

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**San Diego Gas & Electric Company,
Complainant,**

v.

Docket No. EL00-95-045

**Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange,
Respondents.**

**Investigation of Practices of the California
Independent System Operator and the
California Power Exchange**

Docket No. EL00-98-042

**ORDER LIFTING PROTECTIVE ORDER FROM HEAT RATE AND
MMCP DATA AND CONCERNING CONTINUED APPLICATION OF THE
PROTECTIVE ORDER**

(Issued November 15, 2001)

On August 7, 2001 the Chief Administrative Law Judge issued an order adopting a Protective Order in this proceeding. On October 9, 2001 and November 6, 2001, the participants in these proceedings filed testimony and supporting exhibits, much of which was identified as covered by the Protective Order.

Heat Rate and MMCP Data:

At a preliminary conference held on November 13, 2001, I expressed concern about the large volume of testimony and accompanying exhibits that has been filed under seal, and the complications presented for an open and orderly hearing and decision making process. I inquired why I should not order the inclusion of all such materials as part of the public record. As no objections were offered to lifting the Protective Order insofar as it applies to testimony or exhibits pertaining to the heat rates of gas-fired generating units situated within California and the calculation of the Mitigated Market Clear Prices ("MMCP"), I find and conclude that those portions of testimony and exhibits containing these data are no longer subject to the Protective Order in these proceedings.

Accordingly, It is Ordered that, for purposes of this proceeding, notwithstanding any provisions in the tariff of the California Independent System Operator, heat rate data and the calculation of the Mitigated Market Clearing Price shall be treated as part of the public record of this proceeding, and shall not be submitted or kept under seal.

Additionally, each participant that filed responsive testimony and supporting exhibits on issue #1 and/or section 202(c) on or about November 6, 2001 is directed to file a pleading and advise me and the Secretary, with service to all parties through LISTSERV, by November 21, 2001, which (a) clearly identifies those portions of their pre-filed testimony and supporting exhibits pertaining to heat rate and MMCP data that are no longer under seal as a result of this order and (b) clearly identifies those portions of their pre-filed testimony and supporting exhibits which continue to be under seal and subject to the Protective Order.¹

Continued Application of the Protective Order:

It is essential for the orderly, expeditious, and fair adjudication of the issues set for the hearing scheduled to commence on December 17, 2001, to determine promptly the extent to which the Protective Order should continue to apply to those portions of responsive testimony and exhibits identified under (b) above, those portions of rebuttal testimony and supporting exhibits filed under seal by December 10, 2001, and discovery materials subject to the Protective Order which may be proffered as evidence at the hearing commencing on December 17, 2001 or used in cross-examination.

In these respects, the participants are directed to consult and seek to stipulate the lifting of the Protective Order as concerns this material as promptly as possible. If a trial stipulation can not be achieved, the participants jointly shall provide me by December 12, 2001, with a list of those portions of rebuttal testimony and all discovery materials

¹ SWC (The State Water Contractors) has advised me that it "filed evidence of CDWR's [California Department of Water Resources] purchase power transactions that are confidential under the agreement under which they were made, the WSPP. That agreement reportedly requires the parties to maintain the confidentiality of the transaction unless and until disclosure is required by, among others, FERC." SWC expressed a concern as to whether this matter should continue to be protected.

subject to the Protective Order which are claimed to require continued protection at and after the December 17 hearing. The December 13, 2001² Oral Argument to Show Cause why the Protective Order should continue to apply to the hearing shall address all such claims. The matter not shown to require continued extraordinary protection will be included in the public record.

Bruce L. Birchman
Presiding Administrative Law Judge

² Oral Argument on December 13 also is scheduled with regard to motions to strike filed by December 12, 200, and a Prehearing Conference also will be held that date with regard to any outstanding procedural Scoping issues..