

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NewCorp Resources Electric Cooperative

Docket No. AC04-88-001

ORDER GRANTING REHEARING IN PART

(Issued December 29, 2005)

1. On November 21, 2005, NewCorp Resources Electric Cooperative (NewCorp) requested rehearing of the Commission's order in this proceeding dated October 25, 2005 (October 25 Order).¹ In that order, the Commission addressed requests for waivers of the Form 3-Q financial reporting requirements in Order No. 646.² In response to amendments to section 201(f) of the Federal Power Act (FPA)³ made by the Energy Policy Act of 2005 (EPAAct 2005),⁴ the October 25 Order found that certain electric cooperatives, including NewCorp, are no longer subject to the Commission's jurisdiction and, therefore, their requests for waivers were dismissed as moot. In this order the Commission grants NewCorp's request for rehearing insofar as we find that NewCorp is not an electric cooperative as defined in EPAAct 2005 and is a public utility subject to the Commission's jurisdiction. We will address its request for waiver of the Form 3-Q financial reporting requirements in a subsequent order.

Background

2. In the October 25 Order, the Commission categorized NewCorp as an electric cooperative as defined in section 201(f) of the FPA as amended, and found that it was no longer subject to the Commission's jurisdiction as a public utility under Part II of the

¹ *Access Energy Cooperative*, 113 FERC ¶ 61,092 (2005).

² *Quarterly Financial Reporting and Revisions to the Annual Reports*, Order No. 646, 69 Fed. Reg. 9,030 (Feb. 26, 2004), FERC Stats. & Regs. ¶ 31,158 (2004).

³ 16 U.S.C. § 824 (2000).

⁴ Pub. L. No. 109-58, § 1291(c), 119 Stat. 594, 1217 (2005).

FPA. The Commission noted that Forms 1, 1-F, and 3-Q reporting requirements apply to public utilities and licensees,⁵ and dismissed NewCorp's request for waiver as moot.

Request for Rehearing

3. NewCorp contends that the conclusions in the October 25 Order must be reversed because the Commission failed to properly interpret and apply to NewCorp the definitions of "electric cooperative" under the revised FPA. NewCorp also maintains that the Commission should grant its requested waiver of the Order No. 646 quarterly reporting requirements.

4. NewCorp argues that it remains subject to the Commission's jurisdiction as a "public utility" under the FPA. NewCorp states that it continues to satisfy the "public utility" definition because it owns and operates jurisdictional transmission facilities, which are interconnected with the Southwestern Public Service Company's (Southwestern) transmission system, and is engaged in the transmission of electrical energy in interstate commerce to facilitate sales by Southwestern at wholesale to Cap Rock Energy Corporation.

5. NewCorp contends that the exemption from Part II of the FPA for certain electric cooperatives created by EAct 2005 does not apply to NewCorp because NewCorp does not satisfy the EAct definition of "electric cooperative," i.e., as "a cooperatively owned *electric utility*."⁶ NewCorp states that it is not an "electric utility" under the amended FPA because the definition for "electric utility" requires an entity to sell electric energy;⁷ NewCorp does not sell electric energy. Therefore, NewCorp maintains it is not an "electric cooperative" under the amended FPA.

Discussion

6. We agree that NewCorp remains subject to the Commission's jurisdiction because NewCorp does not qualify for the exemption provided to electric cooperatives under the amended FPA. NewCorp owns and operates jurisdictional transmission facilities that are interconnected with Southwestern transmission system, and it is engaged in the transmission of electrical energy in interstate commerce to facilitate sales at wholesale. We find that the exemption from Part II of the FPA for electric cooperatives created by

⁵ See 16 U.S.C. §§ 796, 797, 825c, & 825h (2000); see also 18 C.F.R. §§ 141.1 & 141.400 (2005).

⁶ NewCorp Request for Rehearing at 8 (citing EAct 2005 § 1291(b)(2) (to be codified at 16 U.S.C. § 796(26)) (emphasis added)).

⁷ *Id.* (citing EAct 2005 § 1291(b)(1) (to be codified at 16 U.S.C. § 796(22)(A))).

EPAAct 2005 does not apply to NewCorp because NewCorp is not an “electric cooperative,” defined as “a cooperatively owned *electric utility*.” NewCorp is not an “electric utility” under the amended FPA because it does not sell electric energy, as required by the definition. Rather, NewCorp is a “transmitting utility” that “owns, operates, or controls facilities used for the transmission of electric energy” in interstate commerce for the sale of electric energy at wholesale,⁸ and, as such, remains a public utility subject to the Commission’s jurisdiction.⁹

7. We note that NewCorp requests an expeditious decision on this issue, which is a precondition to closing a transaction involving the transfer of the shares of NewCorp’s member-owner.¹⁰ Accordingly, we find that the Commission continues to have jurisdiction over NewCorp. However, with regard to NewCorp’s request that the Commission grant NewCorp waiver of the Order No. 646 quarterly reporting requirements, we will issue a decision on that issue in a subsequent order.

The Commission orders:

NewCorp’s request for rehearing is hereby granted, in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ EPAAct 2005 § 1291(b)(1) (to be codified at 16 U.S.C. § 796(23)(A), (B)).

⁹ FPA § 201(e), 16 U.S.C. § 824(e) (2000).

¹⁰.NewCorp Request for Rehearing at 2 n.4.