

157 FERC ¶ 61,178
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Monongahela Power Company
Potomac Edison Company
West Penn Power Company
AEP Indiana Michigan Transmission Company, Inc.
AEP Kentucky Transmission Company, Inc.
AEP Ohio Transmission Company, Inc.
AEP West Virginia Transmission Company, Inc.
Appalachian Power Company
Indiana Michigan Power Company
Kentucky Power Company
Kingsport Power Company
Ohio Power Company
Wheeling Power Company
Commonwealth Edison Company
Commonwealth Edison Company of Indiana, Inc.
Dayton Power and Light Company
Virginia Electric and Power Company
Public Service Electric and Gas Company
PECO Energy Company
PPL Electric Utilities Corporation
Baltimore Gas and Electric Company
Jersey Central Power & Light Company
Metropolitan Edison Company
Pennsylvania Electric Company
Potomac Electric Power Company
Atlantic City Electric Company
Delmarva Power & Light Company
UGI Utilities Inc.
Allegheny Electric Cooperative, Inc.
CED Rock Springs, LLC
Old Dominion Electric Cooperative
Rockland Electric Company
Duquesne Light Company
Neptune Regional Transmission System, LLC
Trans-Allegheny Interstate Line Company
Linden VFT, LLC

Docket No. EL16-71-001

American Transmission Systems, Incorporated
City of Cleveland, Department of Public Utilities,
Division of Cleveland Public Power
Duke Energy Ohio, Inc.
Duke Energy Kentucky, Inc.
City of Hamilton, Ohio
Hudson Transmission Partners, LLC
East Kentucky Power Cooperative, Inc.
City of Rochelle
ITC Interconnection LLC
PJM Interconnection, L.L.C.

ORDER DISMISSING REHEARING

(Issued December 2, 2016)

1. On August 26, 2016, the Commission issued an order establishing a proceeding under section 206 of the Federal Power Act (FPA)¹ and Rule 209(a) of the Commission's Rules of Practice and Procedures² to determine whether the PJM Interconnection, L.L.C. (PJM) Transmission Owners are complying with their Order No. 890³ obligations.⁴ The Commission directed the PJM Transmission Owners, within 60 days of the August 26 Order, to either: (1) propose revisions to the PJM Operating Agreement to comply with Order No. 890; (2) revise their portions of the PJM Open Access Transmission Tariff or their individual Open Access Transmission Tariffs to comply with Order No. 890;

¹ 16 U.S.C. § 824e (2012).

² 18 C.F.R. § 385.209(a) (2016).

³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴ *Monongahela Power Co.*, 156 FERC ¶ 61,134 (2016) (August 26 Order).

or show cause why they should not be required to do so.⁵ Responses to the August 26 Order were filed on October 25, 2016, and are currently pending in Docket No. EL16-71-000.

2. In a September 26, 2016 request for rehearing, Indicated PJM Transmission Owners⁶ seek limited rehearing of the August 26 Order “to preserve their rights under the Consolidated Transmission Owners Agreement (CTOA) to engage in and maintain responsibility for transmission planning, including the planning necessary to meet their obligations to retail customers.”⁷ In particular, Indicated PJM Transmission Owners seek rehearing of the August 26 Order to the extent that the order could be read to: (1) reverse the Commission’s prior acceptance of the transmission planning provisions in the PJM Operating Agreement as just and reasonable; (2) shift the burden of proof under FPA section 206; (3) result in changes to the local transmission planning process that would interfere with the internal planning processes of PJM transmission owners; or (4) result in changes to the local transmission planning process that interfere with PJM transmission owners’ ability to meet their obligations to serve retail load or make investment decisions for their transmission systems as set forth under the CTOA. East Kentucky concurrently filed a separate request seeking clarification, or in the alternative rehearing, that the Commission does not intend to regulate local transmission planning in a manner that

⁵ *Id.* P 15.

⁶ Indicated PJM Transmission Owners include Allegheny Electric Cooperative, Inc.; East Kentucky Power Cooperative, Inc. (East Kentucky); UGI Utilities Inc.; Dayton Power and Light Company; Public Service Electric and Gas Company; PPL Electric Utilities Corporation; FirstEnergy Service Company on behalf of American Transmission Systems, Inc., Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company, The Potomac Edison Company, and Monongahela Power Company; American Electric Power Service Corporation, on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company; Duquesne Light Company; Exelon Corporation on behalf of its affiliates, Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc., Delmarva Power & Light Company, PECO Energy Company, and the Potomac Electric Power Company; Duke Energy Ohio, Inc.; Duke Energy Kentucky, Inc.; City of Rochelle; ITC Holdings Corp. on behalf of ITC Interconnection LLC; and Rockland Electric Company.

⁷ Indicated PJM Transmission Owners Rehearing Request at 2.

could be inconsistent with Rural Utilities Service requirements, with which East Kentucky must comply to obtain financing.⁸

Discussion

A. Procedural Matters

3. On October 11, 2016, American Municipal Power, Inc. and Old Dominion Electric Cooperative each submitted a motion to answer and answer to the requests 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, the answers are hereby rejected.

B. Substantive Matters

4. 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."⁹ A final order is one that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.¹⁰ The August 26 Order made no such final determination.¹¹ To the contrary, the August 26 Order merely raised concerns about the implementation of the transmission planning process governed by the

⁸ East Kentucky Clarification Request at 2-3.

⁹ 18 C.F.R. § 385.713(b) (2016); *see also* 16 U.S.C. § 825l(a) (parties "aggrieved by an order issued by the Commission in a proceeding ... may apply for a rehearing within thirty days after the issuance of such order").

¹⁰ *Reliable Automatic Sprinkler Co. Inc. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) (*Reliable*) ("Final agency action 'mark[s] the consummation of the agency's decisionmaking process' and is 'one by which rights or obligations have been determined, or from which legal consequences will flow.'") (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)).

¹¹ *See Investigation of Terms and Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 103 FERC ¶ 61,349, at 62,373 (2003) ("Because the November 20 Order initiated an investigation and thus was not a final order, we will not consider requests for rehearing of the November 20 Order."); *City of Hamilton*, 82 FERC ¶ 61,349, at 62,359 (1998) ("Setting this matter for a trial-type hearing does not impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process."); *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61,372, at 63,012 (1993) ("By not allowing rehearing of findings that were expressly preliminary... the Commission was exercising its discretion to develop workable, efficient procedures....").

PJM Operating Agreement and established a proceeding under FPA section 206 to determine whether the PJM Transmission Owners are complying with their Order No. 890 obligations.¹²

5. Where, as here, Commission action will be succeeded by further Commission action, a request for rehearing may be dismissed.¹³ Accordingly, Indicated PJM Transmission Owners' and East Kentucky's requests for rehearing are dismissed. East Kentucky's requested clarification is likewise premature and thus is also dismissed.

The Commission orders:

The requests for rehearing and clarification are hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² August 26 Order, 156 FERC ¶ 61,134 at PP 13-15. *See also Hunter v. FERC*, 569 F. Supp. 2d 12, 17 (D.D.C. 2008) (observing that order to show cause in FERC proceeding does not “impose[] an obligation, den[y] a right, or fix[] some legal relationship’ as would a true final agency action”) (quoting *Reliable*, 324 F.3d at 732-33).

¹³ *See Internal MISO Generation v Midcontinent Indep. Sys. Operator*, 156 FERC ¶ 61,020, at P 10 (2016) (dismissing requests for rehearing of Commission order that “did not make any final determinations,” but rather “established a paper hearing to assess” the relevant issues); *Entergy Servs., Inc.*, 156 FERC ¶ 61,112, at P 4 (2016) (explaining that an order “establish[ing] procedures to consider the issue of the post-withdrawal settlement benefits ... did not reflect a final decision with respect to that issue”); *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250, at PP 154-155 (2012) (collecting cases).