

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
101 FERC ¶ 61,078

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

Mirant Delta, LLC and  
Mirant Potrero, LLC,  
Complainants,

v.

Docket No. EL01-35-001

California Independent System  
Operator Corporation,  
Respondent.

San Diego Gas & Electric Company,  
Complainant,

v.

Docket No. EL00-95-067

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

California Independent System  
Operator Corporation

Docket No. ER01-1877-001

Docket No. EL00-98-056

Operational Audit of the  
California Independent System Operator

Docket No. PA02-1-001

## ORDER REJECTING AND DENYING REHEARING

(Issued October 25, 2002)

1. In this order, we reject Californians for Renewable Energy's (CARE) untimely request for rehearing concerning an order the Commission issued on July 17, 2002.<sup>1</sup> In addition, we deny CARE's request for rehearing concerning its request for stay of the July 17 Order.<sup>2</sup>
2. In its September 27, 2002 request for rehearing of the Commission's denial of CARE's request for stay, CARE repeats its allegation that the Commission must resolve the "significant socioeconomic and environmental issues" that the Commission's proposed Standard Market Design raises through CARE's proposal for a "corporate election." In this filing, CARE also submits a new motion in which it requests that the Commission "enfranchise" the California Independent System Operator Corporation's (CAISO) governance through CARE's proposal for a "mail ballot election involving all the stakeholders."
3. As an initial matter, since CARE requests that the Commission modify the findings in the July 17 Order through the implementation of CARE's new proposal for a "mail ballot election," we note that CARE has submitted an untimely request for rehearing of the July 17 Order. We must reject CARE's untimely request for rehearing. As the courts have repeatedly recognized, the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA, and the Commission has no discretion to extend that

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<sup>1</sup>See Mirant Delta, LLC, et al., 100 FERC ¶ 61,059 (2002) (July 17 Order).

<sup>2</sup>See Mirant Delta, LLC, et al., 100 FERC ¶ 61,271 (2002) (September 16 Order).

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deadline.<sup>3</sup> Similarly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order.<sup>4</sup>

4. We must also deny CARE's request for rehearing of the Commission's denial of CARE's request for stay because the factual predicate upon which CARE requested its stay is moot. In its August 21, 2002 filing, CARE sought a stay of the July 17 Order until a new Board is elected using CARE's proposal for a "corporate election" process. Since we denied CARE's request for rehearing and rejected its proposal for a "corporate election" process in paragraph 38 of the September 16 Order, there is no longer a justiciable controversy over which we could grant CARE's request for rehearing on its request for stay. Accordingly, we will deny CARE's request for rehearing concerning the Commission's denial of CARE's request for stay.

The Commission orders:

The Commission hereby rejects and denies CARE's requests for rehearing, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,

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<sup>3</sup>See *City of Campbell v. FERC*, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); *Boston Gas Co. v. FERC*, 575 F.2d 975, 977-78, 979 (1st Cir. 1978) (same; describing identical rehearing provision of Natural Gas Act as "a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion."). See also *Sierra Association for Environment v. FERC*, 791 F.2d 1403, 1406 (9th Cir. 1986).

<sup>4</sup>See, e.g., *New England Power Pool*, 89 FERC ¶ 61,022 at 61,076 (2000); *Arkansas Power & Light Co.*, 19 FERC ¶ 61,115 at 61,217-18 (1982), reh'g denied, 20 FERC ¶ 61,013 at 61,034 (1982). See also *Public Service Company of New Hampshire*, 56 FERC ¶ 61,105 at 61,403 (1991); *CMS Midland, Inc.*, 56 FERC ¶ 61,177 at 61,623 (1991).

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Secretary.