

136 FERC ¶ 61,200  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
John R. Norris and Cheryl A. LaFleur.

San Diego Gas & Electric Company

v.

Docket No. EL00-95-246

Sellers of Energy and Ancillary Services  
into Markets Operated by the California  
Independent System Operator Corporation and the  
California Power Exchange Corporation

Investigation of Practices of the California  
Independent System Operator and the  
California Power Exchange Corporation

Docket No. EL00-98-230

Puget Sound Energy, Inc.

v.

Docket No. EL01-10-059

Sellers of Energy and/or Capacity

Investigation of Wholesale Rates of Public Utility  
Sellers of Energy and Ancillary Services in the  
Western Market Systems Coordinating Council

Docket No. EL01-68-035

Investigation of Anomalous Bidding Behavior  
And Practices in Western Markets

Docket No. IN03-10-061

Fact-Finding Investigation Into Possible  
Manipulation of Electric and Natural Gas Prices

Docket No. PA02-2-076

American Electric Power Service Corporation

Docket No. EL03-137-023

Enron Power Marketing, Inc. and Enron Energy  
Services Inc.

Docket No. EL03-180-052

California Independent System Operator Corporation

Docket No. ER03-746-026

State of California, *ex rel.* Bill Lockyer, Attorney  
General of the State of California

v.

Docket No. EL02-71-031

British Columbia Power Exchange Corp.

Public Service Company of New Mexico

Docket No. EL03-168-009

Public Service Company of New Mexico

Docket No. EL03-200-012

People of the State of California, *ex rel.* Edmund G.  
Brown Jr., Attorney General of the State of California,  
Complainant

v.

Docket No. EL09-56-008

Powerex Corp. (f/k/a British Columbia Power Exchange  
Corp.) *et al.*

## ORDER DENYING REHEARING

(Issued September 21, 2011)

1. In this order,<sup>1</sup> the Commission denies a request for rehearing filed by Californians for Renewable Energy, Inc. (CARE) of the Commission's April 29, 2010 order approving a settlement agreement (Settlement) between Public Service Company of New Mexico

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<sup>1</sup> On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95, documenting her decision, based on a memorandum from the Office of General Counsel's General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

(PNM) and the California Parties<sup>2</sup> (collectively, the Parties) in the above-captioned proceedings.<sup>3</sup>

## **I. Background**

2. On February 12, 2010, the Parties filed the Settlement, which resolved certain claims arising from events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001, as they relate to PNM. The April 29 Order approved the Settlement as just and reasonable, rejecting CARE's comments in opposition to the Settlement, explaining that CARE waived its objections to the Settlement by filing untimely comments in opposition to it.<sup>4</sup>

3. CARE filed for rehearing of the April 29 Order. CARE alleges that "there is a pattern of synergistic corruption" in which the Commission is part of a "corrupt organization" that has allowed wholesale energy and ancillary services sellers to charge unjust and unreasonable prices for those services from 2000 to the present day.<sup>5</sup> The rehearing request also charges that certain Commission-regulated entities have been allowed by the Commission "to conspire with various agencies of the State of California to cram charges on energy ratepayers" throughout the Western Electricity Coordinating Council without their prior authorization.<sup>6</sup> CARE further alleges that "there is a pattern and practice of the United States, including [the Commission] and the State of California, participating in such synergistic corruption with the energy industry," as evidenced by governmental actions in the wake of the April 20, 2010 oil spill in the Gulf of Mexico.<sup>7</sup>

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<sup>2</sup> The California Parties include Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the People of the State of California, *ex rel.* Kamala D. Harris, Attorney General, the California Public Utilities Commission (CPUC), and the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code.

<sup>3</sup> *San Diego Gas & Elec. Co.*, 131 FERC ¶ 61,082 (2010) (April 29 Order).

<sup>4</sup> April 29 Order, 131 FERC ¶ 61,082 at P 15 (citing 18 C.F.R. § 385.602(f)(3)).

<sup>5</sup> CARE Rehearing Request at 3.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* CARE includes a photograph of the oil spill.

CARE also states that its rehearing request incorporates the arguments raised in Sacramento Municipal Utility District's (SMUD) request for rehearing.<sup>8</sup>

## II. Discussion

4. Parties are not permitted to raise new issues on rehearing. As we have explained, “raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond.”<sup>9</sup> Despite this rule, CARE’s rehearing request raises new – and hence impermissible – claims that were not raised in its untimely comments opposing the Settlement.<sup>10</sup> In its rehearing request, CARE does not challenge the April 29 Order’s determination to reject its comments as a result of its untimely submission. Rather, CARE’s rehearing request raises new, and also unsupported, allegations regarding “synergistic corruption” among various federal and state governmental agencies, including claims that the Commission was part of a “corrupt organization.”<sup>11</sup>

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<sup>8</sup> SMUD also filed a request for rehearing of the April 29 Order. SMUD and the California Parties subsequently filed with the Commission a settlement resolving certain claims between them. The Commission approved that settlement. *San Diego Gas & Elec. Co.*, 135 FERC ¶ 61,059 (2011). On May 16, 2011, SMUD and the California Parties filed an unopposed notice of withdrawal in Docket Nos. EL00-95, *et al.*, which explained that SMUD was withdrawing its pending request for rehearing of the April 29 Order, as well as other pending rehearing requests in related settlement proceedings. We therefore do not address SMUD’s request for rehearing of the April 29 Order.

<sup>9</sup> *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 & n.10 (2009); *see also* 18 C.F.R. § 385.713(d)(1) (2011) (“The Commission will not permit answers to requests for rehearing.”).

<sup>10</sup> We note that CARE’s untimely comments argued that the Settlement “crammed” charges on ratepayers without their consent. We have previously addressed this argument, explaining that this assertion raised an issue that was beyond the scope of the Commission’s jurisdiction. *See, e.g., San Diego Gas & Elec. Co.*, 130 FERC ¶ 61,183, at P 8 (2010) (“The Commission restates its conclusion that ‘cramming’ under section 1287 of EPAct [Energy Policy Act of 2005] is within the statutory authority of the Federal Trade Commission and thus beyond the scope of the Commission’s jurisdiction.”). Additionally, we have previously addressed CARE’s assertion in its comments that the CPUC does not represent ratepayers. *See, e.g., id.* P 6 & n.12 (citing to Commission orders rejecting CARE’s assertion that the CPUC does not represent ratepayers).

<sup>11</sup> CARE Rehearing Request at 3-4.

5. With respect to CARE's attempt to incorporate by reference the arguments raised in SMUD's rehearing request, that pleading has since been withdrawn and CARE itself did not raise these arguments before and, therefore, we find that CARE is again raising new claims on rehearing.<sup>12</sup>

6. For the foregoing reasons, we deny CARE's request for rehearing.<sup>13</sup>

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<sup>12</sup> The rehearing request also does not explain why the arguments raised in SMUD's rehearing request are relevant to CARE. In any event, as noted above, SMUD has withdrawn its request for rehearing.

<sup>13</sup> In addition to impermissibly raising new claims on rehearing, CARE failed to include the required statement of issues, which is expressly required by Rule 713 of our Rules of Practice and Procedure. *See* 18 C.F.R. § 385.713(c)(2) (2011). This represents yet another instance in which CARE has failed to satisfy the basic requirements set forth in our Rules of Practice and Procedure. *See, e.g.*, April 29 Order, 131 FERC ¶ 61,082 at P 15 (rejecting CARE's untimely comments); *San Diego Gas & Elec. Co.*, 131 FERC ¶ 61,083 at P 17 (same); *Californians for Renewable Energy, Inc. v. Pacific Gas & Elec. Co., et al.*, 134 FERC ¶ 61,060, at P 56, *order denying reh'g*, 134 FERC ¶ 61,207 (2011) ("We find that CARE fails to provide sufficient information to satisfy the Commission rules applicable to complaints."); *San Diego Gas & Elec. Co.*, 130 FERC ¶ 61,183, at n.13 (2010) (noting that CARE had failed to file a statement of issues as part of its request for rehearing); *Californians for Renewable Energy, Inc. v. Cal. Pub. Utils. Comm'n, et al.*, 129 FERC ¶ 61,075, at P 13-14 (2009), *order denying reh'g*, 131 FERC ¶ 61,102 (2010) (finding that CARE failed to satisfy rules governing FPA section 206 complaints); *Californians for Renewable Energy, Inc. v. Pacific Gas & Elec. Co., et al.*, 129 FERC ¶ 61,141, at P 10-11 (2009) (same); *Duke Energy Trading and Marketing, L.L.C., et al.*, 126 FERC ¶ 61,234, at P 44 (2009) (denying rehearing request because CARE raised issues for the first time on rehearing).

The Commission orders:

CARE's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission. Commissioners Spitzer and Moeller are not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.