

122 FERC ¶ 61,280  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Cross-Subsidization Restrictions on Affiliate  
Transactions

Docket No. RM07-15-000

ORDER GRANTING EXTENSION OF TIME

(Issued March 25, 2008)

1. On February 21, 2008, the Commission issued Order No. 707, which amended its regulations to codify restrictions on affiliate transactions between franchised public utilities that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, and their market-regulated power sales affiliates or non-utility affiliates.<sup>1</sup> The Commission stated that Order No. 707 would become effective 30 days after publication in the Federal Register, that is, March 31, 2008.<sup>2</sup> On March 11, 2008, the Edison Electric Institute (EEI) filed a motion for extension of the effective date from March 31, 2008 to either July 1, 2008 or 30 days after the Commission issues an order on rehearing, whichever is later. EEI states that although affiliate restrictions have been applicable to market-based rate power sellers and merging companies, the new final rule requirements will apply more broadly and compliance “will be a significant undertaking for many companies.” It also states that the rule “raises some important questions that EEI and others are likely to ask the Commission to address in requests for rehearing . . .” and urges the Commission to provide ample time for the new rule to be clarified before it takes effect.<sup>3</sup>

2. As an initial matter, the Commission notes that Order No. 707 stated that the pricing rules adopted therein are prospective and will apply to any contracts, agreements

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<sup>1</sup> *Cross-Subsidization Restrictions on Affiliate Transactions*, Order No. 707, 73 Fed. Reg. 11,013 (Feb. 29, 2008), FERC Stats. & Regs. ¶ 31,264 (2008) (Order No. 707).

<sup>2</sup> *Id.* P 85.

<sup>3</sup> EEI Motion at 2.

or arrangements entered into on or after the effective date of the rule (March 31, 2008); to the extent different pricing was in effect for any contract, agreement or arrangement entered into prior to the effective date of the final rule, such pricing may remain in effect.<sup>4</sup> Thus, when the Commission issued the final rule it should have been clear to the industry that, for purposes of complying with Order No. 707, public utilities would not have to modify pricing under contracts, agreements or arrangements in effect before March 31, 2008.<sup>5</sup> We therefore do not believe that, for purposes of this rule, there should be any compliance problems with respect to pre-existing contracts, agreements or arrangements.

3. With respect to any contracts, agreements or arrangements entered into on or after the effective date of the rule (March 31, 2008), however, public utilities were on notice when Order No. 707 was published in the Federal Register that they would have to comply with the pricing restrictions of the rule. If we were to change the effective date, as requested by EEI, public utilities would have a window of time to enter into new contracts, agreements or arrangements that would not have to comply with the new pricing restrictions. It is therefore important that we not change the effective date of the rule. Although we will not change the effective date of the rule, the Commission recognizes that many companies, particularly those not previously subject to the same or similar pricing restrictions as a result of a merger order or a market-based rate authorization, may need further time to ensure that they will be in compliance with the new restrictions and/or to obtain clarification from the Commission upon rehearing of the final rule.

4. Accordingly, upon consideration of the concerns raised by EEI, the Commission will grant an extension of time until 30 days after the issuance of an order on rehearing of Order No. 707 or until July 1, 2008, whichever comes later, for any contracts, agreements or arrangements entered into on or after March 31, 2008 to comply with the requirements of Order No. 707. This means that if utilities enter into contracts, agreements or

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<sup>4</sup> Order No. 707, FERC Stats. & Regs. ¶ 31,264 at P 85.

<sup>5</sup> Our “grandfathering” of preexisting contracts, agreements and arrangements was only for purposes of compliance of this rule. To the extent public utilities were required to comply with the same or similar pricing restrictions pursuant to a merger order or in conjunction with a market-based rate authorization, our action to make Order No. 707 compliance prospective only did not change any such obligations under other orders or rules. That is, pricing restrictions imposed pursuant to a merger order, a market-based rate authorization order or the Commission’s market-based rate rules are not within the scope of Order No. 707 and, consequently, the Order No. 707 grandfathering provision does not relieve a public utility of its obligations under other orders and rules with respect to contracts, agreements or arrangements entered into prior to March 31, 2008.

arrangements on or after March 31, 2008, and if the pricing under such contracts, agreements or arrangements is not consistent with the pricing requirements as they may be clarified or modified by the Commission on rehearing of Order No. 707, these utilities will not be subject to enforcement action for non-compliance for the period beginning March 31, 2008 until the later of July 1, 2008 or 30 days after issuance of an order on rehearing of Order No. 707. However, such contracts, agreements or arrangements will either: (1) need to contain a provision making them automatically subject to compliance with the pricing restrictions, as they may be clarified or modified on rehearing, as of the later of July 1, 2008 or 30 days after issuance of an order on rehearing; or (2) need to be modified to make them consistent with the pricing restrictions as of the later of July 1, 2008 or 30 days after issuance of an order on rehearing.

The Commission orders:

The Commission hereby grants an extension of time for compliance with Order No. 707, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.