

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas and Electric Company

Docket Nos. EL00-95-081

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

EL00-98-069

ORDER GRANTING MOTION TO WITHDRAW FILING

(Issued March 4, 2004)

1. In this order, we grant the motion of Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc. (collectively Reliant) to withdraw their Supplement to Request for Rehearing and Request for Clarification (Supplemental Request) filed in Docket Nos. EL00-95-081 and EL00-98-069. This order benefits customers by expediting the resolution of this proceeding.

Background

2. On October 16, 2003, the Commission issued an Order on Rehearing on issues surrounding the determination of the Mitigated Market Clearing Price (MMCP). See Order on Proposed Findings on Refund Liability, 102 FERC ¶ 61,317 (2003) (Refund Order), order on reh'g, 105 FERC ¶ 61,066 (2003) (Rehearing Order). Following the issuance of the Refund Order, Reliant filed the Supplemental Request. Subsequently, on October 2, 2003, the Commission approved a settlement with Reliant in Docket No. PA02-2-000.¹ On October 28, 2003, Reliant filed a request for Modification of the Order and Expedited Consideration (Request for Modification). In light of the settlement, it

¹ Order Approving Stipulation and Consent Agreement in Reliant Energy Services, Inc., et al., 105 FERC ¶ 61,003 (2003).

requested that the Commission delete paragraphs 41 and 42 of the Rehearing Order, which address the Supplemental Request.

3. In an Errata Notice and Order Granting Motion for Modification (Modification Order)² dated November 26, 2003, the Commission stated that upon the withdrawal of Reliant's Supplemental Request, paragraphs 41 and 42 will be deleted from the Rehearing Order.³ The Commission stated that these paragraphs address the issues Reliant raised in its Supplemental Request, and, therefore, will be unnecessary upon the withdrawal of that pleading. On December 3, 2003, Reliant filed this Motion to Withdraw its Supplemental Request (Motion to Withdraw). On December 18, 2003, the California Parties⁴ filed an Answer in Opposition to Reliant's Motion for Withdrawal of Pleading and Request for Rehearing of Order Granting Reliant's Request for Modification.

Comments

4. The California Parties oppose Reliant's Motion to Withdraw, contending that the Commission should refuse to grant a motion to withdraw a pleading where the withdrawal is opposed and there is good cause to deny withdrawal. They claim that good cause exists to deny Reliant's Request to Withdraw because paragraphs 41 and 42 of the Rehearing Order provide useful and additional rationale in support of the Commission's decision in that case. In addition, they argue that modification of the Rehearing Order would "detract from the clarity and completeness of the Commission's rationale."⁵

Discussion

5. As explained in Reliant's Request for Modification, after the issuance of the Refund Order and after the filing of the Supplemental Request, but prior to the issuance

² 105 FERC ¶ 61,252 (2003).

³ Id. Although the Modification Order stated that the Commission would delete the paragraphs from the Refund Order, we clarify that the paragraphs are to be vacated from the Rehearing Order.

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

⁵ Answer at 3.

of the Rehearing Order which addressed the Supplemental Request, the Commission approved a settlement with Reliant in Docket No. PA02-2-000. In light of the settlement, there is good cause to grant Reliant's request to withdraw the Supplemental Request. Paragraphs 41 and 42 of the Rehearing Order respond solely to Reliant's pleading which has now been withdrawn. Therefore, consistent with the express language of the Modification Order, these paragraphs will be vacated. For this same reason, we will also vacate all but the first sentence of paragraph 27, which contains a summary of Reliant's Supplemental Request.

6. While we typically do not vacate our orders,⁶ we believe that vacating the above-noted language is appropriate in the circumstance of this proceeding. As noted, in the Modification Order we agreed up front that with the grant of withdrawal of Reliant's Supplemental Request we would vacate the language responding to the Supplemental Request. This language, after all, responds solely to Reliant's arguments and neither is critical to understanding the Commission's rationale (explained in greater detail below) nor establishing new policy. Moreover, granting the withdrawal and vacating this language leaves the parties in essentially the same position as if the Supplemental Request had never been filed and thus never addressed and, given that this language adds nothing critical to the Commission's rationale, leaves the parties in essentially the same position as if paragraphs 41 and 42 and all but the first sentence of paragraph 27 of the Rehearing Order had not been vacated. Accordingly, we will allow the vacateur.

7. The California Parties' primary objection to the request to vacate paragraphs 41 and 42 is that this modification to the Rehearing Order would "detract from the clarity and completeness of the Commission's rationale" for calculating refunds. The rationale supporting the Commission's decision for calculating refunds in this proceeding is fully laid out in the Refund Order, at paragraphs 56 to 60, and elsewhere in the Rehearing Order, at paragraphs 23 to 25 and 37 to 40. The vacated language responds solely to arguments raised by Reliant and does not detract from the Commission's reasoning underlying the refund calculation.

8. In accordance with the Modification Order, we grant Reliant's request to withdraw the Supplemental Request and we will vacate the related text from the Rehearing Order.

The Commission orders:

(A) Reliant's request to withdraw the Supplemental Request is hereby granted.

⁶ E.g., *Constellation Power Source, Inc. v. California Power Exchange*, 100 FERC ¶ 61,380 at P 20 (2002).

(B) Paragraphs 41 and 42, and all but the first sentence of paragraph 27, of the October 16, 2003 Rehearing Order in this proceeding are hereby vacated, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.