

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Californians for Renewable Energy, Inc.

v.

Docket No. EL04-14-000

Mirant Americas Energy Marketing, L.P. and  
California Department of Water Resources

ORDER GRANTING WITHDRAWAL OF COMPLAINT

(Issued June 22, 2004)

1. On October 27, 2003, Californians for Renewable Energy, Inc. (CARE) filed a complaint against Mirant Americas Energy Marketing, L.P. (Mirant) and the California Department of Water Resources (CDWR) regarding a power purchase contract between Mirant and CDWR for the period June 1, 2001 to December 31, 2002.<sup>1</sup> On October 28, 2003, CARE filed a motion to withdraw the complaint without prejudice. Rule 216(b)(1) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.216(b)(1) (2003), states that a withdrawal becomes effective at the end of 15 days from the date of the filing of the withdrawal, if the withdrawal is unopposed and the Commission does not disallow the withdrawal. However, on November 11, 2003, CDWR filed a motion to dismiss CARE's complaint with prejudice and a general denial in this docket (as well as in Docket No. EL04-11-000).

2. CARE's complaint against Mirant and CDWR alleged that the contract between these parties was unjust and unreasonable and, alternatively, contrary to the public interest. CARE argued that these parties failed to file this contract with the Commission, and colluded to purchase power at unjust and unreasonable prices. CARE requested that

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<sup>1</sup> CARE submitted the complaint to the Commission electronically after close of business on Friday, October 24, 2003. CARE admits that, thus, the filing date for the complaint is the next business day, Monday, October 27, 2003.

the Commission abrogate the contract. As noted above, however, immediately thereafter CARE sought to withdraw its complaint without prejudice.

3. CDWR, claiming that its participation in this docket is for the “limited purpose of seeking dismissal,”<sup>2</sup> argued that sections 201(a) and (b)(1) of the FPA, 16 U.S.C. §§ 824(a) and (b)(1) (2000), regulate public utility power sellers, but not purchasers or state entities engaged in purchases and therefore the Commission lacks jurisdiction to entertain CARE’s complaint against CDWR. Furthermore, CDWR argued that the Tenth and Eleventh Amendments to the United States Constitution bar CARE’s complaint. Finally, CDWR asserted that CARE is merely reiterating arguments that it has previously raised unsuccessfully in other proceedings.<sup>3</sup> Accordingly, CDWR argued that this proceeding should be dismissed with prejudice.

4. As CARE seeks to have its complaint withdrawn and CDWR similarly seeks dismissal of CARE’s complaint, we will grant the withdrawal of CARE’s complaint, but without prejudice. Elimination of this complaint is the goal of both parties and voluntary withdrawal of the complaint will achieve that goal. Because we do not, therefore, reach the merits of either party’s arguments, we have no basis to find that good cause exists here to dismiss CARE’s complaint with prejudice. We will accordingly deny CDWR’s request for dismissal with prejudice.

The Commission orders:

(A) We hereby grant CARE’s withdrawal of its complaint against Mirant and CDWR, as discussed in the body of this order.

(B) We hereby deny CDWR’s motion to dismiss CARE’s complaint with prejudice, as discussed in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>2</sup> CDWR’s motion to dismiss at 1.

<sup>3</sup> Citing to San Diego Gas & Electric Co., 97 FERC ¶ 61,275 at 62,196 & n.141 (2001).