

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

San Diego Gas & Electric Company,
Complainant,
Docket Nos. EL00-95-000,
EL00-95-045,
EL00-95-069

v.

Sellers of Energy and Ancillary Services
Into Markets Operated by the
California Independent System Operator
Corporation and the California Power
Exchange,
Respondents.

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange
Docket Nos. EL00-98-000,
EL00-98-042,
EL00-98-058

Fact-Finding Investigation Into Possible
Manipulation of Electric and Natural
Gas Prices
Docket No. PA02-2-000

Reliant Energy Services, Inc.
Docket No. EL03-59-000

BP Energy Company
Docket No. EL03-60-000

Enron Power Marketing, Inc. and Enron
Energy Services, Inc.
Docket No. EL03-77-000

Bridgeline Gas Marketing, L.L.C., Citrus
Trading Corporation, ENA Upstream
Company, LLC, Enron Canada Corp., Enron
Compression Services Company, Enron
Energy Services, Inc., Enron MW, L.L.C.,
and Enron North America Corp.
Docket No. RP03-311-000

El Paso Electric Company, Enron Power
Marketing, Inc., Enron Capital and Trade
Resources Corporation

Docket No. EL02-113-000

Puget Sound Energy, Inc.,
Complainant,

Docket No. EL01-10-000

v.

All Jurisdictional Sellers of Energy
and/or Capacity at Wholesale Into Electric
Energy and/or Capacity Markets in the
Pacific Northwest, Including Parties to the
Western Systems Power Pool Agreement,
Respondents.

ORDER REJECTING REQUEST FOR REHEARING

(Issued July 31, 2003)

1. In this order, we reject Californians for Renewable Energy's (CARE) "Request for Hearing" as an untimely request for rehearing concerning an order the Commission issued on July 17, 2002.¹ This order benefits customers by providing certainty to Commission decisions through the enforcement of the Federal Power Act and the Commission's regulations.
2. In its June 21, 2003 "Request for Hearing," CARE contends that "institutional discrimination" is perpetuated by the federal and state government through a California Independent System Operator (CAISO) governance scheme that effectively disenfranchises low-income communities and communities of color. CARE argues that the CAISO has taken actions that discriminate on the basis of race, color, sex, and national origin against low income people of color in San Francisco's Bayview Hunters Point Neighborhood in violation of Title VI of the Civil Rights Act of 1964.
3. The CAISO contends that CARE's "Request for Hearing" asks the Commission to add to the complex and quite different set of issues already before the Commission in the referenced dockets. Moreover, the CAISO asserts that the Request for Hearing is

¹See Mirant Delta, LLC, et al., 100 FERC ¶ 61,059 (2002) (July 17 Order), order rejecting and denying reh'g, 101 FERC ¶ 61,078 (2002).

procedurally defective, raises an issue that is not germane to the captioned proceedings, and seeks remedies over which the Commission does not have jurisdiction. Specifically, the CAISO states that the CARE Request for Hearing fails to comply with the Commission's requirements for motions in that it fails to contain a clear and concise statement of facts and law that support the motion. The CAISO also states that CARE's filing is woefully out-of-time because CARE filed its request almost three years after most of these proceedings were initiated.

4. More fundamentally, according to the CAISO, CARE raises allegations regarding the CAISO's governance that are wholly unrelated to the core issues in these ongoing proceedings. The CAISO asserts that the Commission does not have jurisdiction over Title VI claims or any other claims under the Civil Rights Act of 1964. Additionally, the CAISO points out that the composition of its is prescribed by California statute.

Discussion

5. CARE requests that the Commission modify the findings in the July 17 Order through the implementation of its proposal to "bring a voice [to] affect this low-income community of color." CARE's "Request for Hearing" is, in essence, an untimely request for rehearing of the July 17 Order. Because CARE filed this request for rehearing well beyond the 30-day statutory deadline for a rehearing request, we reject CARE's untimely request for rehearing. As the courts have repeatedly recognized, the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA, and the Commission has no discretion to extend that deadline.² Similarly, the Commission has long held that it lacks the authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order.³

²See City of Campbell v. FERC, 770 F.2d 1180, 1183 (D.C. Cir. 1985) ("The 30-day time requirement of [the FPA] is as much a part of the jurisdictional threshold as the mandate to file for a rehearing."); Boston Gas Co. v. FERC, 575 F.2d 975, 977-78, 979 (1st Cir. 1978) (same; describing identical rehearing provision of Natural Gas Act as "a tightly structured and formal provision. Neither the Commission nor the courts are given any form of jurisdictional discretion."). See also Sierra Association for Environment v. FERC, 791 F.2d 1403, 1406 (9th Cir. 1986).

³See, e.g., New England Power Pool, 89 FERC ¶ 61,022 at 61,076 (2000); Arkansas Power & Light Co., 19 FERC ¶ 61,115 at 61,217-18 (1982), reh'g denied, 20 FERC ¶ 61,013 at 61,034 (1982). See also Public Service Company of New

(continued...)

6. Additionally, the Commission lacks authority to address the issues of racial and economic discrimination outlined in CARE's request. CARE asserts that "institutional discrimination" is perpetuated by the CAISO's governance structure. However, since the Commission's legal authority over the CAISO governing board composition is derived from the Federal Power Act and the purpose of this act is "economic regulation of entrepreneurs engaged in resource developments,"⁴ not to rectify racial and socio-economic discrimination, the Commission cannot rely on racial discrimination as a basis for changing the CAISO's governing board.

The Commission orders:

The Commission hereby rejects CARE's request for rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

³(...continued)
Hampshire, 56 FERC ¶ 61,105 at 61,403 (1991); CMS Midland, Inc., 56 FERC ¶ 61,177 at 61,623 (1991).

⁴NAACP v. Federal Power Commission, 425 U.S. 662, 664 (1976) (holding that the legislative intent of neither the Federal Power Act nor the Natural Gas Act included a "public interest" in eliminating discrimination).