

156 FERC ¶ 61,109  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Utilities Commission of the State of  
California, Complainant v. Sellers of Long-Term  
Contracts to the California Department of Water  
Resources, Respondents

Docket Nos. EL02-60-007  
EL02-62-006  
(CONSOLIDATED)

California Electric Oversight Board, Complainant v.  
Sellers of Energy and Capacity Under Long-Term  
Contracts to the California Department of Water  
Resources, Respondents

ORDER DENYING MOTION FOR ORAL ARGUMENT

(Issued August 15, 2016)

1. On June 27, 2016, pursuant to Rule 711(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.711(c) (2015), Iberdrola Renewables, LLC (Iberdrola)<sup>1</sup> filed a motion for oral argument (Motion) requesting that the parties be allowed to present their arguments before the Commission. Specifically, Iberdrola requests oral argument on two points: (1) the application of the *Mobile-Sierra* presumption<sup>2</sup> to the contracts at issue in these proceedings, and (2) whether Iberdrola is a proper respondent to these proceedings. For the reasons discussed below, we deny Iberdrola's Motion.

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<sup>1</sup> Iberdrola changed its name to Avangrid Renewables, LLC d/b/a Iberdrola Renewables on February 18, 2016. However, to remain consistent with the record in this proceeding, we will continue to refer to it as Iberdrola in this order.

<sup>2</sup> See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*). See also *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cty., Wash.*, 554 U.S. 527 (2008) (*Morgan Stanley*).

2. Iberdrola states that oral argument is appropriate here because the Initial Decision<sup>3</sup> “raises issues of significant magnitude and complexity[,]”<sup>4</sup> and that such issues must be fully and completely addressed through oral argument to best assist the Commission in its decision-making process. With regard to the application of the *Mobile-Sierra* presumption, Iberdrola states that oral argument is necessary because, if the Initial Decision stands, it will be the first time that a contract subject to the *Mobile-Sierra* presumption was abrogated and such a determination raises long-term legal and policy implications of critical importance.<sup>5</sup>

3. Iberdrola also argues that oral argument will assist the Commission in redressing its status as a respondent to this proceeding.<sup>6</sup> Iberdrola maintains that it was correctly dismissed as a respondent from these proceedings in a Commission order dated April 25, 2002.<sup>7</sup> In support, Iberdrola asserts that its contract was not directly affected by market manipulation because, by the time its contract was executed (over two weeks after the end of the energy crisis), forward market prices for products delivering after 2002 had returned to pre-energy crisis levels.

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<sup>3</sup> *Pub. Utils. Comm’n of the State of Cal. v. Sellers of Long-Term Contracts to the Cal. Dep’t of Water Res.*, 155 FERC ¶ 63,004 (2016) (Initial Decision).

<sup>4</sup> Iberdrola Motion at 3.

<sup>5</sup> *Id.* at 4-5.

<sup>6</sup> *Id.* at 5.

<sup>7</sup> *See Pub. Utils. Comm’n of the State of Cal. v. Sellers of Long-Term Contracts to the Cal. Dep’t of Water Res.*, 99 FERC ¶ 61,087, at 61,384 (2002). Upon review of the April 25, 2002 order, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) reversed and remanded the Commission’s dismissal of Iberdrola because the Commission’s decision did not consider “whether some market dysfunction may have lingered after [the Commission’s June 19 price-mitigation] order took effect.” *Pub. Utils. Comm’n of the State of Cal. v. FERC*, 474 F.3d 587, 597 (9th Cir. 2006). The Ninth Circuit’s decision was vacated and remanded by the Supreme Court of the United States (U.S. Supreme Court) following *Morgan Stanley. Sempra Generation v. Pub. Utils. Comm’n of the State of Cal.*, 554 U.S. 931 (2008). The Ninth Circuit, in turn, remanded the case to the Commission for further proceedings consistent with the U.S. Supreme Court’s decision. *Pub. Utils. Comm’n of the State of Cal. v. FERC*, 550 F.3d 767 (9th Cir. 2008). On remand, the Commission decided to reevaluate Iberdrola’s dismissal in this proceeding. *Pub. Utils. Comm’n of the State of Cal. v. Sellers of Long-Term Contracts to the Cal. Dep’t of Water Res.*, 149 FERC ¶ 61,127 (2014) (Order on Remand).

4. On July 1, 2016, the California Parties<sup>8</sup> filed a motion for leave to answer and answer to Iberdrola's Motion (Answer), in which they oppose Iberdrola's Motion. However, Rule 711(c)(3) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.711(c)(3) (2015), prohibits an answer to a motion for oral argument. Therefore, we reject the California Parties' Answer.

5. Under Rule 711 of the Commission's Rules of Practice and Procedure, the decision of whether to provide for oral argument is at the discretion of the Commission.<sup>9</sup> The Commission denies Iberdrola's Motion requesting oral argument. As Iberdrola itself notes, these proceedings have been ongoing for the last 15 years, and as such, we believe the record has been thoroughly developed and the parties, including Iberdrola, have had sufficient opportunity to present their arguments. Following the U.S. Supreme Court's, and later the Ninth Circuit's, remand of this case in 2008, the Commission ordered a trial-type evidentiary hearing to supplement the existing record.<sup>10</sup> Since the record was reopened in late 2014, discovery was held, direct testimony, answering testimony, and rebuttal testimony were filed, prehearing briefs were filed, a three-week evidentiary hearing was conducted, post-hearing initial and reply briefs were filed, and closing oral arguments were made. Lastly, in the months following the issuance of the Initial Decision in April 2016, parties have filed briefs on and opposing exceptions to the Initial Decision. In sum, the factual record is thoroughly developed and the parties' arguments have been fully aired. Therefore, the Commission determines that there is nothing to be gained by again hearing the parties' arguments on these matters and thus deny the Motion.

The Commission orders:

Iberdrola's Motion for Oral Argument is hereby denied.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> The California Parties are the People of the State of California *ex rel.* Kamala D. Harris, Attorney General; the Public Utilities Commission of the State of California; Pacific Gas and Electric Company; and Southern California Edison Company.

<sup>9</sup> 18 C.F.R. § 385.711(c)(4) (2015). *See also Md. Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 127 FERC ¶ 61,274, at P 44 (2009).

<sup>10</sup> Order on Remand, 149 FERC ¶ 61,127.