

121 FERC ¶ 61,024  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Morenci Water & Electric Company

Docket No. OA04-2-001

**ORDER DENYING REHEARING AND GRANTING WAIVER**

(Issued October 11, 2007)

1. On May 2, 2007, Morenci Water & Electric Company (Morenci) filed a request for rehearing of the Commission's Chief Accountant's letter order issued in this proceeding on April 2, 2007 (Letter Order). The Letter Order required Morenci to file FERC Form Nos. 1 and 3-Q for the first, second and third quarters of 2004, 2005, and 2006, by May 2, 2007.<sup>1</sup> In reaching a decision, the Chief Accountant found that Morenci is subject to the Commission's jurisdiction for purposes of the requirement to file FERC Form Nos. 1 and 3-Q. In the alternative, Morenci requests the Commission to grant it a waiver of the form filing requirements. As discussed below, we will deny Morenci's request for rehearing but grant its alternative request for a waiver of the requirement to file FERC Form Nos. 1 and 3-Q.

**Background**

2. Morenci states that it is an investor-owned utility (IOU) that makes only bundled, intrastate retail sales. It has sales of 1.63 million MW per year and a staff of 20 employees. Morenci states that it is not subject to the Commission's jurisdiction and therefore does not have to file FERC Form Nos. 1 and 3-Q, or in the alternative, if it is subject to the Commission's jurisdiction, it requests a waiver of the requirement to file such forms.

3. On January 11, 2005, the Commission issued a letter to Morenci stating that the company had not filed FERC Form No. 3-Q for the first, second and third quarters of 2004. On March 2, 2005, Morenci sent a letter to the Commission stating that the company was "working informally" with Commission staff to determine whether it was

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<sup>1</sup> On April 11, 2007, Morenci filed a request for an extension of time for such filing, to 60 days after the Commission rules on its request for rehearing. On April 20, 2007, the Chief Accountant granted the request.

required to file FERC Form No. 3-Q, and FERC Form No. 1 as well, since the company makes only bundled retail sales. Morenci asked for an extension to file such forms, pending these meetings with staff. Morenci states that it never received the extension (or other communication) so it sent a second letter to the Commission on December 13, 2005, explaining why Morenci is not subject to FERC Form Nos. 1 or 3-Qs' filing requirements.

### **Request for Rehearing and Alternative Request for Waiver**

4. On rehearing, Morenci repeats arguments it made in its December 13, 2005 letter, citing an earlier Commission order granting Morenci's request for a "disclaimer of jurisdiction." In that proceeding, Morenci sought the Commission's determination that it was not a public utility under section 201(e) of the Federal Power Act (FPA) and waiver of Order No. 888's reciprocity requirement, or, in the alternative, waiver of the requirements of Order Nos. 888 and 889.<sup>2</sup> The Commission granted Morenci's request, disclaimed jurisdiction and found that Morenci was not subject to Order No. 888's reciprocity requirement. That order stated that Morenci "is not a public utility, because it does not make sales of electric energy at wholesale in interstate commerce, does not transmit electric energy in interstate commerce, and does not own or operate facilities subject to the Commission's jurisdiction."<sup>3</sup>

5. Morenci states that since the Commission has specifically held that it is not subject to Commission jurisdiction for purposes of Order Nos. 888 and 889, it should not be subject to the Commission's reporting requirements embodied in FERC Form Nos. 1 and 3-Q. If it nevertheless is subject to the regulations governing the filing of FERC Form Nos. 1 and 3-Q, Morenci requests waiver of the requirement to file FERC Form Nos. 1 and 3-Q.

### **Discussion**

6. Rule 141.1(b)(1)(i) of the Commission's Rules of Practice and Procedure states:

Each Major electric utility . . . and other entity, i.e. each corporation, person or licensee as defined in section 3 of the Federal Power Act [citation omitted] including any agency, authority or other legal entity or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its

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<sup>2</sup> *Morenci Water and Electric Co.*, 109 FERC ¶ 61,305 at P 1 (2004).

<sup>3</sup> *Id.* P 7.

possessions, having sales or transmission service equal to Major as defined above, whether or not the jurisdiction of the Commission is otherwise involved, shall prepare and file electronically with the Commission the FERC Form 1 pursuant to the General Instructions set out in that form.<sup>4</sup>

7. Rule 141.400(b)(1)(i) of the Commission's Rules of Practice and Procedure states:

Each electric utility . . . and other entity, i.e. each corporation, person, or licensee as defined in section 3 of the Federal Power Act [citation omitted] including any agency or instrumentality engaged in generation, transmission, distribution, or sale of electric energy, however produced, throughout the United States and its possessions, having sales or transmission service, whether or not the jurisdiction of the Commission is otherwise involved, must prepare and file with the Commission FERC Form No. 3-Q pursuant to the General Instructions set out in that form.<sup>5</sup>

8. Morenci's arguments on rehearing are not persuasive. The plain language of the Commission's rules, set forth above, requires Morenci to file FERC Form Nos. 1 and 3-Q. Therefore, we deny Morenci's request for rehearing. However, given Morenci's unique facts and circumstances, including that it only makes bundled retail sales of 1.63 million MW per year, we will grant Morenci's alternative request for a waiver of the filing requirements of Rules 141.1 and 141.400. The Commission notes that it is in the process of re-evaluating its financial form filing requirements and the waiver granted herein is subject to any further Commission decision with respect to the applicability of

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<sup>4</sup> 18 C.F.R. § 141.1(b)(1)(i) (2007). "Major" utilities are defined in 18 C.F.R. Part 101 General Instructions 1(A)(1) (2007), as follows:

Utilities and licensees that had, in each of the last three consecutive years, sales or transmission service that exceeded any one or more of the following:

- (a) One million megawatt-hours of total sales;
- (b) 100 megawatt-hours of sales for resale;
- (c) 500 megawatt-hours of power exchanges delivered; or
- (d) 500 megawatt-hours of wheeling for others (deliveries plus losses).

Morenci does not dispute that it falls within the definition of a "Major" utility.

<sup>5</sup> 18 C.F.R. § 141.400 (b)(1)(i) (2007).

Rules 141.1 and 141.400.<sup>6</sup> Accordingly, we will evaluate the imposition of these filing requirements on entities such as Morenci in the rulemaking proceeding in Docket No. RM07-9-000.

The Commission orders:

(A) Morenci's request for rehearing is denied.

(B) Morenci's request for waiver of 18 C.F.R. §§ 141.1(b)(1)(i) and 141.400(b)(1)(i) (2007) is granted as described in this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

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<sup>6</sup> See generally, Assessment of Information Requirements for FERC Financial Forms, Docket No. RM07-9-000.