

137 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PacifiCorp

Docket No. ER11-3643-002

ORDER DENYING REHEARING

(Issued November 18, 2011)

1. On August 10, 2011, Utah Associated Municipal Power Systems (UAMPS) and Deseret Generation & Transmission Co-operative, Inc. (Deseret) filed what they characterize as a joint motion for clarification of the Commission's August 8, 2011 order in this proceeding.¹ In this order, we find that the joint motion is a request for rehearing and deny rehearing.

I. Background

2. On May 26, 2011, PacifiCorp filed with the Commission revisions to its Open Access Transmission Tariff under section 205 of the Federal Power Act (FPA).² Thereafter, on June 9, 2011, PacifiCorp filed a "Limited Clarification" of the May 26, 2011 Filing. In the August 8 Order, we addressed both filings together and found that PacifiCorp's proposal raised issues of material fact that could not be resolved based on the record before us, and set the proposal for hearing and settlement judge procedures.³ We also found that the proposed rates may be substantially excessive, accepted them for filing, suspended them for five months, and made them effective December 25, 2011, subject to refund.⁴

¹ *PacifiCorp*, 136 FERC ¶ 61,092 (2011) (August 8 Order).

² 16 U.S.C. § 824d (2006).

³ August 8 Order at P 1 n.2 and P 33.

⁴ *Id.* P 34.

II. Request for Rehearing

3. In their request for rehearing, UAMPS and Deseret argue that the effective date of December 25, 2011, is incorrect, i.e., the result of an administrative oversight.⁵ According to UAMPS and Deseret, the Commission should have calculated the five-month suspension from PacifiCorp's June 9, 2011 Limited Clarification rather than the original filing date of May 26, 2011.⁶ UAMPS and Desert argue that, if the Commission had chosen the correct date from which to calculate the five-month suspension, PacifiCorp's proposed rates would go into effect, subject to refund, on January 8, 2012, not December 25, 2011. On August 12, 2011, PacifiCorp filed an answer.

III. Discussion

A. Procedural Matters

4. UAMPS and Deseret's motion for clarification is, in fact, a request for rehearing, and the Commission will treat it as such.⁷

5. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2011), prohibits answers to requests for rehearing. Therefore, we will reject PacifiCorp's answer.

B. Commission Determination

6. In *Niagara Mohawk Power Corporation*, the Commission addressed a similar argument. In that case, several parties argued that the Commission erred in calculating the five-month suspension period from the effective date that Niagara Mohawk requested in its original filing, rather than the date on which Niagara Mohawk responded to and cured the deficiency in the original filing.⁸ As in *Niagara Mohawk*, we find that the effective date may appropriately be set with reference to the original filing date rather

⁵ Request for Rehearing at 4.

⁶ *Id.* at 3.

⁷ See, e.g., *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984); see also, *Central Minnesota Municipal Power Agency*, 134 FERC ¶ 61,115, at P 15 n.20 (2011); *Denver City Energy Associates, L.P.*, 132 FERC ¶ 61, 249, at P 7 n.19 (2010).

⁸ *Niagara Mohawk Power Corp.*, 126 FERC ¶ 61,173, at P 8 (2009) (*Niagara Mohawk*).

than the amendment's filing date. We set it thus in *Niagara Mohawk*, and we have done the same here.⁹

7. As we stated in the August 8 Order, our preliminary analysis found that the proposed rates may be unjust and unreasonable, and may be substantially excessive; therefore we followed our longstanding policy by suspending the effectiveness of the rates for the maximum five months, and consistent with our precedent, we suspended them from the original filing date. As in *Niagara Mohawk*, we believe that our action was reasonable and fully consistent with our statutory discretion in the circumstances of this case.¹⁰

The Commission orders:

UAMPS and Deseret's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ *Id.* P 7-18. See also *Puget Sound Energy, Inc.*, 137 FERC ¶ 61,063, at n.68 (2011).

¹⁰ 16 U.S.C. § 824e (2006). *Accord Niagara Mohawk*, 126 FERC ¶ 61,173, at P 16-17.