

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cargill Power Markets, LLC,
Conectiv Energy Supply, Inc.,
DTE Energy Trading, Inc.,
PSEG Energy Resources & Trade LLC,
TransAlta Energy Marketing (US) Inc.,
Tenaska Power Services Co., and
Ontario Power Generation Inc.

Docket No. EL05-66-003

v.

Midwest Independent Transmission System Operator,
Inc.

ORDER REJECTING REQUEST FOR REHEARING

(Issued February 1, 2006)

Introduction

1. In this order, we reject the Coalition Members'¹ request for rehearing (second rehearing request) of the order denying rehearing issued in this proceeding on December 2, 2005.²

Background

2. On February 22, 2005, the Coalition Members filed a complaint alleging that Midwest Independent Transmission System Operator, Inc. (Midwest ISO) improperly

¹ The Coalition Members are Cargill Power Markets, LLC, PSEG Energy Resources & Trade LLC, TransAlta Energy Marketing (US) Inc., Tenaska Power Services Co., and Ontario Power Generation Inc. DTE Energy Trading, Inc. and Conectiv Energy Supply, Inc., original signatories to the Complaint and subsequent pleadings filed in this proceeding, are not parties to this second request for rehearing.

² See, Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc., 113 FERC ¶ 61,233 (2005) (December 2 Order). The December 2 Order denied rehearing of Cargill Power Markets, LLC. v. Midwest Independent Transmission System Operator, Inc., 112 FERC ¶ 61,025 (2005) (July 5 Order).

rescinded its discounted transmission rate for transmission service reservations (TSR) for transactions sinking at the Michigan-Ontario Independent Electricity Market Operator interface (MI-IMO interface). The July 5 Order denied the complaint and explained that: (1) TSRs do not create fixed-price contracts; (2) the discount, as posted on OASIS, notified customers that rates could change after December 31, 2003; (3) the MI-IMO interface is constrained; thus Midwest ISO, consistent with Commission policy, properly rescinded the discount; and (4) the relief sought (discounted service for the entire multi-year terms of the Coalition Members' TSRs but denial of the discounted rate to new customers for the same service because of system constraints) could give rise to undue discrimination.

3. The Coalition Members filed a request for rehearing of the July 5 Order. After reviewing each of the Coalition Members' arguments on rehearing and reiterating the findings of the July 5 Order, the Commission denied the rehearing request.³

4. The Coalition Members filed a second rehearing request, seeking rehearing of the December 2 Order that denied rehearing. The Coalition Members argue that the December 2 Order raised a new issue. The Coalition Members contend that the Commission's holding that undue discrimination would result if the Coalition Members' discounted rate were upheld but not offered to new transmission customers seeking transmission service to the MI-IMO interface entitles them to seek rehearing of the December 2 Order which denied rehearing of the July 5 Order.

Discussion

5. We reject the Coalition Members' second rehearing request. The Commission does not allow rehearing of an order denying rehearing.⁴ 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.⁵ Litigation before the Commission cannot be allowed to drag on indefinitely – at some point it must end – and

³ See *supra* note 2.

⁴ See, e.g., *KeySpan-Ravenswood, LLC v. New York Independent System Operator, Inc.*, 112 FERC ¶ 61,153 (2005); *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).

⁵ 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”).

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.⁶

6. 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.⁷ 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.⁸

7. Here, the December 2 Order denied rehearing and affirmed the findings in the July 5 Order. In these circumstances, the second rehearing request was neither required nor appropriate. The fact that, in responding to the Coalition Members’ arguments (reiterating the arguments originally presented in the complaint), the Commission pointed out an additional weakness in those arguments does not modify the results of the July 5 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 the Coalition Members’ second rehearing request.

The Commission orders:

The Coalition Members’ request for rehearing of the December 2 Order denying rehearing in this proceeding is hereby rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁶ See *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)).

⁷ See *Southern*, 273 F.3d at 424.

⁸ 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).