

such motions or protests should be filed on or before August 15, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

**Lois D. Cashell,**

Secretary.

[FR Doc. 95-18781 Filed 7-31-95; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER94-1384-001, ER94-1450-004, ER94-1685-001, ER94-1690-001, ER94-1691-002, ER95-393-001]

**Morgan Stanley Capital Group Inc., Coastal Electric Services Company, Citizens Lehman Power Sales, Engelhard Power Marketing, Inc., AIG Trading Corporation, CLP Hartford Sales, L.L.C.; Order Granting Rehearing in Part and Denying Rehearing in Part, Announcing Elimination of Power Marketer Business and Financial Arrangements Reporting Requirement, and Providing Guidance on Determining "Affiliation" Under Part II of the Federal Power Act**

Issued July 26, 1995.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J. Hoecker, William L. Massey, and Donald F. Santa, Jr.

**Background**

In a November 8, 1994 order issued in Docket No. ER94-1384-000, *Morgan Stanley Capital Group, Inc.*, 69 FERC ¶ 61,175 (1994) (November 8 Order), the Commission accepted for filing the application of Morgan Stanley Capital Group Inc. (MS Capital) for authorization to engage in wholesale electric energy transactions as a marketer at market-based rates. In the November 8 Order, the Commission denied MS Capital's request for relaxed reporting requirements and imposed the same filing and reporting requirements as those applicable to other power marketers. The Commission announced that it would reconsider these reporting requirements in a future generic proceeding applicable to all public utilities selling power at market-based rates. The Commission also denied MS Capital's request for waiver of the annual charge obligation and clarified that such obligation is applicable to all power marketers.

These cases present an appropriate vehicle for addressing the major issues in the November 8 Order. The

Commission will address other issues as they become ripe for resolution.

**Requests for Rehearing of November 8 Order**

On December 8, 1994, MS Capital filed a request for rehearing and modification of and for interim relief from the November 8 Order. MS Capital seeks relief from the November 8 Order in two respects. First, MS Capital asks the Commission to reverse its decision to require MS Capital to report business and financial arrangements between it (or an affiliate) and any entity that buys from or sells power to it, or at least to grant interim relief from that reporting requirement pending the outcome of the generic proceeding announced in the November 8 Order. MS Capital argues, among other things, that compliance with the requirement to report business and financial arrangements would be needlessly onerous and would inhibit the participation of experienced and highly qualified financial companies such as MS Capital in the markets for wholesale sales of electricity. MS Capital also questions whether the business and financial arrangements reporting requirement would provide the Commission and its staff with any meaningful data that could be used to detect reciprocal dealing. If the Commission does not reverse or stay application of the business and financial arrangements reporting requirement, MS Capital proposes several limitations to the scope of that requirement.

Second, MS Capital asks the Commission to reverse, or defer, its holding that power marketers are subject to the Commission's annual charge requirement. MS Capital asks the Commission, at a minimum, to defer its decision to collect annual charges from power marketers for a start-up (e.g., three-year) period "until power marketers are better established," after which time the Commission could evaluate "whether power marketers impose regulatory burdens on the Commission comparable to the burdens created by regulation of utilities with cost-based rates." MS Capital Rehearing Request at 3, 18.

On December 8, 1994, the Electric Power Monitoring Group and its individual members<sup>1</sup> filed a motion to intervene out-of-time and a request for rehearing of the November 8 Order. The Electric Power Monitoring Group seeks rehearing of the Commission's ruling

requiring all power marketers to pay annual charges. The Electric Power Monitoring Group argues, among other things, that: (1) The Commission has not adequately justified its departure from past policy and precedent pursuant to which it previously declined to assess power marketers annual charges; (2) the Commission has limited jurisdiction over power marketers, which does not warrant subjecting them to the annual charge requirement; (3) the Commission does not devote significant resources to the regulation of power marketers as to justify subjecting them to the annual charge requirement;<sup>2</sup> and (4) subjecting power marketers to the annual charge requirement effectively discriminates against power marketers, which will not be able to recover the annual charges in a cost of service rate as do other public utilities subject to the annual charge requirement.

On December 8, 1994, Citizens Lehman Power Sales (CL Sales) also filed a motion for leave to intervene out-of-time and a request for rehearing of the November 8 Order. CL Sales asks the Commission, pending its generic proceeding, to drop the business and financial arrangements reporting requirement and to rely upon existing complaint procedures. If the Commission decides to maintain the reporting requirement in the interim, CL Sales asks the Commission to clarify that its decision to exclude transitory holdings in connection with investment or merchant banking, market-making, or asset management activities for purposes of determining generation dominance<sup>3</sup> also applies to the business and financial arrangements reporting requirement.

On December 9, 1994, Calpine Power Marketing Inc. (Calpine) filed a motion for leave to intervene out-of-time and a request for clarification of the November 8 Order. Like CL Sales, Calpine asks the Commission to clarify that the November 8 Order's exclusion of transitory holdings for purposes of assessing market power is equally applicable to reciprocal dealing concerns and thus also applies to the business and financial arrangements reporting requirement.

On July 7, 1995, MS Capital filed a motion for interim relief from the

<sup>2</sup> The Electric Power Monitoring Group argues that the Commission has failed to supply documentation to support its claim that it "can spend as much (if not more) time evaluating power marketer requests as it can other types of rate applications." 69 FERC at 61,697. The Electric Power Monitoring Group submits that such an analysis should be performed in a rulemaking proceeding of general applicability.

<sup>3</sup> See 69 FERC at 61,693.

<sup>1</sup> The members of the Electric Power Monitoring Group joining in the pleading are Enron Power Marketing, Inc., Valero Power Services Company, Electric Clearinghouse, Inc., Intercontinental Energy Corporation, and KCS Energy Management Services, Inc.