

157 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Michigan South Central Power Agency

Docket Nos. EL16-77-001

v.

Michigan Electric Transmission Company, LLC

Michigan Electric Transmission Company, LLC

ER16-1986-001
(Consolidated)

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued December 2, 2016)

1. On August 18, 2016, the Commission issued an order consolidating and setting for hearing and settlement judge procedures two proceedings regarding: (1) an unexecuted Amended and Restated Michigan South Central 2004 Transmission Ownership and Operating Agreement (Unexecuted Agreement) between Michigan Electric Transmission Company, LLC (METC) and Michigan South Central Power Agency (Michigan South Central), and (2) a complaint by Michigan South Central against METC regarding the transfer of ownership interests upon expiration of a 1980 Transmission Ownership and Operating Agreement (1980 Agreement).¹ The 1980 Agreement, executed in connection with Michigan South Central's construction of a 55 MW fossil fuel-fired generating unit in Litchfield, Michigan (Project I Plant), and a subsequent 2004 Transmission Ownership and Operating Agreement provided for joint ownership of a 345 kV transmission line and transmission service rights for Michigan South Central on the transmission system owned by Consumers Energy Company at the time, and now owned by METC.²

¹ *Mich. S. Cent. Power Agency v. Mich. Elec. Transmission Co., LLC*, 156 FERC ¶ 61,115 (2016) (August 18 Order).

² *See id.* PP 5, 7.

2. The dispute underlying the June 1, 2016 complaint and June 21, 2016 filing of the Unexecuted Agreement involves the transfer of Michigan South Central's ownership interests under the 1980 Agreement upon retirement of the Project I Plant on June 1, 2016. In the August 18 Order, the Commission found that both the complaint and Unexecuted Agreement raised issues of material fact that could not be resolved based on the record, and consolidated the proceedings for purposes of settlement, hearing, and decision.³ The Commission accepted the Unexecuted Agreement, suspending it for a nominal period to become effective August 21, 2016, subject to refund, and established hearing and settlement judge procedures in the consolidated proceeding.

3. In its September 19, 2016 request for rehearing, METC asserts that the Commission should have granted METC's request for waiver of the 60-day prior notice requirement and permitted the Unexecuted Agreement to become effective June 1, 2016 to ensure continuity of service to Michigan South Central.⁴ METC seeks clarification, or in the alternative rehearing, that the Commission granted METC's notice of termination of the 1980 Agreement.⁵ METC further seeks clarification, or in the alternative rehearing, that the June 1, 2016 refund effective date established in the August 18 Order will not bar METC from collecting charges under the 1980 Agreement for Michigan South Central's use of its transmission system prior to the refund effective date.⁶ For the reasons discussed below, we grant METC's requested clarifications and deny its request for rehearing.

I. Discussion

A. Procedural Matters

4. On September 30, 2016, Michigan South Central submitted a motion to answer and answer to METC's request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2016), prohibits an answer to a request for rehearing. Accordingly, Michigan South Central's answer is hereby rejected.

³ *Id.* PP 36-37.

⁴ Rehearing Request at 7-8.

⁵ *Id.* at 8-9.

⁶ *Id.* at 10-11.

B. Substantive Matters**1. Effective Date**

5. METC contends that the Commission erred by failing to grant its requested June 1, 2016 effective date for the Unexecuted Agreement.⁷ We deny rehearing, and affirm the Commission's determination in the August 18 Order to accept the Unexecuted Agreement effective August 21, 2016, 61 days from filing.⁸ We continue to find that METC did not demonstrate good cause for waiver of the prior notice requirement. METC provides no reason why it could not have timely filed the Unexecuted Agreement, given that it received notice in January 2016 that the Project I Plant would be retiring in June.⁹ The Commission has found that extended negotiations do not excuse parties from the prior notice requirement.¹⁰ In addition, the Commission has stated that it will not grant waiver of the prior notice requirement for contested filings, even if they do not have an impact on rates.¹¹

6. METC contends that the August 18 Order creates a problem with continuity of service due to the parties' agreement that the 1980 Agreement would expire by its own terms upon the retirement of the Project I Plant (i.e., June 1, 2016).¹² METC cites two cases in which the Commission granted waiver of prior notice to permit continuity of service from the expiration dates of prior agreements.¹³ But neither is directly on point. One involved agreements filed under a tariff of general applicability within 30 days after

⁷ *Id.* at 1-2, 7-8.

⁸ August 18 Order, 156 FERC ¶ 61,115 at P 37.

⁹ See METC Amended and Restated MSCPA Transmission Ownership and Operating Agreement, METC Rate Schedule No. 44 and Notice of Termination of METC Rate Schedule No. 30, Docket No. ER16-1986-000, at 4 (filed June 21, 2016).

¹⁰ See *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,146, at P 53 (2016) (citing *Entergy Servs., Inc.*, 119 FERC ¶ 61,341, at P 14, *reh'g denied*, 121 FERC ¶ 61,044 (2007)).

¹¹ See *PacifiCorp*, 131 FERC ¶ 61,043, at P 25 (2010). See also *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

¹² Rehearing Request at 7-8.

¹³ *Id.* at 8 n.24.

service commenced,¹⁴ and the other involved an unexecuted agreement filed more than 60 days prior to the requested effective date and then re-filed in its executed version with one change agreed to by the parties.¹⁵ In any event, we find that the August 21, 2016 effective date does not create any disruption in service because, as explained below, the notice of termination for the 1980 Agreement was granted effective August 21, 2016.

2. Notice of Termination

7. METC's June 21, 2016 filing of the Unexecuted Agreement also included notice of termination of the 1980 Agreement, with a request to make the termination effective as of the planned June 1, 2016 retirement of the Project I Plant. METC seeks clarification that the Commission intended in the August 18 Order to grant termination of the 1980 Agreement to coincide with the effective date of the Unexecuted Agreement, whether June 1, 2016 or August 21, 2016.¹⁶

8. The August 18 Order inadvertently failed to explicitly address METC's notice of termination. In accepting the Unexecuted Agreement effective August 21, 2016,¹⁷ the Commission also intended to grant the notice of termination for the 1980 Agreement as of the same date. We note that granting METC's June 21, 2016 request for termination as of June 1, 2016 would have required an express waiver of 18 C.F.R. § 35.15, which requires that such notice be filed at least 60 days prior to the date on which the termination is proposed to take effect. We thus grant clarification that the Commission has granted termination of the 1980 Agreement to coincide with the effective date of the Unexecuted Agreement.¹⁸ Accordingly, there is no "gap" in service.

¹⁴ *The Empire Dist. Elec. Co.*, 133 FERC ¶ 61,004 (2010). The Commission will generally grant waiver of service agreements under "umbrella tariffs" (i.e., tariffs of general applicability) if the service agreement is filed within 30 days of when service begins. *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *clarified*, 65 FERC ¶ 61,081 (1993).

¹⁵ *Kan. Gas and Elec. Co.*, 42 FERC ¶ 61,204, at 61,702-61,703 (1988).

¹⁶ Rehearing Request at 2, 8-9.

¹⁷ August 18 Order, 156 FERC ¶ 61,115 at P 37.

¹⁸ Because we are granting METC's requested clarification, we dismiss as moot its alternative request for rehearing.

3. Refund Effective Date

9. In the August 18 Order, the Commission established a June 1, 2016 refund effective date for the investigation instituted under section 206 of the Federal Power Act¹⁹ in response to Michigan South Central's complaint regarding the transfer of ownership interests upon expiration of the 1980 Agreement.²⁰ METC seeks clarification that this refund effective date will not prevent it from collecting amounts billed for service provided to Michigan South Central under the 1980 Agreement prior to June 1, 2016, but that will not be calculated and billed until July 2017.²¹ We grant clarification to confirm that the refund effective date established in this proceeding does not bar METC from collecting amounts properly billed for service incurred under the 1980 Agreement prior to its termination.²² We note that this clarification relates only to the application of the refund effective date and has no bearing on issues related to the substance of the complaint, including the nature of the utilization adjustment in the 1980 Agreement, as these issues have been set for hearing and settlement judge procedures and are not the subject of any final determinations by the Commission.²³

The Commission orders:

(A) METC's request for rehearing is hereby denied, as discussed in the body of this order.

¹⁹ 16 U.S.C. § 824e (2012).

²⁰ August 18 Order, 156 FERC ¶ 61,115 at P 39.

²¹ Rehearing Request at 2, 10-11.

²² Because we are granting METC's requested clarification, we dismiss as moot its alternative request for rehearing.

²³ Rule 713(b) of the Commission's Rules of Practice and Procedure permits requests for rehearing "of any final decision or other final order in a proceeding." 18 C.F.R. § 385.713(b) (2016); *see also* 16 U.S.C. § 825l (a) (2012). A final order is one that "imposes an obligation, denies a right, or fixes some legal relationship" as a consummation of the administrative process. *Reliable Automatic Sprinkler Co., Inc. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003).

(B) METC's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.