as they now operate under the JDA.

Accordingly, the PJM-Duke Progress JOA should not be approved as submitted in the October 3rd Filing, and PJM and Duke should instead be directed (i) to apply the terms of Section 2.6 of Schedule 1 to the PJM Operating Agreement to interface pricing whenever joint optimized dispatch between Duke Progress and DEC occurs under the JDA and (ii) to attempt to negotiate in good faith, consistent with Article 3.3 of PJM-Duke Progress JOA, a new agreement that reflects changed circumstances.

the term of this Agreement, including changes to the boundaries of PJM in its capacity as an RTO, changes to the boundaries of, or identities of, Balancing Authorities for which a Party serves as Reliability Coordinator, and changes to the Balancing Authorities included in the security constrained, bid-based economic dispatch markets administered by PJM. The Parties agree that the objectives of this Agreement can be fulfilled only if the Parties, from time to time, review and, as appropriate, revise the requirements stated herein in response to changes, including deleting, adding, or revising requirements and protocols. Each Party shall negotiate in good faith in response to such revisions the other Parties may propose from time to time. Nothing in this Agreement, however, shall require any Party to reach agreement with respect to any such changes, or to purchase, install, or otherwise implement new equipment, software, or devices, or functions except as required to perform this Agreement.

¹⁶ See PJM-Progress JOA § 18.3.1.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to these comments as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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Dated: October 24, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 24th day of October, 2014.



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