

106 FERC ¶ 61,239
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Fact Finding Investigation of Potential Manipulation
of Electric and Natural Gas Prices

Docket No. PA02-2-000

THIRD ORDER ON RE-RELEASE OF DATA
REMOVED FROM PUBLIC ACCESSIBILITY ON APRIL 7, 2003

(Issued March 8, 2004)

1. This order addresses the completed review of Enron Corporation (Enron) documents directed by the Commission's April 22, 2003 Order in this proceeding (April 22 Order), which dealt with the release of documents submitted in Docket No. PA02-2-000.¹

Background

2. On March 5, 2003, the Commission issued a notice that it intended to release to the public information collected in its investigation into manipulation of energy prices in the West, and sought, by March 12, 2003, comments from those companies and individuals who submitted information during the course of the investigation. Eighteen companies or organizations, as well as the United States Attorney for the Southern District of Texas, filed comments or otherwise responded. Enron was not among those respondents. On March 21, 2003, the Commission issued an order addressing the comments and responses to its March 5, 2003 Notice, and further announced that it would release the information, except as noted in the order, in no less than five days after issuance of the order. One exception to the release was personal personnel information

¹ Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 103 FERC ¶ 61,077 (2003).

that was raised by three of the commenters. In this regard, the Commission asked that companies or individuals provide specifics by March 24, 2003, so that such information could be excluded from the public release. One company provided such details; Enron did not. Thereafter, on March 26, 2003, the Commission released the remaining information. 102 FERC ¶ 61,311.

3. Subsequent to the release of the information, on March 28, 2003, the Commission received the first of seven motions from Enron asking that certain parts of the released information be removed from public access. These motions in particular attempted to identify Enron employees' personal information. The Commission also received calls on its Enforcement Hotline from Enron employees who were concerned about their personal information being available on the internet. As quickly as possible, the Commission staff accommodated these requests in keeping with the Commission's stated concerns in the March 21 Order about not releasing certain personal data.

4. Further, on April 7, 2003, the Secretary of the Commission issued a notice (April 7 Notice) that the Commission would remove temporarily, until April 24, 2003, Enron e-mails that had been placed on the agency's web site pursuant to the March 21 Order. The notice indicated that during that time the Commission would consider any requests that certain personal and other information be permanently removed from public accessibility. For this purpose, the Commission established an e-mail address for former or current Enron employees, or other individuals whose personal information was included in the data that Enron submitted to the Commission, to be able to contact the Commission directly.

5. In the meantime, on April 4, 2003, Enron filed a petition for writ of mandamus and an emergency motion to stay the March 21 Order in the United States Court of Appeals for the Fifth Circuit, Enron Corp. v. FERC, No. 03-60295, requesting that all Enron e-mails posted on the Commission's web site be removed. No other party filed a motion in court requesting a stay of the March 21 Order. On April 7, 2003, the court denied Enron's petition for writ of mandamus, and granted the stay request, but only to the extent that it directed the Commission to remove all Enron e-mails from its web site until further order of the court. The court also directed the Commission to file a response in this proceeding by close of business April 11, 2003. Subsequently, in light of the Commission's removal of the Enron e-mails from its web site on April 7, the court granted Enron's motion to hold the case in abeyance and to defer the need for the Commission to file a response by April 11, 2003, until April 24, 2003. Accordingly, the Commission's April 7 action removing the Enron e-mails from its web site coincided exactly with the Fifth Circuit's stay of the March 21 order to the extent the stay action implicated the withdrawal of Enron e-mails from the agency's web site.

6. On April 22, 2003, the Commission issued an Order on Re-Release of Data Removed from Public Accessibility on April 7, 2003 (April 22 Order). 103 FERC ¶ 61,077 (2003). In the April 22 Order, the Commission stated that companies and individuals requested in the aggregate that the Commission permanently remove approximately 141,379 documents from its web site. *Id.* at P 2. The Commission further stated that it would not re-release any of these documents that respondents sought to be withheld until the Commission had reviewed those documents and given the respondents and the public notice of its intent to re-release specific documents. *Id.* at P 7-8. As the Commission directed in its April 22 Order, its staff began reviewing the data proffered for removal to ascertain whether indeed it should be in the public domain. No one sought rehearing of the April 22 Order.

7. With respect to the data that was removed from the Commission's web site pursuant to the April 7 Notice but that was not identified by any company or individual for permanent removal, as directed by the Commission, Commission staff returned that data to the agency's web site. *See* 103 FERC ¶ 61,077 at P 9.

8. On September 15, 2003, the Commission issued its first order on the re-release of documents in accord with the April 22 Order (September 15 Order). 104 FERC ¶ 61,294 (2003). The September 15 Order identified 12,057 documents as appropriate for re-release and 5,128 documents as appropriate for permanent removal because they contain personal and other information not relating to the investigation.

9. On November 14, 2003, the Commission issued an Order on Rehearing and on Motion on Disclosure of Information, and Notice of Intent to Release Documents. 105 FERC ¶ 61,205 (2003). This order, *inter alia*, addressed the requests for rehearing filed by Enron and jointly by Citrus Corporation (Citrus) and Northern Border Partners, L.P. (NBP) of the Commission's September 15 Order. Specifically, as relevant here, this order: (1) granted Enron's rehearing request as to documents that contain personal information; (2) denied Enron's rehearing request as to documents that do not contain personal information; and (3) provided notice to Citrus and NBP of the Commission's intent to re-release documents involving them but related to staff's investigation in Docket No. PA02-2-000. On January 14, 2004, the Commission issued an Order Granting Rehearing for Further Consideration of the November 14 Order.

10. On December 23, 2003, the Commission issued its second order on the re-release of documents in accord with the April 22 Order (December 23 Order). 105 FERC ¶ 61,361 (2003). The December 23 Order identified 52,828 documents as appropriate for re-release and 15,806 documents as appropriate for permanent removal because they contain personal and other information not relating to the investigation. Timely motions

for clarification or, in the alternative, requests for rehearing of the December 23 Order were filed by Enron, the California Parties,² and jointly by Citrus and NBP. On February 20, 2004, the Commission issued an Order Granting Rehearing for Further Consideration of the December 23 Order.

Commission Staff's Review

11. Following the issuance of the April 22 Order, Commission staff worked closely with Aspen Systems Corporation, the Commission's contractor responsible for maintaining the information obtained in this proceeding, to ensure that all documents proffered for removal were actually removed from public access. At the same time, a team was organized to review those documents. Members of the team reviewed documents daily and met regularly with senior members of the Enron investigation to discuss the relationship of certain documents to the investigation.

Discussion

12. The Commission has repeatedly held that the release of information in this proceeding, as qualified in its orders, is necessary and in the public interest. See, e.g., 102 FERC ¶ 61,311 at P 6. Therefore, the Commission responded to the requests for permanent removal on a rolling basis so as to provide, as quickly as possible, the public with as much information as possible to better understand the evidentiary record on which the Commission's decisions are grounded. Specifically, the Commission began to issue a series of orders, beginning with the September 15 Order, that address the documents reviewed during the relevant period. This order concludes the review of the documents.

13. As of February 10, 2004, the staff team had completed its review of the Enron e-mails, having reviewed a total of approximately 124,697 documents, which had previously been identified as commercially sensitive, personal information, or information with security concerns.³ Since the November 26, 2003 cutoff date for

² The California Parties consist of the California Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Southern California Edison Company, and Pacific Gas and Electric Company.

³ The 141,379 documents mentioned in paragraph 6 above included duplicate requests for the removal of documents. The 124,697 figure reflects the total number of documents reviewed, excluding duplicate requests for removal of the same document.

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reviewing documents covered by the December 23 Order, the staff team has reviewed approximately 38,878 documents. Of these documents, 8,151 are being withheld permanently because they contain information not relating to the investigation, including social security numbers, home telephone numbers, employee performance evaluations, personal photographs, and spam. The remaining 30,727 documents will be re-released to the public no sooner than three weeks from the issuance of this order. The documents identified for re-release include documents that were pertinent to the investigation, documents that were submitted publicly by respondents in this proceeding, documents containing public news clippings and articles, blank e-mail messages, and notices of meetings.

14. As noted in the December 23 Order, submitters of documents identified the documents they believed appropriate for permanent removal in various manners. 105 FERC ¶ 61,361 at P 13. As with the first and second re-release, the submitters of the documents may review them electronically by submitting a request for a user name and password via e-mail to the following e-mail address: personalinformationremovalrequest@ferc.gov. Only the submitters of these documents will be granted access to the documents.

The Commission orders:

The documents identified as appropriate for re-release as explained above, will be released no sooner than three weeks from the issuance of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.