

158 FERC ¶ 61,013  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Logan Generating Company, L.P.

Docket No. ER16-2217-001

ORDER GRANTING CLARIFICATION IN PART  
AND DISMISSING REHEARING

(Issued January 6, 2017)

1. On September 12, 2016, the Commission accepted for filing, subject to refund, Logan Generating Electric Company, L.P.'s (Logan) proposed rate for the provision of Reactive Supply and Voltage Control Service (Reactive Service) from its 242.25 MW cogeneration facility in Logan Township, New Jersey, and established hearing and settlement judge procedures.<sup>1</sup> Although setting the Reactive Service rate schedule for hearing in its entirety, the Commission noted that Logan's turbine generator cost of \$54,313,533 and generator and exciter cost of \$21,725,413 appear excessive, as the generator manufacturer's letter provided by Logan depicted the turbine generator cost as approximately \$22 million and the generator and exciter cost as approximately \$8.8 million.<sup>2</sup>

2. On October 12, 2016, Logan filed a request for expedited clarification or, in the alternative, expedited rehearing of the September 12 Order. Logan contends that the Commission failed to provide a reasoned explanation for its statement that the generator costs appeared excessive, which Logan asserts could signify a departure from precedent permitting the use of installed costs to calculate Reactive Service rates.<sup>3</sup> Logan thus seeks clarification that it may use installed costs to calculate the facility's Reactive

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<sup>1</sup> *Logan Generating Co., L.P.*, 156 FERC ¶ 61,173 (2016) (September 12 Order).

<sup>2</sup> *Id.* P 9.

<sup>3</sup> Rehearing Request at 1-2.

Service rate, which it claims to have done in its filing.<sup>4</sup> Logan further asserts that the Commission failed to explain whether it considered the testimony and exhibits provided with Logan's filing in making its findings regarding Logan's use of installed costs in its rate calculation, and seeks clarification whether the Commission's statement regarding the generator costs in the September 12 Order constitutes a finding that the testimony and exhibits provided by Logan failed to justify its proposed rate.<sup>5</sup> Should the Commission decline to grant its requested clarifications, Logan requests rehearing of the September 12 Order on the grounds that: (1) requiring Logan to use the raw equipment costs referenced by its manufacturer would represent a departure from precedent permitting the use of installed or investment costs to calculate Reactive Service rates under the *Am. Elec. Power Serv. Corp.*<sup>6</sup> methodology;<sup>7</sup> and (2) the Commission did not adequately address the testimony and supporting documentation provided with Logan's filing, which Logan contends supports its proposed rate.<sup>8</sup>

3. For the reasons discussed below, we grant clarification in part and dismiss Logan's request for rehearing.

#### **Commission Determination**

4. Logan argues that the testimony of Steven Gabel (Gabel Testimony)<sup>9</sup> included with its filing demonstrates that the installed costs for the turbine generator and generator and exciter were calculated in compliance with the *AEP* methodology, and asks the Commission to "clarify the September 12 Order to reconcile the inherent contradiction in the Commission's statement and the Commission's precedent."<sup>10</sup> While Logan purports to seek clarification on this issue, it is unclear how the Commission could fulfill Logan's request by finding that it adequately supported its proposed rate without either

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<sup>4</sup> *Id.* at 6-7.

<sup>5</sup> *Id.* at 2, 7-8.

<sup>6</sup> Opinion No. 440, 88 FERC ¶ 61,141 (1999), *order on reh'g*, 92 FERC ¶ 61,001 (2000) (*AEP*).

<sup>7</sup> Rehearing Request at 9-11.

<sup>8</sup> *Id.* at 11-13.

<sup>9</sup> Transmittal, Exh. No. LGC-1 (Prepared Direct Testimony of Steven Gabel) at 10-11.

<sup>10</sup> Rehearing Request at 7.

prejudging the outcome of the hearing and settlement judge procedures established in the September 12 Order or reversing the establishment of those procedures. We therefore deem Logan's request to be a request for rehearing, and find it to be premature.

5. 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."<sup>11</sup> A final order is one that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.<sup>12</sup> The September 12 Order made no such final determination.<sup>13</sup> Rather, the Commission found that Logan's proposed rate for Reactive Service raised issues of material fact that could not be resolved on the record before the Commission, and thus established hearing and settlement judge procedures.<sup>14</sup>

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<sup>11</sup> 18 C.F.R. § 385.713(b) (2016); *see also* 16 U.S.C. § 825l(a) (2012) (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").

<sup>12</sup> *Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) ("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))).

<sup>13</sup> *See Investigation of Terms & 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 vs. 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 . . .").

<sup>14</sup> September 12 Order, 156 FERC ¶ 61,173 at P 9.

6. Where, as here, Commission action will be succeeded by further Commission action, a request for rehearing may be dismissed.<sup>15</sup> Accordingly, Logan’s request for “clarification” and alternative rehearing request regarding the turbine generator and generator and exciter costs are dismissed. Nonetheless, to avoid confusion, we confirm that the Commission’s statement regarding the turbine generator and generator and exciter costs did not constitute a determination that the costs are excessive, nor was this statement intended to announce a “major policy change”<sup>16</sup> or departure from prior precedent. We are confident that the hearing and settlement judge procedures should provide Logan with ample opportunity to present its arguments regarding the treatment of these costs and interpretation of the Gabel Testimony.

7. Logan also seeks clarification regarding the sufficiency of the testimony and exhibits supporting its filing, contending that it is not clear whether the Commission afforded due weight to the Gabel Testimony, exhibits, and attachments.<sup>17</sup> Logan asserts that it needs additional guidance from the Commission to determine what additional documentary support is needed to satisfy the Commission’s standards.<sup>18</sup> We grant clarification, in part, to confirm that the Commission duly considered all of the evidence in the record before it in this proceeding. We further clarify, per Logan’s request, that the Commission was not able to find that Logan met its burden under section 205 of the Federal Power Act<sup>19</sup> to demonstrate that its proposed rate is just and reasonable and not unduly discriminatory without further inquiry. As explained in the September 12 Order, the Commission found that Logan’s filing raised issues of material fact that could not be resolved based on the record, and therefore set the filing for hearing and settlement judge

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<sup>15</sup> 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 154-55 (2012) (collecting cases).

<sup>16</sup> See Rehearing Request at 11.

<sup>17</sup> *Id.* at 7-8.

<sup>18</sup> *Id.* at 8.

<sup>19</sup> 16 U.S.C. § 824d (2012).

procedures.<sup>20</sup> Moreover, as explained above, setting a filing for hearing and settlement judge procedures is not a final determination and therefore does not, as Logan suggests,<sup>21</sup> constitute a rejection of the filing.<sup>22</sup> The hearing and settlement judge procedures established in the September 12 Order will provide an opportunity to explore the question of whether the evidence provided by Logan supports its proposed rate.<sup>23</sup> Accordingly, for the reasons explained above, we likewise dismiss Logan's alternative request for rehearing regarding the sufficiency of its evidence and exhibits.

The Commission orders:

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

(B) Logan's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> September 12 Order, 156 FERC ¶ 61,173 at P 9.

<sup>21</sup> Rehearing Request at 11-12.

<sup>22</sup> *See supra* note 13.

<sup>23</sup> *See* Rehearing Request at 13.