A copy of any motion to intervene or protest must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: May 9, 2018.

Kimberly D. Bose,

Secretary.

[FR Doc. 2018–10442 Filed 5–15–18; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER12–1338–003; ER12–1347–004]

Order Establishing Briefing Schedule: Duke Energy Corporation Progress Energy, Inc.; Carolina Power & Light Company

Before Commissioners: Kevin J. McIntyre, Chairman; Cheryl A. LaFleur, Neil Chatterjee, Robert F. Powelson, and Richard Glick.

1. On July 14, 2017, the United States Court of Appeals for the District of Columbia (D.C. Circuit) issued a decision,[1] vacating in part the Commission's acceptance of a Joint Dispatch Agreement (JDA) between Duke Energy Carolinas, LLC (Duke Energy Carolinas) and Carolina Power & Light Company (CP&L) [2] and remanding the matter to the Commission for further consideration. The court found that certain provisions in the JDA result in disparate rate treatment between native-load and non-native-load wholesale customers and that the Commission had not offered a valid reason for such a disparity.[3] Also, the court found that the Commission failed to sufficiently respond to several arguments raised by the City of Orangeburg, South Carolina (Orangeburg) regarding certain regulatory conditions in the JDA that Duke Energy Carolinas and CP&L agreed to include pursuant to proceedings before the North Carolina Public Utilities Commission (North Carolina Commission). As discussed below, we establish a briefing schedule to develop a better record on which to make a determination on these two issues.

I. Background

A. Case History

2. The history of this case is recounted at length in earlier Commission orders.[4]

3. As relevant here, in 2012, Duke Energy Corporation (Duke) and Progress Energy, Inc. (Progress) filed on behalf of Duke Energy Carolinas and CP&L a JDA that provided for the joint dispatch of Duke Energy Carolinas' and CP&L's respective generation facilities to serve their loads.[5] In accepting the JDA, the Commission found that the allocation of the lowest energy cost under the JDA to the native-load customers of Duke Energy Carolinas and CP&L is not unduly discriminatory.[6] The Commission stated that this finding was consistent with Order No. 2000, wherein it acknowledged that ''in areas without retail choice, state commissions have the authority to 'require a utility to sell its lowest cost power to native load, as [they] always [have].' '' [7] Also, the Commission found that sections 3.2 (c)(ii)–(iv) of the JDA,[8] which listed certain regulatory conditions that the parties agreed to include in the JDA pursuant to proceedings before North Carolina Commission, pertain to retail ratemaking and, therefore, should be removed from the agreement.[9]

4. Orangeburg requested rehearing, which the Commission denied in the JDA Rehearing Order.[10] In that order, the Commission affirmed its finding that the JDA's pricing methodology (*i.e.,* allocating the lowest cost resources to serve the parties' native loads, while allocating the higher cost resources to off-system sales (non-native load customers)) is just and reasonable.[11] In addition, the Commission held that this methodology does not unduly discriminate against Orangeburg, which is neither a native-load customer of Duke Energy Carolinas nor CP&L.[12] With that determination, the Commission declined to make a finding with respect to Orangeburg's other arguments, such as the lawfulness of the North Carolina Commission's regulatory conditions.[13]

B. D.C. Circuit Remand

5. In *Orangeburg* v. *FERC,* the court stated that, in accepting the JDA, the Commission approved certain provisions that established disparate treatment between native-load and non-native-load wholesale customers.[14] The court stated that, ''according to Orangeburg, these JDA provisions operate against the backdrop of [the North Carolina Commission's] functional veto over which wholesale customers fit into the former category. The court stated that, for the orders to survive review, the Commission must have offer[ed] a valid reason for the disparity between native load and non-native load wholesale customers ''under these circumstances.[15] The court found that the Commission's exclusive

[1] *Orangeburg, South Carolina* v. *FERC,* 862 F.3d 1071 (D.C. Cir. 2017) (*Orangeburg* v. *FERC*).

[2] *Duke Energy Corp.,* 139 FERC 61,193 (2012) (JDA Order), *order denying reh'g,* 151 FERC 61,242 (2015) (JDA Rehearing Order) (together, JDA Orders).

[3] *Orangeburg* v. *FERC,* 862 F.3d at 1084 (citing *Black Oak Energy, LLC* v. *FERC,* 725 F.3d 230, 239 (D.C. Cir. 2013) (*Black Oak*)).

[4] *City of Orangeburg, South Carolina,* 151 FERC 61,241, PP 3–10 (2015) (dismissing Orangeburg's petition for declaratory order); JDA Order, 139 FERC 61,193 at PP 2–4; JDA Rehearing Order, 151 FERC 61,242 at 2–4.

[5] The JDA provides that the savings from the joint dispatch—in fuel, purchased power, and related savings—will go directly to retail and wholesale customers in North Carolina and South Carolina. JDA Order, 139 FERC 61,193 at P 6.

[6] *Id.* P 45.

[7] *Id.* P 45 (quoting from *Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. 31,089 (1999) (Order No. 2000), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607 (D.C. Cir. 2001)).

[8] Section 3.2 (c)(ii)–(iv) of the JDA states:

(ii) Neither [Duke Energy Carolinas] nor [CP&L] may make or incur a charge under this Agreement except in accordance with North Carolina law and the rules, regulations and orders of the [North Carolina Commission] promulgated thereunder;

(iii) Neither [Duke Energy Carolinas] nor [CP&L] may seek to reflect in its North Carolina retail rates (i) any costs incurred under this Agreement exceeding the amount allowed by the [North Carolina Commission] or (ii) any revenue level earned under the Agreement other than the amount imputed by the [North Carolina Commission]; and

(iv) Neither [Duke Energy Carolinas] nor [CP&L] will assert in any forum that the [North Carolina Commission's] authority to assign, allocate, make pro forma adjustments to or disallow revenues or costs for retail ratemaking and regulatory accounting and reporting purposes is preempted and [Duke Energy Carolinas] and [CP&L] will bear the full risk of any preemptive effects of federal law with respect to this Agreement.

JDA Order, 139 FERC 61,193 at P 23.

[9] *Id.* P 37. Also, the Commission noted that ''beyond requiring the removal of these provisions from the JDA, we offer no view on the North Carolina Commission's authority to impose or apply such requirements in its proceeding.'' *Id.*

[10] JDA Rehearing Order, 151 FERC 61,242 at P 1.

[11] *Id.* PP 12–13.

[12] *Id.* at P 13.

[13] *Id.*

[14] *Orangeburg* v. *FERC,* 862 F.3d at 1074, 1081 (wholesale customers are treated differently based on their native-load status. . . . The JDA divides the world into two categories of customers: Native load and non-native load. Only native-load customers—including wholesale customers—enjoy access to the most reliable and lowest cost power.'').

[15] *Id.* at 1084 (citing *Black Oak Energy,* 725 F.3d at 239) (internal quotation marks omitted).

reliance on Order No. 2000 for approving the JDA's disparate treatment and responding to Orangeburg's overlapping Federal Power Act, preemption, and Commerce Clause arguments was untenable for a number of reasons.[16] The court concluded that because the Commission [has not] offer[ed] a valid reason for the disparity, the court could not affirm [the Commission's] approval of the JDA provisions that establish disparate treatment of native-load and non-native-load wholesale customers, and incorporates [the North Carolina Commission's] potentially unlawful regulatory regime.[17] Accordingly, the court vacated in part the JDA Orders and remanded the matter to the Commission for further explanation regarding its approval of the JDA.[18]

II. Discussion

6. We establish a briefing schedule to allow the parties and other interested persons to address the two issues noted below that the D.C. Circuit raised in its decision. Further briefing on these issues will help develop a better record for the Commission to respond to the court's directive to reconsider these issues.

7. We request briefing on the following issues, in particular:

(a) Is the JDA's disparate treatment of native and non-native load wholesale customers unduly discriminatory or preferential? In answering this question, please address the following:

(i) Explain why the JDA treats native and non-native load wholesale customers disparately and whether the differences between these customers justify the disparate treatment.

(ii) Specify in detail the contractual provisions in current or future wholesale contracts that would qualify a wholesale customer for native load treatment under the JDA,[19] as well as any contractual provisions that would disqualify a wholesale customer for native load treatment under the JDA.

(iii) Explain why wholesale sales between Duke Energy Carolinas and CP&L are excluded from the definition of non-native load sales and how the JDA would treat such a sale between the utilities.

(b) Do the North Carolina Commission's regulatory conditions[20] impermissibly interfere with this Commission's jurisdiction over wholesale ratemaking, in violation of the Federal Power Act[21] or the Commerce Clause of the United States Constitution?[22]

8. We require Duke Energy Carolinas and CP&L to submit—and others may submit—initial briefs on or before 45 days from the date of this order. Reply briefs must be submitted on or before 30 days following the due date of the initial briefs. Any person who is not currently a party to the proceeding and who wishes to submit a brief must file a notice of intervention or motion to intervene, as appropriate.

The Commission Orders

(A) Duke Energy Carolinas and CP&L are required to submit, and other parties are hereby permitted to submit initial briefs on or before forty-five (45) days of the date of this order, as discussed in the body of this order.

(B) Parties are hereby permitted to file reply briefs on or before thirty (30) days of the date of filing of initial briefs.

(C) All interested persons who wish to submit briefs but that are not currently parties to Docket Nos. ER12–1338–003 or ER12–1347–004 may submit notices of intervention or motions to intervene, as appropriate, within 21 days of the date of this order. The briefing schedule described in Ordering Paragraphs (A) and (B) will apply to such persons.

(D) The Secretary is hereby directed to publish this order in the **Federal Register**.

By the Commission.

Issued: May 10, 2018.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2018–10402 Filed 5–15–18; 8:45 am]

BILLING CODE 6717–01–P

[16] *Id.* at 1085–1087.

[17] *Id.* at 1087.

[18] *Id.*

[19] The JDA provides that Native Load Customers include wholesale customers that have native load served by Duke Energy Carolinas or CP&L, for which Duke Energy Carolinas or CP&L has an obligation pursuant to current or future wholesale contracts, for the length of such contracts, to engage in planning and to sell and deliver electric capacity and energy in a manner comparable to the [utilities'] service to its Retail Native Load Customers. Duke Energy Carolinas, FERC Electric Tariff, Rate Schedule No. 341 at Article I, Definitions.

[20] Here, we are referring to the regulatory conditions that were in section 3.2 (c)(ii)–(iv) of the JDA, which the JDA Order required be removed.

[21] 16 U.S.C. 824e(a) (2012); *see, e.g., Nantahala Power and Light Company* v. *Thornburg,* 476 U.S. 953 (1986); *Mississippi Power & Light Company* v. *Mississippi ex rel. Moore,* 487 US 354 (1988).

[22] U.S. Const. art. 1, 8, cl. 3; *see, e.g., New England Power Company,* 455 U.S. 331 (1982).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD18–4–000]

Commission Information Collection Activities (FERC–725G); Comment Request; Revision

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of revised information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comments on revisions to the information collection, FERC–725G (Reliability Standards for the Bulk Power System: PRC Reliability Standards) in Docket No. RD18–4–000 and will be submitting FERC–725G to the Office of Management and Budget (OMB) for review of the information collection requirements.

DATES: Comments on the collection of information are due July 16, 2018.

ADDRESSES: You may submit comments identified by Docket No. RD18–4–000 by either of the following methods:

- *eFiling at Commission's Website: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–725G, Reliability Standards for the Bulk Power System: PRC Reliability Standards.

OMB Control No.: 1902–0252.

Type of Request: Revision of FERC–725G information collection requirements.