

110 FERC ¶ 61,153
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,
Complainant,

v.

Docket No. EL00-95-121

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

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

Docket No. EL00-98-108

ORDER DISMISSING REHEARING

(Issued February 14, 2005)

1. On December 21, 2004, the Commission issued an order in this proceeding providing a briefing schedule to obtain comments from interested parties concerning the appropriateness of granting a particular exemption from certain provisions of the California Independent System Operator Corporation's (CAISO) outage control protocol.¹ The California Department of Water Resources (DWR) seeks rehearing of the December 21 Order. We dismiss DWR's request for rehearing of the December 21 Order because, under Rule 713 of the Commission's Rules of Practice and Procedure, a party can seek rehearing only of a Commission final decision or final order.²

¹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,306 (2004) (December 21 Order).

² 18 C.F.R. § 385.713 (2004).

Background

2. In April 2001, the Commission adopted a market monitoring and mitigation plan for wholesale power markets in California.³ Among the measures put in place were those intended to increase CAISO's coordination and control over outages in order to ensure that sufficient generation capacity will be available to meet anticipated market needs. Since DWR operates six hydroelectric generation units and one geo-thermal unit in California, those procedures were to apply to DWR.

3. DWR, a state agency charged with managing California's water supply, sought rehearing of the April 26 Order, challenging (among other things) CAISO's authority to control DWR's planned outages because all of its hydroelectric generation has water management and control as a primary purpose. DWR argued, among other things, that it must balance a number of considerations when it establishes generator maintenance schedules and that allowing CAISO to evaluate its outages did not take into consideration the efficient and reliable operation of California's water delivery and control. In an order on rehearing, issued June 19, 2001, the Commission affirmed that CAISO has the authority to coordinate and control generation outage schedules for generators with PGAs (such as DWR).⁴ DWR filed a petition for review of the orders objecting that the Commission did not adequately respond to its position that CAISO should not control DWR outages in the same way that it controls the outages of other generators.

4. On August 27, 2003, the Ninth Circuit vacated and remanded in pertinent part the Commission's orders.⁵ The court noted that DWR, whose primary mission is the delivery of water, and merchant generators, whose primary function is to generate and distribute electricity, differ in significant ways. The court found that the Commission had not answered the question whether those differences are material for purposes of outage control and that the answer was not evident in the record.

³ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 95 FERC ¶ 61,115 (April 26 Order), *order on reh'g*, 95 FERC ¶ 61,418 (2001) (June 19, 2001 Order).

⁴ June 19, 2001 Order, 95 FERC at 62,551.

⁵ *California Department of Water Resources v. FERC*, 341 F.3d 906 (9th Cir. 2003), *reh'g denied*, 361 F.3d 517 (9th Cir. 2004).

5. On June 22, 2004, the Commission issued an order on remand exempting DWR's hydroelectric facilities from CAISO outage approval requirements.⁶ In reaching this outcome, the Commission recognized the additional challenge DWR has in balancing multiple uses for its water. The Commission further explained that neither CAISO nor any other party had stated that exempting DWR would place the reliability of the electric grid at risk, noting that CAISO has many options at its disposal to maintain reliability and that DWR should be able to perform its primary water management mission without having to accommodate CAISO scheduling requests.

6. CAISO sought rehearing of the June 22 Order asserting that the Commission's decision to exempt DWR should be reversed because it threatens the reliability of the ISO controlled grid and provides no particular water delivery-related benefit to DWR. CAISO contended that its outage coordination does not interfere in any material manner with DWR's water delivery function because the outage coordination tariff provisions do not give CAISO the authority to dictate on a daily basis whether a specific unit should be running or not. CAISO further stated that neither it nor any other party had addressed the issue of the appropriateness of granting an exemption to DWR's units.

7. In the December 21, Order, the Commission provided an opportunity for comments on the matter before issuing a dispositive order on CAISO's request for rehearing. The Commission noted that CAISO had relied in part on documents and conversations that were not in the record in this proceeding, and had provided bare assertions that the exemption provided in the June 22 Order would interfere with its ability to prevent and respond to System Emergencies. Thus, the Commission invited comments on the issues raised in CAISO's rehearing request and laid out a schedule for their submission.

Request for Rehearing

8. DWR asserts that the December 21 Order lacks reasoned decisionmaking to the extent it rests on CAISO's assertion that it had no prior opportunity to comment on an exemption for DWR's units. DWR states that the Commission apparently accepted at face value the CAISO's contention that there had been no occasion to address the issue of the appropriateness of granting an exemption to DWR's units, and DWR asserts that this was reversible error. DWR charges that the Commission failed to explain why CAISO's inability to support its position with evidence justifies giving CAISO an additional opportunity to make its case, and it characterizes the institution of additional proceedings as arbitrary and capricious.

Discussion

⁶ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 107 FERC ¶ 61,294 (2004) (June 22 Order).

9. Under Rule 713, rehearing may not be sought until such time as the Commission issues a final order.⁷ We find that rehearing of the December 21 Order does not lie under Rule 713, because that order is not “a final Commission decision or other final order.”⁸ The December 21 Order merely provides a briefing schedule to obtain comments on the issues raised in the CAISO’s request for rehearing in advance of the issuance of a dispositive order, and makes no findings of fact nor reaches any legal conclusions. No party has been given a procedural advantage relative to others, nor was any denied due process. Accordingly, we dismiss DWR’s request for rehearing.

The Commission orders:

DWR’s request for rehearing is hereby dismissed.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁷ 18 C.F.R. § 385.713 (2004); see *The New PJM Companies*, 105 FERC ¶ 61,404 (2004) (holding that rehearing does not lie from an order of chief judge denying motion; *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,306 (2004) (holding that Commission order proposing actions does not trigger administrative review).

⁸ 18 C.F.R. § 385.713 (2004).