

**ORAL ARGUMENT NOT YET SCHEDULED**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 04-1298**

---

**IN RE: ILLINOIS MUNICIPAL GAS AGENCY,  
PETITIONER**

---

**ON PETITION FOR WRIT OF MANDAMUS TO THE  
FEDERAL ENERGY REGULATORY COMMISSION**

---

**BRIEF FOR RESPONDENT  
FEDERAL ENERGY REGULATORY COMMISSION**

---

**CYNTHIA A. MARLETTE  
GENERAL COUNSEL**

**DENNIS LANE  
SOLICITOR**

**PATRICK Y. LEE  
ATTORNEY**

**FOR RESPONDENT  
FEDERAL ENERGY  
REGULATORY COMMISSION  
WASHINGTON, D.C. 20426**

**JUNE 30, 2005**

## **CIRCUIT RULE 28(a)(1) CERTIFICATE**

**A. Parties:**

All participants in the proceedings below and in this Court are listed in Petitioner's Circuit Rule 28(a)(1) certificate.

**B. Rulings Under Review:**

Petitioner does not seek review of any specific ruling.

**C. Related Cases:**

Counsel is not aware of any related cases pending before this or any other Court.

---

Patrick Y. Lee  
Attorney

June 30, 2005

**TABLE OF CONTENTS**

|  | <b><u>PAGE</u></b> |
|--|--------------------|
| STATEMENT OF THE ISSUES.....   | 1                  |
| COUNTERSTATEMENT OF JURISDICTION.....  | 2                  |
| PERTINENT STATUTES AND REGULATONS.....                                       | 2                  |
| STATEMENT OF THE CASE.....   | 2                  |
| I. NATURE OF THE CASE, COURSE OF PROCEEDINGS,<br>AND DISPOSITION BELOW.....  | 2                  |
| II. STATEMENT OF FACTS.....  | 3                  |
| A. Statutory And Regulatory Background.....                                  | 3                  |
| B. Events Leading To The Mandamus Petition.....                              | 5                  |
| C. Events Subsequent To The Mandamus Petition.....                           | 7                  |
| SUMMARY OF ARGUMENT.....   | 10                 |
| ARGUMENT.....  | 11                 |
| I. THE COMMISSION’S MAY 31 REAFFIRMATION ORDER<br>MOOTS IMGA’S PETITION..... | 11                 |
| II. THE MANDAMUS PETITION ALLEGES AN UNRIPE CLAIM.....                       | 14                 |
| CONCLUSION.....  | 16                 |

## TABLE OF AUTHORITIES

|  | <u>PAGE</u> |
|--|-------------|
| <b>COURT CASES:</b>  |             |
| <i>Abbot Labs. v. Gardner</i> ,<br>387 U.S. 136 (1967).....  | 14          |
| <i>Associated Gas Distribs. v. FERC</i> ,<br>824 F.2d 981 (D.C. Cir. 1987).....                                  | 4           |
| <i>Cajun Elec. Power Coop. v. FERC</i> ,<br>28 F.3d 173 (D.C. Cir. 1994).....                                    | 13          |
| <i>Clifton Power Corp. v. FERC</i> ,<br>294 F.3d 108 (D.C. Cir. 2002).....                                       | 14          |
| <i>Fed. Express Corp. v. Mineta</i> ,<br>373 F.3d 112 (D.C. Cir. 2004).....                                      | 15          |
| <i>In re Illinois Mun. Gas Agency</i> ,<br>No. 98-1347, 1998 U.S. App. LEXIS 30938 (D.C. Cir. Nov. 24, 1998).... | 6, 7        |
| <i>Interstate Natural Gas Ass’n. v. FERC</i> ,<br>285 F.3d 18 (D.C. Cir. 2002).....                              | 5, 6, 7, 13 |
| <i>Moreau v. FERC</i> ,<br>982 F.2d 556 (D.C. Cir. 1993).....  | 13          |
| <i>Pub. Utils. Comm’n v. FERC</i> ,<br>236 F.3d 708 (D.C. Cir. 2001).....  | 11          |
| <i>Toca Producers v. FERC</i> ,<br>No. 04-1135, 2005 U.S. App. LEXIS (D.C. Cir. June 10, 2005).....              | 14, 15      |
| <i>Transwestern Pipeline Co. v. FERC</i> ,<br>897 F.2d 570 (D.C. Cir. 1990).....                                 | 11          |

**TABLE OF AUTHORITIES**

**PAGE**

**ADMINISTRATIVE CASES:**

*Interstate Natural Gas Pipeline Rate Design*,  
47 FERC ¶ 61,295, *reh’g granted*, 48 FERC ¶ 61,122 (1989).....4, 5

\**Notice of Inquiry*,  
109 FERC ¶ 61,202 (2004).....7, 8, 12

Order No. 436, *Regulations of Natural Gas Pipelines  
After Partial Wellhead Decontrol*,  
FERC Stats. & Regs., Regulations Preambles (1982-1985)  
¶ 30,665 (1985).....3, 4

Order No. 636, *Final Rule*,  
59 FERC ¶ 61,030 (1992).....5

Order No. 636-B, *Order Denying Rehearing  
and Clarifying Order Nos. 636 and 636-A*,  
61 FERC ¶ 61,272 (1992).....5

\**Order Reaffirming Discount Policy  
and Terminating Rulemaking Proceeding*,  
111 FERC ¶ 61,309 (2005).....1, 8, 9, 13

*S. Natural Gas Co.*,  
67 FERC ¶ 61,155 (1994).....5

**REGULATION:**

18 C.F.R. § 385.713(b).....9

---

\* Cases chiefly relied upon are marked with an asterisk.

## **GLOSSARY**

|                     |   |
|---------------------|---|
| FERC or Commission  | Federal Energy Regulatory Commission  |
| IMGA                | Illinois Municipal Gas Agency   |
| Mandamus Petition   | Petition for Writ of Mandamus to the Federal Energy Regulatory Commission, filed by Illinois Municipal Gas Agency |
| Reaffirmation Order | <i>Order Reaffirming Discount Policy and Terminating Rulemaking Proceeding</i> , 111 FERC ¶ 61,309 (2005)         |
| Rulemaking Petition | Petition for Rule of General Applicability By Illinois Municipal Gas Agency                                       |

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

---

**No. 04-1298**

---

**IN RE: ILLINOIS MUNICIPAL GAS AGENCY,  
PETITIONER,**

---

**ON PETITION FOR WRIT OF MANDAMUS TO THE  
FEDERAL ENERGY REGULATORY COMMISSION**

---

**BRIEF FOR RESPONDENT  
FEDERAL ENERGY REGULATORY COMMISSION**

---

**STATEMENT OF THE ISSUES**

1. Whether the *Order Reaffirming Discount Policy and Terminating Rulemaking Proceeding*, 111 FERC ¶ 61,309 (2005) (“Reaffirmation Order”), issued by the Federal Energy Regulatory Commission (“FERC” or “Commission”), moots the Petition for Writ of Mandamus to the Federal Energy Regulatory Commission (“Mandamus Petition”), filed by Illinois Municipal Gas Agency (“IMGA”).
2. Whether the Mandamus Petition should be dismissed as premature and unripe for judicial review in light of IMGA’s as-yet-to-be filed rehearing application of the Reaffirmation Order.

## **COUNTERSTATEMENT OF JURISDICTION**

This Court lacks jurisdiction to review this petition because the case is now moot and/or unripe.

## **PERTINENT STATUTES AND REGULATIONS**

The pertinent statutes and regulations are contained in the Addendum to this Brief.

## **STATEMENT OF THE CASE**

### **I. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW**

This case concerns IMGA's request to change FERC policy permitting pipelines to adjust downward throughput used to set their unit rates to reflect discounts given by pipelines for competitive reasons, including gas-on-gas competition.<sup>1</sup> IMGA filed its Petition for Rule of General Applicability ("Rulemaking Petition") on July 2, 1997, seeking to commence a rulemaking proceeding to address the proper ratemaking treatment of discounts given to customers of interstate natural gas pipelines for gas-on-gas competitive reasons.

After no action was taken on the Rulemaking Petition, IMGA sought other means, including filing the Mandamus Petition, to commence action on its

---

<sup>1</sup> Gas-on-gas competition is competition for business between two or more natural gas pipelines as opposed to competition between providers of natural gas and providers of other fuels.



Rulemaking Petition. Soon after IMGGA filed the Mandamus Petition, however, the Commission issued a Notice of Inquiry, requesting comments and responses germane to the matters posed by IMGGA's Rulemaking Petition. Upon receiving and evaluating the numerous responses from industry participants, the Commission issued the Reaffirmation Order, which reaffirmed FERC policy permitting pipelines to adjust downward throughput used to calculate rates to reflect discounts given by pipelines for competitive reasons, including gas-on-gas competition; implicitly denied IMGGA's requested relief in the Rulemaking Petition; and terminated the rulemaking proceeding. Despite the issuance of the Reaffirmation Order disposing of the issues raised in the Rulemaking Petition and mooted the Mandamus Petition, IMGGA has not withdrawn the Mandamus Petition.

## **II. STATEMENT OF FACTS**

### **A. Statutory And Regulatory Background**

FERC Order No. 436 commenced the transition to open access transportation. Pursuant to that order, the Commission adopted regulations requiring pipelines to file maximum and minimum transportation rates for both firm and interruptible service and to charge rates to customers within the maximum and minimum range. *See Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regulations Preambles (1982-1985) ¶ 30,665 at 31,540-45 (1985). In addition, the regulations permitted a pipeline to engage in selective discounting based

on the varying demand elasticities of the pipeline's customers. *Id.* at 31,544. Pipelines became eligible to discount, on a nondiscriminatory basis, to meet competition. *Id.* at 31,546. The Commission explained that these selective discounts would benefit all customers, including customers that did not receive the discounts, by allowing a pipeline to maximize throughput and, thus, spread its fixed costs across more units of service. *Id.* at 31,545. Selective discounting would also protect captive customers from rate increases that would have otherwise occurred if a pipeline lost volumes because it was unable to respond to competition. *Id.* In *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), this Court upheld the regulations permitting selective discounting adopted in Order No. 436. *Id.* at 1011-12.

Subsequent to Order No. 436, FERC's 1989 Rate Design Policy Statement relieved a pipeline that grants a discount to meet competition of the requirement to design rates, in its next rate case, based on the assumption that the discounted volumes will flow at the maximum rates; instead, the pipeline may reduce the discounted volumes so as to recover its cost of service. *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295, *reh'g granted*, 48 FERC ¶ 61,122 (1989). That ruling was based on a concern that requiring rates to reflect discounted service being priced at the maximum rate in a subsequent rate case could act as a disincentive

to future discounting to capture marginal firm and interruptible business. *Id.* at 62,056.

Thereafter, FERC Order No. 636 instituted capacity release, which created competition between a pipeline and its shippers with respect to unused capacity. *See* 59 FERC ¶ 61,030 (1992). Competition from capacity release further induced pipelines to discount their interruptible and short-term firm capacity. *See* Order No. 636-B, 61 FERC ¶ 61,272 at 61,999 (1992).

### **B. Events Leading To The Mandamus Petition**

Since *Associated Gas Distributors* and the Rate Design Policy Statement, various parties, including IMGGA, have challenged the assumptions underlying discounting with regard to the issue of “gas-on-gas” competition.<sup>2</sup> Specifically, they contend that the benefits to captive customers of allowing fixed costs to be spread over more units of service are illusory when discounts are for gas-on-gas competition. IMGGA and its cohorts charge that “the demand for pipeline service is largely inelastic *in the aggregate*; as a result the rate discounts do not produce an overall increase in throughput but merely shift it around among pipelines.” *Interstate Natural Gas Ass’n*

---

<sup>2</sup> For example, in *Southern Natural Gas Co.*, 67 FERC ¶ 61,155 (1994), it was argued that no discount adjustment should be permitted with respect to gas-on-gas competition. The Commission rejected that argument, concluding that “in light of the dynamic nature of the natural gas market . . . any effort to prohibit interstate gas pipelines from discounting to meet gas-on-gas competition would inevitably result in a loss of throughput to the detriment of all their customers.” *Id.* at 61,458.

v. *FERC*, 285 F.3d 18, 57 (D.C. Cir. 2002) (emphasis in original). Based on that premise, they assert that “the competitive customers [who receive a discount] enjoy a decrease in rates and, the captives, instead of enjoying the supposed benefit, actually experience higher rates as the aggregate contribution of the competitive customers is reduced.” *Id.*

On July 2, 1997, IMGA filed the Rulemaking Petition, which requested the Commission “(1) to convene a rulemaking to determine the proper ratemaking treatment of discounts given to customers of interstate natural gas pipeline transmission companies for gas-on-gas competitive reasons (including capacity release volumes); and (2) . . . [to] establish a rule of general applicability that pipelines’ maximum rates be based on estimates of the pipelines’ total throughput without regard to discounts given for gas-on-gas competition with other jurisdictional pipelines.” Rulemaking Pet. at 15 (attached as Appendix to Mandamus Petition). The Rulemaking Petition was docketed at Docket No. RM97-7-000.

The first time IMGA claimed inaction on the part of the Commission, IMGA filed a petition for writ of mandamus with this Court in Case No. 98-1347 on July 24, 1998, seeking an order that the Commission proceed on the Rulemaking Petition. IMGA Br. at 9-10. The Court denied without prejudice IMGA’s petition because IMGA had not shown that FERC’s delay was so egregious or unreasonable as to warrant the extraordinary remedy of mandamus. *See In re Illinois Mun. Gas Agency*,

No. 98-1347, 1998 U.S. App. LEXIS 30938 (D.C. Cir. Nov. 24, 1998) (unpublished disposition).

The issue of discounts for gas-on-gas competition was also raised in *Interstate Natural Gas Association*. This Court denied IMGA's petition for review, leaving the matter for Commission resolution in a rulemaking. *See* 285 F.3d at 58.

On August 30, 2004, IMGA filed the instant Mandamus Petition, seeking an order that the Commission act on the Rulemaking Petition.

### **C. Events Subsequent To The Mandamus Petition**

On November 22, 2004, the Commission issued a Notice of Inquiry in Docket No. RM05-2-000, which sought "comments on its policy regarding selective discounting by natural gas pipeline companies." *See* 109 FERC ¶ 61,202 at ¶ 1 (2004); *see also id.* at ¶ 15 ("In particular, the Commission is interested in exploring the effects of the policy of permitting a discount adjustment in a rate case for all selective discounts, including those given to meet gas-on-gas competition . . ."). Among other rate issues addressed, the Commission requested comments as to "whether the Commission's practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline." *Id.* at ¶ 1. It further asked "what alternative changes in the Commission's discount adjustment policy could be considered to

minimize any adverse effects on captive customers.” *Id.* at ¶ 15(3). As the Notice of Inquiry was given its own docket (RM05-2-000), the Commission decided that it would “consider all the comments in Docket No. RM05-2-000 and w[ould] terminate the proceeding in Docket No. RM97-7-000 [instituted by IMGA’s Rulemaking Petition] because the issues included in Docket No. RM05-2-000 include all the issues raised in the Docket No. RM97-7-000 proceeding.” *Id.* at ¶ 16.

After receiving comments and responses from various parties, including IMGA, the Commission issued the Reaffirmation Order on May 31, 2005. That order addressed the issues raised in the Notice of Inquiry, which subsumed the issues in IMGA’s Rulemaking Petition, and terminated the rulemaking proceeding. The Commission reaffirmed “its current policy on selective discounting” as being “an integral and essential part of the Commission’s policies furthering the goal of developing a competitive national natural gas transportation market.” 111 FERC ¶ 61,309 at ¶ 2. The Reaffirmation Order held that the Commission would “not modify its current policies concerning selective discounting” and would “continue to allow a pipeline to seek a reduction in the volumes used to design its maximum rates, if it obtained those volumes by offering discounts to meet competition, regardless of the source of that competition.” *Id.* at ¶ 14. Moreover, the Reaffirmation Order explained that “in today’s dynamic natural gas market, any effort to discourage pipelines from offering discounts to meet gas-on-gas competition would do more

harm than good.” *Id.* at ¶ 18. Rehearing requests of the Reaffirmation Order are due no later than the date (June 30, 2005), on which this brief is due. *See* 18 C.F.R. § 385.713(b).

## **SUMMARY OF ARGUMENT**

This Court no longer has jurisdiction over the Mandamus Petition under the requirements of Article III of the Constitution. The Notice of Inquiry and the Reaffirmation Order eliminated any case or controversy as to the Mandamus Petition's request for an order that the Commission act on IMGA's Rulemaking Petition. The Commission's Notice of Inquiry sought comments regarding selective discounting and downward adjustment of throughput, the very issues raised by the Rulemaking Petition. Furthermore, the Reaffirmation Order subsumed the issues raised in the Rulemaking Petition into its ruling. Consequently, the Mandamus Petition is now moot as the Commission has already taken the action sought by that petition.

Likewise, to the extent IMGA seeks to maintain the Mandamus Petition to spur FERC action on rehearing, such a position is not ripe for judicial intervention. IMGA has yet to file a rehearing request; thus, a prerequisite for FERC action has yet to be met. Even if IMGA were to file a rehearing request, a petition for writ of mandamus as to that request would still be premature. FERC must be afforded a reasonable time to address the rehearing request before a petition for writ of mandamus may be deemed ripe.



## ARGUMENT

### I. THE COMMISSION'S MAY 31 REAFFIRMATION ORDER MOOTS IMGA'S PETITION

“Article III, Section 2 of the Constitution restricts federal courts to resolving actual, ongoing controversies, rather than issuing advisory opinions or deciding questions that cannot affect the rights of litigants in the case before them. For that reason, if [] events occur while a case is pending on appeal that make[] it impossible for the court to grant any effectual relief whatever to a prevailing party, the appeal must be dismissed [as moot].” *Pub. Utils. Comm'n v. FERC*, 236 F.3d 708, 713-14 (D.C. Cir. 2001) (internal citation and quotation marks omitted); *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 575 (D.C. Cir. 1990) (“A case is moot if events have so transpired that the decision will neither presently affect the parties’ rights nor have a more-than-speculative chance of affecting them in the future.”). Here, certain events have transpired since the Mandamus Petition was filed that preclude — indeed, eliminate the need for — granting any effective relief. What IMGA requested in the Mandamus Petition, *i.e.*, action by the Commission with respect to IMGA’s Rulemaking Petition, has occurred; thus, granting the Mandamus Petition would serve no purpose and provide no relief.

The Mandamus Petition prays that “the Court issue a *writ of mandamus* to the Federal Energy Regulatory Commission, requiring it to commence action on

[IMGA]’s Rulemaking Petition.” Mandamus Pet. at 15 (emphasis in the original). The Rulemaking Petition requested FERC “(1) to convene a rulemaking to determine the proper ratemaking treatment of discounts given to customers of interstate natural gas pipeline transmission companies for gas-on-gas competitive reasons (including capacity release volumes); and (2) . . . [to] establish a rule of general applicability that pipelines’ maximum rates be based on estimates of the pipelines’ total throughput without regard to discounts given for gas-on-gas competition with other jurisdictional pipelines.” Rulemaking Pet. at 15. The Notice of Inquiry expressly requested comments on the very issues raised in the Rulemaking Petition. *Compare* 109 FERC ¶ 61,202 at ¶¶ 1 & 15, *with* Rulemaking Pet. at 15. The convergence of issues resulted in the issues raised in the Rulemaking Petition being subsumed in the Notice of Inquiry and in the termination of the 1997 docket. *See* 109 FERC ¶ 61,202 at ¶ 16. The Notice of Inquiry specifically asked “whether the Commission’s practice of permitting pipelines to adjust their ratemaking throughput downward in rate cases to reflect discounts given by pipelines for competitive reasons is appropriate when the discount is given to meet competition from another natural gas pipeline,” *id.* at ¶ 1, and requested alternatives to that practice, *id.* at ¶ 15(3). In doing so, the Notice of Inquiry addressed matters raised by the Rulemaking Petition, *e.g.*, concern over the impact of selective discounting on rates for captive customers where the discounts are for gas-on-gas competition.

The Notice of Inquiry culminated in the Reaffirmation Order, which terminated the rulemaking proceeding and disposed of the issues posed by the Notice of Inquiry, including those subsumed from the Rulemaking Petition. Together with the Notice of Inquiry and the Commission’s review of submitted comments, the Reaffirmation Order satisfied the Rulemaking Petition’s request for a determination of the proper ratemaking treatment of discounts given to customers of interstate natural gas pipeline transmission companies for gas-on-gas competition.<sup>3</sup> In addition, by reaffirming the Commission’s “current policy on selective discounting,” 111 FERC ¶ 61,309 at ¶ 2, and stating that the Commission would “continue to allow a pipeline to seek a reduction in the volumes used to design its maximum rates, if it obtained those volumes by offering discounts to meet competition, regardless of the source of that competition,” *id.* at ¶ 14, the Reaffirmation Order implicitly rejected IMGA’s request that the Commission establish a rule of general applicability that pipelines’ maximum rates be based on estimates of the pipelines’ total throughput without regard to discounts given for gas-on-gas competition.

---

<sup>3</sup> To the extent IMGA contends that an evidentiary hearing must have been provided, FERC “enjoys broad discretion to determine its own procedures.” *See Interstate Natural Gas*, 285 F.3d at 57. As the Commission was able to resolve any disputed issues on the written record before it, no evidentiary hearing was required. *See, e.g., Cajun Elec. Power Coop. v. FERC*, 28 F.3d 173, 177 (D.C. Cir. 1994); *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993). In the instant proceeding, 40 parties provided comments and sufficient information to make a ruling without the need for an evidentiary hearing.

In sum, the Commission directly acted on the matters presented by IMGA's Rulemaking Petition, and this Court cannot grant any effectual relief with respect to the Mandamus Petition.<sup>4</sup> Hence, the Mandamus Petition should be denied.

## **II. THE MANDAMUS PETITION ALLEGES AN UNRIPE CLAIM**

According to IMGA's counsel, IMGA intends to seek rehearing of the Reaffirmation Order, but does not plan to withdraw the Mandamus Petition pending Commission action on the rehearing request, apparently as a spur to issuance of a rehearing order. Even if maintaining the Mandamus Petition as a spur were a valid use of the Court's docket, there is not a ripe mandamus claim regarding the yet-to-be-filed rehearing request.

Article III mandates that a claim be ripe for judicial resolution. *Toca Producers v. FERC*, No. 04-1135, 2005 U.S. App. LEXIS, at \*5-6 (D.C. Cir. June 10, 2005). In determining whether a claim is ripe, this Court "must 'evaluate both the fitness of the issues for judicial decision and the hardship to the parties of withholding court consideration.'" *Id.* at \*6 (quoting *Abbot Labs. v. Gardner*, 387 U.S. 136, 149 (1967)). Moreover, this Court must "balance the interests of the court

---

<sup>4</sup> Furthermore, "[t]he remedy of mandamus is reserved for extraordinary circumstances in which the petitioner demonstrates that his right to issuance of the writ is clear and indisputable." *Clifton Power Corp. v. FERC*, 294 F.3d 108 (D.C. Cir. 2002) (internal quotation marks and citation omitted). Because action has already been taken, IMGA has not demonstrated a clear and indisputable right to issuance of the writ at this time.

and the agency in delaying review against the petitioner's interest in prompt consideration of allegedly unlawful agency action." *Id.* (quoting *Fed. Express Corp. v. Mineta*, 373 F.3d 112, 118 (D.C. Cir. 2004)) (internal quotation marks omitted).

Under those standards for determining ripeness, the Mandamus Petition fails. Maintaining the Mandamus Petition to spur Commission action on rehearing is completely premature. IMGGA has yet to seek rehearing. Indeed, the rehearing deadline has not passed. Until that deadline passes, the Commission cannot issue a rehearing order. Moreover, even if IMGGA were to seek rehearing, that would not balance the interests in favor of IMGGA to make the Mandamus Petition ripe and fit for judicial review. Requesting rehearing would merely initiate the process for issuance of a rehearing order. The Commission must be afforded some reasonable time to address such a request; otherwise, maintaining the Mandamus Petition would be tantamount to demanding immediate agency action, which would be a strain on Commission resources and its prerogative on procedural agency matters. Furthermore, dismissing the Mandamus Petition would not exact any hardship on IMGGA should it seek rehearing. If after a reasonable time to address rehearing the Commission failed to act, IMGGA could then submit a new petition for writ of mandamus pertaining to the rehearing inaction. In short, IMGGA's decision not to withdraw the Mandamus Petition to spur Commission action on an as-yet-to-be-filed

rehearing request represents an unripe claim, and the Mandamus Petition should be dismissed.

## CONCLUSION

For the reasons stated, the petition for writ of mandamus should be denied.

Respectfully submitted,

Cynthia A. Marlette  
General Counsel

Dennis Lane  
Solicitor

Patrick Y. Lee  
Attorney

Federal Energy Regulatory  
Commission  
Washington, DC 20426  
TEL: (202) 502-6600  
FAX: (202) 273-0901  
June 30, 2005

**ADDENDUM**  
**(Regulation)**

**TABLE OF CONTENTS**

**PAGE**

**REGULATION:**

18 C.F.R. § 385.713(b).....A



**18 C.F.R. § 385.713(b), provides as follows:**

(b) Time for filing; who may file.

A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

**ADDENDUM**  
**(Unpublished Disposition)**

**TABLE OF CONTENTS**

**PAGE**

**UNPUBLISHED DISPOSITION:**

|   |   |
|---|---|
| <i>In re Illinois Mun. Gas Agency,</i><br>No. 98-1347, 1998 U.S. App. LEXIS 30938<br>(D.C. Cir. Nov. 24, 1998)..... | B |
|---|---|

LEXSEE 1998 U.S. APP. LEXIS 30938

**In re: Illinois Municipal Gas Agency, Petitioner**

**No. 98-1347**

**UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF  
COLUMBIA CIRCUIT**

*1998 U.S. App. LEXIS 30938*

**November 24, 1998, Filed**

**NOTICE:** [\*1] RULES OF THE DISTRICT OF COLUMBIA CIRCUIT COURT OF APPEALS MAY LIMIT CITATION TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT OF APPEALS FOR THIS CIRCUIT.

*F.2d 70, 79-81 (D.C. Cir. 1984).* The petition is denied without prejudice to refiling in the event of significant additional delay.

**Per Curiam**

**DISPOSITION:** Petition denied without prejudice.

**COUNSEL:** For ILLINOIS MUNICIPAL GAS AGENCY, Petitioner: Philip B. Malter, Malter & Mickum, Riva, MD.

**JUDGES:** BEFORE: Williams, Ginsburg, and Rogers, Circuit Judges.

**OPINION:**

**ORDER**

Upon consideration of the petition for a writ of mandamus, the response thereto, and the reply, it is

**ORDERED** that the petition be denied. Petitioner has not shown that the agency's delay is so egregious or unreasonable as to warrant the extraordinary remedy of mandamus. See *Telecommunications Research and Action Center v. FCC*, 242 U.S. App. D.C. 222, 750

|   |                               |
|---|-------------------------------|
| <b>In Re: Illinois Municipal Gas Agency<br/>D.C. Cir. No. 04-1298</b> | <b>FERC Docket No. RM97-7</b> |
|---|-------------------------------|

### **CERTIFICATE OF COMPLIANCE**

In accordance with Fed. R. App. P. 32(a)(7)(C)(i) and Circuit Rule 32(a)(2), I hereby certify that this brief contains 3,223 words, not including the tables of contents and of authorities, the glossary, the certificate of counsel, this certificate, and the addendum.

---

Patrick Y. Lee  
Attorney

Federal Energy Regulatory  
Commission  
Washington, DC 20426  
TEL: (202) 502-6600  
FAX: (202) 273-0901  
June 30, 2005

|   |                               |
|---|-------------------------------|
| <b>In Re: Illinois Municipal Gas Agency<br/>D.C. Cir. No. 04-1298</b> | <b>FERC Docket No. RM97-7</b> |
|---|-------------------------------|

### **CERTIFICATE OF SERVICE**

In accordance with Fed. R. App. P. 25(d)(1), I hereby certify that I have, this 30th day of June 2005, served the foregoing by causing copies of it to be mailed to counsel listed below.

**ILLINOIS MUNICIPAL GAS AGENCY**

Philip B. Malter  
Malter & Mickum  
1010 Queen Anne's Lace Way  
Annapolis, MD 21401

---

Patrick Y. Lee  
Attorney

Federal Energy Regulatory  
Commission  
Washington, DC 20426  
TEL: (202) 502-6600  
FAX: (202) 273-0901  
June 30, 2005