

105 FERC ¶ 61,253
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

Reliant Energy Services, Inc.)	
Reliant Energy Coolwater, Inc.)	Docket Nos. EL03-59-000
Reliant Energy Ellwood, Inc.)	IN03-10-000
Reliant Energy Etiwanda, Inc.)	PA02-2-000
Reliant Energy Mandalay, Inc.)	
Reliant Energy Ormond Beach, Inc.)	

ORDER DISMISSING CALIFORNIA PARTIES' REQUEST FOR REHEARING OF
ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued November 26, 2003)

1. On October 2, 2003, the Commission issued an order approving a Stipulation and Consent Agreement (Agreement) between Staff of the Division of Enforcement, Office of Market Oversight and Investigations and Reliant Energy Services, Inc., Reliant Energy Coolwater, Inc., Reliant Energy Ellwood, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (collectively, Reliant). 105 FERC ¶ 61,008 (2003) (Reliant Order Approving Agreement). The California Parties¹ have filed a request for rehearing of the October 2 order.² This order dismisses the request for rehearing.

2. The Agreement resolved all outstanding issues with respect to Reliant arising from the investigation in Docket No. PA02-2-000, including issues in the Final Report on Price Manipulation in Western Markets, filed in Docket No. PA02-2-000 (Final Report), in Docket No. EL03-59-000 (Show Cause Order), the Fact-Finding Investigation of Entities that Controlled California Generators (Physical Withholding Investigation), and Docket

¹ The California Parties consist of The California Electricity Oversight Board, the California Public Utilities Commission, the California Attorney General, Southern California Edison Company, and Pacific Gas and Electric Company.

² In addition to filing the request for rehearing in the captioned proceedings, which are the only proceedings in which the Reliant Order Approving Agreement was issued, the California Parties improperly filed the request in Dockets EL00-95-000, EL00-95-045, EL00-95-075, EL00-98-000, EL00-98-042, EL00-98-063.

No. IN03-10-000 (Anomalous Bidding Investigation). The Agreement expressly did not affect any obligations that Reliant may have in the refund proceeding (Docket No. EL00-95-000).

3. Because Docket No. PA02-2-000, the Physical Withholding Investigation, and the Anomalous Bidding Investigation are Part 1b investigations, 18 C.F.R. Part 1b (2003), in which the Commission has enforcement discretion and to which there are no parties, the order approving the Agreement expressly provided that “requests for rehearing would not lie.” Reliant Order Approving Agreement at ¶ 26, n.6.

4. On October 16, 2003, the Commission issued an Order Clarifying Nature of Proceedings, 105 FERC ¶ 61,063 (2003) (Order Clarifying Proceedings). In its Order Clarifying Proceedings, the Commission reiterated that there are no parties to an enforcement investigation. 18 C.F.R. § 1b.11(2003). *See* Order Clarifying Proceedings ¶¶ 5-7. Accordingly, the Commission specifically treated the California Parties’ motions to intervene in these enforcement investigations as motions to file comments. Order Clarifying Proceedings. ¶ 7. The reasoning contained in our Order Clarifying Proceedings still stands and is equally applicable here.

5. Because the California Parties are not parties to these investigative proceedings, they lack standing to seek rehearing of the Reliant Order Approving Agreement. The Federal Power Act requires that an entity seeking rehearing be a party to a proceeding. *See* 16 U.S.C. § 8251(a) (2000). *See also* 18 C.F.R. § 385.713(b) (2003); *Fact-Finding Investigation into Possible Manipulation of Electric & Natural Gas Prices*, 103 FERC ¶ 61,019, at p. 61,074 (2003); *Southern Company Service, Inc.*, 92 FERC ¶ 61,167, at p. 61,566 (2000); *Consolidated Edison, Inc. & Northeast Utilities*, 92 FERC ¶ 61,014, at p. 61,031 (2000).

The Commission orders:

The California Parties’ request for rehearing is hereby dismissed.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.