

87 FERC ¶ 61,382

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

Open Access Same-Time Information) Docket No. RM95-9-008
System and Standards of Conduct)

ORDER DENYING REQUEST FOR FURTHER
REHEARING AND RECONSIDERATION

(Issued June 30, 1999)

In this order, we deny requests for further rehearing and reconsideration of the Commission's findings regarding the unmasking of source and sink information in OASIS postings. 1/

Background

Electric Power Supply Association (EPSA) and Enron Power Marketing, Inc. (EPMI) have filed a timely request for further rehearing of the February 1999 Order. In addition, EPSA and EPMI join with American Electric Power Service Corp.; Coral Power, LLC; Koch Energy Trading, Inc.; PECO Energy Company-Power Team; and Williams Energy Services Company (collectively, Movants) in seeking reconsideration, irrespective of rehearing.

The February 1999 Order denied rehearing of the June 1998 Order, 2/ in which the Commission determined that "source and sink" information must be unmasked at the time when a transmission provider updates its OASIS transmission reservation posting to show that the customer has confirmed its earlier request for service. 3/

In the June 1998 Order, we explained that:

[s]ource and sink information for point-to-point transmission service describes the location of the generators and the ultimate load in an electric system sense, and does not necessarily identify sellers and

1/ See Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 (1998) (June 1998 Order), reh'g denied, 86 FERC ¶ 61,139 (1999) (February 1999 Order).

2/ 86 FERC at 61,491-93.

3/ 83 FERC at 62,453-57.

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buyers by name. In accordance with the convention of the transmission provider under its individual Open Access Tariff (the Pro Forma Tariff allowed each transmission provider to determine this for itself in its Open Access Tariff filing) this source and sink information may routinely include only the identities of the respective control areas (e.g., in the case of point-to-point transmission across a transmission provider's system, the point of receipt is identified as a control area and the point of delivery is similarly identified), or it may include the identities of the respective bus bars of the particular generators and loads (e.g., in the case of transmission within, out of or into a transmission provider's transmission system). [4/]

Discussion

Ordinarily, we would deny, without reaching the merits, a request for rehearing of an order (such as the February 1999 Order) that denied rehearing and did not establish new Commission policy. 5/ Likewise, ordinarily, we would deny, without reaching the merits, a request for reconsideration when the Movants (as here) fail to show that the Commission did not fully grasp the facts presented on rehearing. 6/ However, as we expressly stated in the February 1999 Order that "EPMI or others may request that we revisit . . . [the unmasking] issue in the future," in this instance we will make an exception to our general practice. 7/

4/ Id. at 62,453, n.14.

5/ See, e.g., Northern Natural Gas Company, 80 FERC ¶ 62,148 at 61,587 (1997); Southwestern Public Service Company, 65 FERC ¶ 61,088 at 61,533 & n.14 (1993); Blue Lake Gas Storage Company, 62 FERC ¶ 61,179 at 62,210 (1993); Louisville Gas and Electric Company, 59 FERC ¶ 61,231 at 61,779 (1992); Municipal Electric Utilities Association of New York State, 23 FERC ¶ 61,302 at 61,640 (1983); Cf. Southern Company Services, Inc., et al., 87 FERC ¶ 61,221 (1999) (Southern) (staying effectiveness of order on rehearing, and permitting interested persons to file requests for rehearing of that order on rehearing, which prospectively rescinds waivers of a reporting requirement previously granted to several hundred power marketers).

6/ See Racehorse Company, 59 FERC ¶ 61,170 at 61,612 (1992).

7/ 86 FERC at 61,492.

1. Impact of Unmasking on the Short-term Market

In the June 1998 Order, we evaluated whether source and sink information should be posted on the OASIS or kept confidential. In making this decision, we considered the need for the information, its availability from other sources, and the potential business sensitivity of the information claimed by power marketers. We emphasized that our overriding concern was promoting the overall competitiveness of electricity markets ^{8/} and concluded that:

disclosure of this information will foster greater public confidence in the integrity of OASIS systems and improve the ability of such systems to facilitate open access use of transmission systems comparable to that enjoyed by the transmission providers. We also believe that unmasking can be accomplished without compromising the role that power marketers play in electricity markets. [9/]

As we explained in the February 1999 Order, EPMI argued on rehearing that:

the Commission failed to consider that power marketers would lose the benefits of follow-on short-term transactions and that this would drive them out of this market. EPMI also argues that the benefits of disclosure are minimal. Together, EPMI argues, these factors should lead the Commission to reverse the findings on unmasking in the June [1998] Order. [10/]

After evaluating EPMI's allegations, we concluded that:

EPMI would have the Commission protect a market niche that some market participants may have enjoyed by virtue of possessing market-related information that has not been available to others. As in Alabama Power, [11/] by requiring disclosure, the Commission is merely removing information imperfections in an otherwise

8/ 83 FERC at 62,456.

9/ Id.

10/ 86 FERC at 61,491.

11/ Alabama Power Company v. Federal Power Commission, 511 F.2d 383, 390-91 (D.C. Cir. 1974).

competitive market, thereby facilitating the efficient allocation of resources. [12/]

We clarified that the benefits of disclosure to the overall market included:

(1) promoting competition in the overall market; (2) fostering greater public confidence in the integrity of OASIS postings; (3) improving the open access use of transmission systems comparable to that enjoyed by transmission providers; and (4) allowing better monitoring of discriminatory practices. [13/]

On further rehearing, Movants argue that it is not true that some market participants enjoy a market niche by possessing market information unavailable to other market participants. 14/ They argue that this same information could be assembled by anyone willing to invest adequate time and money. 15/ In their view, disclosure would merely promote "free-riders." They conclude that unmasking will drive power marketers to other markets and will result in higher prices to customers. Finally, they argue that unmasking is not a power marketer issue at all, but a short-term market issue and that the Commission's analysis is flawed, because power marketers comprise the entire short-term market and not merely a segment of that market. 16/

We find Movants' arguments on further rehearing to be without merit. Movants reiterate or reformulate arguments previously made and rejected by the Commission.

As to Movants' specific contentions, we turn first to the argument that source and sink information can be assembled by anyone willing to invest adequate time and money in this venture and that disclosure of this information will create "free riders."

To the extent that Movants are correct that the disclosure of source and sink information will reduce the costs of identifying potential customers, this cost savings will be enjoyed as much by Movants (who themselves can compete for more customers) as by any other OASIS user and competition will then

12/ 86 FERC at 61,492 (emphasis added, footnotes omitted).

13/ Id.

14/ Movants' Further Rehearing Request at 2, 10-12.

15/ Id. at 11.

16/ Id. at 12-14.

be focussed to an even greater extent on which seller can offer a customer the best price, rather than on a seller keeping the identity of its customers hidden from competitors. 17/ We do not see this as a "free rider" problem, where some customers benefit at the expense of others, because the source and sink information within each control area is to be disclosed equally to all OASIS users. 18/

As we stated in the February 1999 Order, 19/ we believe that disclosure of this information would promote the overall competitiveness of the market (including that for short-term transactions) because it would make it easier for more sellers to find customers and offer them transmission service at lower prices. Nothing in Movants' request for rehearing or request for reconsideration dissuades us from this view.

Second, as to Movants' contention that unmasking will drive power marketers from the short-term market, at this early stage, this is only conjecture. Movants seem to recognize that the Commission already has taken steps to minimize the possible potential competitive impact on power marketers that might result from unmasking source and sink information by objecting, on further rehearing, to increased competition for follow-on transactions and no longer arguing (as they did previously) that they will be prevented from completing the initial transaction. Moreover, an increased price sensitivity for follow-on

17/ We note that, as stated above, depending on the terms of a transmission provider's tariff, source and sink information may divulge either control area information only, or may include specific bus bar information. Movants' concerns relate only to the disclosure of specific bus bar information. Moreover, as we stated in the June 1998 Order, 83 FERC at 62,453, n.14, even in this circumstance, "[s]ource and sink information for point-to-point transmission service describes the location of the generators and the ultimate load in an electric system sense, and does not necessarily identify sellers and buyers by name."

18/ From the perspective of individual power marketers (or even of power marketers collectively), they understandably would wish to avoid the disclosure of information that might make it easier for other sellers to learn the identity of their customers and offer them a better price. Nevertheless, in the Commission's view, the greater availability of information better promotes the overall competitiveness of electric energy markets. It better promotes competition as compared to aiding particular competitors.

19/ 86 FERC at 61,492.

transactions (which, we note, means that competition is being promoted) does not necessarily mean that power marketers cannot succeed in this competitive environment.

Third, Movants take issue with the Commission's conclusion that the Commission needs to focus on promoting competition in the market as a whole, rather than focusing on protecting the interests of a particular market segment. Movants contend that the Commission fails to recognize that, in the short-term market for wholesale electricity, power marketers represent the entire market and not just a market segment. We disagree. Movants ignore the presence of power providers in the market, as well as the fact that Movants do not speak on behalf of all power marketers.

2. If Unmasking Were Delayed for Thirty Days, Would the Commission's Objectives Still Be Met?

Movants argue, in their request for rehearing, that the Commission failed to consider the alternative of masking the information for a period of thirty days. They further assert that "[n]o one is complaining about even real-time unmasking of monthly and yearly transactions." 20/ The real problem, Movants maintain, is instead with short-term transactions, by which they mean hourly, daily, and weekly service. 21/ Moreover, Movants contend that the Commission failed to consider alternatives, such as directing the unmasking of all transactions except those involving requests for hourly transmission service. 22/

By contrast, Movants' request for reconsideration argues that there may not be a need to post source and sink information, particularly regarding "short-term" transactions, except after the fact. Movants question the Commission's conclusions that disclosure would: 1) promote competition; 2) increase confidence in the OASIS; and 3) increase open access use of transmission systems. Movants also argue that summer price volatility underscores the importance of short-term market liquidity. Movants hypothesize that, if transmission availability becomes tight this summer, possible price spikes could be exacerbated if unmasking causes power marketers to opt out of the short-term market for wholesale electricity.

20/ Movants' Further Rehearing Request at 16.

21/ Id. at 17.

22/ Id. at 9.

Movants' contention that the Commission did not consider the alternative of a thirty-day lag before unmasking source and sink information in short-term transactions is untrue. 23/ The June 1998 Order explicitly addressed the issue of the timing of disclosure and found that:

[w]hile we acknowledge the potential business sensitivity that power marketers attach to source and sink information, we believe that delaying unmasking until the transmission provider updates the transmission reservation posting to show the customer's confirmation should allow the power marketer to finalize its arrangements with the power purchaser and the power seller. [24/]

Moreover, the February 1998 Order was issued only after an evaluation of all the filed comments, including those of Coalition for a Competitive Electric Market (CCEM), which raised the idea of a thirty-day lag in its comments. 25/ Our consideration of the proper amount of time to delay unmasking encompassed consideration of a thirty-day lag. Merely because a thirty-day lag was not adopted, does not mean that it was not considered.

23/ We note that Movants are imprecise in their use of the term "short-term service." In section 1.42 of the pro forma tariff, the Commission defined "short-term firm point-to-point transmission service" as service having a term of less than one year, while providing, in section 1.27 of the pro forma tariff, that "non-firm point-to-point transmission service" is available on a stand-alone basis for periods from one hour to one month. Thus, if EPSA and EPMI intended, in their earlier request for rehearing, that "short-term service" not include monthly service, then it was incumbent on them to explain this (which they did not do). If Movants now wish to narrow their objection to the unmasking of hourly, daily, and weekly service, this does not change the fact that their earlier argument contained no such limitation, but was directed at all short-term transmission transactions, including monthly service.

In addition, Movants' arguments are internally inconsistent. They argue (Movants' Further Rehearing Request at 9) that the Commission failed to consider the alternative of unmasking all transactions except hourly transactions, while continuing to assert that unmasking should not apply to daily and weekly transmission service (id. at 16-17).

24/ 83 FERC at 62,456.

25/ See CCEM Comments at 9.

In addition, the Commission already has taken steps to mitigate the possible impact on power marketers resulting from the unmasking of source and sink information. Movants seem to recognize that these steps have shifted the question from whether marketers would be prevented from deriving the benefit of the first transaction (where source and sink information would be divulged) to the question of the impact of increased competition in follow-on transactions. As for Movants' conjecture that unmasking might exacerbate potential price spikes this summer, this arguably would happen only if, as predicted by Movants, power marketers no longer conduct business in the short-term market (or at least no longer engage in hourly, daily, and weekly transactions). We see no reason why power marketers cannot successfully compete for business in this market and we expect that power marketers will continue to be involved in all kinds of short-term transactions. In any event, Movants' conjecture is just that and is unsubstantiated.

Two policy questions remain. First, would the expected benefits from unmasking (at the time when a transmission provider updates its OASIS transmission reservation posting to show that the customer has confirmed its earlier request) still be realized if unmasking for hourly, daily, and weekly service were delayed thirty days? Second, does the potential business sensitivity claimed by power marketers related to the disclosure of source and sink information regarding hourly, daily, and weekly transmission service (at the time when a transmission provider updates its OASIS transmission reservation posting to show that the customer has confirmed its earlier request) outweigh the expected benefits to the overall short-term market?

Although after-the-fact unmasking of source and sink information still would allow the Commission to monitor past instances of discriminatory practices, a thirty-day lag would not serve our overriding concern of promoting the overall competitiveness of electricity markets.^{26/} Nor does it serve our goal of preventing unduly discriminatory practices.

While a thirty-day lag might help to further minimize the potential competitive business sensitivity of the source and sink information, it would do so at the cost of the data being so stale as to be virtually useless in promoting competitive electric markets. In addition, while after-the-fact monitoring allows the Commission to determine whether improper conduct has occurred in the past, unduly discriminatory practices are best prevented before-the-fact, and if the relevant information is made available before the energy is scheduled, a customer who believes it is being discriminated against may immediately contact the transmission provider to rectify the problem

^{26/} 83 FERC at 62,456.

informally, before the opportunity to do so is lost. This option would not be available if disclosure were delayed thirty days. We also note that the desirability of making important market information available to all competitors on a comparable, non-preferential, and timely basis was a major impetus behind Order Nos. 889 and 889-A, 27/ and is equally applicable here.

We conclude, therefore, that the need for making the information on source and sink available at the time when a transmission provider updates its OASIS transmission reservation posting to show that the customer has confirmed its earlier request outweighs any potential harmful impact on power marketers because, overall, such timely disclosure promotes the competitiveness of the short-term market for electricity. Additionally, if the information may be obtained from non-OASIS sources, as Movants contend, 28/ then the potential adverse impact of timely disclosure would be small in any event.

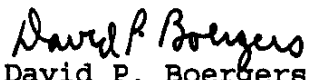
The Commission orders:

(A) The request for further rehearing filed by EPSA and EPMI is hereby denied, as discussed in the body of this order.

(B) The request for reconsideration filed by Movants is hereby denied, as discussed in the body of this order.

By the Commission. Commissioners Bailey and Hébert dissented with a separate statement attached.

(S E A L)


David P. Boergers,
Secretary.

27/ E.g., Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,588, 31,595-602; Order No. 889-A, FERC Stats. & Regs. ¶ 31,049 at 30,548-49.

28/ Movants' Further Rehearing Request at 11.

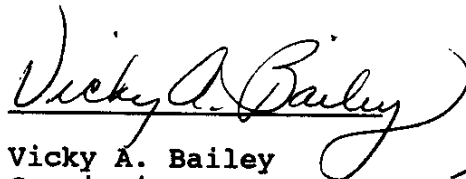
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Bailey, Commissioner, and Hébert, Commissioner, dissenting

We fail to understand why the Commission does not strike a better balance that respects both: (1) the Commission's and the public's need for source and sink information; and (2) the articulated concern on rehearing for the commercial and competitive sensitivity of this information. Specifically, we would grant the requests for rehearing to the extent that the power marketer movants ask for a delay of 30 days, after finalization of the transaction and the transmission provider's update of its transmission reservation posting, before unmasking source and sink information. Such a delay would still provide the Commission and the public the information it needs to monitor and promote the competitive operation of wholesale power markets, while allowing power marketers to remain active in short-term energy markets.

In other contexts, the Commission has allowed for longer delay in the divulgence of commercially sensitive information than we would grant here. See Central Hudson Gas & Electric Corp., et al., 86 FERC ¶ 61,062 at 61,224, 61,231 (1999); New England Power Pool, 85 FERC ¶ 61,379 at 62,480 (1998). We fail to see why the power marketer movants here, forced to disclose immediately the details of the transactions they arrange, have presented a less compelling case for delay. While the majority concedes that the delay "might" help minimize competitive harm, the reasons the order offers for overriding that consideration, slip op. at 8-9, fail to convince us that 30-day old data is "so stale as to be virtually useless." Id. at 8.

In addition, Commissioner Bailey continues to dissent for all of the reasons articulated in her earlier two dissents in this proceeding. See 86 FERC at 61,493, and 83 FERC at 62,467-69.


Vicky A. Bailey
Commissioner


Curt L. Hébert, Jr.
Commissioner