

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

The New PJM Companies

Docket No. ER03-262-011

American Electric Power Service Corp.

On behalf of its operating companies

Appalachian Power Company

Columbus Southern Power Company

Indiana Michigan Power Company

Kentucky Power Company

Kingsport Power Company

Ohio Power Company, and

Wheeling Power Company

Commonwealth Edison Company, and

Commonwealth Edison Company of Indiana, Inc.

The Dayton Power and Light Company,

and

PJM Interconnection, LLC

ORDER DISMISSING REQUEST FOR REHEARING

(Issued December 31, 2003)

1. On December 24, 2003, the Kentucky Public Service Commission (Kentucky Commission), the Virginia State Corporation Commission (Virginia Commission) and Commonwealth of Virginia Office of the Attorney General (collectively, State Parties) sought rehearing of the Order of Chief Judge Denying Emergency Motion of the Virginia State Corporation Commission and Kentucky Public Service Commission to Extend the Date for Initial Decision.¹ We dismiss the State Parties' request for rehearing of the Chief Judge's order, because under Rule 713 of the Commission's Rules of Practice and Procedure, a party can seek rehearing only of a Commission final decision or final order.²

¹ The New PJM Companies, et al., Docket No. ER03-262-009 (2003) (December 17 Order).

² 18 C.F.R. § 385.713 (2003).

Background

2. On November 25, 2003, the Commission issued an Order Making Preliminary Findings and Giving Public Notice and Setting Matters for Public Hearing under [Public Utility Regulatory Policies Act of 1978] Section 205(a).³ In the order, the Commission directed the administrative law judge to conduct a public hearing and issue an initial decision by March 15, 2004.

3. On December 10, 2003, the Virginia Commission and the Kentucky Commission (collectively, State Commissions) filed an emergency motion seeking to extend the date for the initial decision from the March 15, 2004 date to October 19, 2004. The Chief Judge denied the State Commissions' request in the December 17 Order for the following reasons: (1) the evidentiary hearing would focus on only one of the three issues set for hearing, because two of the issues were legal in nature, requiring few, if any, findings of fact; (2) since more than two years have passed since American Electric Power Service Corp., as a condition of the merger, was to voluntarily join a Commission-approved RTO, discovery should be sparse; and (3) any delay in the procedural schedule most likely would result in a delay in the October 1, 2003 date for AEP's full integration into PJM, thus delaying RTO expansion, as well as the establishment of a joint and common market in the region.

Discussion

4. Under Rule 713, rehearing may not be sought until such time as the Commission issues a final order.⁴ We find that rehearing of the December 17 Order does not lie under Rule 713, because the Chief Judge's order is not "a final Commission decision or other final order."⁵ Therefore, we dismiss the State Parties' request for rehearing.⁶

³ The New PJM Companies, et al., 105 FERC ¶ 61,251 (2003).

⁴ 18 C.F.R. § 385.713 (2003); see American Electric Power Company, 105 FERC 61,063 at P 7 (2003).

⁵ 18 C.F.R. § 385.713 (2003).

⁶ Pursuant to Rule 715 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.715 (2003), the prescribed procedure for challenging a ruling such as the December 17 Order is an interlocutory appeal to the Commission challenging the Chief Judge's determination. Under Rule 715, the motion for interlocutory appeal must be made within 15 days of the December 17 Order, and is due on January 2, 2004, because January 1, 2004 is a federal holiday.

The Commission orders:

The State Parties' request for rehearing is hereby dismissed.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.