

98 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Morgan Stanley Capital Group, Inc. v.
California Independent System Operator Corporation

Docket No. EL01-89-001

ORDER DENYING REHEARING

(Issued January 17, 2002)

On October 29, 2001, the California Independent System Operator Corporation (ISO) filed for rehearing of the Commission's order issued on September 28, 2001 in this proceeding concerning interim relief for the problem of "phantom congestion."¹ As discussed below, we deny the ISO's request.

Background

¹Morgan Stanley Capital Group, Inc. v. California Independent System Operator Corporation, 96 FERC ¶ 61,354 (2001) (September 28 Order).

Morgan Stanley Capital Group, Inc. (MSCG) filed a complaint against the ISO requesting interim relief to address the problem of "phantom congestion", which it contended occurred when the ISO accommodates Existing Transmission Contracts² pursuant to its tariff. MSCG alleged that the ongoing problem of "phantom congestion" resulted in the unjust and unreasonable curtailment of the ISO's transactions, and caused it daily financial harm. In the September 28 Order, the Commission found that MSCG raised material issues of fact that warranted an evidentiary hearing, and instituted an investigation on the complaint under section 206 of the Federal Power Act (FPA). To encourage the parties to settle their dispute, the Commission held the hearing in abeyance, pending the completion of settlement procedures. Pursuant to FPA section 206(b), the Commission also established a refund effective date of August 13, 2001, 60 days from the date on which MSCG filed the complaint in this proceeding.

Rehearing

The ISO disputes the Commission's establishment of a refund effective date of August 13, 2001 and argues that any relief for phantom congestion must be implemented prospectively. The ISO asserts that retroactive relief is not possible given the large volume of transactions processed by the ISO, and that beyond the sheer volume of transactions, it would be very difficult to identify the parameters for such a reanalysis, including: "(1) what additional flows would have been scheduled; (2) what the sources of generation would have been (and if, in fact they would have been available); or (3) what adjustment bids, if any, might have been associated with those schedules."³ In addition, the ISO asserts that a grant of retroactive relief would lead to endless litigation over what transaction would or would not have been scheduled.

On November 14, 2001, the M-S-R Public Power Agency, the Modesto Irrigation District, the Cities of Redding and Santa Clara, California and the Metropolitan Water District of Southern California (collectively M-S-R) jointly filed a response in support of the ISO's request.

Discussion

²The ISO defined Existing Contracts as contracts which grant transmission service rights in existence on the ISO Operations Date.

³ISO Request for Rehearing at 4.

Under Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁴ a party may not file an answer to a request for rehearing unless allowed by the decisional authority. We are not persuaded to allow M-S-R's response.

The Commission established a hearing and a refund effective date of August 13, 2001 pursuant to section 206 of the FPA. Whether refunds should be required back to August 13, 2001 or not is, as the ISO's own arguments demonstrate, a factual matter that should be addressed in the hearing (or settlement discussions) established in the Commission's September 28 Order. Accordingly, we deny the ISO's request for rehearing.

The Commission orders:

(A) The ISO's request for rehearing is hereby denied, as discussed in the body of this order.

(B) M-S-R's response is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.

⁴18 C.F.R. § 385.213(a)(2) (2001).

