

165 FERC ¶ 61,090
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Reform of Generator Interconnection Procedures
and Agreements

Docket No. RM17-8-002

ORDER DISMISSING REQUEST FOR REHEARING

(Issued November 13, 2018)

1. On September 24, 2018, the Edison Electric Institute (EEI) submitted a motion requesting an extension of the compliance deadline for Order No. 845¹ up to and including ninety (90) days after the Commission's issuance of an order addressing the pending requests for rehearing of Order No. 845. EEI asserted that additional time would help to ensure that all transmission providers have the opportunity to effectively comply with Order No. 845. On September 26, 2018, the American Wind Energy Association (AWEA) filed an answer opposing EEI's motion.
2. On October 3, 2018, pursuant to delegated authority,² the Office of the Secretary issued a notice granting EEI's motion and requiring that transmission providers submit the compliance filings directed in Order No. 845 within ninety (90) days of the Commission's issuance of an order addressing the pending requests for rehearing of Order No. 845.³
3. On October 15, 2018, AWEA filed a request for rehearing of the Extension Notice. It argues that, by extending the deadline for compliance filings, the Commission departed from its precedent providing that the filing of a request for rehearing does not

¹ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 83 *Fed. Reg.* 21,342 (May 9, 2018), 163 FERC ¶ 61,043 (2018) (Order No. 845).

² *See* 18 C.F.R. §§ 375.302(b), 375.302(f), 385.2008 (2018).

³ Notice of Extension of Compliance Date, Docket No. RM17-8-000 (Oct. 3, 2018) (Extension Notice).

stay a Commission decision or order.⁴ AWEA also argues that the Extension Notice failed to provide a reasoned basis for the Commission's "departing from its former policy."⁵ AWEA further argues that the Extension Notice effectively stays Order No. 845 "indefinitely until a rehearing request is issued."⁶ Finally, AWEA contends that transmission providers have had months to prepare their compliance filings and that the potential burdens they might experience by having to file a compliance filing "assuming a rehearing request is even granted, [are] outweighed by the serious and definite harm of open-endedly staying the effectiveness of . . . Order No. 845."⁷

4. We dismiss AWEA's Rehearing Request for several reasons. The Extension Notice is not a "final Commission decision or other final order," and, therefore, not subject to rehearing pursuant to Rule 713(a) of the Commission's regulations.⁸ Moreover, the Commission has substantial discretion to establish its calendar and procedures to balance the interests of all parties and provide for a reasonable resolution of proceedings⁹ and the timing of submission of compliance filings is within the Commission's discretion. Finally, we disagree with AWEA; the Extension Notice does

⁴ AWEA Oct. 15, 2018 Rehearing Request at 4 (citing 16 U.S.C. § 8251(c) (2012)).

⁵ *Id.* at 5.

⁶ *Id.* at 4.

⁷ *Id.* at 6.

⁸ 18 C.F.R. § 385.713(a) (2018); *see also San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 95 FERC ¶ 61,179, at 61,586-87 (2001) ("[b]ecause . . . notices are interlocutory actions not subject to requests for rehearing, we will dismiss the parties' requests for rehearing").

⁹ *See, e.g., City of San Antonio v. CAB*, 374 F.2d 326, 329 (D.C. Cir. 1967) (no principle of administrative law is more firmly established than that of agency control of its own calendar, within the bounds of due process); *Association of Massachusetts Consumers Inc. v. SEC*, 516 F.2d 711, 714 (D.C. Cir. 1975), *cert. denied*, 423 U.S. 1052 (1976); *Consolidation Coal Co. v. Costle*, 483 F. Supp. 1003 (S.D. Ohio 1979) (an administrative agency has wide discretion in controlling its calendar). *See also Miami General Hospital v. Bowen*, 652 F.Supp. 812, 814 (S.D. Fla. 1986) (decision to refuse an extension of time not reviewable). *See also Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,267, at P 5 (2006) (dismissing a request for rehearing of a notice extending an order's compliance deadline until after the Commission issued a rehearing order on the order that created the compliance requirements).

not change or stay Order No. 845's effective date, but simply extends the date that compliance filings are due. Thus, we dismiss AWEA's Rehearing Request.

The Commission orders:

AWEA's Rehearing Request of the Extension Notice is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Kimberly D. Bose,
Secretary.