

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 No. EL00-95-084

v.

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

Investigation of Practices of the California Independent  
System Operator Corporation and the California  
Power Exchange Docket No. EL00-98-072

Fact-Finding Investigation Into Possible Manipulation  
of Electric and Natural Gas Prices Docket No. PA02-2-012

Reliant Energy Services, Inc. Docket No. EL03-59-001

BP Energy Company Docket No. EL03-60-002

Enron Power Marketing, Inc.  
Enron Energy Services, Inc. Docket No. EL03-77-003

Bridgeline Gas Marketing, LLC  
Citrus Trading Corporation  
ENA Upstream Company, LLC  
Enron Canada Corporation  
Enron Compression Services Company  
Enron Energy Services, Inc.  
Enron MW, LLC  
Enron North America Corporation Docket No. RP03-311-003

El Paso Electric Company  
Enron Power Marketing, Inc.  
Enron Capital and Trade Resources Corporation Docket No. EL02-113-003

Portland General Electric Company

Docket No. EL02-114-003

Enron Power Marketing, Inc.  
Avista Corporation  
Avista Energy, Inc.

Docket No. EL02-115-005

## ORDER DENYING REHEARING

(Issued October 7, 2004)

1. In an order issued on June 27, 2003, the Commission denied a motion to consolidate these proceedings.<sup>1</sup> The California Parties<sup>2</sup> jointly filed a request for rehearing of the June 27 Order. As discussed below, we deny rehearing. This order benefits market participants by preventing inefficiency and waste of Commission and party resources.

### **Background**

2. On April 29, 2003, the California Parties filed a motion (April 29 Motion) for the consolidation of the above-captioned proceedings. The parties argued that, because the evidence demonstrated that the market manipulation “was market-wide and interrelated, any proceeding to determine the remedy for such conduct” must be correspondingly market-wide.<sup>3</sup>

3. In the June 27 Order, the Commission denied the motion, on the ground that consolidating these proceedings into one proceeding (or even three, as some parties had proposed) “would not lead to increased efficiency in the resolution of factual or legal issues.”<sup>4</sup> It went on to explain:

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<sup>1</sup> *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services, et al.*, 103 FERC ¶ 61,359 (2003) (June 27 Order). The request for rehearing also addresses a protective order granted by the Commission in the June 27 Order. However, in a letter filed with the Commission on May 21, 2004, the California Parties conceded that their request for rehearing was moot with respect to that issue.

<sup>2</sup> People of the State of California ex rel. Bill Lockyer, Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas and Electric Company, and Southern California Edison Company.

<sup>3</sup> California Parties’ Motion for Institution of Consolidated Proceeding at 6.

<sup>4</sup> June 27 Order at P 11 (footnote omitted).

There remain distinct factual and legal issues in each proceeding that are in different stages of development. Consolidation would only act to delay more advanced proceedings and the resolution of discrete issues, while other proceedings are given the opportunity to catch-up. Furthermore, we find that a massive single proceeding on the scale that the California Parties propose would create more problems than it would solve and would create unnecessary administrative problems for Commission staff and resources.<sup>[5]</sup>

The Commission was also concerned that consolidation would be “highly inefficient and costly” for California municipalities and other small entities, which “would be forced to participate in a wide-ranging proceeding on issues in which they have little interest.”<sup>6</sup>

4. On rehearing, the California Parties assert that the March 26 Order erred by deciding that these proceedings should not be consolidated. In support, they reiterate the claim made in their motion that the evidence they have already introduced in these proceedings demonstrates the interrelated nature of both the tariff violations and the California markets, necessitating consolidation. In addition, they maintain that an August 21, 2002, order (August 21 Order) of the United States Court of Appeals for the Ninth Circuit,<sup>7</sup> which required the Commission to permit the California Parties to adduce evidence of market manipulation in the so-called Refund Proceeding, “implicitly found unacceptable” the notion that these cases should not be consolidated.<sup>8</sup> Finally, the California Parties argue that section 313(b) of the Federal Power Act (FPA),<sup>9</sup> pursuant to which the court issued the August 21 Order, requires consolidation of these proceeding.

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<sup>5</sup> *Id.* (footnote omitted).

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

<sup>7</sup> *Public Utilities Commission of the State of California, et al. v. FERC*, (9<sup>th</sup> Cir. Docket Nos. 01-71051, *et al.* August 21, 2002).

<sup>8</sup> California Parties’ Request for Rehearing at 19.

<sup>9</sup> 16 U.S.C. § 825l(b) (2000).

## Discussion

5. The Commission denies rehearing. We rejected in the June 27 Order the California Parties' argument that the interrelated nature of the tariff violations and the market required consolidation, and we see no reason to rule differently here. We would only add that our decision in this regard is a reasonable exercise of our considerable discretion to order the proceedings and control the dockets before us.<sup>10</sup>

6. As to the arguments advanced for the first time on rehearing (i.e., that the August 22 Order and FPA section 313(b) require consolidation), the California Parties make no attempt to suggest that these arguments could not have been made in their original motion. As we recently observed, absent a showing of good cause,

[t]he Commission generally looks with disfavor on parties raising on rehearing issues that should have been raised earlier. Such behavior is disruptive to the administrative process because it has the effect of moving the target for parties seeking a final administrative decision.<sup>[11]</sup>

As the California Parties suggest no good cause for their failure to raise these arguments in more timely manner, or for the Commission to now consider them, we reject them.

### The Commission orders:

The Commission hereby denies the California Parties' request for rehearing, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Acting Secretary.

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<sup>10</sup> *E.g., Algonquin Gas Transmission Co. v. FERC*, 948 F.2d 1305, 1314 (D.C. Cir. 1991).

<sup>11</sup> *Californians for Renewable Energy, Inc. v. Calpine Energy Services, et al.*, 107 FERC ¶ 61,238 at P 7 (2004) (footnote omitted), citing *Tenaska Power Services Co. v. Southwest Power Pool, Inc.*, 102 FERC ¶ 61,140 at P 14 (2003); *Baltimore Gas & Electric Company, et al.*, 91 FERC ¶ 61,270 at 61,922 (2000); *Northern States Power Company (Minnesota), et al.*, 64 FERC ¶ 61,172 at 62,522 (1993); *Cities and Villages of Albany and Hanover, Illinois, et al.*, 61 FERC ¶ 61,362 at 62,451 (1992).