

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher,

Acadia Power Partners, LLC, *et al.*
El Paso Electric Company

Docket No. ER02-1406-001, *et al.*
Docket No. ER99-2416-001

ORDER DENYING MOTION FOR STAY AND
REQUEST FOR EXTENSION OF TIME

(Issued July 22, 2004)

1. In a filing made on July 1, 2004, El Paso Electric Company (El Paso) requested a stay or, in the alternative, an extension of time to comply with the Commission's May 13, 2004 Order implementing new generation market power analysis and mitigation procedures.¹ In the May 13 Order, all applicants with three-year market-based rate reviews pending before the Commission were directed to amend their filings by revising the generation market power portion of their three-year reviews to address the two interim indicative generation market power screens. El Paso was included in Group I, with amendments due within 90 days of May 13. This order denies El Paso's request for stay and request for an extension of time. This action benefits customers by enhancing the efficiency of the administrative process.
2. El Paso requests that the Commission stay application of the May 13 Order to El Paso's pending triennial market-based rate update and defer application until El Paso submits its next triennial update on May 27, 2005. El Paso argues that a stay is justified because a stay will prevent duplication of effort and the expenditure of substantial resources within a relatively short period.
3. El Paso requests, in the alternative, an extension of time to comply with the new filing requirements. In support of its request, El Paso states that an extension of time would allow the Commission to address issues raised on rehearing. El Paso also cites the technical complexity of implementing the interim screens, and the substantial resources required to conduct the analysis.

¹ Acadia Power Partners, LLC, *et al.*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

Discussion

4. The Commission may stay its action “when justice so requires.”² In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.³ The Commission's general policy is to refrain from granting a stay of its orders, to assure definiteness and finality in Commission proceedings.⁴ The key element in the inquiry is irreparable injury to the moving party.⁵ If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.⁶

5. We will deny El Paso's request for a stay, as we find that El Paso has failed to meet its burden of demonstrating that it will suffer irreparable harm absent a stay. “Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough.”⁷ The adverse consequences that El Paso predicts are of a purely economic nature. It is well-settled that absent a threat to the existence of a movant's business (a threat El Paso does not suggest exists here), “economic loss does not, in and of itself, constitute irreparable harm”.⁸ Having failed to make an adequate showing of irreparable harm, El Paso does not satisfy our conditions for a stay.

6. Moreover, El Paso is not harmed by complying with the May 13 Order. El Paso is incorrect in its assertion that it will have to file two full three-year market-based rate reviews within nine months, one in response to the May 13 Order, and the other as part of its previously scheduled 2005 triennial update. The May 13 Order states that the Commission “will consider the revised applications directed herein to be the next

² 5 U.S.C. § 705 (2000).

³ *See, e.g.*, CMS Midland, Inc., Midland Cogeneration Venture Ltd. P'ship, 56 FERC ¶ 61,177 at 61,631 (1991), *aff'd sub nom.* Michigan Municipal Coop. Group v. FERC, 990 F.2d 1377 (D.C. Cir.), *cert. denied*, 510 U.S. 990 (1993).

⁴ *Id.* at 61,630-31. *See also* Wisconsin Gas Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985).

⁵ *See* 56 FERC ¶ 61,177 at 61,631.

⁶ *See id.*

⁷ Wisconsin Gas Co., 758 F.2d at 674.

⁸ *Id.*

required three-year market-based rate review for the applicants”.⁹ Therefore, the update required by the May 13 Order would take the place of the previously scheduled 2005 triennial update, and subsequent updates would be due every three years thereafter.

7. We will deny El Paso’s request for an extension of time also. El Paso’s argument that the extra time would enable the Commission to address issues on rehearing is moot because the Commission issued its order on rehearing after El Paso filed its request.¹⁰

The Commission orders:

El Paso’s request for a stay and for an extension of time are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

⁹ May 13 Order at P 11; *see* May 13 Order at P 7 (requiring applicants to file revised three-year reviews addressing interim screens and changed factual circumstances).

¹⁰ AEP Power Mktg., Inc., *et al.*, 108 FERC ¶ 61,026 (2004).