

UNITED STATES OF AMERICA 107 FERC ¶ 61, 295  
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company,  
Complainant,

v.

Docket No. EL00-95-095

Sellers of Energy and Ancillary Services  
Into markets Operated by the California  
Independent System Operator and the  
California Power Exchange Corporation,  
Respondents

Investigation of Practices of the California  
Independent System Operator and the  
California Power Exchange

Docket No. EL00-98-082

ORDER DENYING REHEARING

(Issued June 22, 2004)

1. In this order, we deny rehearing of an order granting a motion of Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively, Reliant) to withdraw a pleading, issued March 4, 2004 in this proceeding.<sup>1</sup> This order benefits customers by expediting the resolution of this proceeding.

**I. BACKGROUND**

2. On March 26, 2003, the Commission issued an order concerning the determination of the Mitigated Market Clearing Price (MMCP) and consequent refunds.<sup>2</sup> Among many

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<sup>1</sup> San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al., 106 FERC ¶ 61,216 (2004) (March 4 Order).

<sup>2</sup> San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al., 102 FERC ¶ 61,003 (Refund Order), order on reh'g, 105 FERC ¶ 61,066 (2003)

(continued...)

other issues, the Refund Order addressed how natural gas costs should be reflected in the MMCP. The Refund Order found that the gas costs previously used in the formula, California spot gas price indices, were not a reliable indicator of generators' actual gas costs and instead established a fuel cost allowance mechanism based on producing-area prices plus a transportation allowance. Reliant sought rehearing, and subsequently filed a Supplement to Request for Rehearing and Request for Clarification (Supplemental Request). Later, on October 2, 2003, the Commission approved a settlement with Reliant in Docket No. PA02-2-000, et al., concerning, in part, Reliant's natural gas trading activity.<sup>3</sup>

3. The Commission acted on rehearing of the Refund Order on October 16, 2003, denying rehearing regarding the use of gas price indices for the calculation of the MMCP.<sup>4</sup> The Commission agreed with the finding from the Staff Final Report<sup>5</sup> that gas price manipulation created published indices that were not sufficiently reliable to be used for purposes of calculating the MMCP, and held that the refund calculation method adopted in the Refund Order "is consistent with the need to give refunds to customers without penalizing the generators."<sup>6</sup> In paragraphs 41 and 42 of the order, the Commission responded to arguments in Reliant's Supplemental Request regarding the role it may have had in causing gas price indices to be unreliable.

4. In light of the settlement approved in early October, Reliant filed a request for modification of the October 16 Order, seeking deletion of paragraphs 41 and 42, which addressed issues Reliant raised in its Supplemental Request. The Commission stated in an Errata Notice and Order Granting Motion for Modification (Modification Order) issued November 26, 2003, that upon the withdrawal of Reliant's Supplemental Request, Paragraphs 41 and 42 would be deleted from the October 16 Order. The Modification Order concluded that the two paragraphs would be unnecessary upon the withdrawal of the Supplemental Request.

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(October 16 Order).

<sup>3</sup> Reliant Energy Services, Inc., et al., 105 FERC ¶ 61,008 (2003).

<sup>4</sup> See October 16 Order at P 23-45.

<sup>5</sup> See Staff Final Report on Price Manipulation in Western Markets, Docket No. PA02-2-000, March 26, 2003.

<sup>6</sup> Id. at P 40.

5. Shortly thereafter, Reliant filed a motion to withdraw its Supplemental Request. The California Parties<sup>7</sup> filed an answer in opposition to the motion contending that good cause existed to deny the motion because paragraphs 41 and 42 of the October 16 Order provided useful and additional rationale in support of the Commission's decision in that case. They also argued that modification of the order would detract from the completeness of the Commission's rationale.

6. The March 4 Order granted Reliant's motion to withdraw the Supplemental Request and vacated paragraphs 41 and 42 of the October 16 Order. The order also vacated all but the first sentence of paragraph 27, which contained a summary of Reliant's Supplemental Request. The March 4 Order explained that the pertinent language responded solely to Reliant's arguments and that neither the arguments nor the response were critical to understanding the Commission rationale in the Refund Order. In addition, the Commission stated that granting the withdrawal and vacating the paragraphs would leave the parties in essentially the same position as if the Supplemental Request had never been filed and the vacated language had never been issued. Responding to the California Parties' objection that the modification would detract from the October 16 Order, the Commission stated that the rationale supporting its decision for calculating refunds "is fully laid out in the Refund Order at paragraphs 56 to 60, and elsewhere in the Rehearing Order, at paragraphs 23 to 25 and 37 to 40."<sup>8</sup>

## II. REQUEST FOR REHEARING

7. On April 5, 2003, the California Parties filed a request for rehearing of the March 4 Order. The California Parties assert that the Commission has failed to justify its removal of valuable rationale concerning use of natural gas indices from the October 16 Order. The California Parties argue that the Commission's stated reason for the removal, that the language responds solely to Reliant's arguments, does not justify vacatur. They state that the issue is not a matter that involves only Reliant and the Commission, but that it has implications for every party who has an interest in the refund proceeding.

8. According to the California Parties, "[a]lthough the Commission may be correct in stating that the deleted paragraphs are not 'critical' to understanding the Commission's

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<sup>7</sup> The California Parties are the Public Utilities Commission of the State of California; the People of the State of California *ex rel.* Bill Lockyer, Attorney General; the California Department of Water Resources; the California Electricity Oversight Board; Pacific Gas and Electric Company; and Southern California Edison Company.

<sup>8</sup> March 4 Order at P 7.

rationale”<sup>9</sup> in the Refund Order, they are helpful. They object to the Commission’s apparent deletion of the language in exchange for Reliant’s withdrawal of its Supplemental Request because “the reasoning that the Commission has agreed to erase has meaning for parties other than Reliant.”<sup>10</sup>

9. The California Parties also assert that the March 4 Order departs from Commission precedent regarding vacatur. They cite Panhandle Eastern Pipe Line Company<sup>11</sup> and Cascade Power Company<sup>12</sup> as instances where the Commission was reluctant to vacate orders because it would be disruptive to the proceedings. The California Parties object that the Commission has not justified departure from that reasoning here.

### III. DISCUSSION

10. We disagree with the California Parties that the vacated language is particularly important to the meaning of the October 16 Order. The October 16 Order denied rehearing of this aspect of the Refund Order and did not alter the reason for abandoning use of the gas indices in the refund methodology. Paragraphs 41 and 42 did not contain any information vital to understanding the Commission’s policy in either the October 16 Order or in the Refund Order; rather, paragraphs 37 to 40 contain the key procedural and substantive discussion about the Refund Order’s decision not to use gas price indices. Once Reliant’s Supplemental Request was withdrawn, paragraphs 41 and 42 were unnecessary. The Refund Order fully explained that the index prices were not reliable for purposes of calculating the MMCP and this finding did not require the additional specificity provided by the discussion of Reliant’s impact on gas indices. Thus, removing that discussion from the October 16 Order did not disrupt the proceeding or weaken the order. The possibility that some parties “find helpful” this additional language is not reason to grant rehearing.

11. We also disagree that the March 4 Order departed from the intent of Panhandle Eastern and Cascade. In those cases, parties sought vacatur of entire orders, not a discrete, tangential portion of an order, as is the case here. The considerable time and resources spent on establishing and modifying the refund methodology are intact; the effect of the March 4 Order has not undermined that effort. Whereas in Cascade an applicant sought to withdraw a compliance submittal that had already been approved by a

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<sup>9</sup> Request for rehearing at 7.

<sup>10</sup> Id.

<sup>11</sup> 83 FERC ¶ 61,008 at 61,030 (1998) (Panhandle Eastern).

<sup>12</sup> 74 FERC ¶ 61,240 at 61,821 (1996) (Cascade).

final Commission order, here Reliant withdrew a pleading concerning a single issue that was easily parsed from the remainder of the proceeding. Thus, the cases relied on by the California Parties are inapposite and do not control our decision here.

12. For these reasons, we will deny rehearing of the March 4 Order.

The Commission orders:

The California Parties' request for rehearing is hereby denied.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Magalie R. Salas,  
Secretary.