

97 FERC 61, 191
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Public Utilities Commission of
the State of California

Docket No. RP00-241-000

v.

El Paso Natural Gas Company,
El Paso Merchant Energy-Gas, L.P., and
El Paso Merchant Energy Company

ORDER GRANTING MOTION TO COMPEL
RETURN OF PROTECTED MATERIAL AND REQUIRING
SOUTHERN CALIFORNIA EDISON COMPANY TO SHOW CAUSE

(Issued November 16, 2001)

On November 14, 2001, Southern California Gas Company (SoCalGas) filed a motion for expedited consideration of its motion to compel the return of highly sensitive protected materials and the possible imposition of sanctions. SoCalGas asserts that immediate action by the Commission is necessary to prevent violations of discovery orders and rulings of the Chief Administrative Law Judge (Chief ALJ) in this proceeding and to prevent irreparable harm to SoCalGas.

The public interest requires that parties to a proceeding maintain the confidentiality of commercially sensitive information that is subject to the terms of a protective order. Accordingly, as discussed below, the Commission grants the motion of SoCalGas and will require Southern California Edison Company (Edison) to return the protected materials at issue and further orders Edison to show cause why the protective order has not been violated and why sanctions should not be imposed.

Background

On October 31, 2001, SoCalGas filed its "Motion of Southern California Gas Company to Compel Return of Highly Sensitive Protected Materials from Southern California Edison Company" (October 31, 2001 Motion). On November 2, 2001, Edison filed an answer opposing the October 31, 2001 Motion. On November 5, 2001, the Chief ALJ referred the October 31, 2001 Motion to the Commission because he concluded that, having issued the Initial Decision in this proceeding,¹ the matter was no longer before him.

SoCalGas contends that the Chief ALJ ordered and Edison expressly agreed to return the highly sensitive material at the conclusion of a study that Edison planned to prepare. SoCalGas further emphasizes that the material at issue is raw customer data and, because it never was filed with the Commission, it is not a part of the official record in this proceeding. SoCalGas states that it agreed to permit Edison to return the data at the conclusion of the hearing and that, despite a demand to Edison to return the materials, Edison has refused to do so. SoCalGas contends that another company will ask the judge in an unrelated proceeding in a California state court to permit Edison's witness to use the protected SoCalGas material for purposes of the state proceeding.

In further support of its October 31, 2001 Motion and its subsequent motion for expedited consideration of that motion, on November 16, 2001, SoCalGas filed a motion to lodge "Ex Parte Application for Authorization to Use Documents Covered by Protective Orders; Declarations of Irving Jacob Golub and Marcus J. Kocmur in Support Thereof" that was filed in the state proceeding on November 15, 2001 (Motion to Lodge). SoCalGas asserts that the state court pleading asks the judge in the state proceeding to nullify the Chief ALJ's discovery rulings and orders to allow a witness in that proceeding to use the protected materials that he acquired on behalf of Edison in the unrelated complaint proceeding now pending before the Commission on exceptions.

In its November 2, 2001, answer to the October 31, 2001 Motion, Edison argued generally that the studies and review of the documents in question cannot be concluded until this case is no longer in active litigation, and that the record in this proceeding may be reopened. Edison emphasized that it has not violated the terms of the applicable protective order and will not do so.

¹Public Utilities Commission of the State of California v. El Paso Natural Gas Co., 97 FERC ¶ 63,004 (2001).

Discussion

The Commission will grant the motion of SoCalGas to compel return of the protected materials at issue. Although this proceeding is still pending before the Commission, and the terms of the applicable protective order and other any related agreements, including the terms relating to the distribution and use of the confidential material, are still in force, the Commission finds that the Motion to Lodge shows the likely imminent violation of the protective order to which the materials are subject. Should Edison require these materials for subsequent use in the instant proceeding pending before the Commission, it may apply to the Commission for permission to obtain those materials at that time.

The Commission emphasizes that it expects all parties to the instant proceeding to honor the terms of the applicable protective order and related rulings and agreements. Any failure to do so is a serious matter that warrants appropriate sanctions. Accordingly, the Commission also will order Edison to show cause why it and its representatives and agents have not violated the terms of the applicable protective order in this case and all related rulings and agreements with respect to the treatment and handling of protected materials and, further, why sanctions should not be imposed.²

The Commission orders:

(A) The October 31, 2001 Motion and the Motion of Southern California Gas Company for Expedited Consideration of Motion to Compel Return of Highly Sensitive Protected Materials and Possible Imposition of Sanctions are granted, as discussed in the body of this order.

(B) Within 10 days of the date of issuance of this order, Edison must return the protected materials to SoCalGas.

²See 18 C.F.R. § § 385.209 and 385.213 (2001).

(C) Within 10 days of the date of issuance of this order, Edison must file an answer showing why it and its agents and representatives have not violated the terms of the applicable protective order and all related rulings and agreements and why sanctions should not be imposed.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.