

169 FERC ¶ 61,262
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

PJM Interconnection, L.L.C.
Potomac Electric Power Company

Docket No. ER19-1475-001

ORDER DENYING CLARIFICATION AND DISMISSING REHEARING

(Issued December 30, 2019)

1. On March 29, 2019, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² PJM Interconnection, L.L.C. filed revisions on behalf of Potomac Electric Power Company (PEPCO) to adjust the true-up mechanism in PEPCO's transmission formula rate template (Formula Rate) and protocols. On May 31, 2019, the Commission accepted the proposed revisions for filing, suspended them for a nominal period to become effective June 1, 2019, subject to refund and set all issues raised by protestors for hearing and settlement judge procedures.³ On July 1, 2019, PEPCO filed a request for clarification or, in the alternative, rehearing of the May 31 Order.

2. PEPCO requests that the Commission clarify that by setting "all issues raised by the protestors for hearing," the scope of the hearing necessarily includes the question whether issues raised by protestors, including those implicating unrevised tariff provisions, have a sufficient nexus to PEPCO's filing and that protestors bear the burden of demonstrating the requisite nexus.⁴ In the alternative, PEPCO requests rehearing,

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,192, at P 40 (2019) (May 31 Order).

⁴ PEPCO July 1, 2019 Request for Clarification or, in the Alternative, Rehearing at 3-4 (Request for Clarification or Rehearing).

claiming that the Commission committed reversible error in setting issues for hearing without first finding this required nexus.⁵

Commission Determination

3. We deny PEPCO's request for clarification. As the Commission has previously explained, when the Commission establishes a hearing under section 205 of the FPA, the Presiding Judge has discretion to determine the appropriate scope of the hearing and the parties' evidentiary burdens during the hearing process.⁶

4. We also dismiss PEPCO's request for rehearing. Requests for rehearing of the Commission's decision to set issues for hearing are premature. Rule 713(b) of the Commission's Rules of Practice and Procedure permits requests for rehearing "of any final decision or other final order in a proceeding."⁷ A final order is one that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.⁸ The Commission made no final determination in the May 31 Order regarding PEPCO's proposed revisions to its Formula Rate and Formula Rate protocols. Rather, the Commission stated that its preliminary analysis indicated that the proposed revisions had not been shown to be just and reasonable and raised issues of material fact that could not be resolved on the record before the Commission, and thus set all issues raised by the protestors for hearing and settlement judge procedures.⁹ Where, as here, Commission action is not final and is to be succeeded by further Commission action, a request for rehearing may be dismissed.¹⁰

⁵ Request for Clarification or Rehearing at 4.

⁶ *Old Dominion Elec. Coop.*, 158 FERC ¶ 61,045, at P 12 (2017).

⁷ 18 C.F.R. § 385.713(b) (2019); 16 U.S.C. § 825l (a) (2018) (parties "aggrieved by an order issued by the Commission in a proceeding ... may apply for a rehearing within thirty days after the issuance of such order.").

⁸ *Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) (holding that "[f]inal agency action 'mark[s] the consummation of the agency's decision making process' and is 'one by which rights or obligations have been determined, or from which legal consequences will flow'" (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997))).

⁹ May 31 Order, 167 FERC ¶ 61,192 at PP 38, 40-41.

¹⁰ See, e.g., *Talen Energy Marketing*, 158 FERC ¶ 61,077, at P 4 (2017); *Pacific Gas & Elec. Co.*, 162 FERC ¶ 61,246, at PP 6-7 (2018).

The Commission orders:

The request for clarification is hereby denied and the request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.