

135 FERC ¶ 61,165  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Wolverine Power Supply  
Cooperative, Inc.

Docket No. ER10-978-001

ORDER DENYING REQUEST FOR REHEARING

(Issued May 19, 2011)

1. In this order, we deny Wolverine Power Supply Cooperative, Inc.'s (Wolverine) request for rehearing of the Commission's May 28, 2010 order in this proceeding.<sup>1</sup>

**I. Background**

2. The Commission authorized Wolverine's acquisition of a 340 MW generating facility located in Sumpter Township, Michigan (Facility) from FirstEnergy Generation Corp. (FirstEnergy) on March 9, 2010,<sup>2</sup> and the acquisition closed on March 31, 2010.<sup>3</sup> Before the sale, FirstEnergy provided reactive power from the Facility to Midwest Independent Transmission System Operator, Inc. (MISO) under a rate schedule accepted by the Commission in February 2005.<sup>4</sup>

3. On March 31, 2010, Wolverine filed in this proceeding a rate schedule (Rate Schedule) that set forth its revenue requirement for providing cost-based Reactive Supply and Voltage Control from Generation Sources Service (Reactive Power) from its Facility

---

<sup>1</sup> *Wolverine Power Supply Coop., Inc.*, 131 FERC ¶ 61,184 (2010) (May 28 Order).

<sup>2</sup> *Wolverine Power Supply Coop., Inc. & FirstEnergy Generation Corp.*, 130 FERC ¶ 62,204 (2010).

<sup>3</sup> See Wolverine Notification of Closing, Docket No. EC10-41-000 (filed Apr. 1, 2010).

<sup>4</sup> See *FirstEnergy Solutions Corp.*, 110 FERC ¶ 61,142 (2005) (February 2005 Order).

to MISO. Wolverine requested waiver of the Commission's notice and filing requirement to allow the Rate Schedule to be effective April 1, 2010, the day after filing the Rate Schedule as well as the day after it acquired the Facility.

4. In the May 28 Order, the Commission conditionally accepted the Rate Schedule, subject to a compliance filing to address two issues that are not germane to the request for rehearing. In accordance with Schedule 2 of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), the Commission denied Wolverine's requested waiver of the prior notice requirement and established an effective date of June 1, 2010, the first day of the month immediately following acceptance by the Commission.<sup>5</sup>

## II. Request for Rehearing

5. Wolverine filed a request for rehearing of the May 28 Order, arguing that the May 28 Order erred in denying Wolverine's requested waiver of the prior notice requirement and approving Wolverine's Rate Schedule with an effective date of June 1, 2010, rather than the requested effective date of April 1, 2010. Wolverine contends that the Commission's denial of waiver of the prior notice requirement to permit an effective date of April 1, 2010 was arbitrary, capricious and unduly discriminatory.

6. Wolverine asserts that the Commission routinely has implemented Schedule 2 to permit an effective date the day after filing,<sup>6</sup> provided that the applicant has so requested and has otherwise met the *Central Hudson* criteria for waiver of the prior notice requirement.<sup>7</sup> Wolverine argues that it satisfied the *Central Hudson* standards for waiver because it filed its Rate Schedule with the Commission on the earliest possible date following its acquisition of the Facility and prior to commencement of service on April 1, 2010.

---

<sup>5</sup> May 28 Order, 131 FERC ¶ 61,184 at P 13 n.11.

<sup>6</sup> Wolverine Request for Rehearing at 4 (citing *DTE East China, LLC*, 114 FERC ¶ 61,138 (2006) (*DTE-East China*); *AmGen Energy Co., LLC*, 112 FERC ¶ 61,082, *clarified*, 112 FERC ¶ 61,277 (2005) (*AmGen*); *Riverside Energy Ctr., LLC and RockGen Energy, LLC*, Docket Nos. ER09-1312-000 and ER09-1313-000 (Nov. 3, 2009) (delegated letter order) (*Riverside*)).

<sup>7</sup> *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

7. Wolverine argues that the May 28 Order erred in reading the phrase “following acceptance” in section II.C of Schedule 2 too narrowly.<sup>8</sup> The Commission, Wolverine states, understood acceptance to mean the date that the Commission issued the order accepting the filing. Rather, Wolverine asserts, a reasonable read of the Tariff provision permits revenues to be collected following the date when the Commission’s acceptance was made effective. In *AmGen* and *Riverside*, Wolverine argues, the Commission did not explicitly tie the effective date to the date of a Commission order, but permitted collection to begin on the day after filing when acceptance was made effective in accordance with *Central Hudson*.

8. Wolverine argues that waiver of notice was particularly appropriate under the circumstances of this Facility because it was an existing Qualified Generator for which Reactive Power compensation was not being established in the first instance. Wolverine states that the Facility continued to supply Reactive Power to MISO while its ownership changed hands from FirstEnergy to Wolverine. Wolverine claims that its submittal simply involved transferring the revenue stream for the Facility from its former owner to Wolverine and updating its cost-based revenue requirement.<sup>9</sup>

9. Wolverine further argues that the Commission granted waiver of the prior notice requirement to permit an effective date one day after filing in *Tilton Energy LLC*.<sup>10</sup> According to Wolverine, in *Tilton*, the prior owner filed to concurrently terminate its revenue recovery for the generating facility effective on the same date that the new owner proposed to commence recovery. Wolverine states that the circumstances in *Tilton* are identical to this case. Furthermore, Wolverine states that FirstEnergy requested waiver of the prior notice requirement to permit an April 1, 2010 effective date in order to allow FirstEnergy’s rate recovery for the Facility to cease on the date the Facility was sold to

---

<sup>8</sup> Section II.C of Schedule 2 provides: “Qualified Generator status is effective on the first day of the month immediately *following acceptance* of the revenue requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month.” MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 1765 (emphasis added).

<sup>9</sup> We note that FirstEnergy’s accepted annual revenue requirement for the Facility was \$1,179,000, whereas Wolverine’s proposed annual revenue requirement is \$1,413,831.

<sup>10</sup> Wolverine Request for Rehearing at 5 (citing *Tilton LLC*, Docket No. ER10-323-000 (Jan. 12, 2010) (delegated letter order) (*Tilton*)).

Wolverine.<sup>11</sup> The Commission granted FirstEnergy's request. Wolverine claims that the Commission's failure to grant waiver of the prior notice requirement to permit an effective date of April 1, 2010 is inconsistent with the Commission's decision in *FirstEnergy*.<sup>12</sup>

10. Furthermore, Wolverine states that the denial of waiver and establishment of a June 1, 2010 effective date unreasonably and inequitably deprived Wolverine of its revenue requirement in providing Reactive Power to MISO between April 1, 2010 and June 1, 2010. April 1, 2010 also is the date that FirstEnergy ceased providing Reactive Power from the Facility and terminated its revenue recovery from MISO. Wolverine claims that it filed on the earliest date possible, the same day it acquired the Facility, and it is not reasonable to expect Wolverine to file before it became the legal owner of the Facility.

11. Finally, Wolverine states, while Schedule 2 permits an effective date on the first day of the month after a full 60-day notice and following the date of the Commission order accepting the filing, Schedule 2 also permits an effective date on the day after filing if waiver is requested in accordance with *Central Hudson*, as evidenced by the Commission's action in *Tilton*, *DTE-East China*, *AmGen*, and *Riverside*.<sup>13</sup> Wolverine asserts that Schedule 2 contains sufficient flexibility, and has been applied by the Commission to accommodate both situations.<sup>14</sup>

### **III. Commission Determination**

12. We will deny Wolverine's request for rehearing of the May 28 Order. Wolverine's requested effective date, April 1, 2010, is inconsistent with the relevant Tariff, which specifies the date when Wolverine is eligible to receive compensation from MISO. Section II.C of Schedule 2 provides that "Qualified Generator status is effective on the first day of the month immediately *following acceptance of the revenue*

---

<sup>11</sup> *Id.* at 5-6 (citing *FirstEnergy Solutions Corp.*, Docket No. ER10-325-000 (May 21, 2010) (delegated letter order) (*FirstEnergy*)).

<sup>12</sup> *Id.* Wolverine also points to the Commission's decision to grant waiver of notice to permit an effective date prior to the issuance of the order in *Dynegy Midwest Generation, Inc.* *Id.* at 5 (citing *Dynegy Midwest Generation, Inc.*, Docket No. ER10-325-000 (Jan. 12, 2010) (delegated letter order) (*Dynegy*)).

<sup>13</sup> *Id.* at 4, 6.

<sup>14</sup> *Id.* at 7.

*requirement by the Commission or the first day of the month if Commission acceptance of such revenue requirement is on the first day of the month.”*<sup>15</sup>

13. As explained in the May 28 Order, the earliest effective date for Wolverine’s proposed revenue requirement permitted under Schedule 2 is June 1, 2010. In order to receive compensation from MISO under Schedule 2, the Facility must be a Qualified Generator. In this proceeding, the Facility became a Qualified Generator on June 1, 2010 since the Commission accepted Wolverine’s revenue requirement on May 28, 2010, and June 1, 2010 is the first day of the month immediately following the Commission’s acceptance.

14. In its rehearing request, Wolverine challenges the Commission’s interpretation of “following acceptance” in section II.C of Schedule 2. Wolverine understands acceptance to mean the date when the Commission made acceptance effective. We disagree. Sections 205(c) and (d) of the FPA require that public utilities give the Commission and the public at least 60 days prior notice of any change in their rates, terms and conditions of service before the change takes effect.<sup>16</sup> The Commission may waive the 60-day prior notice requirement if “good cause” is shown.<sup>17</sup> Section 205 commits the decision on whether good cause has been shown to the Commission’s discretion.<sup>18</sup> Accordingly, waiver of the 60-day prior notice requirement is the exception rather than the rule.<sup>19</sup> Schedule 2 provides a prospective effective date for proposed revenue requirements. In this particular case, the Tariff is thus consistent with section 205 in requiring prospective effective dates on reactive power revenue requirements. Unlike section 205, however, Schedule 2 does not provide a good cause exception to permit an earlier effective date.

---

<sup>15</sup> MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 1765 (emphasis added).

<sup>16</sup> 16 U.S.C. §§ 824d(c)-(d) (2006).

<sup>17</sup> *Id.*; see *Central Hudson*, 60 FERC ¶ 61,106 at 61,337, 61,338-39; *Cleveland Elec. Illuminating Co.*, 76 FERC ¶ 61,156, at 61,926 (1996); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,271 (2005).

<sup>18</sup> *El Paso Elec. Co.*, 105 FERC ¶ 61,131, at P 45 (2003).

<sup>19</sup> *Id.* P 10-22.

Pursuant to the terms of Schedule 2, the Commission properly determined that the effective date for Wolverine's proposed revenue requirement is June 1, 2010.<sup>20</sup>

15. Moreover, Wolverine's reliance on *Riverside*, *Tilton*, *Dynegy*, and *First Energy*<sup>21</sup> is unavailing. These are staff-issued delegated letter orders and do not constitute legal precedent that is binding on the Commission.<sup>22</sup> The only two Commission orders cited by Wolverine in support of its position, *AmGen* and *DTE-East China*, are also unavailing. While the Commission in both cases did permit an effective date the day after filing, the

---

<sup>20</sup> *E.g.*, *Prairie Power, Inc.*, 135 FERC ¶ 61,025, at P 10 (2011) (determining that the earliest effective date permitted under Schedule 2 of MISO's Tariff was May 1, 2011 for an order issued on April 12, 2011); *Great River Energy*, 133 FERC ¶ 61,138, at P 9 & n.7 (2010) (accepting the proposed reactive power revenue requirement on November 18, 2010 and establishing a December 1, 2010 effective date in accordance with Schedule 2 of MISO's Tariff); *Manitowoc Pub. Utils.*, 117 FERC ¶ 61,327, at P 11 & n.5 (2006) (denying an earlier requested effective date and establishing a January 1, 2007 effective date for the reactive power revenue requirement consistent with MISO's Schedule 2 requirement); *New Covert Generating Co., LLC*, 116 FERC ¶ 61,096, at P 15 (2006) (denying waiver of the prior notice requirement and a requested effective date the day after filing in accordance with Schedule 2 of MISO's Tariff, stating "the effective date for the proposed [reactive power revenue requirement] must be the first day of the month following the date of [the] order").

<sup>21</sup> *See supra* notes 6, 10-12.

<sup>22</sup> *E.g.*, *Westar Energy, Inc.*, 124 FERC ¶ 61,057, at P 26 (2008); *Norwalk Power, LLC*, 122 FERC ¶ 61,273, at P 25 (2008). The Commission has explained that: "actions taken by its staff pursuant to delegated authority 'do not constitute Commission precedent binding the Commission in future cases' and the 'exercise of . . . delegated authority cannot serve to supplant the policies [the Commission has] established in [its] decisions and regulations.'" *Mid-Continent Area Power Pool*, 97 FERC ¶ 61,038, at 61,184 n.10 (2001) (citing *Phoenix Hydro Corp.*, 26 FERC ¶ 61,389, at 61,870 (1984), *aff'd*, 775 F.2d 1187, 1191 (D.C. Cir. 1985)).

Indeed, delegated letter orders, including the orders cited by Wolverine, typically contain the following disclaimer: "This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, contract, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such action is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against your company."

effective date permitted under Schedule 2 was not raised as an issue in those cases and thus was not affirmatively decided by the Commission;<sup>23</sup> it is inappropriate to read into the Commission's absence of discussion on this point a Commission practice contrary to what the Commission has done here.<sup>24</sup>

16. Therefore, the May 28 Order correctly decided that the earliest effective date permitted under Schedule 2 of MISO's Tariff is June 1, 2010.

The Commission orders:

Wolverine's request for rehearing of the May 28 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>23</sup> *Northeast Utils. Serv. Co.*, 74 FERC ¶ 61,065, at 61,173 n.10 (1996); *accord*, *e.g.*, *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 21 n.23 (2008); *Sw. Pub. Serv. Co.*, 51 FERC ¶ 61,130, at 61,364 & n.8 (1990).

<sup>24</sup> *E.g.*, *United States v. Shabani*, 513 U.S. 10, 16 (1994) (stating strained reading of prior cases is of little consequence for precedential purposes if the question is not resolved in the opinion, and no resolution of it may be inferred); *Webster v. Fall*, 266 U.S. 507, 511 (1925) (stating “[q]uestions which merely lurk in the record, neither brought to the attention of the [Commission] nor ruled upon, are not to be considered as having been so decided as to constitute precedents”). If a decision does not “squarely address an issue,” the Commission is not bound and remains “free to address [the issue] on the merits” at a later date. *Harper v. Va. Dep’t of Taxation*, 509 U.S. 86, 118 (1993) (O’Connor, J., dissenting) (quoting *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993)).