

175 FERC ¶ 61,123
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
Neil Chatterjee, Allison Clements,
and Mark C. Christie.

San Diego Gas & Electric Company

Docket No. EL00-95-301

v.

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

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

Docket No. EL00-98-273

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued May 20, 2021)

1. This order addresses arguments raised by the California Parties¹ on rehearing of a prior Commission order² that addressed the scope of ordered hearing procedures related to certain cost offsets claimed by Hafslund Energy Trading LLC (Hafslund).³

¹ For purposes of this pleading, the California Parties are comprised of the People of the State of California *ex rel.* Attorney General, the Public Utilities Commission of the State of California, Pacific Gas and Electric Company, and Southern California Edison Company.

² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 158 FERC ¶ 61,055 (2017) (Hearing Order).

³ The California Parties' initial rehearing request also sought rehearing concerning the scope of the ordered hearing on cost offsets with respect to another respondent, Shell Energy North America (US), L.P. (Shell). However, as discussed below, the California Parties withdrew the rehearing request with respect to Shell on June 12, 2018.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁴ the rehearing request filed in this proceeding may be deemed denied by operation of law. However, as permitted by section 313(a) of the Federal Power Act,⁵ we are modifying the discussion in the Hearing Order and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

3. This proceeding involves the scope of a hearing that the Commission ordered in Docket No. EL00-95-295 and Docket No. EL00-98-267. During the 2000-2001 Western energy crisis, the Commission established a refund methodology providing that sales of 24 hours or shorter in the California Independent System Operator Corporation (CAISO) and California Power Exchange, Inc. (CalPX) markets were to be mitigated to the level of a mitigated market clearing price (MMCP). However, the Commission also permitted generators that believe that MMCP does not cover all of their costs to “file for cost-of-service rates covering all of their generating units ... for the duration of the mitigation period and including the [R]efund [P]eriod.”⁷ Subsequently, the Commission extended an opportunity to claim cost offsets to marketers based on “their overall revenues over the [R]efund [P]eriod”⁸ and also clarified the requirements for calculating cost offset and established a uniform format for cost offset filings.⁹

⁴ 964 F.3d 1 (D.C. Cir. 2020) (en banc) (*Allegheny Def. Project*).

⁵ 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Hearing Order. See *Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 96 FERC ¶ 61,120, at 61,518 (2001). We note the Refund Period is the period of time between October 2, 2000 and June 20, 2001.

⁸ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 97 FERC ¶ 61,275, at 62,193 (2001).

⁹ *San Diego Gas and Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 112 FERC ¶ 61,176 (2005), *on reh’g*, 121 FERC ¶ 61,184 (2007).

4. As explained in the Hearing Order, the Commission had accepted Shell's cost offset claim, though it required some revisions on compliance, and had accepted Hafslund's cost offset claim.¹⁰ The California Parties filed a petition for review in the Ninth Circuit of the Commission's decisions. The Commission sought a voluntary remand from the Ninth Circuit to reconsider the cost offset claims submitted by Shell and Hafslund, which the court granted. Subsequently, the Commission issued the Hearing Order, which established an evidentiary hearing to examine whether the cost offset claims submitted by Shell and Hafslund include the costs associated with the transactions that constituted certain types of transactions that violated the then-current CAISO and CalPX tariffs.¹¹ Subsequently, the California Parties and Shell entered into a settlement agreement resolving, among other things, their dispute regarding Shell's cost offset claim. The settlement was approved by the Commission in May 2018,¹² and the California Parties withdrew their rehearing request to the extent it pertains to Shell's cost offset claim only.¹³

II. Rehearing Request

5. On rehearing, the California Parties argue that the Commission erred in failing to set for hearing all of the issues related to cost offsets that were briefed before the Ninth Circuit. Specifically, the California Parties identify additional issues that should be considered at the hearing, including the appropriate geographic scope of the cost offsets, whether book-out transactions, hedges, and other financial transactions should have been included, and issues related to fair process and discovery.¹⁴ The California Parties contend that the Commission erred to the extent that it did not set for hearing Hafslund's Refund Period tariff violations other than those types of transactions that were specified in the Hearing Order.¹⁵

¹⁰ Hearing Order, 158 FERC ¶ 61,055 at P 4.

¹¹ *Id.* P 7.

¹² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 163 FERC ¶ 61,083 (2018).

¹³ *See supra* n.3.

¹⁴ Rehearing Request at 13-17.

¹⁵ *Id.* at 18-20.

III. Commission Determination

6. We dismiss the California Parties' request for rehearing as moot. First, as noted above, the California Parties withdrew the rehearing request as to Shell. Second, with respect to Hafslund, we find that the rehearing request has been rendered moot by subsequent events. Specifically, Hafslund did not participate in the ordered cost offset hearing. On August 16, 2018, the presiding Administrative Law Judge (Presiding Judge) ruled in favor of the joint motion for summary judgment against Hafslund that was filed by the California Parties and Commission Trial Staff.¹⁶ The Presiding Judge found that "[u]ndisputed expert testimony indicates Hafslund has no basis for a cost offset" if the types of transactions identified in the Hearing Order were excluded.¹⁷ Accordingly, the Presiding Judge concluded that Hafslund's baseline refund liabilities were not affected by Hafslund's cost offset claim.¹⁸ No briefs on exceptions to the Presiding Judge's decision were filed. Subsequently, on September 26, 2018, the Commission issued a notice indicating that it was taking no action on the Presiding Judge's decision, thereby permitting it to become a final Commission order.¹⁹

7. Because the Presiding Judge found that Hafslund had no basis for a cost offset, and because the Commission effectively affirmed that finding by permitting that decision to become a final Commission order, we conclude that the California Parties' request for rehearing in this matter is moot and we therefore dismiss it.

The Commission orders:

In response to the request for rehearing, the Hearing Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Commissioner Danly is not participating.

(S E A L)

¹⁶ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 164 FERC ¶ 63,015 (2018).

¹⁷ *Id.* P 30.

¹⁸ *Id.* P 31.

¹⁹ *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 164 FERC ¶ 61,223 (2018).

Debbie-Anne A. Reese,
Deputy Secretary.