

IMO interface (sink) on September 25, 2002, while Cargill had confirmed service from PJM (source) to the IMO (sink) on November 21, 2002. Therefore, Cargill states that under the Midwest ISO's source-sink methodology, Tenaska's and Cargill's reservations do not compete.

Discussion

Procedural Matters

22. Pursuant to Rule 214 of the Commission's regulations, 18 CFR § 385.214 (2002), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. In addition, we will grant Duke Energy's untimely intervention, given its interest in this proceeding, the early stage of this proceeding, and the absence of any undue prejudice or delay. While Rule 213(a)(2) of the Commission's regulations, 18 CFR 385.213(a)(2) (2002), allows replies to answers only at the discretion of the decisional authority, we will allow Cargill's reply to the Midwest ISO's answer, as it has aided us in understanding the matters at issue in this proceeding.

Analysis

23. We find that the parties have raised material issues of fact upon which Cargill's complaint is based. More specifically, the parties dispute the circumstances under which Cargill's service reservation was accepted and recalled, and when Cargill received notice of the recall. Accordingly, pursuant to section 206 of the Federal Power Act⁹ (FPA), we will set Cargill's complaint for hearing.

24. That being said, we strongly encourage the parties to settle this complaint. Accordingly, we will hold the hearing in abeyance and direct settlement judge procedures pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ The Chief Judge shall appoint a settlement judge in this proceeding within 15 days of the date of issuance of this order. The settlement judge shall report to the Chief Judge and the Commission within 45 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

25. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the

FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after the filing of the complaint, but no later than five months subsequent to the expiration of the 60-day period. Consistent with our general policy of providing maximum protection to customers,¹¹ we will set the refund effective date as of the date 60 days after the date of the filing of Cargill's complaint, or March 2, 2003.

26. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state the best estimate as to when it reasonably expects to make such a decision. Ordinarily, to implement that requirement, we would direct the presiding judge to provide a report to the Commission in advance of the refund effective date. Here, given that the refund effective date for the complaint is March 2, 2003, the Commission cannot follow its normal procedure.

27. Although we do not have the benefit of the presiding judge's report, based on our review of record, we expect that, assuming this case does not settle, the presiding judge should be able to render a decision within four months of the commencement of hearing procedures. After the presiding judge renders an initial decision, assuming the case does not settle, we estimate that we will be able to issue our decision within approximately two months of the filing of briefs on and opposing exceptions.

The Commission Orders

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held in Docket No. EL03-38-000, concerning the issues raised in Cargill's complaint against the Midwest ISO, as discussed in the body of this order. Also as discussed in the body of this order, we will hold the

hearing in abeyance pending further Commission action and the settlement judge negotiations, as discussed in Paragraphs (B) and (C) below.

(B) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 CFR 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all the powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(C) Within 30 days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 30 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If the settlement procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in these proceedings to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(E) The refund effective date established pursuant to section 206(b) of the Federal Power Act is March 2, 2003.

(F) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in EL03-38-000 in the **Federal Register**.

By the Commission.

Magalie R. Salas,
Secretary.

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¹¹ See, e.g., *Seminole Electric Cooperative, Inc. v. Florida Power & Light Company*, 65 FERC ¶ 61,413 at 63,319 (1993); *Canal Electric Company*, 46 FERC ¶ 61,153 at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

⁹ 16 U.S.C. 824e (2002).

¹⁰ 18 CFR 385.603 (2002).