

106 FERC ¶ 61, 177  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy North America, LLC  
Duke Energy Trading and Marketing, L.L.C.

Docket Nos. IN03-10-000  
PA02-2-000

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

(Issued February 19, 2004)

1. On December 19, 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 Duke Energy Trading and Marketing, L.L.C. and Duke Energy North America, LLC (collectively, Duke Energy) 105 FERC ¶ 61,307 (2003) (Duke Energy Order Approving Agreement). The California Parties<sup>1</sup> have filed a request for rehearing of the December 19, 2003 Order.<sup>2</sup> This order dismisses the request for rehearing.

2. The Agreement resolved all outstanding issues with respect to Duke Energy 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), the Fact-Finding Investigation of Entities that Controlled California

---

<sup>1</sup> 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.

<sup>2</sup> In addition to filing the request for rehearing in the captioned proceedings, which are the only proceedings in which the Duke Energy 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, and EL00-98-063. Accordingly, we will direct the Secretary to remove the California Parties' request for rehearing from those dockets.

Generators (Physical Withholding Investigation), and Docket No. IN03-10-000 (Anomalous Bidding Investigation). The Agreement expressly did not affect any obligations that Duke Energy may have in the refund proceeding (Docket No. EL00-95-000).<sup>3</sup>

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 will not lie.” Duke Energy Order Approving Agreement at ¶ 17, n.4.

4. On October 16, 2003, the Commission issued an Order Clarifying Nature of Proceedings, 105 FERC ¶ 61,063 (2003) (Order Clarifying Proceedings) in the captioned matters, among others. In its Order Clarifying Proceedings, the Commission noted 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 denied the California Parties’ motions to intervene in these enforcement investigations and treated their motions to intervene 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 Duke Energy 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); *Reliant Energy Services, Inc.* 105 FERC ¶ 61,253, at p. 62,331 (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:

(A) The California Parties’ request for rehearing in the above-captioned dockets is hereby dismissed.

---

<sup>3</sup> Additionally, specific alleged gaming practices by Duke Energy in the gaming order to show cause proceeding (Docket EL03-152-000) are the subject of a separate agreement and stipulation.

Docket Nos. IN03-10-000 and PA02-2-000

- 3 -

(B) The Secretary is hereby directed to remove the California Parties request for rehearing in Dockets EL00-95-000, EL00-95-045, EL00-95-075, EL00-98-000, EL00-98-042, and EL00-98-063 as being improperly filed in those proceedings.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.