

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-1009

September Term, 2002

Filed On: April 23, 2003 [745318]

Dynergy Power Marketing, Inc.,
Petitioner

v.

Federal Energy Regulatory Commission,
Respondent

KeySpan-Ravenswood, Inc., et al.,
Intervenors

Petition for Review of Orders of the
Federal Energy Regulatory Commission

Before: EDWARDS, RANDOLPH, and TATEL, *Circuit Judges*

J U D G M E N T

This cause came to be heard on a petition for review of orders of the Federal Energy Regulatory Commission ("FERC") and was briefed and argued by counsel. It is

ORDERED AND ADJUDGED that the petition for review is hereby denied.

Petitioner Dynergy Power Marketing, Inc. seeks review of two temporary, interim orders issued by the Federal Energy Regulatory Commission ("Commission") concerning proposals submitted by the New York Independent System Operator, Inc. ("ISO") to mitigate prices resulting from the exercise of market power in energy markets administered by the ISO. The orders challenged here addressed an ISO-proposed modification to automate the identification of bids that potentially might require mitigation, so as to eliminate the one-day delay that occurred under then-current manual procedures. Specifically, the ISO proposed an "Automated Mitigation Procedure" ("AMP") that would accelerate the identification of questionable bidding based on existing and previously-approved conduct and impact criteria. The Commission approved the AMP for a limited period only, to expire on October 31, 2001. *New York Indep. Sys. Operator, Inc., Order Accepting Tariff Filing as Modified*, 95 F.E.R.C. ¶ 61,471 (2001), Joint Appendix ("J.A.") 427, and *New York Indep. Sys. Operator, Inc., Order Denying Rehearing*, 97 F.E.R.C. ¶ 61,176 (2001), J.A. 469.

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The disputed orders expired by their own terms on October 31, 2001. Subsequently, on May 31, 2002, FERC issued an order modifying the AMP program and making it effective for an indefinite term.

The orders that are the subject of this petition for review no longer have any effect, and this court has no power to revive them. *See Pub. Utils. Comm'n of the State of Cal. v. FERC*, 236 F.3d 708 (D.C. Cir. 2001) (dismissing petition for review because the challenged contracts had expired). The case is therefore moot. *Id.* at 713.

Moreover, petitioner has filed a separate challenge to the May 31, 2002 FERC order that indefinitely extended the challenged AMP. Any relief that petitioner seeks in this challenge to FERC's temporary, interim orders can be obtained through a successful challenge to the May 31, 2002 order. It therefore would be pointless for this court to review earlier orders that all parties agree have been superceded by the May 31, 2002 order. There is no live controversy with respect to the interim orders.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

By:

Michael C. McGrail
Deputy Clerk