

117 FERC ¶ 61,346
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator
Corporation

Docket Nos. EL04-108-000
EL04-108-005

ORDER GRANTING CLARIFICATION AND DENYING
MOTIONS TO HOLD PROCEEDING IN ABEYANCE

(Issued December 27, 2006)

1. In this order, we address a request for clarification of the Commission's order approving the uncontested settlement between the California Energy Resources Scheduling Division of the California Department of Water Resources (CERS) and Sempra Generation (Sempra),¹ and CERS-Sempra's motion to hold the proceeding in abeyance. The request for clarification was filed jointly by CERS and Sempra seeking the Commission's clarification in regard to the motion filed with the Administrative Law Judge (ALJ) requesting to hold the proceeding in abeyance. In this order, we deny CERS-Sempra's motion to hold the proceeding in abeyance and grant request for clarification. We also act on an additional motion to hold the proceeding in abeyance filed with the ALJ.

Background

2. In a June 17, 2004 Order,² the Commission identified possible seller's choice contracts signed by CERS on behalf of retail customers during the 2000-2001 energy crisis and instituted a section 206 proceeding before an ALJ to investigate the feasibility of both upholding these contracts without modification and implementing the CAISO's Market Redesign and Technology Upgrade (MRTU).³

¹ *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,386 (2005) (Settlement Order).

² *Cal. Indep. Sys. Operator Corp.*, 107 FERC ¶ 61,274 (2004).

³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274 (2006) (MRTU Order).

3. During the course of the section 206 proceeding, settlement judge procedures were also established to provide a forum for parties to renegotiate the terms of their seller's choice contracts prior to a formal hearing.

4. The settlement judge procedures resulted in an uncontested offer of settlement between CERS and Sempra. The terms of the settlement required that the parties jointly file with the Commission a motion to hold the proceeding in abeyance throughout the end of the term of their contract. On April 7, 2005, CERS and Sempra submitted to the ALJ a joint motion requesting that the proceeding be held in abeyance until the expiration of their seller's choice contract.

5. The settlement was also conditioned upon the Commission's acceptance of the CAISO's conceptual proposal designed to address issues surrounding the seller's choice contracts, *i.e.*, Inter-Scheduling Trade Proposal introducing the Physical Validation Rule under the CAISO's MRTU.

6. The CERS-Sempra settlement was certified by the ALJ to the Commission as uncontested on May 18, 2005.⁴ On June 10, 2005, Commission approved the settlement.⁵ In a concurrently issued order, the Commission approved in concept the CAISO's Inter-Scheduling Trade Proposal.⁶

Request for Clarification

7. On June 20, 2005, CERS and Sempra filed a joint request for clarification of the *Settlement Order*. On July 5, 2005, Sacramento Municipal Utility District filed an answer to CERS-Sempra's request for rehearing. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.713(d), answers to requests for rehearing are not permitted.

8. On rehearing, CERS and Sempra request that the Commission clarify whether the Commission intended to grant their motion to hold the proceeding in abeyance as part of its acceptance of the settlement or, in the alternative, issue an order granting the motion. CERS and Sempra explain that their settlement is conditioned upon the continuation of the Physical Validation Rule under the CAISO's MRTU. According to the parties, in the event the Physical Validation Rule ceases to be effective, the continuing availability of

⁴ *Pub. Util. Providing Serv. in Cal. under Seller's Choice Contracts*, 111 FERC ¶ 63,038 (2005).

⁵ *See supra* n. 1.

⁶ *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 62,384 (2005).

this forum is necessary for expeditious resolution of seller's choice issues relating to their contract.

Commission Determination

9. We clarify that the Commission did not intend to hold the proceeding open until the expiration of the seller's choice contract in question. We find that the basis for holding the proceeding in abeyance is too speculative. We note that the Physical Validation Rule was accepted for filing by the Commission in *MRTU Order*. The Physical Validation Rule has become part of the CAISO's Commission-approved MRTU tariff and is expected to get implemented in January 31, 2008. We also find that there is no need to hold this proceeding in abeyance. In the event that the Physical Validation Rule ceases to apply, parties will have an opportunity to file with the Commission a complaint seeking modification of the settlement agreement. For these reasons, we deny CERS and Sempra's motion to hold the instant proceeding in abeyance.⁷

The Commission orders:

(A) The motion for clarification is hereby granted, and clarification is hereby provided, as discussed in the body of this order.

(B) CERS and Sempra's motion to hold this proceeding in abeyance is hereby denied, as discussed in the body of this order.

(C) CERS and PRF's motion to hold the proceeding in abeyance is hereby dismissed as moot.

By the Commission

(S E A L)

Magalie R. Salas,
Secretary.

⁷ We also note that on April 11, 2005, CERS and Goldman Sachs and its affiliate, Power Receivable Financing, LLC (PRF) filed a joint motion to hold the proceeding in abeyance pending PRF obtaining whatever consents may be necessary for PRF to have the authority to execute the settlement. Up to this date, the Commission has not yet been notified of the status of the settlement efforts by CERS and PRF. The CERS-PRF motion to hold the proceeding in abeyance is hereby dismissed as moot. In *MRTU Order*, the Commission accepted for filing tariff provisions implementing the Physical Validation Rule and establishing "EZ Gen Trading Hubs" which will replace the delivery points provided for in seller's choice contracts, including the CERS-PRF contract.