

UNITED STATES OF AMERICA 99 FERC 61,008
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

San Diego Gas & Electric Company

v. Docket No. EL00-95-
057

Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation and the
California Power Exchange

ORDER DENYING REHEARING

(Issued April 1, 2002)

Reliant Energy Services, Inc. (Reliant) filed a request for
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rehearing of our December 19, 2001 order (December 19 Order) to
the extent that the December 19 Order denied Reliant's motion to
"supplement" its cost justification filing for transactions
occurring in the California Independent System Operator
Corporation's and Western Systems Coordinating Council's markets
during June 2001. In this order, we deny Reliant's request for
rehearing.

I. Background

A. The December 19 Order

By order issued on September 7, 2001, the Commission
rejected Reliant's cost justification for transactions occurring

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San Diego Gas & Electric Co. v. Sellers of Energy and
Ancillary Services Into Markets Operated by the California
Independent System Operator Corporation and the California Power
Exchange, 97 FERC 61,290 (2001).

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during June 2001 and ordered refunds. On October 9, 2001, Reliant filed a motion to "supplement" its cost justification filing for June 2001 transactions in response to the September 7 Order. The December 19 Order, in pertinent part, denied

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Reliant's motion to "supplement." It held as follows:

We reject Reliant's motion to supplement its July 9 [cost justification] filing. Reliant filed its motion three months after its original filing and one month after the issuance of the September 7 Order. Further, Reliant now proffers an alternative theory for justifying its costs only after the September 7 Order rejected its original theory. As noted by SoCal Edison, Reliant's proposed supplement reattributes gas prices in a manner inconsistent with its July 9 [cost justification] filing and prior representations. During the period at issue there was no significant change in natural gas market conditions. As opposed to its original assignment of gas purchases in the spot market, Reliant's revised submittal imputes a simple weighted average of gas purchases to the transactions at issue. As we have previously stated, if natural gas markets change significantly and are documented, a seller must document and support its entire gas purchase portfolio and allocation among all generating units during the relevant time. Reliant made no attempt to meet this requirement.

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See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 96 FERC 61,254, clarified, 97 FERC 61,061 (2001) (September 7 Order); see also San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 97 FERC 61,012 (2001) (October 5 Order) (rejecting Reliant's cost justification filing for transactions occurring during July 2001 and ordering refunds).

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The December 19 Order also denied Reliant's requests for rehearing of the September 7 and October 5 Orders. Reliant does not seek rehearing of that aspect of the December 19 Order.

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97 FERC at 62,306.

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B. Reliant's Request for Rehearing of the December 19 Order

Reliant argues that its motion to "supplement" was timely made in that it was filed within the typical 30-day response period for compliance filings if the Commission had allowed a compliance filing, which Reliant argued for in its request for rehearing of the September 7 Order.

Further, Reliant states that it provided a new analysis in its supplement to respond to what it characterizes as the new information provided by the September 7 Order. It contends that it has stated in numerous filings to the Commission and continues to believe that spot gas prices are the best measure for justifying market bids and for establishing proxy prices in a bid-based spot market, but it nevertheless attempted to provide cost justifications to meet the Commission's standards. It contends that its cost justifications have allocated actual gas costs on a portfolio-wide basis and that its original filing and its proposed "supplement" are consistent with each other in that both relied on the same portfolio of costs. It further contends that the Commission's standards for cost justifications are undefined.

Reliant also argues that the December 19 Order did not explain its statement that there was no significant change in

natural gas market conditions during the relevant period.⁵ It argues that, in its proposed "supplement," it documented significant declines in gas prices over the relevant period such that its volume-weighted, portfolio-wide gas prices exceeded spot gas prices in some hours by as much as 300 percent.

Finally, Reliant argues that the December 19 Order incorrectly summarily stated that Reliant "has not made 'any

attempt' to meet the Commission's requirements."⁶ Reliant contends that the Commission acted contrary to due process by dismissing its attempts to meet the Commission's requirements without any explanation of how it failed to meet those requirements.

II. Discussion

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The relevant period for cost justifications for the month of June was June 20 - June 30, 2001, the period covered by price mitigation pursuant to the April 26 and June 19 Orders. The remainder of June 2001 was subject to the outcome of a refund proceeding before an Administrative Law Judge at the Commission.

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Reliant's Request for Rehearing at 6.

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We will deny Reliant's request for rehearing. As the December 19 Order concluded, Reliant's "supplement" was an alternative theory, proffered only after its original theory was rejected. Despite Reliant's statement in its motion to "supplement" that it was providing the proposed "supplement" "within a reasonable time after receiving notice that it is

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required," the September 7 Order did not direct Reliant to submit a "compliance filing" or provide for Reliant to "supplement" its cost justification filing. Reliant's submittal was, in essence, a new proposed cost justification filing with respect to transactions occurring during June 2001, but the time for submitting cost justifications for June 2001 had already

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lapsed. Thus, Reliant's proposed submittal was untimely. Further, Reliant's arguments concerning why it believes it should have been allowed to "supplement" its previously-rejected cost justification filing merely reiterate the arguments that it previously made in its motion to "supplement" its cost justification filing, and we reject them for the same reasons

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given in the December 19 Order.

Reliant takes exception to the December 19 Order's statement that Reliant failed to show a significant change in natural gas market conditions. It does so by providing documentation of significant declines in spot gas prices during June 2001. We fail to see how declining spot gas prices provide cost justification above the mitigated price for this period. The spot gas prices Reliant refers to were not used to develop the mitigated price.

Consequently, Reliant's request for rehearing presents no arguments that persuade us that we were in error when we denied its motion to "supplement," and we will deny rehearing.

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Reliant's Motion for Leave to Supplement and Supplement, p. 5 (Oct. 9, 2001).

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In its mitigation order issued on April 26, 2001, the Commission required that cost justifications had to be filed within seven days of the end of the month. See San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, 95 FERC 61,115 at 61,359 (2001), order on reh'g, 95 FERC 61,418 (2001), reh'g pending on some issues.

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We further note that Reliant made the same arguments, i.e., that it be allowed to "supplement" its cost justification filing, in its request for rehearing of the September 7 Order, and the December 19 Order rejected those arguments.

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The Commission orders:

Reliant's request for rehearing of the December 19 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.