

149 FERC ¶ 61,127  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;  
Philip D. Moeller, Tony Clark,  
and Norman C. Bay.

Public Utilities Commission of the State of  
California

Docket No. EL02-60-007

*Complainant,*

v.

Sellers of Long-Term Contracts to the California  
Department of Water Resources

*Respondents.*

California Electricity Oversight Board

Docket No. EL02-62-006

(consolidated)

*Complainant,*

v.

Sellers of Energy and Capacity Under Long-  
Term Contracts with the California Department of  
Water Resources

*Respondents.*

ORDER ON REMAND

(Issued November 17, 2014)

1. This case is before the Commission on remand from the United States Court of Appeals for the Ninth Circuit (Ninth Circuit).<sup>1</sup> The consolidated proceedings stem from two separate but virtually identical complaints challenging certain wholesale energy contracts entered into between 2000 and 2001, during the period of market dysfunction in the western United States. In light of the Ninth Circuit's decision, the Commission here orders a trial-type, evidentiary hearing before an Administrative Law Judge (ALJ) to supplement the existing record. The Commission will determine what further steps must be taken after issuance of the ALJ's factual determinations.

## **I. Background**

### **A. Commission Proceedings**

2. On February 25, 2002, the Public Utilities Commission of the State of California (CPUC) and the California Electricity Oversight Board (EOB)<sup>2</sup> filed separate complaints seeking to modify 30 long-term contracts that the California Department of Water Resources (CDWR) entered into with several different sellers, including, as relevant here, Shell<sup>3</sup> and Iberdrola.<sup>4</sup> The CPUC and the EOB argued that the prices, terms, and conditions of these contracts were unjust and unreasonable and, to the extent applicable, not in the public interest.<sup>5</sup> The CPUC and the EOB also alleged that the sellers obtained the prices, terms and conditions in the contracts through the exercise of market power in violation of the Federal Power Act (FPA) and that the sellers' actions were causing injury to the citizens and ratepayers of California.

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<sup>1</sup> *Public Utilities Commission of California, et al., v. FERC*, 550 F.3d 767 (9<sup>th</sup> Cir. 2008).

<sup>2</sup> The EOB was defunded in 2008, and is no longer an active party. *See* Second Motion for Order on Remand filed by the California Public Utilities Commission and the People of the State of California, *ex rel.* Kamala D. Harris, Attorney General, at n.1 (August 2014 Motion).

<sup>3</sup> Shell Energy North America (US), L.P. (Shell, f/k/a Coral Power, L.L.C.).

<sup>4</sup> Iberdrola Renewables, Inc. (Iberdrola, f/k/a PPM Energy, Inc.).

<sup>5</sup> *See* CPUC, Complaint, Docket No. EL02-60-000 (filed Feb. 25, 2002) and EOB, Complaint, Docket No. EL02-62-000 (filed Feb. 25, 2002). While the original complaint involved many more parties, Shell and Iberdrola are the only remaining Respondents in the instant proceeding, as noted below.

3. In its April 25, 2002 order,<sup>6</sup> the Commission dismissed the allegations as to the contracts that were entered into after June 20, 2001 (of which the Iberdrola contract was one), and set for hearing the issues regarding the contracts entered into before that date.<sup>7</sup> The hearing was to address “whether the dysfunctional California spot markets adversely affected the long-term bilateral markets, and, if so, whether modification was warranted of any individual contract at issue.”<sup>8</sup> The Commission instructed the presiding ALJ to determine the applicable standard of review for challenged contracts not containing explicit *Mobile-Sierra* language.<sup>9</sup>

4. The ALJ issued a partial initial decision on January 16, 2003, in which he held that “the *Mobile-Sierra* public interest standard of review applie[d] to a negotiated contract unless the contract expressly state[d] otherwise...”<sup>10</sup> On June 26, 2003, the Commission affirmed the ALJ’s holding with regard to the “public interest” standard of review, and, finding that the Complainants had not met their burden of proof under that standard to

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<sup>6</sup> *Pub. Utils. Comm’n of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources*, 99 FERC ¶ 61,087 (2002) (April 25 Order).

<sup>7</sup> All of those sellers have since settled, with the exception of Shell.

<sup>8</sup> April 25 Order, 99 FERC ¶ 61,087 at 61,384. In differentiating the hearing from a concurrent staff investigation (Final Report on Price Manipulation in Western Markets, Docket No. PA02-2-000 (Staff Report)), the Commission stated that the contracts were being set for hearing “based on the arguments that the dysfunctional spot markets in California caused long-term contracts not to be reasonable, whereas the investigation [looked] at whether there was improper behavior by sellers that may have caused prices not to be reasonable.” *See id.* at 61,383, n.28.

<sup>9</sup> *See United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956); *Pub. Utils. Comm’n of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources*, 102 FERC ¶ 61,025, at P 13 (2003) (contract rates for wholesale energy sales are presumed to be just and reasonable, but the presumption can be overcome if the contract seriously harms the public interest).

<sup>10</sup> *Pub. Utils. Comm’n of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources*, 102 FERC ¶ 63,013, at P 45 (2003).

justify modification or abrogation of the contracts at issue, denied their complaints.<sup>11</sup> The Commission further stated that it had considered both the Staff Report as well as the evidence of market manipulation submitted in the 100 Days Discovery Proceeding,<sup>12</sup> and concluded that such evidence, even if assumed to be true, was not “determinative of the issues in this proceeding.”<sup>13</sup> The Complainants sought rehearing, which was denied by the Commission.<sup>14</sup>

## **B. Ninth Circuit**

5. Complainants appealed the Commission’s prior orders in this case. On appeal, the Ninth Circuit reversed and remanded the Commission’s prior orders, finding that the Commission mistakenly applied the *Mobile-Sierra* precedent to conclude that the challenged contracts were just-and-reasonable, and that the Commission erred in rejecting Complainant’s challenge to the dismissal of Iberdrola from the proceedings.<sup>15</sup>

## **C. Supreme Court**

6. The Respondent Sellers petitioned the Supreme Court for *certiorari*. The Supreme Court did not initially grant *certiorari* in this proceeding, but did in *Morgan Stanley*,

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<sup>11</sup> *Pub. Utils. Comm’n of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources*, 103 FERC ¶ 61,354, at P 3 (2003).

<sup>12</sup> The 100 Days Discovery Proceeding was established on November 20, 2002, when the Commission issued an order allowing parties in the Docket No. EL00-95, *et al.* proceeding to adduce evidence that was either indicative or counter-indicative of market manipulation that may have occurred during the California energy crisis of 2000-2001 (100 Days Discovery). The submission of evidence was completed on March 20, 2003.

<sup>13</sup> *Pub. Utils. Comm’n of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources*, 103 FERC ¶ 61,354, at P 34 (2003).

<sup>14</sup> *Pub. Utils. Comm’n of the State of California v. Sellers of Long Term Contracts to the California Department of Water Resources*, 105 FERC ¶ 61,182 (2003).

<sup>15</sup> *Pub. Utils. Comm’n of Cal. v. FERC*, 474 F.3d 587 (9<sup>th</sup> Cir. 2006).

involving a companion case with similar facts, arguments, and parties.<sup>16</sup> The Court rejected several aspects of the Ninth Circuit's interpretation (in *Snohomish County*) of the operation of the *Mobile-Sierra* presumption. First, the Court rejected the notion that the *Mobile-Sierra* presumption is inapplicable to the Commission's initial review of a contract.<sup>17</sup> Second, the Court held that the *Mobile-Sierra* presumption functions the same for buyers as it does for sellers.<sup>18</sup> Third, the Court rejected the Ninth Circuit's holding that a contract must be formed within a full functioning market in order to trigger the *Mobile-Sierra* presumption.<sup>19</sup>

7. While the Court concluded that the existence of a dysfunctional spot market is not dispositive of the applicability of the public interest standard of review, it nonetheless stated that "if the 'dysfunctional' market conditions under which the contract was formed were caused by the illegal action of one of the parties [to the contract], FERC should not apply the *Mobile-Sierra* presumption."<sup>20</sup> Therefore, the Court remanded the matters in *Snohomish County* to the Commission with direction to "amplify or clarify" its findings on two points to be discussed below.

8. Immediately after the decision in *Morgan Stanley*, the Supreme Court granted the petitions for *certiorari* in this case and remanded the relevant Ninth Circuit's decision to that court,<sup>21</sup> which in turn vacated its decision in this proceeding and remanded this case to the Commission "for proceedings consistent with the Supreme Court's rulings" in *Morgan Stanley*.<sup>22</sup> Subsequently, the CPUC and some of the remaining suppliers in these

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<sup>16</sup> *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) (*Morgan Stanley*). *Morgan Stanley* involved petition for *certiorari* filed by Morgan Stanley Capital Group and other sellers of the referenced companion case, *Pub. Util. Dist. No. 1 of Snohomish County v. FERC*, 471 F.3d 1053 (9<sup>th</sup> Cir. 2006) (*Snohomish County*).

<sup>17</sup> *Morgan Stanley*, 128 S. Ct. at 2745.

<sup>18</sup> *Id.* at 2747-49.

<sup>19</sup> *Id.* at 2746.

<sup>20</sup> *Id.*

<sup>21</sup> *See Sempra Generation v. CPUC*, 554 U.S. 931 (2008).

<sup>22</sup> *Pub. Utils. Comm'n of Cal. v. FERC*, 550 F.3d 767 (9<sup>th</sup> Cir. 2008).

proceedings entered into settlements, which the Commission approved.<sup>23</sup> Shell and Iberdrola are the only remaining respondents.

#### **D. The Complainants' Motion**

9. On August 28, 2014, the CPUC and the Attorney General of the State of California (together, the Complainants) submitted their "Second Motion for an Order Setting Procedures on Remand from the Ninth Circuit." They request that the Commission assign this case to an ALJ with instructions to reopen the record and allow for discovery on the issues made relevant by *Morgan Stanley* and to set a trial-type hearing to address that evidence.<sup>24</sup>

10. In support of their motion, the Complainants argue that they were denied the opportunity in earlier proceedings to conduct discovery or produce evidence of issues made newly-relevant by *Morgan Stanley*; namely, unlawful market activity and any connection of that activity with the contracts at issue.<sup>25</sup> Additionally, they argue that no record exists in the first place with regard to Iberdrola, and the decision to exclude them from the original proceedings was incorrect. Finally, the Complainants state that, in establishing the scope of discovery allowed in the evidentiary hearing, the Commission should use what the Complainants refer to as the "any relevant evidence" standard.<sup>26</sup>

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<sup>23</sup> *Pub. Utils. Comm'n of the State of California v. Sellers of Long-Term Contracts to the California Department of Water Resources*, 141 FERC ¶ 61,092 (2012) (approving settlement between certain Dynegy entities and the CPUC); *Pub. Utils. Comm'n of the State of California v. Sellers of Long-Term Contracts to the California Dept. of Water Resources*, 133 FERC ¶ 61,245 (2010) (approving settlement between Semptra Generation and the CPUC and CDWR).

<sup>24</sup> Second Motion for Order on Remand at 2.

<sup>25</sup> The Complainants cite, as evidence of Shell's possible unlawful activity, two initial decisions in Docket No. EL00-95-248 and Docket No. EL01-10-085. *See San Diego Gas & Elec. Co.*, 142 FERC ¶ 63,011 (2013) (Baten, J.) and *Puget Sound Energy, Inc.*, 146 FERC ¶ 63,028 (2014) (McCartney, J.). We note that the Commission recently issued an order on the initial decision in Docket No. EL00-95-248. *San Diego Gas and Elec. Co. v. Sellers of Energy and Ancillary Servs.*, Opinion No. 536, 149 FERC ¶ 61,116 (2014).

<sup>26</sup> The Complainants argue that this standard was "adopted" in *Puget Sound Energy, Inc.*, 141 FERC ¶ 61,248, at P 15 (2013) (Order Granting Interlocutory Appeal).

11. On September 12, 2014, Shell submitted a motion to dismiss and an answer in opposition to the Complainants' motion. Shell argues that "[t]he existing record in this case is extensive and comprehensive, [the Complainants] were not as limited as they contend during the initial proceedings in this case, and that there is plenty in the record<sup>27</sup> on which the Commission can base a decision without ordering more discovery or setting the proceedings for a trial-like hearing."<sup>28</sup> Shell argues that the Commission is not required to reopen the proceedings, but merely to re-evaluate the evidence already in the record in light of *Morgan Stanley*. Shell states that the evidence already in the record proves that its contract with CDWR contained just and reasonable rates, and that, as a result, the Commission should dismiss the complaints. Shell also contests the Complainants' conclusions as to its unlawful activity, stating that those decisions are still pending before the Commission and are not final.

12. Iberdrola echoes some of the same arguments made by Shell. Iberdrola repeats that the "substantial record...provide[s] the Commission with a firm basis for bringing this proceeding to a...close" because it proves that Iberdrola's contract with CDWR is just and reasonable.<sup>29</sup> Additionally, Iberdrola contends that it should not be a party to this proceeding in the first place. Iberdrola points out that, in its April 25 Order, the Commission excluded Iberdrola's contract from the group of contracts it set for hearing because it was "entered into after the date the West-wide mitigation went into effect."<sup>30</sup> Although the Ninth Circuit believed it was an error for the Commission to dismiss Iberdrola from the earlier proceedings,<sup>31</sup> Iberdrola argues that Ninth Circuit opinion was vacated and remanded to the Commission only with instructions to apply *Morgan Stanley*

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<sup>27</sup> Shell contends that the Complainants can benefit from not only evidence already adduced in this proceeding, but in the related proceedings as well – such as the Staff Report and the 100 Days Discovery.

<sup>28</sup> Shell, Answer and Cross-Motion at 17 (First Shell Answer).

<sup>29</sup> Iberdrola, Answer and Cross-Motion at 2.

<sup>30</sup> April 25 Order, 99 FERC ¶ 61,087 at 61,384. The Commission based its decision on the fact that CDWR was not bound "to proceed with execution of the contracts after the West-wide mitigation went into effect since the effect of the West-wide mitigation was to stabilize prices." *Id.*

<sup>31</sup> *Pub. Utils. Comm'n of Cal. v. FERC*, 474 F.3d 587, 597 (9<sup>th</sup> Cir. 2006). The court believed that the effects of market manipulation may have "lingered" after the date the West-wide mitigation went into effect, and thus the Commission had not considered "all the relevant factors" in its decision. *Id.*

to the issues at hand. Thus, Iberdrola argues, its exclusion from the proceedings is still in effect, and it is not a proper party.

13. On September 26, 2014, the Complainants answered both Shell's and Iberdrola's cross-motions for dismissal by stating that the record lacks the evidence, due to either its exclusion or unavailability, to allow the Commission to perform the necessary analysis ordered by the Supreme Court in *Morgan Stanley*. Additionally, they counter Iberdrola's argument by stating that when the Ninth Circuit vacated its decision and remanded to the Commission, it was only done so that *Morgan Stanley* could be applied to the earlier proceedings, and the question of the appropriateness of Iberdrola's dismissal still lingers. The Complainants state that they will not seek duplicative discovery, subject to a few conditions, if the information already exists in the record.

14. On October 1, 2014, Shell moved for leave to answer and answered the Complainants by again arguing that the current record is sufficient for the Commission to make its determination. On October 7, 2014, Iberdrola also filed a motion for leave to answer and answer. Finally, on October 8, 2014, the Complainants filed a motion or leave to answer and answer to Shell and Iberdrola.

## **II. Procedural Matters**

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will reject the answer filed by Shell on October 1, 2014, the answer filed by Iberdrola on October 7, 2014, and the answer filed by the Complainants on October 8, 2014, because they have not provided information that assisted us in our decision-making process.

## **III. Discussion**

### **A. Additional Hearing**

16. In *Morgan Stanley*, the Supreme Court directed the Commission to address: (1) whether the contracts at issue [in that case] imposed an excessive burden on consumers "down the line," relative to the rates they could have obtained after elimination of the dysfunctional spot market, or otherwise seriously harmed the public interest; and (2) whether any of the sellers involved in [that] case engaged in unlawful activities in the spot market that affected any of its contracts that [were] at issue. With regard to the first issue, the Court stated that it was not enough to simply look at whether consumers' rates increased immediately upon the relevant contracts' going into effect, but rather a determination must be made as to "whether the contracts imposed an

excessive burden on consumers ‘down the line’ relative to the rates they could have obtained (but for the contracts) after elimination of the dysfunctional market.”<sup>32</sup> The Court noted that, even if consumers paid more than they would have in the absence of the contracts, the rates should be disallowed only “if that increase is so great that, even taking into account the desirability of fostering market-stabilizing long-term contracts, the rates impose an excessive burden on consumers or otherwise seriously harm the public interest[.]”<sup>33</sup>

17. With regard to the second issue, the Court stated that, “if it is clear that one party to a contract engaged in such extensive unlawful market manipulation as to alter the playing field for contract negotiations, the Commission should not presume that the contract is just and reasonable.”<sup>34</sup> The Court emphasized that, when unlawful market activity directly affects contract negotiations, such activity eliminates the premise on which the *Mobile-Sierra* presumption rests: that the contract rates are the product of fair, arms-length negotiations.<sup>35</sup> Thus, the Court requires the Commission to find and explain the causal connection between any unlawful market activity and the contracts at issue.

18. *Morgan Stanley* does not require the Commission to reopen the record to allow the submission of new evidence, but rather gives the Commission the flexibility to reconsider the evidence already provided and, based on that evidence, determine if a need for contract modification has been demonstrated. However, the Commission has determined it appropriate to reopen the record in this case. This approach is consistent with the Commission’s determinations in other proceedings stemming from the Western energy crisis.<sup>36</sup>

19. The Ninth Circuit held that the Commission erred in dismissing CPUC’s complaint regarding CDWR’s contract with Iberdrola. While the Ninth Circuit’s opinion was subsequently vacated by the Supreme Court, that was due to errors in the court of appeals’ interpretation of the operation of the *Mobile-Sierra* presumption. Accordingly, we believe that the Ninth Circuit’s decision warrants a review of whether Iberdrola was

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<sup>32</sup> *Morgan Stanley*, 128 S. Ct. at 2749-50.

<sup>33</sup> *Id.* at 2750.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See, e.g., *Nevada Power Co. v. Enron Power Mktg., Inc.*, 125 FERC ¶ 61,312 (2008).

in fact improperly dismissed. The Commission therefore will allow the parties to present evidence to address whether or not Iberdrola should be a party to this proceeding.

**B. Down the Line Burden Imposed by the Contract**

20. In *Morgan Stanley*, the Supreme Court found that “[t]he standard for a buyer’s challenge must be the same, generally speaking, as the standard for a seller’s challenge: the contract rate must seriously harm the public interest.”<sup>37</sup> Thus, the Commission reopens the record for evidence on: (1) the difference “down the line” between having the contracts at issue in effect and not having them in effect; and (2) whether that difference seriously harms the public interest.<sup>38</sup> The Court did not define “down the line” and stated that it was unsure what exactly informed the Commission’s earlier determination, explaining:

the Commission may have looked simply to whether consumers’ rates increased immediately upon the relevant contracts going into effect, rather than determining whether the contracts imposed an excessive burden on consumers ‘down the line,’ relative to the rates they could have obtained (but for the contracts) after elimination of the dysfunctional market.<sup>39</sup>

Thus, the Commission concludes that, in this proceeding, “down the line” should be measured based on the life of the contract since the contracts in question have already expired.

21. A relevant factor in the down-the-line analysis is the cost of substitute power in the absence of the contracts. An appropriate measure of the cost of substitute power at a particular point in time in the duration of a contract may be the actual market prices available at that time for comparable long-term contracts. For those contracts with negotiated non-rate terms, parties should provide evidence on how to account for those non-rate terms in establishing a market price for substitute power.

22. Further, while evidence of the difference between market prices and the contract price is important, it is not dispositive. Buyers attempting to demonstrate an excessive burden on consumers must submit evidence on: (1) given the contract, what consumers’ rates were; (2) what consumers’ rates would have been down the line in the absence of

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<sup>37</sup> *Morgan Stanley*, 128 S. Ct. at 2747.

<sup>38</sup> *Id.* at 2750.

<sup>39</sup> *Id.*

the contract; and (3) how the difference imposes an excessive burden on consumers. The Court emphasized in *Morgan Stanley* that the impact on consumers is a key element of this analysis.<sup>40</sup>

### C. Spot Market Manipulation

23. In *Morgan Stanley*, the Court found, “the mere fact of a party’s engaging in unlawful activity in the spot market does not deprive its long-term contracts of the benefit of the *Mobile-Sierra* presumption.... Where, however, causality has been established, the *Mobile-Sierra* presumption should not apply.”<sup>41</sup> Thus, the Commission reopens the record for gathering of evidence on: (1) whether the seller under a particular contract at issue in this proceeding engaged in unlawful market activity in the spot market; and, if so (2) whether such activity had a direct effect on the negotiations of the contract at issue (i.e., a causal connection between an unlawful activity and the terms of the contracts).

24. Whether any of the sellers in this case engaged in unlawful market activity in the spot market must be determined based on the relevant laws, regulations, orders, and tariffs in effect at the time of the Western energy crisis. The then-current CAISO and CalPX tariffs included a provision, known as the Market Monitoring and Information Protocol or “MMIP,” that addressed “gaming” and “anomalous market behavior.” The MMIP barred all participants in the CAISO and CalPX markets from engaging in gaming or anomalous behavior in those markets.<sup>42</sup> In recent years, the Commission has broadened the scope of relevant evidence of unlawful behavior to include “market practices and behaviors [that] constitute a violation of the then-current CAISO and CalPX and individual seller’s tariffs, as well as Commission orders.”<sup>43</sup> The Complainants, when they allege unlawful spot market manipulation by the Respondents, are expected to be specific when presenting their arguments and evidence on this issue; the Complainants are required to specify which tariff provision and/or portion of the tariff provision the Respondents’ conduct violated. As proposed by the Complainants in their September 26 answer, the Commission will not require Respondents to resubmit evidence already in the record in this proceeding, subject to: (1) the Complainants obtaining the Respondents’

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 2751.

<sup>42</sup> See *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345, at PP 17-19 (2003), *reh’g denied*, 106 FERC ¶ 61,020 (2004).

<sup>43</sup> *San Diego Gas and Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 135 FERC ¶ 61,183, at P 31 (2011).

waiver of any restrictions previously imposed on the evidence in other proceedings; (2) the evidence's authentication according to the Commission's regulations; and (3) the ability of the Complainants to physically or electronically locate the materials.

25. Finally, consistent with the Commission's precedent, the Respondents accused of unlawful manipulation in this proceeding may submit evidence that the activity in question was, in fact, legitimate business behavior.<sup>44</sup> With regard to the showing of a causal connection, the Supreme Court in *Morgan Stanley* stated that such evidence must demonstrate that the seller's behavior "directly affect[ed]" contract negotiations.<sup>45</sup> Thus, the Complainants, when presenting evidence of such a connection, must demonstrate that a particular seller engaged in unlawful manipulation in the spot market and that such manipulation directly affected the particular contract to which the seller was a party.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205, 206 and 309 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the issues identified in the body of this order.

(B) A presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish

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<sup>44</sup> *Nevada Power Co. v. Enron Power Mktg, Inc.*, 125 FERC ¶ 61,312, at PP 26-27 (2008); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Servs.*, 129 FERC ¶ 61,147, at PP 21-22 (2009).

<sup>45</sup> *Morgan Stanley*, 128 S. Ct. at 2750.

procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.