
FEDERAL ENERGY REGULATORY COMMISSION

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NEWS RELEASE

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COMMISSION UPHOLDS WESTERN POWER CONTRACTS, CONNECTICUT CONTRACT

Upholding the findings of administrative law judges (ALJs), the Federal Energy Regulatory Commission today found that the evidence did not support modifying power contracts in the West, saying this would not be in the public interest and that the buyers had failed to make a case for such action. A request for refunds in the Pacific Northwest was also denied.

At issue were long-term contracts between the California Department of Water Resources (CDWR), the California Public Utilities Commission and the California Electricity Oversight Board and six sellers; contracts held by Nevada Power, Sierra Pacific, Southern California Water Company, and Public Utility District No. 1 Snohomish County, Washington; a complaint filed by PacifiCorp seeking to modify 12 power contracts; and a request by other utilities in a case initiated by Puget Sound Energy for refunds.

In a further order dealing with contract issues, the Commission said that NRG Energy, which has filed for bankruptcy protection and sought to reject its contract to sell power to Connecticut Power and Light (CP&L), remains obligated to continue to provide power pursuant to its contract while an ALJ examines the facts and issues surrounding contract termination.

(2)

The decisions in all five orders underlined the Commission's view that contracts—regardless of whether prices substantially rise, as in Connecticut, or fall, as in California and elsewhere in the West—should not be broken lightly.

In the western contracts cases, the Commission affirmed the ALJs' conclusions that all of the contracts should be evaluated under the public interest standard to justify contract modification or abrogation.

The U.S. Supreme Court has ruled that, under the public interest standard, the complainant must show that the contract is contrary to the public interest, such as where it might impair the financial ability of a public utility to continue service, cast upon other customers an excessive burden, or be unduly discriminatory.

In the CDWR order, the Commission noted that Commission and court precedent clearly establish that allegations that contracts have become uneconomic by the passage of time do not render them contrary to the public interest under the Federal Power Act.

The contracts were entered into voluntarily in a market-based environment, the Commission pointed out. The Commission found no evidence of unfairness, bad faith, or duress in the original contract negotiations. It said there was no credible evidence that the contracts placed the complainants in financial distress or that ratepayers will bear an excessive burden.

In the second order, responding to complaints from Nevada Power and others, the Commission denied claims that dysfunctions in the California electricity spot markets caused long-term contracts negotiated in bilateral markets in California, Washington and Nevada and entered into under a Western Systems Power Pool (WSSP) agreement to be unjust and unreasonable.

The Commission confirmed an ALJ's decision denying the complaints on the ground that the parties had not met the public interest standard justifying contract modification or refunds.

The complainants accepted market risks in signing the contracts and benefitted from resales of the energy purchased, the Commission stated.

(3)

It noted that dysfunctional spot sales markets do not justify changing the long-term contracts. Under the public interest standard, it must be shown that the rates, terms and conditions are contrary to the public interest. The complainants did not present credible evidence that their ratepayers will pay excessively burdensome rates due to the contracts, the Commission added.

The Commission also noted that there was no evidence to support a finding that there was market manipulation specific to the long-term contracts.

In the third order, dealing with PacifiCorp's complaint, the Commission again affirmed an ALJ's decision, saying that the *Mobile-Sierra* public interest standard applied to these contracts and that PacifiCorp had not provided evidence that satisfied its burden of proof for contract modification under the public interest standard.

In the fourth order, the Commission granted rehearing of a December 2000 denial of a complaint filed by Puget Sound Energy and said that relief sought by Puget has already been provided by a June 2001 order that prescribed price mitigation in the electricity spot markets throughout the West.

As for retroactive refunds for spot market bilateral sales in the Northwest, requested by other complainants, the Commission said they were not warranted, supporting the finding of an ALJ. In denying refunds, the Commission said it agreed with the state commissions, which it noted have an important interest in protecting many of the ultimate customers in the region. The Commission's lack of jurisdiction over so many of the sellers in the Pacific Northwest would lead to an inequitable outcome if retroactive refunds were ordered.

In the fifth order, involving power supplies in Connecticut, the Commission concluded that, despite its bankruptcy status, NRG Energy must continue to honor its contract to supply power to CL&P and instituted proceedings to determine whether the evidence under *Mobile-Sierra* justifies contract termination. The Commission instituted a paper hearing to collect this evidence, with the responses and answers due within ten and 20 days, respectively, of the date of the order. NRG has asserted that CL&P breached its contract last summer by withholding payments NRG claims are due to it, and that NRG is entitled to terminate their contract. The Commission ruled that CL&P did not breach the contract.

(4)

The complaints addressed in the orders involving markets in the West concern contracts signed in spring 2001 before the Commission enacted price mitigation measures in June 2001.

R-03-22

(30)