ORDER DISMISSING REQUEST FOR REHEARING

(Issued March 20, 2020)


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Midwest TDUs\(^4\) “conditionally” sought rehearing of the Order on Remand. In this order, we dismiss as moot Midwest TDUs’ request for rehearing of the Order on Remand.

I. **Background**

2. Certain parties to this proceeding filed petitions for review in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), challenging aspects of the Commission’s June 2012 Order and the Rehearing Order. On January 6, 2017, the D.C. Circuit granted the Commission’s unopposed motion for partial voluntary remand of the record to further consider issues related to section 217 of the Federal Power Act (FPA).\(^5\) On October 30, 2017, the D.C. Circuit granted the Commission’s unopposed motion for remand of the entire record in those petitions to permit the Commission to consider the effect that the D.C. Circuit’s July 7, 2017 decision in *NRG Power Marketing, LLC. v. FERC*\(^6\) might have on those cases.

3. In the Order on Remand, in light of *NRG*, the Commission found that the conditions required in the June 2012 Order and the Rehearing Order could be considered to be major modifications to MISO’s 2011 filing.\(^7\) Accordingly, because the Commission could not find MISO’s 2011 filing to be just and reasonable without these modifications, the Commission reversed its conditional acceptance of MISO’s 2011 filing and rejected MISO’s 2011 filing in its entirety.\(^8\)

4. As relevant here, the Commission explained that its rejection of MISO’s 2011 filing was based on the court’s issuance of *NRG*, and observed that because *NRG* was issued subsequent to the court granting the Commission’s request for voluntary remand to

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\(^7\) Order on Remand, 162 FERC ¶ 61,173 at PP 3, 14.

\(^8\) *Id.* PP 3, 15.
further consider issues raised on appeal related to the interpretation of FPA section 217, it would not further consider the FPA section 217 issues on remand.  

II. Request for Rehearing

5. Midwest TDUs state that they conditionally seek rehearing of the Order on Remand, if and to the extent that it “were read as making merits findings related to” FPA section 217 issues.

III. Discussion

6. The Order on Remand did not make a ruling on the merits of any issues related to FPA section 217 or the substance of MISO’s resource adequacy filing. Accordingly, we dismiss Midwest TDUs’ request for rehearing as moot.

The Commission orders:

Midwest TDUs’ request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

( SEAL )

Kimberly D. Bose,
Secretary.

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9 Id. P 16.

10 Midwest TDUs Request for Rehearing at 7.