

132 FERC ¶ 61,209
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

San Diego Gas & Electric Company

v.

Docket No. EL00-95-236

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

SUPPLEMENTAL ORDER SOLICITING COMMENTS

(Issued September 7, 2010)

1. On November 19, 2009, the Commission issued an order on remand from the United States Court of Appeals for the Ninth Circuit (Ninth Circuit),¹ establishing an evidentiary, trial-type hearing before an Administrative Law Judge (ALJ).² Specifically, the CPUC Remand Order instructed the ALJ to gather evidence on: (1) whether any of the sellers named as respondents in this proceeding engaged in violations of the relevant tariff, rules or regulations governing the markets, in effect prior to October 2, 2000, in organized markets operated by the California Independent System Operation Corporation (CAISO) and California Power Exchange Corporation (CalPX) and (2) whether any such violation(s) affected the market clearing price for a trading hour during which the

¹ *Pub. Util. Com'n of the State of Cal. v. FERC*, 462 F.3d 1027 (9th Cir. 2006). On April 15, 2009, the Ninth Circuit issued its mandate for Commission action on this remand. *See Pub. Util. Com'n of the State of Cal. v. FERC*, slip op. No. 01-71051 (Apr. 15, 2009).

² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 129 FERC ¶ 61,147 (2009) (CPUC Remand Order).

violation occurred.³ In the CPUC Remand Order, the Commission specified that participants may submit evidence with respect to violations of a provision in the then-current CAISO and CalPX tariffs, known as the Market Monitoring and Information Protocol (MMIP), that barred all participants in the CAISO and CalPX markets from engaging in gaming or anomalous behavior in those markets.⁴ The CPUC Remand Order also defined which categories of the MMIP violations will be addressed in the instant proceeding.⁵

2. On rehearing, the California Parties⁶ request that the list of violations under consideration in the instant proceeding be expanded.⁷ Before addressing this request, the Commission seeks written comments by all interested participants explaining: (1) which violations and unlawful activity, as proposed by the California Parties, should be included in the scope of the instant proceeding and (2) what are the grounds for inclusion or exclusion of a specific violation or unlawful activity from the scope of the instant proceeding.

3. Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), an answer may not be made to a rehearing request, unless otherwise ordered by the decisional authority. The Commission finds that written comments on the issues identified above will assist in its decisionmaking. To be considered by the Commission, all written comments must be submitted within 15 days of the date of issuance of this order.

³ *Id.* P 19.

⁴ *Id.* P 20.

⁵ *Id.* P 20-22.

⁶ For the purpose of this proceeding, the California Parties are Pacific Gas and Electric Company, Southern California Edison Company, the State of California *ex rel.* Edmund G. Brown Jr., Attorney General, and the Public Utilities Commission of the State of California.

⁷ California Parties' December 22, 2009 Rehearing Request at 4-10.

The Commission orders:

The Commission hereby invites all interested participants to file written comments addressing the issues identified in the body of this order. All written comments must be submitted within 15 days of the date of issuance of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.