

UNITED STATES OF AMERICA 100 FERC ¶ 61,342
FEDERAL ENERGY REGULATORY COMMISSION

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

Revised Public Utility Filing Requirements

Docket Nos. RM01-8-001
and RM01-8-002

ORDER ON MOTION TO VACATE AND REQUEST FOR REHEARING
OF ERRATA NOTICE AND MOTION FOR RECONSIDERATION
AND REQUEST FOR CLARIFICATION OF ORDER NO. 2001

ORDER NO. 2001-B

(Issued September 26, 2002)

1. In this order, we deny a motion to vacate and a request for rehearing of an errata notice issued in this proceeding on June 14, 2002. We also deny a motion for reconsideration of Order No. 2001 and deny in part, and grant in part, a request for clarification of Order No. 2001.¹

BACKGROUND

2. On April 25, 2002, the Commission issued Order No. 2001, a final rule establishing revised public utility filing requirements. The rule requires public utilities to electronically file quarterly reports (Electric Quarterly Reports) summarizing pertinent data about their currently effective contracts (contract data) and data about wholesale power sales they made during the reporting period (transaction data). Electric Quarterly Reports replace the filing of: Power Marketer Quarterly Transaction Reports summarizing market-based rate transactions; short and long term market-based sales agreements; and conforming cost-based agreements. The rule is intended to streamline and reduce the filing burden on public utilities, while providing greater transparency and information accessibility to the public and the Commission.

¹Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043, FERC Stats. & Regs. ¶ 31,127 (April 25, 2002).

3. Order No. 2001 contained a typographic error. Although the order contains three explicit statements that transactions lasting less than a day are to be reported using actual prices and not to be reported on a high, low, and weighted average basis,² an accompanying attachment, which provided a summary of required data sets, inadvertently stated that the transaction information for "rate" was to "designate the transaction period's weighted average actual rate."³ The words "weighted average" were included erroneously.

4. This error was corrected in the order that was published in the Federal Register on May 8, 2002. See 67 FR 31073. In addition, on June 14, 2002, the Commission issued an errata notice correcting the version of the order posted on the Commission's Issuance Posting System (CIPS) and on the Records Information Management System (RIMS). This correction was also reflected in FERC Stats. & Regs., Regulations Preambles ¶ 31,127 at 30,171 (2002), page dated 7-31-2002.

5. Timely requests for rehearing and/or clarification of Order No. 2001 were filed by eight parties. These were addressed in Revised Public Utility Filing Requirements, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), issued on July 18, 2002, in which we affirmed our conclusions in Order No. 2001 that the reported data are not confidential, that 30 days after the end of each quarter is the appropriate lag before data are reported, and that data must be reported on a disaggregated basis. We also clarified the begin and end dates

²See Order No. 2001, at P 254, which states that "Public Utilities Will Report Actual Prices for All Transactions, Including Those Lasting Less than One Day," at P 260, which states that "[t]he Commission concludes that public utilities reporting the actual rates charged for transactions lasting less than a day complies with the requirements of section 205(c) of the FPA," and at P 261, which states that "[w]e agree with PJM that reporting actual prices would actually be less burdensome than reporting the prices of transactions lasting less than one day on a high, low, and weighted average basis (when the prices change during the day) because the data could be reported as is, without the extra steps of identifying the high and low prices and computing the weighted average."

³Order No. 2001, FERC Stats. & Regs., Regulations Preambles ¶ 31,127 at 30,171 (2002), page dated 5-20-2002.

to be reported for "transaction end date," "transaction begin date," and "contract termination date," and denied requests for a stay and for a filing extension.⁴

6. On June 25, 2002, J. Aron & Company (J. Aron) filed a request for reconsideration of Order No. 2001. On July 15, 2002, Edison Mission Energy and Edison Mission Marketing & Trading, Inc. (together, Edison Mission) filed a protest, request for rehearing and motion to vacate the errata notice. On July 16, 2002, Edison Electric Institute's Alliance of Energy Suppliers (Alliance) filed a request for clarification of Order No. 2001. These pleadings were not addressed in Order No. 2001-A.

DISCUSSION

A. The Errata Notice

7. Edison Mission argues that the errata notice made substantive, rather than merely corrective changes to the manner in which data are collected by the Commission. It further argues that the Commission failed to consider more effective alternatives and that the Commission's action does not further the Commission's stated goals.

Commission Conclusion

8. We find Edison Mission's arguments without merit. First, as cited in P 3 above, the erroneous inclusion of the words "weighted average" in the RIMS version of an attachment to Order No. 2001, is explicitly contradicted by the discussion in P 254-261 of the preamble and by the order published in the Federal Register and its attachments. After a consideration of the comments, Order No. 2001 determined that the rates for transactions lasting less than a day should be reported using actual prices rather than be reported on a high, low, and weighted average basis. While we agree that this was a substantive determination, this finding was explicitly made in the order itself, along with the reasons for that decision, and was not a substantive finding introduced in an errata notice without any discussion in the order itself.

9. Edison Mission did not file a timely request for rehearing of Order No. 2001, and we will not revisit our decision to require the reporting of actual prices for transactions lasting less than a day.

⁴However, on August 1, 2002, the Commission issued a notice granting a filing extension until August 5, 2002.

B. J. Aron's Request for Reconsideration

10. J. Aron requests that the Commission reconsider many of the findings it made in Order No. 2001. Specifically, J. Aron requests that the Commission reconsider its findings on: confidentiality; the disclosure of long-term contract information; aggregation of data; the impact of disclosure on competitive markets; and the appropriate lag before information reported in Electric Quarterly Reports is publicly divulged.

Commission Conclusion

11. Unlike requests for rehearing, requests for reconsideration do not have a prescribed deadline and may be filed at any time. However, the Commission's practice is to deny requests for reconsideration that are merely requests for rehearing styled as requests for reconsideration.⁵ Such is the case here. Accordingly, we will deny J. Aron's request for reconsideration. J. Aron provides no new information or evidence of changed circumstances that would warrant reconsideration by the Commission of its findings in Order No. 2001. Its pleading merely reiterates arguments already raised by other parties and rejected in Order Nos. 2001 and 2001-A and contains no new information or evidence of changed circumstances.

C. Alliance's Requests for Clarification

12. Alliance is concerned that Order No. 2001 requires the reporting of large volumes of contract-related data and transaction data and requests that the Commission search for ways to reduce this burden. Alliance argues that the Commission should reconsider the volumes of information it is requiring to be filed and should clarify that samples of information or aggregated data may be submitted instead. Alliance also argues that if the Commission continues to require data to be reported in disaggregated form, the Commission should aggregate the data before publishing it. Alliance argues that delayed publication will not cure the problems resulting from publication of disaggregated data. Alliance next argues that the Commission should clarify that transaction end date should be reported as of the earlier of the transaction end date or the last day of the quarter.

⁵See, e.g., Houston Lighting & Power Company, 84 FERC ¶ 61,183 at 61,955 (1998).

Alliance also argues that the Commission should acknowledge that transaction data terms such as "increment name" and "increment peak name" may be defined differently in different operating regions and systems and make allowance for such variance in reporting.

13. Alliance also asks the Commission to rename Pre-2000 contract information that has to be filed on January 31, 2003 as Pre-April 1, 2002 contract information and drop references to Pre-2000 contract information. Alliance argues that this would more accurately reflect the contracts to be reported in the January 31, 2003 Electric Quarterly Reports. Finally, Alliance seeks assurance that the Commission will confer closely with the industry in developing the more advanced relational database now under development and discussed in Order No. 2001 and in the order issuing the instruction manual for interim filings.⁶

Commission Conclusion

14. We reject Alliance's arguments that the Commission should reconsider the volumes of information it is requiring to be filed in Electric Quarterly Reports and should allow the use of sample or aggregated data. Although these requests are styled as a request for clarification, they actually constitute a request for reconsideration. The Commission gave extensive consideration to comments on these issues in Order Nos. 2001 and 2001-A. Alliance has not provided any new information or circumstances that warrant reconsideration of our findings on these issues.

15. As to Alliance's argument that "transaction end date" should be reported as of "the earlier of the transaction end date or the last day of the quarter," we already addressed this issue in Order No. 2001-A and granted the requested clarification.

16. We reject Alliance's argument that the Commission should allow regional differences in the use of terms such as "increment name" and "increment peak name." It has not explained how any terms used in Order No. 2001 vary from region to region. If Alliance is unsure of the meaning of any terms used in the data sets, it may request further clarification from the Commission. The goal is to standardize terms to enhance transparency of the data. In addition, the Commission has repeatedly invited respondents to suggest new terms (that would be standardized) where the FERC-provided terms are

⁶Revised Public Utility Filing Requirements, 99 FERC ¶ 61,238 (2002).

Docket Nos RM01-8-001 and RM01-8-002

- 6 -

not sufficient. We would welcome suggestions from an industry group,⁷ Alliance, or others, on how to best define terms to ensure that filers from all regions use terms in the same manner.

17. We clarify that the contract information that will be reported on January 31, 2003 (when the relational database now under development is in place) includes Pre-April 2002 contract information. As Alliance states, the July 31, 2002 and October 31, 2002 Electric Quarterly Reports must include information about post April 1, 2002 contracts, and the January 31, 2003 report will capture information about all the utility's currently effective contracts under which service has commenced, including those entered into prior to April 1, 2002.

18. Regarding Alliance's request that the Commission confer closely with the industry in developing the more advanced relational database, we have already committed to do this and no further clarification on this issue is necessary. We have invited industry participation in this process⁸ and accept Alliance's offer to be an active participant in this process.

The Commission orders:

(A) Edison Mission's motion to vacate and request for rehearing of the June 14, 2002 errata notice are hereby denied, as discussed in the body of this order.

(B) J. Aron's motion for reconsideration of Order No. 2001 is hereby denied, as discussed in the body of this order.

(C) Alliance's requests for clarification are hereby denied in part, and granted in part, as discussed in the body of this order.

By the Commission.

(S E A L)

⁷Order No. 2001 at P 329.

⁸See Order No. 2001 at P 359.

Docket Nos RM01-8-001 and RM01-8-002

- 7 -

Linwood A. Watson, Jr.,
Deputy Secretary.