

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation into the operations and practices of companies affiliated with Enron Corporation, relating to the filing for Chapter 11 bankruptcy of Enron Corp. and its affiliated entities.

FILED
PUBLIC UTILITIES COMMISSION
DECEMBER 11, 2001
SAN FRANCISCO, CALIFORNIA
INVESTIGATION 01-12-008

ORDER INSTITUTING INVESTIGATION

Summary

By this order, we initiate an investigation into the financial and operational capabilities of Enron Energy Marketing Corp. (EEM), Enron Energy Services, Inc. (EES) and The New Power Company (NPC) pursuant to Public Utilities Code Sections 701, 394.25(b)(3) and other applicable authorities.¹ The purpose of this investigation is to gather facts to help the Commission assess the effects, if any, of these entities' financial status on their customers and on other customers in California. The Commission will determine if it needs to take action or recommend that other agencies take action to protect the interests of all customers.

Discussion

On December 2, 2001, Enron Corporation announced that it and a number of its subsidiaries (collectively Enron) had filed voluntary petitions for Chapter

¹ Unless otherwise indicated, all section references will indicate the Public Utilities Code.

11 reorganization with the U.S. Bankruptcy Court for the Southern District of New York. Of most relevance to California are Enron's retail energy operations. A number of Enron-affiliated entities affected by the bankruptcy filing are currently doing business in California as energy service providers (ESPs). Enron Energy Marketing Corp. (ESP #1083), Enron Energy Services, Inc. (ESP #1015) and The New Power Company (ESP #1356) are registered with this Commission.² The Commission's authority relating to ESPs is set forth in Public Utilities Code §§ 394 through 396. Pursuant to these statutes, ESPs offering service to residential and small commercial customers must register with the Commission, and the Commission can suspend or revoke an ESP's registration if it is financially or operationally incapable of providing service to its customers, among other reasons. (§§ 394-394.1; 394.25.) ESP customers may file complaints regarding ESPs either with the Commission or in court (§ 394.2).

Scope of Proceeding

The sudden financial collapse and ensuing bankruptcy of Enron Corporation and its subsidiaries causes us concern for a number of reasons. First, the collapse and bankruptcy may impair Enron's ability to serve its retail energy customers in California. Second, the collapse and bankruptcy may have other impacts on California energy markets, including possible price increases, and operational effects on other entities, such as the investor-owned energy utilities (including Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas & Electric Company), the Independent System Operator (ISO) and the California Department of Water Resources (DWR).

² Enron Power Marketing cancelled its ESP registration effective October 26, 2001.

Our primary concern is that California retail energy customers continue to receive reliable energy services. Given the speed of Enron's financial collapse, we must better understand the effects, if any, of that collapse and the resulting bankruptcy petitions. If necessary, the Commission must be prepared to act or to recommend action before other agencies to ensure that California ratepayers are protected to the maximum extent possible from any negative impacts of Enron's condition.

This investigation will focus on those issues that clearly affect California customers, and on those respondents over whom we have jurisdiction. Given the complexities of Enron's corporate structure, however, and the implications of its bankruptcy, information about entities other than the named respondents may be required in order to develop a meaningful analysis of the issues that concern us. If, in the course of the investigation, it proves necessary to expand its scope beyond that set forth in this order, or to add respondents, these changes in scope will be announced and explained in a ruling issued by either the Assigned Commissioner or Administrative Law Judge.

We note that the Commission could undertake certain actions to address problems that are identified by this investigation, including revocation of an ESP's Commission-issued registration pursuant to §394.25. We also put parties on notice that facts related to the assignment of the ESPs' direct access contracts to an investor-owned utility or to an alternative ESP may be incorporated into the record of the Commission's rulemaking to consider implementation issues associated with direct access suspension.

In addition, the Commission intends to work together with other entities and state agencies in gathering the information needed to determine what impacts, if any, there are from Enron's financial difficulties may have on retail

energy customers and California energy markets. These entities include DWR and the ISO. We also expect Commission staff to participate in this proceeding.

Preliminary Scoping Memo

Rule 6 (c)(1) of our Rules of Practice and Procedure provides that an order instituting investigation (OII) “shall determine the category and need for hearing, and shall attach a preliminary scoping memo. The order, only as to the category, is appealable under the procedures in Rule 6.4.” This investigation is preliminarily determined to be ratesetting, as that term is defined in Rule 5(c). We preliminarily determine the need for evidentiary hearings as set forth in the following schedule.

As a preliminary step, EEM, EES, NPC, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E) and Southern California Gas Company (SoCalGas) are ordered respond to the following questions: ³

1. Describe the types of services provided by EES, EEM and NPC (collectively referred to as ESPs) to California retail customers. Describe the types of customers served by the ESPs.
2. What specific steps are the ESPs and IOUs taking to ensure that the ESPs’ retail customers continue to receive reliable energy services?
3. What financial and operational impacts, if any, do Enron’s December 2nd Petitions for Bankruptcy and its financial condition have on the energy services provided by EES, EEM and NPC?
4. Have any particular provisions been established between the ESPs, the IOUs or other alternative energy providers as a result of Enron’s petitions for bankruptcy?

³ EES, EEM and NPC are collectively referred to as ESPs. PG&E, SCE, SDG&E and SoCalGas are collectively referred to as the investor-owned utilities (IOUs).

5. What impacts, if any, do Enron's Petitions for Bankruptcy and its financial condition have on the operations of California electric and natural gas markets, and, how would these impacts affect California energy customers?
6. Has the manner in which EEM, EES and NPC provide energy to their retail customers changed, since the onset of their financial difficulties?
7. Have Enron and its affiliates increased their reliance on the ISO to provide electric power for their retail customers? If so, what are the implications of this for Enron's customers and the customers of other providers, including the customers of the IOUs?

Responses to these questions should be filed and served in this docket and served on the Directors of the Energy Division, the Consumer Services Division and the Office of Ratepayer Advocates as well as the assigned Administrative Law Judge and assigned Commissioner, by December 18, 2001. Given the expedited timeframe, responses shall be served by both electronic mail and regular mail. Hard copies of all responses shall be filed with the Commission's Docket Office, pursuant to Article 2 of the Commission's Rules of Practice and Procedure. A prehearing conference (PHC) is set for December 20, 2001 at 10:00 a.m. in the Commission's Courtrooms.

In accordance with Rule 6(c)(1), we provide a preliminary schedule. The schedule will be discussed at the PHC and may change.

Preliminary Schedule

Given Enron's significant role in energy markets, we must move quickly to gather facts and assess the possible impacts of Enron's financial condition and its Petitions for Bankruptcy on California energy customers and the State's energy markets. We will adopt the following preliminary schedule:

OII Issued	December 11, 2001
Parties' responses due	December 18, 2001
Prehearing Conference	December 20, 2001

Evidentiary hearings	Week of January 7, 2002
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A scoping memo will be issued following the PHC. Any objection to the preliminary categorization of this investigation should be raised in the responses to the questions listed in this OII.

Ex Parte Communications

This proceeding is subject to Rule 7, which specifies standards for engaging in ex parte communications and the reporting of such communications. Pursuant to Rules 7(a)(3) and 7(c), ex parte communications will be permitted only if consistent with the restrictions of Rule 7(c). Such ex parte communications are subject to the reporting requirements set forth in Rule 7.1, unless and until the categorization determination is modified by the Commission pursuant to Rule 6.4.

O R D E R

IT IS ORDERED that:

1. An investigation is instituted into the financial and operational capabilities of the Enron-affiliated entities Enron Energy Marketing Corp. (EEM), Enron Energy Services, Inc. (EES) and The New Power Company (NPC), and how those capabilities affect their ability to provide service to their retail energy customers.
2. The Commission shall examine whether the financial and operational capabilities of these Enron-affiliated entities and steps taken in response to these new realities impact the service provided to other California retail energy customers.
3. EEM, EES, NPC, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company and Southern California Gas Company are respondents to this investigation and ordered to file and serve responses to the questions raised in this investigation by December 18, 2001.

Interested parties may also file and serve responses by December 18, 2001. All responses shall be filed and served according to the protocols described herein.

4. A prehearing conference (PHC) shall be held on December 20, 2001 at 10:00 a.m. in the Commission's Courtrooms. A new service list for this investigation shall be established at the prehearing conference. Commission staff shall participate in this proceeding.

5. The category of this investigation is preliminarily determined to be "ratesetting" as that term is defined in Rule 5(c) of the Commission's Rules of Practice and Procedure.

6. Any objection to the preliminary categorization of this investigation shall be raised in the responses to the questions included in this investigation.

7. The Executive Director shall cause this OII to be served on respondents and on the service lists to Applications (A.) 98-07-003, A.98-07-006, A.98-07-026 and on all Commission-registered electric service providers.

8. The temporary service list (A.98-07-003 et al.) is attached and shall be used for service of all pleadings until a service list for this proceeding is established. The official service list for this proceeding shall be created by the Process Office and posted on the Commission's web site (www.cpuc.ca.gov) as soon as practicable after the first PHC. Parties may also obtain the service list by contacting the Commission's Process Office at (415) 703-2021.

This order is effective today.

Dated December 11, 2001, at San Francisco, California.

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I.01-12-008 COM/CXW/eap *

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