

130 FERC ¶ 61,183
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, and John R. Norris.

San Diego Gas & Electric Company

Docket No. EL00-95-238

v.

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. EL00-98-222

Puget Sound Energy, Inc.

Docket No. EL01-10-053

v.

Sellers of Energy and/or Capacity

Investigation of Anomalous Bidding Behavior
And Practices in Western Markets

Docket No. IN03-10-054

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

Docket No. PA02-2-070

American Electric Power Service Corporation

Docket No. EL03-137-018

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

Docket No. EL03-180-047

California Independent System Operator Corporation

Docket No. ER03-746-019

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

Docket No. EL02-71-026

v.

British Columbia Power Exchange Corp.

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

Docket No. EL09-56-003

v.

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

Cargill-Alliant, LLC

Docket No. EL03-144-005

ORDER DENYING REHEARING

(Issued March 18, 2010)

1. In this order, the Commission denies a request for rehearing filed by Californians for Renewable Energy, Inc. (CARE) of the Commission's December 17, 2009 order approving a settlement agreement (Settlement) between the California Parties¹ and

¹ For purposes of this Settlement, the California Parties include:

Pacific Gas & Electric Company (PG&E), Southern California Edison Company (SoCal Edison), San Diego Gas & Electric Company (SDG&E), the People of the State of California, *ex rel.* Edmund G. Brown, Attorney General, and the California Public Utilities Commission (CPUC). For purposes of this Settlement, the California Parties also include the California Department of Water Resources (CERS) (acting solely under authority and powers created by California Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in sections 80000 through 80270 of the California Water Code).

Cargill Power Markets, LLC (Cargill) (collectively, Parties) in the above captioned proceedings.²

Background

2. On October 14, 2009, the California Parties and Cargill filed the Settlement, which resolved claims arising from events and transactions in the western energy markets during the period January 1, 2000 through June 20, 2001 as they relate to Cargill.³ The Settlement's monetary consideration is comprised of: (1) Cargill's receivables that are held by the California Power Exchange Corp. (CalPX) and estimated to be \$42,852 as of March 31, 2009, plus interest; (2) cash consideration from Cargill in the amount of \$761,301, plus interest; and (3) the assignment of any future refunds that Cargill is entitled to receive.⁴ The Settlement provides that the California Utilities (i.e., PG&E, SoCal Edison, and SDG&E) assume responsibility for Cargill's true-ups of receivables, any refund amounts that Cargill owes to non-settling participants for transactions in the western energy markets during the settlement period, and any interest shortfall the Commission allocates to Cargill.⁵ The California Utilities' obligation to make payments on behalf of Cargill shall not exceed the total amount actually paid to the California Utilities under the Settlement.⁶

3. In the December 17 Order, the Commission rejected CARE's arguments on the merits and approved the Settlement, finding that the overall result of the Settlement was just and reasonable.⁷

Request for Rehearing

4. CARE raises two arguments on rehearing. First, CARE argues that the Commission erred in finding that the CPUC's authority to represent ratepayers has not been compromised by its participation in electricity markets. Second, CARE argues that

² *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 29 FERC ¶ 61,258 (2009) (December 17 Order).

³ See Parties' October 14, 2009 Joint Explanatory Statement at 2.

⁴ *Id.* at 3, 15.

⁵ *Id.* at 3, 16.

⁶ *Id.* at 16.

⁷ December 17 Order, 129 FERC ¶ 61,258 at P 19, 22, 25, 26.

the Commission erred in rejecting CARE's "cramming" argument,⁸ because both the Federal Trade Commission and the Commission share authority to protect ratepayers under the Energy Policy Act of 2005 (EPAAct).⁹ We address each of these arguments below.

CPUC Representing Ratepayers

5. In its rehearing request, CARE cites at length the Commission's determination in the December 17 Order that the CPUC and the California Attorney General represent California ratepayers under state constitutional and statutory authority. CARE asserts that the Commission erred in approving the Settlement, because the Commission failed to demonstrate that the CPUC's authority to represent ratepayers has not been compromised by the State of California's role as a market participant, through the California Department of Water Resources, in proceedings before the Commission and in the courts.¹⁰ In addition, CARE argues that this finding was in error because "[b]y denying jurisdiction FERC violates CARE[']s right to due process before the Federal Court as this issue is pending review before the Ninth Circuit Court of Appeals over a similar finding by FERC under Docket EL03-130 *et al.*"¹¹

6. The Commission denies rehearing. Regarding whether the CPUC and the California Attorney General represent California ratepayers, CARE merely repeats the argument addressed by the Commission in the December 17 Order. Thus, the Commission reiterates its previous determination that the CPUC and the California Attorney General, which both executed the Settlement, represent California ratepayers.¹²

⁸ CARE January 19, 2010 Rehearing Request at 4-5; CARE October 19, 2009 Comments at 3, 7 (CARE argued that approving this settlement over CARE's objections would amount to cramming additional unwanted goods and services to an electric consumer, citing EPAAct section 1287, 42 U.S.C. § 16471(c) (2006)).

⁹ CARE January 19, 2010 Rehearing Request at 5.

¹⁰ CARE January 19, 2010 Rehearing Request at 4.

¹¹ *Id.* at 6.

¹² See December 17 Order, 129 FERC ¶ 61,258 at P 25 (citing Cal. Pub. Util. Code § 307 (2008), Cal. Const. Art. V § 13; Cal. Gov't Code § 12511 (2008); Cal. Bus. & Prof. Code §§ 16700, *et seq.*, 17200, *et seq.* (2008)); see also *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Servs.*, 129 FERC ¶ 61,259, at P 36 (2009) (same); *Duke Energy Trading and Mktg., LLC*, 125 FERC ¶ 61,345 (2008), *reh'g denied*, 126 FERC ¶ 61,234, at P 45 (2009) (same), *appeal docketed*, No. 09-71515 (9th Cir. 2009).

CARE has advanced no reason to persuade us to find otherwise. Regarding CARE's argument that the Commission's finding denies jurisdiction and due process to CARE, the Commission notes that this argument is not clearly articulated. CARE never explains what it means that the Commission's determination denies it jurisdiction or due process, leaving the Commission to speculate as to CARE's argument.¹³ Further, CARE raises this argument for the first time on rehearing, and the Commission looks with disfavor on parties raising issues for the first time on rehearing, in part, because other parties are not permitted to respond to a request for rehearing.¹⁴ Nevertheless, the Commission finds that its approval of the settlement does not interfere in any way with CARE's currently-docketed appeal of the Commission's finding and reaffirms its previous finding¹⁵ that the CPUC does in fact represent California ratepayers.

Cramming

7. CARE also contends that the Commission erred in its December 17 Order in finding that section 1287 of EAct is beyond the scope of the Commission's jurisdiction. CARE simply argues, without further explanation, that "[t]his is in error because both FTC and FERC share such authority to protect ratepayers under the EAct."¹⁶

¹³ The Commission also notes that CARE's rehearing request is deficient because it fails to include a Statement of Issues section separate from the arguments made, as required by Rule 713 of the Commission's Rules of Practice and Procedure. *See* 18 C.F.R. 385.713(c)(2) (2009). Although we are exercising our discretion to address CARE's rehearing request on the merits notwithstanding this procedural error, we caution CARE to comply with the Commission's Rules of Practice and Procedure in the future. Failure to comply with these requirements may result in dismissal of CARE's pleadings.

¹⁴ *See, e.g., PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 and n.10 (2009) ("The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond."); *Allegheny Energy Supply Co., L.L.C.*, 122 FERC ¶ 61,104, at P 6 (2008) (same); 18 C.F.R. § 385.713(d) (2009) ("The Commission will not permit answers to requests for rehearing.").

¹⁵ *See* note 12 *supra*.

¹⁶ CARE January 19, 2010 Rehearing Request at 5. *See also* CARE October 19, 2009 Comments at 3, 7 (defining "cramming" as the selling of unwanted goods and services to an electric consumer, citing EAct section 1287, 42 U.S.C. § 16471(c) (2006)).

8. The Commission denies rehearing, because CARE's request for rehearing repeats – without further elaboration or explication – its previous argument, which the Commission rejected in the December 17 Order. CARE's argument remains unclear and the Commission can only speculate that CARE's reference to EAct pertains to the Federal Trade Commission's authority to address "cramming" in section 1287 of EAct.¹⁷ This section of EAct reads: "(c) Cramming.—The Federal Trade Commission may issue rules prohibiting the sale of good and services to an electric consumer unless expressly authorized by law or the electric consumer."¹⁸ The Commission restates its conclusion that "cramming" under section 1287 of EAct is within the statutory authority of the Federal Trade Commission and thus beyond the scope of the Commission's jurisdiction.

The Commission orders:

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

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁷ Pub. L. No. 190-58, § 1287, 119 Stat. 594, 981 (2005).

¹⁸ 42 U.S.C. § 16471(c) (2006).