

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Morgan Stanley Capital Group, Inc.

Docket No. ER03-1126-001

ORDER DENYING REHEARING

(Issued March 24, 2004)

1. In this order, the Commission denies Mirant Americas Energy Marketing, Inc. (Mirant) request for rehearing of the September 8, 2003 Letter Order issued pursuant to delegated authority in this proceeding. This order ensures that parties follow our regulations with respect to matters of interest to them.

**Background**

2. On July 29, 2003, Morgan Stanley Capitol Group Inc. (Morgan Stanley) submitted for filing, pursuant to Section 205 of the Federal Power Act (FPA),<sup>1</sup> a Scheduling Services Agreement (Scheduling Agreement) between Morgan Stanley and Deseret Generation & Transmission Cooperative, Inc. (Deseret). Morgan Stanley asked the Commission to accept the filing “immediately” and to waive or shorten the notice period to allow the Commission to do so.

3. The Scheduling Agreement provided for Morgan Stanley to schedule Deseret’s electric energy resources, load requirements, and transmission resources at Deseret’s direction and for Deseret’s account, for Morgan Stanley and Deseret to purchase and sell energy to each other, for Deseret to reassign excess transmission capacity to Morgan Stanley, and for Morgan Stanley to act as Deseret’s agent interacting with applicable energy and transmission providers and Control areas at Deseret’s direction.

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<sup>1</sup> 18 U.S.C. § 824d (2000).

4. Morgan Stanley stated that the Scheduling Agreement was being tendered for filing “out of an abundance of caution” and that it did not believe that the filing is required under the Federal Power Act, the Commission’s regulations, or the Commission’s order authorizing Morgan Stanley to engage in wholesale sales of electricity at market-based rates.<sup>2</sup> Morgan Stanley further stated that authority for the sales and purchases of energy between it and Deseret has already been authorized by Commission because each party had been authorized to sell electric energy at market-based rates,<sup>3</sup> that each party would report its sales and prices in its Electronic Quarterly Report (EQR) to the Commission, as required by Commission orders and Regulations.<sup>4</sup>

5. The September 8, 2003 Letter Order accepted the Scheduling Agreement for filing, effective July 30, 2003, as requested. The letter order noted that no protests had been filed.

### **Request for Rehearing**

6. On October 8, 2003, Mirant filed a request for rehearing. Mirant indicates that it does not seek to have Morgan Stanley’s authorization to schedule under the Scheduling Agreement overturned, and that it does not seek to otherwise disturb the transaction at issue. Rather, Mirant requests that the Commission clarify that the letter order’s acceptance for filing does not mean that a seller with blanket authorization to make wholesale sales of power at market-based rates, such as Morgan Stanley, is required to file agreements like the Scheduling Agreement for individual review and acceptance pursuant to Section 205 of the FPA. If the letter order is properly construed as meaning that agreements like the Scheduling Agreement must be individually filed with, and accepted by, the Commission pursuant to Section 205 of the FPA, Mirant requests rehearing on the grounds that the letter order was unsupported by precedent and was

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<sup>2</sup> Morgan Stanley Capital Group Inc., 69 FERC ¶ 61,175 (1994), order on reh’g, 72 FERC ¶ 61,082 (1995).

<sup>3</sup> Morgan Stanley was granted market-based rate authority in Docket No. ER94-1384-000 (Morgan Stanley Capital Group Inc., 69 FERC ¶ 61,175 (1994), order on reh’g, 72 FERC ¶ 61,082 (1995)). Deseret was granted market-based rate authority in Docket No. ER99-2506-000 (MEP Investments, LLC, et al., 87 FERC ¶ 61,209 (1999)).

<sup>4</sup> See Revised Public Utility Requirements, Order No. 2001, FERC Stats. & Regs. ¶ 31,127 (2002), order on reh’g, Order No. 2001-A, 100 FERC ¶ 61,074 (2002), order on reh’g, Order No. 2001-B, 100 FERC ¶ 61,342 (2002).

arbitrary, capricious and an abuse of discretion. Further, Mirant also asks that the Commission provide guidance as to how a seller should provide transaction data for market-based rate transactions such as those contemplated by the Scheduling Agreement should be reported on the Commission's EQR templates.

7. On October 23, 2003, Morgan Stanley filed an answer to Mirant's request for rehearing. Morgan Stanley supports Mirant's argument that individual agreements like the Scheduling Agreement are not required to be filed under Section 205 of the FPA.

8. Morgan Stanley urges the Commission to acknowledge that the details of these transactions need not be reported in the EQRs, or, in the alternative, to provide guidance on the reporting in the EQRs of transactions like those covered by the Scheduling Agreement.

### **Discussion**

9. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2003), we will reject Morgan's Stanley's answer as an impermissible answer to a request for rehearing.

10. We will deny Mirant's request for rehearing. Morgan Stanley asked the Commission to "accept this filing immediately"<sup>5</sup> and in the September 8 Letter Order the Commission did so. Mirant, on rehearing, expressly acknowledges that it does not seek to disturb the Scheduling Agreement.<sup>6</sup> What Mirant seeks, rather, is Commission guidance on what agreements need to be filed, and how information should be reported on the EQRs. These matters are beyond the scope of this proceeding. These matters are more appropriately addressed in a petition for declaratory order.<sup>7</sup> We make no determination here whether these agreements are, or are not, required to be filed.

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<sup>5</sup> Transmittal Letter at 1.

<sup>6</sup> Request for Rehearing at 4. We note, as well, that Mirant did not protest Morgan Stanley's filing.

<sup>7</sup> See 18 C.F.R. § 385.207(a)(2) (2003); see also 18 C.F.R. § 381.302(a) (2003).

The Commission orders:

Mirant Americas Energy Marketing, L.P.'s request rehearing of the September 8, 2003 Letter Order in Docket No. ER03-1126-000 is hereby denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.