

Duke Integration Stakeholder Group Meeting

Friday, September 17, 2010

Cincinnati, Ohio

FERC Docket No. ER10-2254-000: Responses to Filed Comments

On August 16, 2010, Duke Energy Ohio, Inc. (“DEO”) and Duke Energy Kentucky, Inc. (“DEK”) jointly submitted their Fixed Resource Requirement (“FRR”) Integration Plan to the Federal Energy Regulatory Commission (“FERC” or “Commission”) in Docket No. ER10-2254-000 (“Duke FRR Filing”). Several parties filed comments seeking factual clarifications of the proposal, and a few parties filed protests. This document is intended to preview potential DEO/DEK answers to some of the questions raised, for purposes of obtaining stakeholder response during the meeting on September 17.

INTERVENOR COMMENTS & PROPOSED RESPONSES

1. Will parties who “self-serve” be able to do so for parts of the FRR plan (deliver year blocks) less than the total 29-month transition period? (See, e.g., FirstEnergy, AMP-Ohio) Also, will LSEs be allowed to satisfy a portion of their capacity obligations with their own resources and the remaining with resources acquired from DEO through the Duke FRR plan? (AMP-Ohio)

- Response: All loads will have the option to self-supply. The means of self-supply, and the flexibility associated with that means, are established by PJM’s reliability assurance agreement (“RAA”).
- As stated on page 14 of the Duke FRR Filing, alternative retail suppliers have an option, per section D.9 of Schedule 8.1 of the RAA, to procure their own supply, which we call the “opt-out” option. The RAA specifically provides that such elections may be made on a delivery year basis. The RAA does not specify whether an alternative retail supplier may opt-out for part of its load or all of it. We propose to allow opt-outs for partial loads to promote flexibility.
- Other wholesale loads may self-supply by entering into their own FRR plans.¹ Typically there is a minimum five-year period for an FRR plan in PJM.² However, given the unique integration-related context of our FRR

¹ Per RAA Schedule 8.1, Section B.1, “a Party [that did not previously select FRR status under another now-expired eligibility option] is eligible to select the FRR Alternative if it (a) is an IOU, 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 Party’s participation in the FRR Alternative.” (emphasis added).

² Section C.1 of Schedule 8.1 of the RAA provides that the election of a Party of the FRR Alternative “shall be for a minimum term of five consecutive Delivery Years.”

proposal, we have requested waiver of the minimum five-year term to allow FRR plans for DEO and other affected FRR entities to run only for the 29 month period prior to RPM integration. Thus, we proposed two FRR self-supply alternatives:

- They can enter into a traditional FRR plan, per the terms of the RAA (*e.g.*, with the minimum five year term contemplated by the RAA); or
 - They can (with the Commission’s permission, which permission DEO and DEK have sought in this proceeding on their behalf) enter into an out-of-time FRR Plan designed to see them through the 29 month transition period before they can participate in RPM, with all of the waivers and adjustments that we seek in this filing to make such an out-of-time FRR Plan possible, but otherwise the same as a traditional FRR plan.
- DEO and DEK did not request waiver of the five-year minimum FRR period for FRR plans to run less than 29 months. Nor did DEO/DEK request any waiver that would permit LSEs serving wholesale load to submit an independent FRR plan for a partial amount of their capacity obligation. We note that the waiver requests we made on behalf of independent FRR entities were intended to be helpful, not to constrain the ability of independent FRR entities to make alternative waiver requests on their own behalf.

2. Explain how DEO will bill the proposed index price to third-party suppliers who serve wholesale or retail load in the Ohio footprint. (See FirstEnergy)

- Response. Pursuant to Schedule 8.1 of the RAA, DEO is required to fulfill the FRR capacity needs of alternative retail electric suppliers serving switched load. DEO will serve such load at the RPM price, as provided for in RAA Section D.8 of Schedule 8.1, unless the alternative retail LSE supplies its own capacity pursuant to an election and commitment made under Section D.9 of Schedule 8.1. As stated on page 15 of the FRR Filing,³ such sales will be made under DEO’s market-based rate tariff. Procedurally, PJM will act as the billing agent to the Duke Parties for sales of capacity to such alternative retail suppliers.

- Specifically, the RAA states (emphasis added):

PJM shall manage the transfer accounting associated with such compensation and shall administer the collection and payment of amounts pursuant to the compensation mechanism.

³ See footnote 25 of FRR Filing.

3. Explain Duke's request for waiver regarding summer compliance testing of Demand Resources and measurement of Energy Efficiency Resources for the partial year Jan 1, 2012 to May 31, 2012. (See, e.g., PSEG)

- Response: It is not clear to DEO/DEK how PJM could test demand resources in the summer of 2011, since those resources will still at that time be in the Midwest ISO. Thus, we have proposed that PJM be required to use its reasonable judgment in determining, for that very limited time period from January 1, 2012 to May 31, 2012, which DR and EE resources can satisfy reliability requirements, if any. PJM is in the process of comparing its testing, measurement and verification requirements with those of the Midwest ISO, to ascertain whether they are sufficiently similar, in PJM's sole judgment, such that allowing these resources to participate in the FRR Plan will not cause PJM to fail to satisfy its reliability requirements.

4. In its comments PSEG questions the propriety of the waiver DEO sought with respect to Section F.2 of Schedule 8.1 of the RAA to the extent that it would impose a FRR Capacity Deficiency Charge on a Demand Resource Provider when its resources are no longer available to support the Demand Resource Provider's capacity obligation because of the permanent departure of the load resource associated with the obligation. PSEG also wants to know whether it is a permanent waiver request for all DRP in the DEO/DEK zones.

- Response. The proposed waiver request in question is intended to continue for the FRR transitional period only, and to provide maximum flexibility for affected stakeholders during that timeframe. That said, to date no parties have expressed an interest in that particular waiver request. As a result, and in light of the considerations raised in PSEG's comments, DEO proposes to withdraw this waiver request.

5. Explain the process for pseudo-tying facilities from PJM to the Midwest ISO. (See, e.g., PSEG)

- Response. The Midwest ISO tariff contains provisions regarding the criteria for maintaining pseudo-ties to the Midwest ISO. First, the Midwest ISO tariff provides that regulation, spin, and supplemental qualified resources in the day-ahead energy and operating reserve market either be physically located within the Midwest ISO balancing authority area or be pseudo-tied into Midwest ISO and remain pseudo-tied until the next Network Model update.⁴ The Midwest ISO also provides that load external to the Midwest ISO Balancing Authority Area may be included as part of the Transmission Provider Region if that Load registers through an

⁴ Midwest ISO Tariff §§ 39.2.1B.a, b, and c.

existing Local Balancing Authority (LBA) and pseudo-ties into the Midwest Balancing Authority Area through that existing LBA.⁵

- The PJM Tariff indicates that in order to provide Synchronized Reserve, Day-ahead Scheduling Reserves, etc. a unit must be electrically located in the PJM Balancing Authority.⁶ PJM interprets “electrically located” to mean either physically connected to the PJM Region or either pseudo-tied or dynamically scheduled into PJM. The PJM Tariff also provides for dynamic scheduling.⁷ PJM considers dynamic schedules and pseudo-ties to be the same thing, although the Midwest ISO does not.

6. Explain the treatment of existing transmission and interconnection service, and of transmission and interconnection service requests, and application of “hold harmless” (e.g., IMPA, EKPC, AMP-Ohio). Explain the determination of deliverability from existing resources (AMP-Ohio).

Response. As stated in the Initial Filing DEO and DEK expect to submit a number of future filings as part of the proposed RTO Realignment, including additional filings in the Summer or Fall of 2011 to address transition of transmission service, generator and load interconnection queues, generator deactivation requests, and existing agreements.

It is our understanding that PJM will treat existing interconnection agreements in a manner similar to which they are being treated for the ATSI integration. Specifically, generators with existing interconnection agreements and in service as of the integration date will be deliverable in PJM upon integration. If the generator received energy resource interconnection service in MISO it will retain its energy only status. If the generator received network resource interconnection service in MISO it will retain capacity rights in PJM. For two-party interconnection agreements, upon integration those agreements will be provided with a PJM service agreement number and will be bound by the terms of PJM’s Tariff. For three-party interconnection agreements, they must first be assigned from MISO to PJM after which PJM will assume the role of Transmission Provider under those agreements. However, before PJM will accept assignment of such agreements it will review them to determine whether they contain any terms and conditions for which the Transmission Provider is responsible that are inconsistent with PJM’s standard interconnection service agreement located in Attachment O to PJM’s Tariff. In such case, the generator will be given the option to enter

⁵ *Id.*, § 39.2.3.

⁶ PJM Tariff, Attachment K – Appendix §§ 1.3.1D.03, 1.3.33B.01,

⁷ PJM Tariff, Attachment K – Appendix § 1.12.

into PJM's standard form of interconnection service agreement, amend their current agreements to address the inconsistencies or condition the assignment of the agreement on the generator agreeing to a supremacy provision pursuant to which PJM's Tariff and Manuals will prevail where there are inconsistencies.

All hold harmless issues should be addressed as part of planned future DEO/DEK filings. As stated in the DEO/DEK Answer in Docket No. ER10-1562-000, pursuant to the *LG&E* standard the "hold harmless" obligations apply to "existing" transmission contracts for the remaining term of such contracts.⁸ According to FERC, a transmission reservation only qualifies for hold harmless treatment if it was confirmed before the withdrawing entity gave notice of the withdrawal to the Midwest ISO. Thus, no transmission reservation will qualify for hold harmless treatment if it was confirmed by the Midwest ISO after May 20, 2010. We continue to invite parties with hold harmless questions to contact Duke to discuss them.

⁸ *LG&E Withdrawal Order*, 114 FERC ¶ 61,282 at P 44 (emphasis in original). "[E]xisting" arrangements means those transmission contracts entered into prior to the date that DEO and DEK notified the Midwest ISO of their intent to withdraw, i.e., May 20, 2010. *Id.*; see also *LG&E Rehearing Order*, 116 FERC ¶ 61,020 at P 24. "[C]ontracts" include "grandfathered agreements, executed transmission service agreements under the [ASM Tariff] that cover specific transactions, or [any] confirmed reservation on the Midwest ISO Open-Access Same-time information system (OASIS) in existence as of the notice date." *LG&E Withdrawal Order*, 114 FERC ¶ 61,282 at P 46; see also *LG&E Rehearing Order*, 116 FERC ¶ 61,020 at P 24