

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Union Light, Heat and Power Company
and The Cincinnati Gas & Electric Company

Docket No. ER04-1248-002

ORDER ACCEPTING FILING

(Issued June 2, 2005)

1. In this order, we accept for filing the revisions to the Purchase, Sale and Operation Agreement (PSOA) submitted for filing by Union Light, Heat and Power (Union) and The Cincinnati Gas & Electric Company (Cincinnati) (collectively, the Filing Parties) in compliance with the Commission's order issued March 3, 2005.¹ This order benefits customers by ensuring that the price for sales of energy between affiliates reflects market prices.

Background

2. On September 27, 2004, the Filing Parties filed the executed PSOA to provide for the continued integration of Union's and Cincinnati's generating plants with PSI Energy Inc.'s (PSI) generating plants in light of the transfer of three of Cincinnati's generating plants (Plants) to Union. They requested an effective date of March 30, 2005, to coincide with the date of closing of the transfer of the Plants. The PSOA provides the terms and conditions under which the Plants transferred to Union, as required by the Kentucky Commission, will continue to be dispatched as Cincinnati resources. The PSOA tracks the terms of a Joint Dispatch Agreement between Cincinnati and PSI, under which Cinergy Corp., the parent company of Cincinnati and PSI, dispatches the Cincinnati and PSI generation fleets (including Union's plants). The PSOA as originally filed provided that the market price for energy transfers was to be determined based upon "actual sales quotes of hourly energy with similar characteristics to unaffiliated third parties."

¹ *Union Light, Heat and Power Co.*, 110 FERC ¶ 61,212 (2005) (March 3 Order).

3. On January 11, 2005, the Director, Division of Tariffs and Market Development - Central issued a deficiency letter stating that since the PSOA is a long-term power purchase agreement among affiliates, it is subject to review under the criteria identified in *Edgar*.² The Director stated that the Filing Parties must submit actual data showing comparable purchase and sale prices that demonstrate that the PSOA pricing meets at least one of the three standards identified in *Edgar*.

4. On January 26, 2005, the Filing Parties filed a response to the deficiency letter, but did not provide the requested data. The Filing Parties maintained that the PSOA is consistent with *Edgar* and that no showing is required. However, to assuage concerns about the pricing of inter-affiliate transfers of energy under the PSOA, they committed to defer the effectiveness of the PSOA until after the Midwest Independent System Operator's (ISO) Day 2 market³ becomes effective, which occurred April 1, 2005, and they proposed to substitute Midwest ISO Day 2 clearing prices for the hourly market price methodology in the PSOA.

5. The March 3 Order accepted the executed PSOA, subject to the Filing Parties filing, within 15 days of the date of issuance of the order, modifications to the PSOA reflecting the use of the Midwest ISO's Day 2 market prices for the affiliate sales.

The Compliance Filing

6. The Filing Parties have revised the PSOA to reflect the use of the Midwest ISO's Day 2 market clearing prices for pricing energy sales instead of the hourly market pricing methodology originally included in the PSOA. In addition, the Filing Parties state they are refile Cincinnati's entire rate schedule because the original filing had an incorrect rate schedule number.

² *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*) (providing that parties can show that there is no affiliate preference in three ways: (1) evidence of direct head-to-head competition between the affiliate and competing unaffiliated suppliers in a formal solicitation or informal negotiation process; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers).

³ Day 2 refers to the launch of the Midwest ISO's Energy Markets.

Discussion

A. Procedural Matters

7. Notice of Union and Cincinnati's filing was published in the *Federal Register*, 70 Fed. Reg. 16,263 (2005) with comments due on or before April 5, 2005. On April 5, 2005, the Office of the Ohio Consumers' Counsel (OCC) filed a protest.

8. The OCC states that it is involved in a case at the Securities and Exchange Commission regarding whether the sale of the generating plants is legal and that the compliance filing does not acknowledge the pending litigation. The OCC further argues that the PSOA is inaccurate in its statements that Union has acquired generating facilities from Cincinnati, and that Cincinnati generating facilities no longer are subject to regulation by the Public Utilities Commission of Ohio.

9. On April 13, 2005, the Filing Parties filed a motion to reject or answer to the OCC's protest.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the Filing Parties' answer and will, therefore, reject it.

B. Analysis

11. The Commission finds that the Filing Parties have satisfactorily complied with the directives of the March 3 Order that they revise the pricing in the PSOA. With regard to the OCC's protest, the OCC is raising a new issue. The Commission has previously stated that the only issue in a compliance filing proceeding is whether the company has complied with the directives of the Commission's prior order.⁴ Therefore, protests to a compliance filing seeking changes in the rulings of a prior order generally are disfavored. The OCC did not intervene in the filing in Docket No. ER04-1248-000. This compliance filing is not the proper forum to raise new issues not directly related to the revisions directed in the March 3 Order.

⁴ See, e.g., *Pacific Gas and Electric Company*, 109 FERC ¶ 61,336 at P 5 (2004); *Delmarva Power & Light Company*, 63 FERC ¶ 61,321, at p. 63,160 (1993) (the Commission will not consider arguments raised in a compliance proceeding that are not responsive to the narrow issue of the filing company's compliance with the explicit directives of the Commission in an earlier order).

The Commission orders:

The Filing Parties' compliance filing, including Cincinnati's refiled rate schedule, is accepted for filing effective on the date of closing of the transfer from Cincinnati to Union. The Filing Parties are directed to file tariff sheets reflecting the appropriate effective date once the date of closing has been established, within 15 days of such effective date.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.