

UNITED STATES OF AMERICA 103 FERC ¶ 61,077
FEDERAL ENERGY REGULATORY COMMISSION

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

Fact Finding Investigation of Potential Manipulation
of Electric and Natural Gas Prices

Docket No. PA02-2-000

ORDER ON RE-RELEASE OF DATA REMOVED
FROM PUBLIC ACCESSIBILITY ON APRIL 7, 2003

(Issued April 22, 2003)

1. On April 7, 2003, the Secretary of the Commission issued a notice that the Commission would remove temporarily, until April 24, 2003, Enron Corporation (Enron) e-mails that had been placed on the agency's web site pursuant to an order issued on March 21, 2003.¹ The notice indicated that during that time the Commission would consider any requests that certain personal and other information be permanently removed from public accessibility. With respect to claims regarding supposed trade secrets, the notice pointed out that the Commission had already considered and denied requests that such information be removed. The notice set April 17, 2003, as the deadline for Enron or anyone else to file comments or otherwise advise the Commission of e-mails that should be removed permanently from the Commission web site.

2. On April 17, 2003, the Commission received responses to the April 7 notice from Public Utility District No. 1 of Snohomish County, Washington (Snohomish County), Enron, UBS AG, HGP, Inc., Northern Natural Gas Company (Northern Natural), and

¹102 FERC ¶ 61,311 (2003). The March 21 order and the April 7 notice were issued in Docket Nos. PA02-2, EL00-95, EL00-98, and EL01-10. The only information at issue here, however, is information collected in Docket No. PA02-2. Therefore, this order is being issued in that docket alone.

three former or current Enron employees.² For its part, Snohomish County requested, *inter alia*, that the Commission re-release expeditiously the public record information removed pursuant to the April 7 notice. The other companies and individuals requested in the aggregate that the Commission permanently remove approximately 141,379 documents (almost exclusively e-mails) from the Commission's web site.³ Enron divided its request to remove 106,711 documents into four attachments. Attachment A supposedly reflects sensitive personal information on current and former Enron employees. Attachments B and C list documents which allegedly contain commercially sensitive information of third parties. Attachment D contains e-mails that Enron found on data bases, other than the Enron e-mail data base, from which the Commission released information on March 26, 2003.⁴ UBS AG submitted 30,566 e-mails of its employees that it claims were inappropriately included by Enron in materials Enron submitted to the Commission in response to subpoenas issued during the investigation. UBS AG claims that the information for which it now seeks protection is different from the information UBS AG itself produced to the Commission. HGP, Inc. sought removal of information, approximately 245 documents, which in its opinion poses security risks. Northern Natural identified no documents, but asked that all Northern Natural and Northern Natural related personnel information be removed. The individuals who responded to the April 7 notice asked the Commission to remove 3,857 emails that contain personal information.

3. As detailed below, with the exception of Snohomish County's and Northern Natural's requests, the Commission grants *for now* the respondents' requests to remove the identified documents from the agency's web site, but directs its staff to commence review of those documents immediately to ascertain whether any of them should be re-released, and directs the remaining information be returned to the agency's web site.

²HGP, Inc. and one of the employees submitted their responses by e-mailing them to Commission staff. Because neither is accustomed to dealing with FERC procedures, the Commission will waive the formal filing requirements in 18 C.F.R. § § 385.2001, *et seq.* HGP, Inc., however, was advised that responses to formal notices of the Commission are required to be filed according to the Commission rules, and may attempt to submit its filing accordingly.

³These documents fill no more than one compact diskette out of 3,341 compact diskettes of information released on March 26, 2003.

⁴It appears that the seven motions that Enron filed after the release of the information on March 26, 2003, are subsumed in its April 17 response to the April 7 notice.

Accordingly, the Commission grants in part and denies in part Snohomish County's request, and denies Northern Natural's request because it lacks the specificity needed to be accommodated.

4. By way of background, on March 5, 2003, the Commission issued a notice that it intended to release to the public information collected in its investigation into the manipulation of energy prices in the West, and sought, by March 12, 2003, comments from those companies and individuals who submitted information during the course of the investigation. Eighteen companies or organizations, as well as the United States Attorney for the Southern District of Texas, filed comments or otherwise responded. Neither Enron nor any of its current or former employees were among those who responded to the March 5 notice.⁵ On March 21, 2003, the Commission issued an order addressing the comments and responses to its March 5 notice, and further announced that it would release the information, except as noted in the order, in no less than five days after issuance of the order. One exception to the release was personal personnel information that was raised by three of the respondents.⁶ In this regard, the Commission asked that companies or individuals provide specifics by March 24, 2003, so that such information could be excluded from the public release. Reliant Resources was the only respondent that provided such details. Enron did not. Thereafter, on March 26, 2003, the Commission released the remaining information.

5. Subsequent to the release of the information, on March 28, 2003, the Commission received the first of seven motions from Enron asking that certain parts of the released information be removed from public access. These motions in particular attempted to identify Enron employees' personal information. The Commission also received calls on its Enforcement Hotline from Enron employees who were concerned about their personal information being available on the internet. As quickly as possible, the Commission staff accommodated these requests in keeping with the Commission's stated concerns in the March 21 order about releasing certain personal data.

6. Without first seeking relief from the Commission, on April 4, 2003, Enron filed a petition for writ of mandamus and an emergency motion to stay the March 21 order in

⁵Dynegy, Inc., to which Northern Natural was sold in February 2002 before being sold again to MidAmerican Energy Holdings Company, was among the respondents to the March 5 notice.

⁶Dynegy, Inc. was one of the three respondents to the March 5 notice that raised personal personnel information, but never subsequently provided the Commission with any details.

the United States Court of Appeals for the Fifth Circuit, *Enron Corp. v. FERC*, No. 03-60295, requesting that all Enron e-mails posted on the Commission's web site be removed. On April 7, 2003, the court denied Enron's petition for writ of mandamus, and granted the stay request, but only to the extent that it directed the Commission to remove all Enron e-mails from its web site until further order of the court. The court also directed the Commission to file a response in this proceeding by close of business April 11, 2003. Subsequently, in light of the Commission's removal of the Enron e-mails from its web site on April 7, the court granted Enron's motion to hold the case in abeyance and to defer the need for the Commission to file a response by April 11, 2003, until April 24, 2003. Accordingly, the Commission's April 7 action removing the Enron e-mails from its web site coincides exactly with the Fifth Circuit's stay of the March 21 order to the extent the stay action implicated the withdrawal of Enron e-mails from the agency's web site.

7. Under the present circumstances, the Commission will not re-release any of the documents that respondents have sought to be withheld with specificity until the Commission has reviewed those documents and given the respondents and the public notice of its intent to re-release specific documents. As indicated in the March 21 order, review will be undertaken to determine which of the identified e-mails contain personal information about current and former Enron employees, and perhaps about other individuals, that has nothing to do with the Commission's investigation. None of those e-mails will be re-released. Nevertheless, the Commission intended to release as much information as possible to enable the public to understand better the bases for the Commission's determinations in a report on the Enron investigation issued the same day as the information was released and other decisions that might flow from that report. In this regard, information about performance management, compensation programs, and stock options could be associated with the investigation and the context in which it was conducted, and will likely be re-released.

8. The Commission directs its staff to start immediately reviewing the data proffered for removal here, starting with the allegedly commercially sensitive information to ascertain whether indeed it should be in the public domain. The Commission will render a decision with respect to these documents as soon as possible. Staff should also review the supposedly personal information. The Commission will continue to withhold this information, if indeed it comprises personal matters which contribute nothing to the public's understanding of the price manipulation allegations investigated in this docket or to the public's understanding of Enron's operations at issue in the investigation. As

noted, if and when the Commission decides to re-release any of the information, the Commission will give at least five days notice as required by 18 C.F.R. § 388.112(e).⁷

9. With respect to the data that was removed from the Commission's web site pursuant to the April 7 notice but that has not been identified by any company or individual for permanent removal, the Commission directs its staff to return that data to the agency's web site.

10. As a final matter, as described above, after the release of the information on March 26, 2003, the Commission received requests to remove information from several former and current Enron employees who were concerned about their personal information being on the agency's web site. The Commission's staff accommodated those requests, consistent with the March 21 order, as quickly as possible. After the issuance of the April 7 notice, the Commission's staff also referred individuals to Enron, which was supposedly searching the Enron e-mail data base to identify e-mails containing employees' personal information. In the event Enron's efforts in that regard did not accommodate their current or former employees' requests, or if there are other individuals whose personal information nevertheless was included in the data that Enron submitted to the Commission, the Commission has established an e-mail address for people to contact the Commission directly. That e-mail address is: personalinformationremovalrequest@ferc.gov.

The Commission orders:

(A) The data identified with specificity by the respondents to the April 7 notice in this docket will continue to be withheld until such time as the Commission decides to re-release it. Staff is directed to commence reviewing the proffered documents immediately to determine whether any of them should be re-released. Staff is further directed to return data not identified by any respondent to the agency's web site.

(B) Snohomish County's motion to re-release all of the data removed from the agency's web site pursuant to the April 7 notice is granted in part and denied in part.

⁷This procedure, in the Commission's view, moots Enron's requested action in the Fifth Circuit.

Docket No. PA02-2-000

- 6 -

(C) Northern Natural's motion is denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.