

168 FERC ¶ 61,088
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

City of Falmouth, Kentucky

Docket No. EL18-176-001

ORDER DISMISSING REQUEST FOR REHEARING AS MOOT

(Issued August 15, 2019)

1. In this order, we dismiss as moot the request for rehearing filed by the City of Falmouth, Kentucky (Falmouth) with respect to the Commission's December 20, 2018 order in this proceeding.¹

I. Background

2. Falmouth owns and operates a municipal electric system in northern Kentucky, serving approximately 4 MW of load. Until April 30, 2019, Falmouth purchased wholesale requirements power and transmission service from Kentucky Utilities Company (KU) over the facilities of East Kentucky Power Cooperative, Inc. (EKPC) under Rate Schedule FERC No. 189 (KU Contract). In 2014, however, Falmouth stated that it provided KU with timely notice to terminate the KU contract, effective April 30, 2019. Falmouth represented that, beginning May 1, 2019, it would take all of its wholesale requirements power from the newly-formed Kentucky Municipal Energy Agency (KyMEA).²

3. In its June 20, 2018 petition for declaratory order (Petition) in this proceeding, Falmouth requested that the Commission confirm that when Falmouth changes energy suppliers, Falmouth may continue to obtain transmission service over the facilities of EKPC at the same rates, terms and conditions that Falmouth paid historically under the KU Contract.³

¹ *City of Falmouth, Ky.*, 165 FERC ¶ 61,250 (2018) (December 2018 Order).

² *Id.* P 2.

³ *Id.* P 7.

4. In the December 2018 Order, the Commission denied Falmouth's Petition. The Commission found that, contrary to Falmouth's claims, when Falmouth changes its energy supplier, it will no longer be covered by the terms of the agreement that previously entitled Falmouth to take nonconforming transmission service under the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff).⁴ The Commission also found that Falmouth failed to provide sufficient justification to warrant an exception to the Commission's policy that new transmission service should be taken at the prevailing, standardized Tariff rates, terms, and conditions.⁵

II. Request for Rehearing

5. On January 22, 2019, Falmouth requested rehearing of the December 2018 Order. On rehearing, Falmouth argued that the Commission misinterpreted the Kentucky Stipulation, the agreement entitling it to take nonconforming service, and thus erred in directing Falmouth to enter into a new agreement for transmission service under the PJM Tariff beginning May 1, 2019.⁶ Falmouth also stated, however, that its "principal concern is keeping the lights on," and that it "hopes to soon be able to advise the Commission that the ongoing efforts to achieve the transition to PJM service have been successful," in which case Falmouth acknowledged that its request for rehearing "may become moot."⁷

III. Subsequent Events

6. On March 15, 2019, as supplemented on May 8, 2019, Louisville Gas and Electric Company (LG&E) and KU (collectively, the Utilities) filed a Wholesale Distribution Service Agreement (WDSA) between the Utilities and KyMEA in Docket No. ER19-1316-000. The Utilities stated in that proceeding that the WDSA would allow KyMEA's members to transition from KU wholesale requirements customers to customers taking transmission service under the Utilities' Joint Pro Forma Open Access Transmission Tariff.⁸ The Utilities also noted that, following the December 2018 Order, KyMEA

⁴ *Id.* P 43. *See also id.* P 45 (discussing the relevant agreement, the Kentucky Stipulation).

⁵ *Id.* P 43.

⁶ Falmouth Request for Rehearing at 2-7.

⁷ *Id.* at 2, 5.

⁸ *Louisville Gas and Elec. Co.*, Supplemental Filing, Docket No. ER19-1316-000, at 1 (filed May 8, 2019).

“requested termination of the pseudo-tie incorporating” Falmouth’s load into the Utilities’ Balancing Authority Area and requested that arrangements be made to facilitate the inclusion of this load into PJM.⁹ In addition, at KyMEA’s request, the Utilities stated that the parties to the WDSA agreed that the Utilities would “directly assign the costs associated with the LG&E/KU-owned 69kV radial line that connects the [EKPC] system to the City of Falmouth.”¹⁰ On May 10, 2019, the Commission accepted the WDSA for filing, effective May 1, 2019, as requested.¹¹

IV. Procedural Matters

7. On January 30, 2019, the Utilities filed a motion for leave to comment and comments on the request for rehearing. On February 6, 2019, EKPC filed a motion for leave to answer and answer to the request for rehearing. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure¹² prohibits answers to a request for rehearing. Accordingly, we deny the motions and reject the Utilities’ and EKPC’s filings.

V. Determination

8. In light of the events described above, we dismiss as moot Falmouth’s request for rehearing of the December 2018 Order. The events that Falmouth acknowledged¹³ may cause its request for rehearing to become moot have now transpired, as Falmouth—a KyMEA member—now takes conforming service under the PJM Tariff. Accordingly, we find that Falmouth’s request for rehearing is moot.¹⁴

⁹ *Id.*, Testimony of Derek Rahn, at 2.

¹⁰ *Id.*

¹¹ *Louisville Gas and Elec. Co.*, Docket No. ER19-1316-000, at 2 (May 10, 2019) (delegated order).

¹² 18 C.F.R. § 385.713(d)(1) (2018).

¹³ Falmouth Request for Rehearing at 2, 5.

¹⁴ *See, e.g., TC Ravenswood, LLC*, 150 FERC ¶ 61,142, at P 10 (2015) (dismissing request for rehearing as moot where there was no longer a live controversy).

The Commission orders:

Falmouth's request for rehearing is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.