

**UNITED STATES OF AMERICA 100 FERC ¶63, 011
FEDERAL ENERGY REGULATORY COMMISSION**

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

Docket No. EL00-95-045

v.

**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 DENYING CARE-S MOTION FOR RECONSIDERATION

(Issued August 2, 2002)

1. On July 29, 2002, CARE filed a motion for reconsideration of my Order issued on July 23, 2002. The July 23 Order granted its motion filed on July 19, 2002 for inclusion on the restricted service list and denied the request to sponsor witness testimony and evidence at the August hearing on mmcp issues that is said to concern alleged inappropriate or fraudulent practices. My July 23 Order noted that I had adopted a Restricted Service list on August 31, 2002, that my rulings of record prior to the August 31 Order established procedures for inclusion on a Restricted Service List, and that CARE had not complied with those procedures and had not filed a motion seeking inclusion on the Restricted Service list prior to July 29, 2002. My July 23 Order also explained why the evidence which CARE denominated as mmcp evidence was beyond the scope of the issues set for hearing, including the mmcp issues been set for hearing which have been adjudicated under the governing trial schedule. I noted that the participants have filed briefs with Proposed Findings on the adjudicated mmcp issues and that the record on those issues is closed. The July 23 Order further explained that the evidence which CARE sought to sponsor at the August hearing was beyond the scope of

the remaining refund liability issues set for hearing by the Commission and which are to be adjudicated at the August hearing.

2. My July 23 Order permitted answers to CARE's motion for reconsideration to be filed by August 1, 2002. On August 1, 2002 the California Generators and the Competitive Supplier Group filed answers and on August 2, 2002 the California Parties filed an answer. The latter responds to certain matters raised by the California Generators that are not responsive to my July 29 Order and both require no further comment at this time with regard to party groupings.

3. For information, consistent with my July 23, 2002 Order, CARE has been added to the Restricted Service list that applies to the adjudicatory proceedings before me in these captioned dockets.

4. CARE's motion for reconsideration reiterates its argument that CARE was improperly omitted from inclusion on the Restricted Service list and renews its request to sponsor a witness and evidence at the August hearing that is said to concern mmcp issues and would address alleged inappropriate or fraudulent utility practices.

5. The Commission's Order issued on August 13, 2002 granted CARE intervention in proceedings before the Commission that were investigating the practices of California utilities as well as participation in the evidentiary hearing in these proceedings established by the Commission's July 25, 2001 Order Establishing Evidentiary Hearing Procedures, Granting Rehearing in Part, and Denying Rehearing in Part, 96 FERC ¶61,120 (2001).

6. On August 13, 2001, I convened a prehearing conference and established procedures for inclusion on a Restricted Service list. See generally, Transcript at 220-221. The official transcript of the record of that conference was official notice to the public of all official matters. My ruling concerning procedures for placement on the Restricted Service list applied to all parties to the evidentiary hearings. I adopted a Restricted Service list by an Order issued on August 31, 2002. The initial Restricted Service list contained the names and addresses of those participants who, consistent with my August 13 ruling, had requested to be placed on the Restricted Service List. CARE was not among the participants seeking inclusion on the Restricted Service list adopted on August 31, 2002. In fact, the first time that CARE sought to be included on the Restricted Service list was in its motion filed on July 19, 2002. Beyond that, CARE has not elected to participate in any prehearing conference, oral argument, or evidentiary hearing since it was granted party status on August 13, 2001.

7. The first time that I heard from CARE was on October 30, 2001, at 2:56 p.m. by an e-mailed which contained a document and a request to have Amy filing considered in the deliberations on Docket No. EL00-95-045.[@] The filing lacked a certificate of service which is required to provide notice to the public. Consequently, the document was not properly filed with me or the Commission. The document in question was styled CARE's Case Against Independent Energy Producers Association (IEPA) and California Parties Including Evidence Of Violations of Law And Requests For Appropriate Relief, which including a request for attorney's fees.[@] As CARE was acting *pro se*, I advised CARE procedurally by e-mail at 4:08 p.m. that same day at length on the need to familiarize itself with and comply with the Commission's Rules on Practice and Procedure with regard to the filing of pleadings and certificate of service requirements. I noted several ways in which CARE's pleading did not comply with Commission procedures and, thus, was not properly before me and the Commission. Among other things, CARE was advised that In public proceedings everything is on the record and that means proper filings and proper service on all concerned.[@] Pertinent to the matters asserted in CARE's July 19 motion and its July 29 motion for reconsideration, CARE also was specifically advised, We have a restricted service list to which you can be added by making a proper request and providing the essential information.[@] (My emphasis added) As noted, CARE did not request inclusion on the Restricted Service list until it filed its motion on July 19, 2002.

8. The next time I heard from CARE was in the early part of November 2001. CARE by e-mail provided me a petition in which it requested the Commission to cancel certain California Department of Water Resources long-term energy contracts and administrative aid, including attorneys' fees. The petition did not include a certificate of service and thus, was not served on the public as required by Commission regulations. The Secretary of the Commission referred the petition to me. My Order issued on November 5, 2001 explained why the petition did not comply with the Commission regulations governing the filing of pleadings, including the need for a pleading to include a certificate of service which, I pointed out, acted as notice to the public of a filing and permitted the public to respond to the pleading. I further explained to CARE that if the pleading had conformed to Commission regulations, its request to cancel the long-term power contracts of DWR did not address and, thus, was beyond the scope of the three issues set for hearing before me by the Commission's July 25, 2001 Order. CARE was advised to file a proper pleading with the Commission in the event that it desired the Commission to consider such relief.

9. Subsequently, CARE filed a similar petition with the Commission and requested rehearing of prior Commission Orders, consideration of the document mentioned in the preceding paragraph, and administrative aid, including attorney fees. By its December 19, 2001 Order on Clarification and Rehearing, 97 FERC & 62,170 (2001), at page 62,236, the Commission denied CARE's petition for rehearing and request for administrative assistance.

10. As a result of being granted intervention and party status on August 13, 2001 in the evidentiary hearings before me in these captioned proceedings as well as party status on other issues that remain before the Commission in these captioned proceedings, the Secretary placed CARE on the official service list in all such proceedings. As such, CARE would receive in due course all orders and notices issued by the Commission and all orders issued by this Presiding Judge. Orders that I have issued since August 13, 2001 have, among other things, addressed trial schedule procedures and deadlines for the submission of evidence on the issues set for hearing and hearings on those issues. In any event, as a party to the evidentiary hearings, CARE was responsible for monitoring the progress of the evidentiary hearings and taking whatever action it deemed appropriate consistent with my Orders and rulings of record.

11. Too date, CARE has had the opportunity to participate but has not participated in any prehearing conference, oral argument, or evidentiary hearing that is reflected in the 3,610 pages of the transcript of the official record of these adjudicatory proceedings. Nor has CARE raised any matters before me with regard to any of my Orders and rulings on and after August 13, 2001 and prior to its motion filed on July 19, 2002.

12. The Commission's July 25, 2001, Order cited above, 96 FERC ¶ 61,120 (2001), set three issues for hearing and retained jurisdiction over all other matters that are the subject of investigation in these captioned proceedings and the numerous other proceedings referenced by that Order. The Commission carefully explained that it was establishing an evidentiary hearing to further develop the factual record in order to implement the refund methodology which it established in the July 25 Order. 96 FERC at page 61,520. The Commission further clearly explained that "the scope of the hearing will be limited to the collection of data needed to apply the refund methodology prescribed herein". Towards this end, the Commission required the Presiding Judge to make findings of fact with respect to (1) the mitigated price in each hour of the refund period, (2) the amount of refunds owed by each supplier according to the Commissions' methodology, and (3) the amount currently owed to each supplier by the ISO, the investor owned utilities, and the State of California. 96 FERC at page 61,520.

13. Under the governing trial scheduled, as modified from time to time, I have convened and concluded hearings earlier this year that have addressed the stipulated issues pertaining to item (1) of the Commission's July 25, 2001 Order--the appropriate mitigated market clearing price (mmcp) under the Commission's prescribed methodology and related issues concerning whether certain transactions during the refund period which the Commission has exempted from price mitigation were made under § 202 (c) of the Federal Power Act. Under the governing trial schedule and my rulings, to which CARE is bound, the hearing record on the mmcp and § 202(c) issues has been closed.

14. To be clear, the August 2002 hearing will address the remaining issues that were set for hearing by the Commission's July 25, 2001 hearing-- issues referenced under items (2) and (3) in the July 25 Order which, essentially, address "who owes what to whom." The active parties and the Commission's Trial Staff are in the process of complying with the remaining trial schedule deadlines that pertain to adjudication of these issues.

15. CARE's July 19 motion requested the opportunity at the August 2002 hearing to sponsor expert testimony and evidence on "mmcp issues". The "mmcp issues" which CARE belatedly seeks to address and to have adjudicated at the August hearing do **not** involve implementation of the Commission's mitigated market clearing pricing methodology that have been stipulated by the participants and adjudicated earlier this year. Instead, CARE's self-styled "mmcp issues" are said to concern alleged inappropriate or fraudulent utility practices. CARE's motion for reconsideration elaborates that it wishes to sponsor witness testimony in support of a document styled "How Deregulation Let the Power Industry Steal \$71 Billion From California. CARE claims that this report "shows that California was not a victim of the laws of supply and demand, as it has been widely portrayed. The California energy crisis, instead, was a public relations hoax—orchestrated by the power industry that will cost \$2,200 for every Californian."

16. My July 23 Order found that CARE had failed to establish good cause to present this evidence at the August hearings, noting that the evidence does not address the mmcp issues set for hearing, that the August hearing will address the remaining issues set for hearing by the Commission, and that the evidence which CARE seeks to proffer is beyond the scope of items (1), (2), and (3) set for hearing by the Commission's July 25, 2001 Order. As such, the matters which CARE seeks to adjudicate are beyond the scope of the issues to be addressed by the evidentiary hearings ordered by the Commission.

17. As I pointed out in my July 23 Order, matters concerning alleged inappropriate or fraudulent practices are matters over which the Commission has retained jurisdiction on

and after July 15, 2001 in these captioned proceedings and other proceedings. These matters are the subject of ongoing investigations in these captioned proceedings and other proceedings that are pending before the Commission and are not before me for adjudication in the evidentiary hearings that have been held and will be held during August 2002.

18. For all these reasons CARE has failed to state matters which warrant granting reconsideration of my July 23 Order and its motion for reconsideration is denied.

19. Under the governing trial schedule and my rulings concerning the August hearing, the participants are in the process of developing a list of the order of witnesses for cross-examination with regard to the testimony that has been filed and that remains to be filed with regard to a Joint Narrative Stipulation of Issues which I adopted on July 31, 2002. If CARE desires to participate in the August hearing and cross-examine witnesses with regard to their testimony on the stipulated issues that address items (2) and (3) of the Commission's July 25, 2001 Order, it should consult with the active participants and comply with the trial schedule and my rulings of record. Additionally, CARE should ensure that any desired cross-examination directly relates to and is relevant to the witness testimony and the stipulated issues that will be adjudicated at the August hearing.

Bruce L. Birchman
Presiding Administrative Law Judge