

111 FERC ¶ 61,440  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Investigation of Anomalous Bidding  
Behavior and Practices in the Western  
Markets

Docket No. IN03-10-008

ORDER DISMISSING PLEADING

(Issued June 20, 2005)

1. On November 8, 2004, the Attorney General of California, the California Electricity Oversight Board, the California Public Utilities Commission, Southern California Edison Company, and Pacific Gas and Electric Company (collectively, the California Parties) filed a request for rehearing of an order issued by the Commission on October 8, 2004.<sup>1</sup> For the reasons discussed below, we will dismiss the California Parties' pleading.

**Background**

2. In the October 8 Order, we dismissed a motion for clarification and rehearing filed by the California Parties on the grounds that the California Parties were not parties to the non-public investigations that were the subject of their pleading. Those investigations had been undertaken by the Commission's Office of Market Oversight and Investigations (OMOI) pursuant to a Commission order issued June 25, 2003;<sup>2</sup> the Commission had instructed OMOI to investigate anomalous market behavior and bidding patterns in the western markets and to report back to the Commission regarding its investigation. In a

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<sup>1</sup> *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 109 FERC ¶ 61,034 (2004) (October 2004 Order).

<sup>2</sup> *See Investigation of Anomalous Bidding Behavior and Practices in the Western Market*, 103 FERC ¶ 61,347 (2003).

subsequent order, issued October 16, 2003,<sup>3</sup> the Commission had explained that it viewed the investigations established in Docket No. IN03-10-000 as non-public investigations under Part 1b of the Commission's regulations.<sup>4</sup>

3. In the October 2004 Order at issue here, we relied on these prior findings in dismissing the California Parties' pleading. We also found that the California Parties had improperly filed its pleading in multiple proceedings. Consistent with our precedent, therefore, we directed the Commission's Secretary to remove the California Parties' filings in Docket No. EL00-95-000, EL00-95-045, EL00-95-069, EL00-98-000, EL00-98-042, and EL00-98-058.<sup>5</sup>

### **Request for Rehearing**

4. The California Parties assert, in effect, that the Commission erred in both the October 2003 and October 2004 Orders by declining, in both instances, to permit interventions in this proceeding. The California Parties further claim that the Commission's refusal to allow the California Parties to participate in OMOI's non-public investigations violates the requirements of due process and is arbitrary, capricious, and contrary to reasoned decisionmaking. In particular, the California Parties argue that the Commission improperly resolved issues raised in its non-public investigations.

### **Discussion**

5. We will dismiss the California Parties' pleading as a collateral attack of the October 2003 Order and for the additional reasons set forth below. As we explained in the October 2003 Order and then again in the October 2004 Order, the California Parties were not (and are not) parties to the non-public OMOI investigations conducted in this

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<sup>3</sup> See *Fact-Finding Investigation of Potential Market Manipulation of Electric and Natural Gas Prices*, 105 FERC ¶ 61,063 (October 2003 Order), *order on rehearing*, 105 FERC ¶ 61,281 (2003), *appeal pending*, *City of Palo Alto v. FERC*, Nos. 04-1036, *et al.* (D.C. Cir.).

<sup>4</sup> 18 C.F.R. Part 1b (2004) (Rules Relating to Investigations).

<sup>5</sup> October 2004 Order, 109 FERC ¶ 61,034 at P 16, *citing Duke Energy North America LLC*, 106 FERC ¶ 61,117 at n. 2 (2004).

proceeding.<sup>6</sup> Under the Commission's regulations, there is no right to intervene in non-public investigations.<sup>7</sup> Nor have we granted the California Parties' party status at any point earlier in this proceeding.

6. Finally, because the California Parties lack party status, they also lack standing under the Federal Power Act<sup>8</sup> to seek rehearing of the October 2004 Order, as only a "party" may seek rehearing (and ultimately, judicial review.)<sup>9</sup>

The Commission orders:

The California Parties' pleading is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>6</sup> See, e.g., October 2003 Order, 105 FERC ¶ 61,063 at P 7; October 2004 Order, 109 FERC ¶ 61,034 at P 14. See also *Duke Energy North America, LLC*, 105 FERC ¶ 61,307 (2003), *rehearings dismissed*, 106 FERC ¶ 61,177 (2004); *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 110 FERC ¶ 61,369 (2005).

<sup>7</sup> 18 C.F.R. §§ 1b.11 and 385.101(b)(1) (2004).

<sup>8</sup> 16 U.S.C. § 8251 (2000).

<sup>9</sup> See generally *Fact-Finding Investigation into Possible Manipulation of Electric and Natural Gas Prices*, 103 FERC ¶ 61,019 at P 14-17 (2003); *Duke Energy North America, LLC*, 106 FERC ¶ 61,177 at P 5 (2004). As such, we will also dismiss the California Parties' pleading, as docketed in EL00-95-115 and EL00-98-102.