

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Transmission Congestion on the
Delmarva Peninsula

Docket No. PA03-12-002

ORDER DENYING REHEARING

(Issued July 26, 2005)

1. In this order, the Commission denies Old Dominion Electric Cooperative's (ODEC) request for rehearing of an April 15, 2005 Order terminating an informal fact-finding proceeding concerning transmission congestion on the Delmarva Peninsula.¹
2. The April 15 Order explained that, after exploring the issues in an informal, non-adversarial proceeding, the presiding Administrative Law Judge (ALJ) issued a report and, later, findings of fact and recommendations.² The April 15 Order also explained that the ALJ's findings of fact and recommendations were discussed at a Commission meeting and a number of issues raised in the proceeding were addressed in other dockets. The April 15 Order then stated that "the Commission will not take any further action in this proceeding" and terminated the PA03-12-000 docket.³
3. ODEC seeks rehearing, arguing that the Commission terminated the proceeding prematurely without making any findings or addressing the ALJ's recommendations. ODEC also argues that the Commission, having established the investigative proceeding, is obligated to resolve the issues raised. It contends that the separate dockets referenced in the April 15 Order do not substitute for the Commission acting in this proceeding.
4. The Commission terminated the PA03-12-000 proceeding for good reason. The nature of the informal, non-adversarial fact-finding inquiry established by the Commission was to develop the underlying issues, but not create a record for formal action in this proceeding. Rather, the Commission believes that it is more appropriate for solutions to transmission congestion to be developed through a stakeholder process and

¹ *Transmission Congestion on the Delmarva Peninsula*, 111 FERC ¶ 61,044 (2005) (April 15 Order).

² *Id.*, at P 2-4.

³ *Id.*, at P 5.

addressed in more formal proceedings. As noted in the April 15 Order, the Commission has taken positive steps to address in other dockets the issues raised by ODEC.⁴ In addition, the Commission has approved revisions to PJM Interconnection LLC's Regional Transmission Expansion Plan, which will provide relief to customers in load pockets by identifying transmission upgrades necessary to address "unhedgeable" congestion.⁵

5. ODEC incorrectly claims that the Commission is obligated to resolve the issues raised in the fact-finding proceeding. In fact, the Commission initiated this investigative-type proceeding at its discretion and, likewise, has discretion whether to terminate the proceeding.⁶ Accordingly, we deny ODEC's request for rehearing.

The Commission orders:

Old Dominion Electric Cooperative's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴ *E.g.*, *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,196 (2004) (PJM post-contingency dispatch); *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,053 (2004), *order on reh'g*, 110 FERC ¶ 61,053 (2005) (PJM proposal to establish a competitive auction to address long-term scarcity); *PJM Interconnection, L.L.C.*, 103 FERC ¶ 61,167 (2003) (PJM load response program).

⁵ *PJM Interconnection, L.L.C.*, 105 FERC ¶ 61,123 (2003), *order on reh'g*, 109 FERC ¶ 61,067 (2004), *order on reh'g*, 110 FERC ¶ 61,377 (2005).

⁶ *See, e.g.*, *Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices*, 104 FERC ¶ 61,146 at P 13 (2003) ("the Commission has exclusive authority under the FPA to decide how to resolve issues under investigation"); *PJM Interconnection, L.L.C.*, 97 FERC ¶ 61,319 at 62,463 (2001) (Commission exercised its discretion to terminate a show cause proceeding). *Cf.*, *Heckler v. Chaney*, 470 U.S. 821, 831-33 (1985) (agency decisions whether to exercise its prosecutorial or enforcement authority are within its discretion); *Baltimore Gas and Electric Co. v. FERC*, 252 F.3d 456, 458-60 (D.C. Cir. 2001) (the Commission's decision to settle an enforcement action was within its discretion); *General Motors v. FERC*, 613 F.2d 939, 944 (D.C. Cir. 1979) (an administrative agency's decision to conduct or not to conduct an investigation is committed to the agency's discretion).