

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company,)	Docket Nos. EL00-95-077
Complainant,)	
)	
v.)	
)	
Sellers of Energy and Ancillary Services)	
into Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
Respondent.)	
)	
Investigation of Practices of the California)	EL00-98-065
Independent System Operator and the California))	
Power Exchange)	

ORDER ON REQUESTS FOR
CLARIFICATION AND REHEARING

(Issued December 12, 2003)

1. In this order, we address requests for clarification and rehearing of our February 10, 2003 order (Clarification Order)¹ that allowed the parties in this proceeding to file reply comments to the evidence submissions due on March 3, 2003. This order resolves the procedural issues remaining and thereby brings closure to the evidence submission process.

Background

¹ San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., et al., 102 FERC & 61,164 (2003).

2. The Clarification Order addressed requests for rehearing and clarification of the November 20, 2002 order (Discovery Order)² that allowed the parties in this proceeding to conduct additional discovery into market manipulation by various sellers during the western power crisis of 2000 and 2001, and specified procedures for adducing this information. The Discovery Order required that no later than February 28, 2003 the parties submit directly to the Commission additional evidence and propose new and/or modified findings of fact with specific citations to the record to support any proposed substantive recommendations. The Clarification Order afforded parties the opportunity to respond to submissions made on February 28, 2003. The parties were given time until March 17, 2003 to file reply comments. The initial submissions due date was later extended from February 28 to March 3, 2003. Accordingly, the reply comment deadline was also changed to March 20, 2003.³

3. Further, the Clarification Order instructed the parties to inform the Commission in their reply comments if they believed that there was a need for cross-examination. The Clarification Order also indicated that reply comments may include testimony. The parties were also directed to include in their initial submissions and reply comments an index of all relevant material for the above-captioned proceeding, and provide a separate index for any other pending or proposed proceeding for which the filer claimed its submission was relevant.

Requests for Rehearing and Clarification

4. The California Parties⁴ requested that the Clarification Order be clarified to state that the parties' direct-cases-in-chief could be submitted only on March 3, 2003. The California Parties expressed concern that the adverse parties would present their cases-in-chief on March 20 under the guise of reply comments. We deny this request for clarification. We believe that the Clarification Order was quite clear on this point. In that

² San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., et al., 101 FERC & 61,186 (2003).

³ See San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., et al., 102 FERC & 61,194 (2003).

⁴ The California Parties are comprised of the People of the State of California, ex rel. Bill Lockyer, Attorney General; the California Electricity Oversight Board; Southern California Edison Company; the Public Utilities Commission of the State of California; and Pacific Gas and Electric Company,

order, we afforded parties the opportunity to respond to submissions made by adverse parties on March 3, 2003 by filing reply comments no later than March 20, 2003.⁵

5. The California Parties further requested the Commission to clarify that in the event a witness filed rebuttal testimony on March 20, parties who wished to cross-examine that witness would be allowed to inform the Commission after the March 20 submission of reply comments. The California Parties also requested that the Commission clarify that it did not prejudge the question of whether additional discovery procedures and/or an evidentiary hearing would be necessary. We deny these requests for clarification. We again reiterate in this order that our intention was to finalize the issues in these dockets expeditiously and to bring closure and certainty to these proceedings (to sellers and customers alike) fairly and quickly. We believe that the discovery procedures established by the Discovery Order and supplemented by the Clarification Order were sufficient to meet the concerns of the California Parties.

6. In their request for rehearing, the California Electricity Oversight Board (CEOB) and the California Public Utilities Commission (CPUC) cited the Clarification Order's directive to file a separate index for any other pending or proposed proceeding for which the filer claimed its submission was relevant, and in connection with this, requested additional time to gather, analyze and submit evidence on the issues unique to the long-term contract proceeding in Docket Nos. EL02-60 and EL02-62. We do not believe that CEOB and CPUC should have been afforded additional time. CEOB and CPUC had notice of the discovery process established by the Discovery Order from the very beginning and had sufficient time to adduce additional evidence of potential market manipulation in relevant markets. The parties were given the opportunity to flag the evidence that could be equally relevant in other proceedings.

The Commission orders:

⁵ See Clarification Order, slip opin. at 2.

The requests for clarification and rehearing are hereby denied for the reasons discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.