

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Commonwealth Edison Company

v.

Midwest Generation, L.L.C.

Docket No. EL03-127-001

ORDER DENYING REHEARING

(Issued September 10, 2003)

1. In this order, we deny an emergency motion for clarification and a request for rehearing by Commonwealth Edison Company (ComEd) of a recent Commission order.¹ This order benefits customers by ensuring that black start service is available at just and reasonable rates.

Background

2. In connection with the sale of certain generating units from ComEd to Midwest Generation, L.L.C (Midwest) in 1999, ComEd entered into three power purchase agreements (PPAs) with Midwest under which Midwest would sell power from specified facilities to ComEd at agreed upon prices until 2004 (including the price ComEd would pay Midwest for black start service). The parties also executed thirteen Facilities, Interconnection, and Easement Agreements (“Facilities Agreements”) that required Midwest to provide black start service to ComEd from three specified generating units. Once ComEd sold the black start facilities to Midwest, it cancelled the PPAs. It then filed the complaint initiating this proceeding, arguing that Midwest remained obligated under the Facilities Agreements to continue providing ComEd with black start service, even though ComEd had cancelled the associated PPAs that specified the price ComEd would pay Midwest in return for the black start service. Midwest responded that ComEd was trying to renege on its agreement to pay the agreed upon price for the black start service and obtain the same service at a lower price. Midwest added that it would continue to provide ComEd with black start service, if agreement could be reached on the

¹Commonwealth Edison Company v. Midwest Generation, L.L.C.,
104 FERC ¶ 61,053 (2003) (July 2003 Order).

price to be charged for the service. Midwest wanted to be paid the amount specified in the parties' prior agreements (i.e., the amounts specified in the PPAs).

3. The July 2003 Order found ComEd's complaint moot in part and denied it in part. We found that there was no need to grant the complaint to compel Midwest to provide black start service because Midwest was willing to continue providing the service voluntarily. Moreover, as ComEd had terminated the PPAs and a rate for the black start service needed to be established, and as negotiations between the parties had proved fruitless, the July 2003 Order directed Midwest to file a rate schedule under Section 205 of the Federal Power Act (FPA),² to recover its charges for black start service, within 30 days of the date of the order, or by August 11, 2003.

4. On July 17, 2003, ComEd filed an emergency motion for clarification, arguing that the July 2003 Order required clarification because Midwest allegedly disputed its obligation to provide ComEd with black start service; ComEd is concerned that Midwest would prove unwilling to provide this service until the rates it files for black start service become effective. Thus, ComEd argues that the Commission erred when it concluded that ComEd's complaint was moot. It states that the Commission should issue an order clarifying Midwest's current obligation to provide black start service at cost-based rates (the rates ComEd's complaint argued should be substituted for the higher rates specified in the PPAs). In the alternative, ComEd requests rehearing of the July 2003 Order.

5. On August 11, 2003, in Docket No. ER03-1187-000, Midwest submitted for filing its proposed rates for black start service that it maintains are submitted in compliance with the July 2003 Order. Midwest's filing requests an effective date of August 12, 2003, to make service available at the earliest date.

Discussion

6. As shown by Midwest's August 11, 2003 rate filing, ComEd's concern that Midwest would be unwilling to provide it with black start service has proven unfounded. We find without merit ComEd's arguments that we should clarify or reverse our findings in the July 2003 Order. Those findings are clear. Moreover, ComEd's arguments merely reiterate arguments it previously advanced in support of its complaint and that we rejected in the July 2003 Order. Since those arguments were fully addressed in our July 2003 Order, we will reject those arguments here for the same reasons given in the July 2003 Order and without further elaboration.

² 16 U.S.C. § 824e (2000).

The Commission orders:

ComEd's emergency motion for clarification and 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.