

111 FERC ¶61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

NEO California Power LLC

Docket No. EL02-18-001

ORDER LIFTING STAY

(Issued May 5, 2005)

1. In this order, we address a joint status report, lift a stay imposed earlier, and return a pending dispute to ongoing settlement judge procedures (but with reports now due every 90 days). Doing so will promote consensual resolution of this proceeding.

Background

2. On November 13, 2001, NEO California Power LLC (NEO California) filed a complaint alleging, among other things, that the California Independent System Operator Corporation (ISO) had not paid for all capacity purchased from NEO California, and had not assured NEO California that it would be paid for capacity sales. On December 3, 2001, the ISO responded that NEO California's complaint had been mooted.

3. On March 1, 2002, the Commission directed the ISO to file to substantiate its claims that the overdue payments to NEO California had been paid.¹ On March 18, 2002, the ISO made a compliance filing.

4. On May 20, 2003, the Commission found that the compliance filing was not sufficiently transparent to enable the Commission to determine whether it complied with the March 1 Order. Accordingly, because there remained material issues of fact in dispute, the Commission established an evidentiary hearing but held that hearing in abeyance pending settlement judge procedures. If settlement discussions continued beyond 60 days, the Commission directed the settlement judge to file a report to the Chief Judge and the Commission every 30 days reporting on the parties' progress toward settlement.²

¹ *NEO California Power LLC*, 98 FERC ¶ 61,228 (2002) (March 1 Order).

² *NEO California Power LLC*, 103 FERC ¶ 61,206 (2003).

5. Settlement discussions continued and the settlement judge issued reports.
6. On January 7, 2005, the parties were directed to report to the Commission explaining why settlement discussions have stalled, whether, when, and how settlement discussions can be restarted, or whether settlement judge procedures should be terminated and instead trial-type evidentiary proceedings commenced. In addition, the Commission's requirement that the settlement judge submit status reports every 30 days was stayed.³
7. On January 24, 2005, the parties filed a joint status report. The parties state that settlement discussions have not stalled, but rather that they have made substantial progress toward informally resolving the underlying payment dispute, and request that the Commission continue to allow informal resolution of the proceeding.

Discussion

8. In light of the parties' statement that they believe progress is being made in informal settlement discussions, we agree that at present there is no need to institute formal hearing procedures. Accordingly, we will lift the stay (but provide for reports every 90 days), and so return this dispute to settlement judge procedures.

The Commission orders:

The stay of the requirement that the settlement judge file status reports at least every 30 days is hereby lifted, but modified so that such reports need only be filed every 90 days.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

³ *NEO California Power LLC*, 110 FERC ¶ 61,010 (2005).