

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 27, 2004

In Reply Refer To:
Commonwealth Edison Company
Docket Nos. ER04-589-000, ER04-589-001
and ER04-594-000

Commonwealth Edison Company
Attn: Peter J. Thornton, Esq.
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10 South Dearborn Street, P.O. Box 805379
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Dear Mr. Thornton:

1. In this order, the Commission accepts the withdrawals of firm point-to-point transmission service agreements and accepts one service agreement not included in the requested withdrawals.
2. On February 26, 2004, in Docket No. ER04-589-000, Commonwealth Edison Company (ComEd) submitted for filing fourteen unexecuted service agreements for firm point-to-point transmission service with Edison Mission Marketing & Trading, Inc. (EMMT). On February 27, 2004, in Docket No. ER04-594-000, ComEd submitted for filing another five firm point-to-point transmission service agreements with EMMT. On April 6, 2004, in Docket No. ER04-589-001, ComEd submitted for filing a request to withdraw thirteen of the fourteen service agreements submitted in Docket No. ER04-589-000. Also, on April 6, 2004, in Docket No. ER04-594-000, ComEd submitted a request to withdraw all five agreements submitted in Docket No. ER04-594-000.
3. Notice of ComEd's February 26, 2004 filings were published in the Federal Register, 69 Fed. Reg. 11005 (2004), with interventions, comments, and protests due on or before March 18, 2004 and notice of ComEd's February 27, 2004 filings were published in the Federal Register, 69 Fed. Reg. 11614 (2004), with interventions, comments, and protests due on or before March 19, 2004. On March 5, 2004, in Docket Nos. ER04-589-000 and ER04-594-000, Edison Mission Energy, EMMT, and Midwest Generation EME, L.L.C. (collectively, EME) filed a motion to intervene and protest. On March 2, 2004, in Docket No. ER04-589-000, Duke Energy North America, L.L.C. and Duke Energy Trading and Marketing, L.L.C. (collectively, Duke Energy) filed a motion

to intervene that raises no substantive issues. On March 19, 2004, ComEd filed an answer to EME's protest.

4. Notices of ComEd's April 6, 2004 filings were published in the Federal Register, 69 Fed. Reg. 20000 (2004), with interventions, comments, and protests due on or before April 27, 2004. No interventions or protests were filed.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motion to intervene of Duke Energy and EME serve to make them parties to the proceedings in which they intervened.

6. In a series of orders, the Commission ordered the elimination of so-called Through and Out (T&O) rates, i.e., rates in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, L.L.C. (PJM) regions for transmission that sinks in the Midwest ISO or PJM regions.

7. The Commission provided for the elimination of T&O rates effective April 1, 2004.¹ The Commission did so to eliminate prohibited and inefficient rate pancaking that obstructed more efficient and competitive electricity markets and that resulted in unjust and unreasonable rates.² Subsequently, in the Commission's February 6, 2004 Order,³ to allow parties time to participate in a stakeholder process that might assist in the development of Seams Elimination Charge/Cost Adjustment/Assignment (SECA) compliance filings, the effective date was extended to May 1, 2004.

8. Recognizing that there could be delays in the effective date for the elimination of T&O rates (since the orders further provided that the elimination of T&O rates should occur simultaneously with replacement by a transition revenue recovery mechanism such as a SECA and that there could be cost shifts upon the elimination of T&O rates, EMMT had proposed to ComEd that the service agreements be revised to permit cancellation of some or all of the transmission reservations should T&O rates remain in effect beyond April 1, 2004. ComEd declined EMMT's proposal and submitted the agreements in

¹Midwest Independent Transmission System Operator, Inc., et al., 105 FERC ¶ 61,212 at P 1, 15 (2003).

² Midwest Independent Transmission System Operator, Inc., et al., 104 FERC ¶ 61,105 at P 1, 39, order on reh'g, 105 FERC ¶ 61,212 at P 1, 15, clarified, 105 FERC ¶ 61,288 (2003).

³ Midwest Independent Transmission System Operator, Inc., et al., 106 FERC ¶ 61,106 at P 6 (2004). As noted below, that date was subsequently extended to December 1, 2004. Midwest Independent Transmission System Operator, Inc., et al., 106 FERC ¶ 61,261 at P 1, 18 (2004).

unexecuted form. Thus, ComEd filed unexecuted service agreements and EMMT protested the agreements.

9. Subsequent to EMMT's protest, the Commission, on March 19, 2004, further extended the elimination of T&O rates until December 1, 2004, and also provided an opportunity for entities to reduce the capacity for the term of, or cancel, confirmed reservations sinking in the PJM and Midwest ISO regions that had been requested between November 17, 2003 and March 19, 2004, for service beginning on or after April 1, 2004.⁴ The Commission explained that the option to reduce or cancel those reservations was a solution to EMMT's problem, especially since no evidence of the need for additional relief was offered. In light of this order, ComEd and EMMT have agreed to cancel and withdraw the previously submitted service agreements.

10. We find that the proposed cancellations and withdrawals of the service agreements (with the exception of Original Service Agreement No. 766, which is accepted for filing as discussed below), which are uncontested, should be granted as requested by the parties and consistent with the Commission's March 19, 2004 order. Accordingly, all of the service agreements submitted in Docket Nos. ER04-589-000 and ER04-594-000, with the exception of Original Service Agreement No. 766, are hereby deemed cancelled and withdrawn; as agreed by ComEd and the customer,⁵ Original Service Agreement No. 766 is hereby accepted for filing effective April 1, 2004, as requested.

By direction of the Commission.

Magalie R. Salas,
Secretary.

⁴ Midwest Independent Transmission System Operator, Inc., et al., 106 FERC ¶ 61,262 at P 1, 8, 18, 25 (2004).

⁵ See ComEd April 6, 2004 letter.