

122 FERC ¶ 61,104  
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.

Allegheny Energy Supply Company, LLC

Docket No. ER07-966-001

ORDER DENYING REQUEST FOR REHEARING

(Issued February 6, 2008)

1. This order denies the rehearing request filed by the Virginia Office of the Attorney General, Division of Consumer Counsel (Virginia Consumer Counsel) of the Commission's letter order issued in this proceeding on June 26, 2007.<sup>1</sup> The June Order authorized Allegheny Energy Supply Company, LLC (Allegheny Supply) to make wholesale sales of energy, capacity and ancillary services to its affiliate, the Potomac Edison Company (Potomac Edison), at market-based rates in Potomac Edison's Virginia service territory. This order also denies Allegheny Supply's motion for leave to answer Virginia Consumer Counsel's rehearing request.

The June Order

2. On May 30, 2007, Allegheny Supply filed an application requesting authorization to make wholesale power sales to its affiliate, Potomac Edison, pursuant to a Request for Proposals solicitation (Potomac Edison RFP). Allegheny Supply's petition stated that the Potomac Edison RFP was modeled on a competitive solicitation process previously approved by the Commission in 2004, 2005, and 2006 to sell power in Maryland. For example, bidders in the Potomac Edison RFP were permitted to bid only on price to provide full requirements wholesale service for portions of Potomac Edison's Virginia territory. Potomac Edison also used an independent monitor to supervise the procurement process including all bid day activities by on-site personnel. As a result of the Potomac Edison RFP, Allegheny Supply was selected as the winner for eleven out of twelve available bid blocks.<sup>2</sup>

---

<sup>1</sup> *Allegheny Energy Supply Co., LLC*, Docket No. ER07-966-000 (June 26, 2007) (unpublished letter order) (June Order).

<sup>2</sup> See *Allegheny Energy Supply Company, LLC* Application at 5.

3. The Virginia State Corporation Commission (Virginia Commission) and the Virginia Consumer Counsel filed timely motions to intervene. Neither the Virginia Commission nor the Virginia Consumer Counsel, however, raised any protests or substantive arguments.

4. The June Order found that the Potomac Edison RFP was consistent with the Commission's guidelines set forth in *Allegheny Energy Supply Company (Allegheny)*.<sup>3</sup> As a result, the June Order authorized Allegheny Supply to sell wholesale power at market-based rates to its affiliate Potomac Edison, effective June 1, 2007.

#### Request for Rehearing

5. On July 26, 2007, Virginia Consumer Counsel filed a request for rehearing of the June Order, arguing that the June Order erred in concluding that the Potomac Edison RFP was consistent with *Allegheny* and *Edgar*. Specifically, the Virginia Consumer Counsel argues that the record underlying this case lacks sufficient evidence to conclude that Potomac Edison's RFP satisfies the Commission's affiliate abuse guidelines. Virginia Consumer Counsel argues that the Potomac Edison RFP is inconsistent with the *Allegheny* guidelines because, in contrast to the *Allegheny* RFP, where the Maryland Commission supervised the RFP process, the Virginia Corporation Commission did not supervise or approve the results of the Potomac Edison RFP. The Virginia Consumer Counsel further argues that the June Order erred in approving the Potomac Edison RFP prior to soliciting and reviewing input from the independent monitor. According to the Virginia Consumer Counsel, the Commission's review of the independent monitor's report is particularly important in this case, because 92 percent of the load was won by one affiliate. The Virginia Consumer Counsel asks the Commission to grant rehearing and require Potomac Edison and Allegheny Supply to produce the independent monitor's report because it "may be necessary for the Commission to determine whether or not [Potomac Edison's] RFP is consistent with the *Allegheny* affiliate abuse guidelines."<sup>4</sup>

---

<sup>3</sup> *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082, at P 22 (2004). In *Allegheny*, the Commission provided four guidelines to help the Commission determine if an RFP such as the one at issue in the instant proceeding meets the criteria for affiliate power sales transactions set forth in *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*): (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. *Id.*

<sup>4</sup> See Virginia Office of the Attorney General, Division of Consumer Counsel, Request for Rehearing at 8 (July 26, 2007) (Request for Rehearing).

Discussion

6. The Commission denies Virginia Consumer Counsel's rehearing request. The Virginia Consumer Counsel raises for the first time on rehearing its argument that the Commission erred in concluding that the Potomac Edison RFP was consistent with the *Allegheny* guidelines. The Commission looks with disfavor on parties raising issues for the first time on rehearing.<sup>5</sup> This is because other parties are not permitted to respond to a request for rehearing.<sup>6</sup> Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision. Moreover, Virginia Consumer Counsel offers no reason why its arguments could not have been raised in its earlier pleading in this proceeding. Accordingly, we deny Virginia Consumer Counsel's rehearing request.

7. In addition, Rule 713(d)(1) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.713(d)(1) (2007), prohibits an answer to a request for rehearing. Accordingly, we will reject Allegheny Supply's answer.

The Commission orders:

- (A) Virginia Consumer Counsel's request for rehearing is hereby denied.
- (B) Allegheny Supply's motion for leave to answer is hereby denied.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

---

<sup>5</sup> See, e.g., *Calpine Oneta Power v. American Elec. Power Service Corp.*, 114 FERC ¶ 61,030, at P 7 (2006); *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,211, at P 34 (2005), citing *Baltimore Gas & Elec. Co.*, 91 FERC ¶ 61,270, at 61,922 (2000); *Baltimore Gas & Elec. Co.*, 92 FERC ¶ 61,043, at 61,114 (2000).

<sup>6</sup> 18 C.F.R. § 385.713(d) (2007).