

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NewCorp Resources Electric Cooperative

Docket No. AC04-88-001

ORDER DENYING REHEARING

(Issued February 17, 2006)

1. On November 21, 2005, NewCorp Resources Electric Cooperative (NewCorp) requested rehearing of the Commission's order in this proceeding dated October 25, 2005 (October 25 Order).¹ In that order, the Commission addressed requests for waivers of the Form No. 3-Q (Form 3-Q) financial reporting requirements in Order No. 646.² In response to amendments to section 201(f) of the Federal Power Act (FPA)³ made by the Energy Policy Act of 2005 (EPAAct 2005),⁴ the October 25 Order found that certain electric cooperatives, including NewCorp, are no longer subject to the Commission's jurisdiction and, therefore, their requests for waivers were dismissed as moot.

2. In an order dated December 29, 2005,⁵ the Commission granted NewCorp's request for rehearing with respect to NewCorp's jurisdictional status, finding that NewCorp is not an electric cooperative as defined in EPAAct 2005 and is a public utility subject to the Commission's jurisdiction. The December 29, 2005 Order deferred action, however, on NewCorp's request for waiver of the Form 3-Q reporting requirements. In this order the Commission denies NewCorp's request for rehearing insofar as it requests waiver of the Form 3-Q financial reporting requirements as discussed below.

¹ *Access Energy Cooperative*, 113 FERC ¶ 61,092 (2005).

² *Quarterly Financial Reporting and Revisions to the Annual Reports*, Order No. 646, 69 Fed. Reg. 9,030 (Feb. 26, 2004), FERC Stats. & Regs. ¶ 31,158 (2004), *order on reh'g*, Order No. 646-A, 69 Fed. Reg. 32,440 (June 10, 2004), FERC Stats. & Regs. ¶ 31,163 (2004).

³ 16 U.S.C. § 824(f) (2000).

⁴ Pub. L. No. 109-58, § 1291(c), 119 Stat. 594, 985 (2005).

⁵ *NewCorp Res. Elec. Cooperative*, 113 FERC ¶ 61,328 (2005).

Request for Rehearing

3. On November 21, 2005, NewCorp requested rehearing of the Commission's October 25 Order. NewCorp argued that the October 25 Order failed to properly interpret and apply to NewCorp the definitions of "electric cooperative" and "electric utility" under the amended FPA. In an order dated December 29, 2005, the Commission agreed that NewCorp remains subject to the Commission's jurisdiction.⁶

4. Next, NewCorp argues that the Commission should grant NewCorp a waiver of the Form 3-Q reporting requirements for the reasons stated in NewCorp's August 18, 2004 Filing; namely, that requiring NewCorp to submit quarterly reports would constitute a significant administrative hardship and an extreme financial burden without producing commensurate benefits to its customers or otherwise serving the public interest.⁷ NewCorp contends that it already expends a significant amount of resources to comply with the Commission's annual Form No. 1 (Form 1) requirements, and that it would be required to incur significant additional costs and resources to assemble and report quarterly financial information.⁸ NewCorp maintains that imposing an additional filing requirement—*i.e.*, not granting the requested waiver—would neither benefit the Commission nor Cap Rock Energy Corporation, NewCorp's customer-owner, and that its cooperative structure prevents potential conflicts between owner and customer interests and makes the Form 3-Q reporting requirements unnecessary.⁹ Finally, NewCorp argues that the Commission has granted similar requests for waiver in the past for small entities.¹⁰

Discussion

5. We first note that the information provided pursuant to the Form 3-Q financial reporting requirements is important to the Commission for meeting its obligations under the FPA of ensuring just and reasonable rates, terms, and conditions, as described in Order No. 646. In Order No. 646, the Commission stated:

⁶ *Id.*

⁷ NewCorp Request for Rehearing at 4 (incorporating August 18, 2004 Filing at 4).

⁸ *Id.* (incorporating August 18, 2004 Filing at 4-5).

⁹ *Id.* (incorporating August 18, 2004 Filing at 6-9).

¹⁰ NewCorp states that it transmits or wheels approximately 635,000 MWh per year, far below the 4 million MWh threshold set by the Small Business Administration in its definition of a small electric utility. August 18 Filing at 4.

[S]upplemental schedules provide important details regarding the types and sources of revenues, the category and types of costs incurred, the assets and utility investments made by the respondent, significant new borrowings incurred during the period, as well as information about the establishment and disposition of regulatory assets and liabilities during the period. The reporting of this detailed information allows Commission staff to better understand emerging trends experienced by the respondents, and the economic impact that significant transactions, events, and regulatory initiatives have on regulated operations. Additionally, this level of detailed reporting helps ensure that emerging financial trends are not masked due to the consolidation of various account balances. Finally, this level of detail along with the related notes contained in the reports will allow the Commission to better monitor the adequacy of cost-based rates on a more timely basis, and to monitor the respondents' overall compliance with Commission regulations.^[11]

6. With respect to the additional costs to assemble and report quarterly financial information—*i.e.*, the administrative hardship and financial burden issues that NewCorp raises—we also note that in Order No. 646 the Commission stated:

All jurisdictional entities subject to the Commission's accounting and financial reporting regulations are required to keep their books and records in such a manner as to permit the preparation of financial and operating statements directly from such records at the end of each accounting period according to the prescribed accounts. Furthermore, the accounting period prescribed by the Uniform Systems of Accounts is a calendar month. Consequently, the Commission's existing regulations require jurisdictional entities to have accounting and financial reporting systems in place to readily prepare financial and operating statements summarized on a monthly basis. Therefore, it should not be unduly burdensome for these entities to prepare and report on account activity on a monthly, quarterly, or annual basis when required to do so by this Commission.^[12]

Therefore, NewCorp must maintain accounting books and records on a monthly basis, and these same records are the bases of the data required by the Form 3-Q financial reporting requirements.

¹¹ Order No. 646 at P 22.

¹² *Id.* P 21 (note omitted).

7. NewCorp argues that it was previously granted a waiver of the requirements of Order No. 889,¹³ due to the “expense and burden of maintaining an OASIS, and of complying with the standards of conduct which require separating the merchant and transmission functions.”¹⁴ The requirements of Order No. 889, however, are distinguishable from the Order No. 646 quarterly reporting requirements because the Order No. 889 requirements imposed a much higher burden on NewCorp. The Order No. 889 requirements included separating sales and transmission staff and establishing a computer system (called OASIS). As a result, the Commission estimated that compliance with Order No. 889 would take 1,879 hours for recording and 418 hours for recordkeeping (*i.e.*, a total of 2,297 hours annually) as compared to the estimated 150 hours for the Form 3-Q reporting requirements. Much of the data to comply with the quarterly reporting requirements are already prepared by NewCorp during its annual Form 1 reporting process. So the burden of complying with Order No. 646 is not similar to the burden of complying with Order No. 889, and a waiver of the Order No. 646 requirements is not similarly necessary.

8. NewCorp also argues that, as a small utility, the additional quarterly reporting requirements would impose an undue burden, citing *United Power, Inc.*¹⁵ and *Northern States Power Company*.¹⁶ But in those cases the Commission granted waiver from the requirements of Order No. 889, discussed above, and, in *United Power, Inc.*, waived the requirements of Order No. 888¹⁷ as well. Those waivers are not comparable to the waiver sought here.

9. NewCorp further states that the Commission has held that cooperatives and small utilities would be eligible for exemption from the requirements of Order No. 2004, which adopted standards of conduct that apply uniformly to interstate natural gas pipelines and

¹³ *Open Access Same-Time information System and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (1996).

¹⁴ August 18 Filing at 7 (citing *Northern States Power Co.*, 76 FERC ¶ 61,250, at 62,297 (1996)).

¹⁵ 89 FERC ¶ 61,034, at 61,105 & n.6 (1999).

¹⁶ 76 FERC ¶ 61,250 (1996).

¹⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997); *order on reh’g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff’d in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002).

public utilities, particularly if the Commission had previously granted an exemption under Order No. 889,¹⁸ which Order No. 2004 supersedes. For the same reasons that a waiver from Order No. 889 is not comparable to a waiver from the quarterly reporting requirements, a waiver from Order No. 2004 standards of conduct requirements is not an indication that a waiver from the quarterly reporting requirements is warranted. Complying with Order No. 2004 imposes a much heavier burden than does complying with Order No. 646.

10. NewCorp states that the Commission has recognized the unique characteristics of electric cooperatives and has exempted electric cooperatives from its restrictions on public utility issuances of secured and unsecured debt as set forth in *Westar Energy, Inc.*¹⁹ Such restrictions require, for example, that a public utility seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes only. NewCorp explains that the *Westar* restrictions were designed to prevent investor-owned utilities' shareholders and management, whose interests may be different than the interests of utility customers, from taking actions that might jeopardize the utilities' ability to perform their functions and adversely affect their customers.²⁰ NewCorp states that the Commission found in *Kandiyohi Power Cooperative* that the ownership structure of an electric cooperative prevents potential conflicts between owner and customer interests.²¹ NewCorp argues that the comity between it and its customer-owner, Cap Rock Energy Corporation (Cap Rock), merits a similar waiver from the Form 3-Q reporting requirements.

11. The Commission disagrees. Concerns about potential conflicts between owner and customer interests, which electric cooperatives' structures may prevent, is not the principal reason for the quarterly reporting requirements. As stated above, the Commission established the reporting requirements to allow Commission staff to better understand emerging trends and the economic impact that transactions, events, and regulatory initiatives have on regulated operations; to help ensure that emerging financial trends are not masked due to the consolidation of various account balances; to allow the Commission to better monitor the adequacy of cost-based rates on a more timely basis;

¹⁸ August 18 Filing at 7 (citing *Standards of Conduct for Transmission Providers*, Order No. 2004, 68 Fed. Reg. 69,134 (Dec. 11, 2003), FERC Stats. & Regs. ¶ 31, 155, at P 27-28 (2003)).

¹⁹ 102 FERC ¶ 61,186, at P 20-22 (2003).

²⁰ August 18 Filing at 7 (quoting *Kandiyohi Power Cooperative*, 106 FERC ¶ 61,010 (2004)).

²¹ 106 FERC ¶ 61,010 at P 16.

and to monitor the respondents' overall compliance with Commission regulations. Therefore, NewCorp's cooperative structure is not a decisive factor in deciding the waiver issue.²²

12. Finally, NewCorp's contention in this proceeding that an additional 240 hours is required for the Form 3-Q reporting requirements appears to be somewhat exaggerated because much of the data are already collected by NewCorp during the process to complete Form 1 and to comply with the requirements, stated above, to keep monthly records. However, in Order No. 646, the Commission estimated that compliance with the Form 3-Q reporting requirements would take 150 hours. This burden estimate represents an average of the burden for all companies subject to the reporting requirement, large companies as well as small. (In addition, the Commission's accounting staff is available to meet with NewCorp to discuss NewCorp's financial accounting and recordkeeping systems so that it may efficiently comply with the Forms 1 and 3-Q reporting requirements.)

13. Therefore, we do not find that compliance with the Form 3-Q financial reporting requirements imposes an undue burden on NewCorp. Accordingly, we will deny NewCorp's request for rehearing.

The Commission orders:

NewCorp's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²² Moreover, NewCorp is unlike typical consumer-owned rural electric cooperatives. NewCorp is a wholly-owned subsidiary of Cap Rock. Cap Rock is a publicly-traded corporation that conducts utility business for profit. Its utility transmission business, which is conducted by NewCorp, likewise operates for profit. Cap Rock, together with NewCorp, has gross revenues of \$82 million, utility plant of \$149 million, and 111 full-time employees.