

94 FERC ¶ 61,243
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

San Diego Gas & Electric Company,
Complainant,

v.

Docket No. EL00-95-013

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

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

Docket No. EL00-98-012

ORDER DISMISSING REHEARING

(Issued March 9, 2001)

In this order, we dismiss the request for rehearing of our order issued January 8, 2001,¹ which clarified the order directing remedies for California wholesale electric markets issued on December 15, 2000.²

Background

The December 15 Order directed changes in market rules for the spot markets operated by the California Independent System Operator Corporation (ISO) and the

¹San Diego Gas & Electric Company, et al., 94 FERC ¶ 61,005 (2001) (January 8 Order).

²San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 (2000), reh'g pending (December 15 Order).

California Power Exchange Corporation (PX) in an effort to address dysfunctions in California's bulk power markets and to ensure just and reasonable wholesale power rates by public utility sellers in California. In order to eliminate undue reliance on the spot markets in California, the December 15 Order, among other things, (1) removed the requirement that the investor-owned utilities in California (IOUs) sell all of their generation into, and buy all their generation from, the PX (the buy/sell requirement); (2) terminated the PX's wholesale rate schedules (effective as of the close of the April 30, 2001 trading day), which enabled the PX to continue to operate as a mandatory power exchange; and (3) established a \$150/MW breakpoint, above which sellers' bids needed to clear the market would not set the market clearing price, and successful bidders would be paid as bid.

On December 26, 2000, the PX filed a request for rehearing and emergency motion for stay of the December 15 Order. The PX requested the Commission to act on three aspects of its motion by December 29, 2000; these were: (1) staying the prohibition against the IOUs selling into PX markets and allowing them to participate on a voluntary basis, (2) staying the termination of its block forward markets, to permit voluntary forward trading; and (3) staying the implementation of the \$150/MW breakpoint. The PX also sought rehearing of these issues. Rehearing requests by the PX and numerous other parties are currently pending.³

In the January 8 Order, the Commission issued a clarification of the December 15 Order. The January 8 Order clarified that the Commission did not intend to preclude the PX from engaging in bilateral forward contracting, and that the PX was free to revise its rate schedule providing forward contracting services (CTS rate schedule) to remove spot market components from that rate schedule.

³When the Commission did not act on its rehearing request by December 29, 2000, the PX filed a petition for extraordinary writ of mandamus in the United States Court of Appeals for the Ninth Circuit, asking the court to stay those three aspects of the December 15 Order. This litigation is currently pending.

Request for Rehearing

On February 7, 2001, the PX filed a request for rehearing of the January 8 Order. The PX raises four arguments on rehearing. First, the PX charges that the January 8 Order failed to fix just and reasonable rate in its existing rate schedules, as required by section 206 of the Federal Power Act (FPA).⁴ Second, the PX objects that the January 8 Order did not remove the ongoing prohibition against the IOUs trading in its markets. Third, the PX alleges that the intent of the January 8 Order is to prohibit it from operating a spot market, and that such a prohibition is unduly discriminatory and confiscatory. Last, the PX contends that the order failed to provide a viable alternative to its CTS rate schedule or to mitigate the harm it has been suffering since the issuance of the December 15 Order. According to the PX, the Commission's offer to entertain a future rate schedule did not provide it with an alternative to its current tariffs.

Discussion

The Commission rejects the PX's contentions that the January 8 Order harmed the PX in any way. All of the Commission's actions to which the PX objects emanate from the December 15 Order. The December 15 Order addressed the rates for the PX in response to the complaint filed in Docket No. EL00-95-000. Likewise, the determination to eliminate the buy/sell requirement and to terminate the PX's rate schedules was made in the December 15 Order. These issues will be considered when the Commission addresses the requests for rehearing of the December 15 Order. The January 8 Order, which merely clarified the December 15 Order and did not impose any additional burdens or requirements on the PX, does not provide a separate ground for rehearing. If anything, the January 8 Order provided a benefit to the PX by explaining in more detail the alternatives available to it. Thus, the PX cannot allege that it was aggrieved by the January 8 Order, and the Commission will dismiss its rehearing request.⁵

⁴16 U.S.C. § 824e (1994).

⁵Section 313(a) of the Federal Power Act, 16 U.S.C. § 8251, permits only those persons that are aggrieved by a Commission order to request rehearing of that order. See, e.g., City of Summersville, 84 FERC ¶61,073 (1998) and Arizona Public Service Co., 26 FERC ¶61,357 (1984).

Docket Nos. EL00-95-013
and EL00-98-012

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The Commission orders:

The PX's request for rehearing is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.