

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

KeySpan-Ravenswood, LLC

v.

Docket No. EL05-17-002

New York Independent System Operator, Inc.

ORDER REJECTING REQUEST FOR REHEARING

(Issued August 1, 2005)

1. In this order, the Commission rejects a request by KeySpan-Ravenswood, LLC (Ravenswood) for rehearing (second rehearing request) of the Commission's order denying rehearing issued in this proceeding on June 1, 2005.<sup>1</sup>

**Background**

2. This matter began, on October 27, 2004, when Ravenswood filed a complaint against the New York Independent System Operator, Inc. (NYISO) alleging that, for the Summer 2002 Capability Period, NYISO charged its members rates that were not consistent with its filed rate schedules, by failing to comply with the New York State Reliability Council's Reliability Rules incorporated in three Commission-approved rate schedules.<sup>2</sup> In the February 2005 Order, the Commission found Ravenswood's arguments without merit and denied its complaint.

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<sup>1</sup> *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 111 FERC ¶ 61,336 (2005) (Rehearing Order) (denying rehearing of 110 FERC ¶ 61,116 (2005) (February 2005 Order)).

<sup>2</sup> In support of its complaint, Ravenswood argued, *see* 110 FERC ¶ 61,116 at P 8, that NYISO erroneously computed the amount of installed capacity (ICAP) that statewide load serving entities were required to acquire for the Summer 2002 Capability Period, based on a failure to accurately translate ICAP requirements into unforced capacity (UCAP), the units of capacity used in NYISO's capacity auctions.

3. Ravenswood filed a request for rehearing of the February 2005 Order. The Commission denied rehearing. After reviewing each of Ravenswood's arguments on rehearing, the Commission found that "[n]othing in Ravenswood's rehearing request persuades us to revise the findings in our February 2005 Order."<sup>3</sup>

4. In reviewing Ravenswood's arguments, the Rehearing Order (in the next to last paragraph) added:

Further, had NYISO actually used the ICAP to UCAP translation supported by Ravenswood, it still remains unclear what prices would actually have been paid by LSEs because of the nature of the translation and the auction. This lack of clarity, and no instances of reliability problems arising from capacity shortages during the Summer 2002 Capability Period, leads the Commission to conclude that, even if we agreed with Ravenswood that NYISO's actions violated its tariffs, Ravenswood still would not have met its burden to show that it was entitled to any refunds, let alone the \$23.3 million in refunds that it requested. [<sup>4</sup>]

5. In response to the Rehearing Order, Ravenswood filed its second rehearing request, seeking rehearing of the Commission's earlier order that denied rehearing. Ravenswood argues that the inclusion in the Rehearing Order of the statement quoted above entitles it to seek rehearing of the Commission's earlier order denying rehearing.

### **Discussion**

6. We reject Ravenswood's second rehearing request. The Commission does not allow rehearing of an order denying rehearing.<sup>5</sup> Any other result would lead to never-ending litigation as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing unless presumably that response were word-for-word identical to what the Commission earlier said.<sup>6</sup> Litigation before the

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<sup>3</sup> 111 FERC ¶ 61,336 at P 1.

<sup>4</sup> *Id.* at P 27.

<sup>5</sup> See, e.g., *Southern Company Services, Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Company d/b/a Allegheny Power*, 106 FERC ¶ 61,181 (2004); *Southwestern Public Service Co.*, 65 FERC ¶ 61,088 at 61,533 (1993).

<sup>6</sup> Accord, e.g., *Canadian Association of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of "infinite regress" that would "serve no useful end").

Commission cannot be allowed to drag on indefinitely – at some point it must end – and so the Commission does not allow parties to seek rehearing of an order denying rehearing. And, as the District of Columbia Circuit has put it, even “an improved rationale” would not justify a further request for rehearing.<sup>7</sup>

7. Rehearing of an order on rehearing lies only when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection.<sup>8</sup> In fact, a second rehearing request is required in instances when the later order modifies the results of the earlier order in a significant way.<sup>9</sup>

8. Here, in the Rehearing Order, the Commission denied rehearing and affirmed the findings in the February 2005 Order. In these circumstances, the second rehearing request was neither required nor appropriate. The fact that, in responding to Ravenswood’s arguments (reiterating the arguments originally presented in its complaint), the Commission pointed out an additional weakness in Ravenswood’s arguments does not modify the results of the February 2005 Order, and does not otherwise constitute a significant modification of that order. This being the case, consistent with the precedent cited above, we will reject Ravenswood’s second rehearing request.

The Commission orders:

Ravenswood’s request for rehearing of the Commission’s earlier order denying rehearing in this proceeding is hereby rejected.

By the Commission. Chairman Kelliher concurring with a separate statement attached.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>7</sup> See *Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416, 423-24 (1<sup>st</sup> Cir. 2001); *Southern Natural Gas Co. v. FERC*, 877 F.2d 1066, 1073 (D.C. Cir. 1999) (*Southern*) (citing *Tennessee Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1109-10 (D.C. Cir. 1988)).

<sup>8</sup> See *Southern*, 273 F.3d at 424.

<sup>9</sup> See *California Department of Water Resources v. FERC*, 306 F.3d 1121, 1125 (D.C. Cir. 2002); *Town of Norwood, Massachusetts v. FERC*, 906 F.2d 772, 775 (D.C. Cir. 1990).

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Joseph T. KELLIHER, Chairman, concurring,

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I agree with the Commission's decision to reject KeySpan's request for rehearing of the Commission's June 1 order denying rehearing on the basis that Keyspan's second rehearing request does not properly lie. However, I write separately to note that I dissented from the Commission's June 1 rehearing order, and I reiterate my belief that the Commission erred in its decision to deny Keyspan's request for rehearing of the February 10 Order for the reasons set forth in my dissenting statement.<sup>1</sup>

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Joseph T. Kelliher  
Chairman

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<sup>1</sup> *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 111 FERC ¶ 61,336 at 62,488-89 (2005).