
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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FOR IMMEDIATE RELEASE

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COMMISSION DISMISSES COMPLAINTS CHALLENGING CPUC-APPROVED WHOLESALE POWER CONTRACTS

The Federal Energy Regulatory Commission dismissed two complaints filed by Californians for Renewable Energy Inc. (CARE) seeking Commission review and abrogation of wholesale power contracts approved by the California Public Utilities Commission. The Commission found that the two complaints mischaracterized relevant case law and provided no factual support for the complaints' allegations that the contracts were unjust and unreasonable.

"Our action today provides for greater regulatory certainty by clarifying federal electricity law in the wake of recent court decisions. California has embraced long-term contracts as a means to assure adequate electricity supply and prevent a repeat of the 2000-2001 crisis. We support state policy and respect contract certainty," Commission Chairman Joseph T. Kelliher said.

"The Commission remains vigilant to protect customers against market manipulation and market power. We are much better prepared than we were seven years ago in this regard," Chairman Kelliher added.

The Commission's order addressed claims made by CARE regarding recent decisions by the U.S. Court of Appeals for the Ninth Circuit addressing market-based rate contracts (*Pub. Util. Dist. No. 1 v. FERC*, 471 F.3d 1053 (9th Cir. 2006) (*Snohomish*); *Pub. Util. Com'n of the State of Cal. v. FERC*, 474 F.3d 587 (9th Cir. 2006) (*CPUC*); and *Lockyer v. FERC*, 383 F.3d 1006 (9th Cir. 2004) (*Lockyer*)).

Contrary to CARE's assertions that the 9th Circuit Appeals Court decisions invalidated the Commission's market-based rate program, the 9th Circuit decisions upheld the Commission's market-based rate program, the Commission determined. The Court's decisions concluded that the Commission's finding of the absence of market power, coupled with ongoing reporting requirements, satisfies the notice and filing requirements of section 205 of the Federal Power Act.

The 9th Circuit Court “specifically upheld our general approach to approval of market-based rates. We therefore find that there was no need to submit the challenged contracts for prior review,” the Commission said.

Further, CARE alleged that the challenged contracts are unjust and unreasonable, but offered no specific evidence in support of its allegation. “Because the sellers under the contracts in question have been granted market-based rate authority, the wholesale contracts that they have entered into are presumed to be just and reasonable. CARE offers no evidence to overcome this presumption,” the Commission said.

CARE also alleged that the contracts would impose a financial burden on ratepayers, but failed to provide any quantifiable evidence to support the allegation. Nor did CARE provide any factual support of its allegation that the contracts would pose a reliability threat. CARE also alleged that the contracts were tainted by market power without providing any evidence.

“CARE has ... failed to present sufficient evidence to demonstrate that either contract is unjust and unreasonable or should otherwise be abrogated. CARE’s complaints are therefore hereby dismissed,” the Commission concluded. The Commission also granted the California Public Utilities Commission’s motion to dismiss the complaints.

The wholesale power supply contracts were entered into between Southern California Edison Co. and Long Beach Generation LLC, and between Pacific Gas and Electric Co. and Metcalf Energy Center LLC and the Los Medanos Energy Center LLC. Pursuant to a state-approved resource procurement program intended to improve power grid reliability for summer 2007 through 2009. The contracts require the power providers to make new investments, such as to repower generating units.