

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions of  
Public Utilities Code § 761.3 enacted by  
Chapter 19 of the 2001-02 Second Extraordinary  
Legislative Session.

Rulemaking 02-11-039  
(Filed November 21, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
ON SERVICE LIST**

Decision (D.) 03-09-002 added 16 respondents to this proceeding. Further, it directed that new respondents review the appearance information in Attachment B to the decision, and seek corrections or changes, if any, by motion filed and served within 10 days.

**1. Motion of La Paloma, NEG and ET**

On September 15, 2003, La Paloma Generating Company, LLC (La Paloma), PG&E National Energy Group (NEG), and PG&E Energy Trading (ET) filed and served a joint motion. No responses have been received.

La Paloma seeks correction to the service list by substitution of appearance. La Paloma's motion is granted. The appearance of Eric Eisenman for respondent La Paloma is replaced with that of Tom Romesberg.

Service of documents in this proceeding is by electronic mail, with limited exceptions. For example, service of a paper copy of each document and pleading filed in this matter is required on each person on the service list who does not have an electronic mail address, and on each person who requests paper service. (February 19, 2003 Scoping Memo, Ordering Paragraph 10.) To facilitate service,

Romesberg shall inform Process Office within 5 days of the date of this ruling, with a copy on the service list, of an electronic mail address that may be used for electronic service on him, if one is available.

NEG and ET move to be deleted as respondents. NEG states that it does not own any generating plants in California in its own name. Rather, NEG asserts that the plants are owned by individual entities (*e.g.*, one of which is La Paloma). NEG requests that it be deleted because the generating plants are separate entities. Similarly, ET says it does not own generation facilities in or outside California.

The motions of NEG and ET are denied. Facilities covered by Public Utilities Code § 761.3(a) include, with limited exceptions, all electric generation facilities “owned by an electrical corporation or located in California.”

(§ 761.3(a).)<sup>1</sup> An electrical corporation includes “every corporation or person owning, controlling, operating, or managing any electric plant for compensation within” California, with some exceptions. (§ 218(a).)<sup>2</sup>

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<sup>1</sup> Exceptions include (a) nuclear-powered plants, (b) qualifying facilities, (c) generation installed exclusively to serve a customer’s own load, (d) facilities owned by a local publicly owned electric utility, (e) public agency electric facilities that generate electricity incidental to the provision of water or wastewater treatment, and (f) facilities owned by a city and county operating as a public utility. (§ 761.3(d) and (h).)

<sup>2</sup> Exceptions include (a) where electricity is generated on or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others, (b) a corporation or person employing cogeneration technology or a non-conventional power source for limited purposes, (c) a corporation or person employing landfill gas technology for limited purposes, (d) a corporation or person employing digester gas technology for limited purposes, or (e) a corporation or person employing cogeneration technology or non-conventional power sources that physically produced electricity prior to January 1, 1989, and furnished that electricity to immediately adjacent real property for use thereon prior to January 1, 1989.

*Footnote continued on next page*

NEG may not own any power plants in its own name. NEG, however, does not assert that through its corporate structure (including subsidiaries and affiliates) it does not own any power plants covered by Public Utilities Code § 761.3(a).

Further, neither NEG nor ET assert that they fall within one of the stated exceptions in §§ 761.3(a) and 218(a). Moreover, they do not state that, even if they are not owners, they fail to control, operate or manage any electric plant for compensation within California.

## **2. Motion of EHP**

On September 15, 2003, Elk Hills Power, LLC (EHP) filed and served a motion that seeks correction to the service list. No responses have been received.

EHP's motion is granted. As a result, the appearance of Kelly M. Morton is removed, and the existing appearance of Daniel A. King for respondent EHP remains.

## **3. Motion of SER and SEEHP**

On September 15, 2003, Sempra Energy Resources (SER) and Sempra Energy Elk Hills Power Corp (SEEHP) filed and served a motion seeking modification or clarification. No responses have been received.

SER/SEEHP assert that the purported inclusion of "Sempra" as a respondent in Attachment B to D.03-09-002 is ambiguous or erroneous because no such entity exists. SER/SEEHP assert that the order should be clarified.

The motion for clarification is granted as provided herein. The respondent identification and appearance of "Sempra" is modified to "Sempra Energy." As

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(§ 218(a) – (e).) These exceptions are generally already within the exceptions covered by § 761.3(d) and (h).

explained by SER/SEEHP: “Sempra Energy is a holding company that through various subsidiaries and affiliates, provides a wide spectrum of electric...products and services to a diverse range of customers...in California...” (Motion, pages 3-4.) Sempra Energy is understood to be an electric corporation that owns, controls, operates, or manages electric plant for compensation within California through various subsidiaries and affiliates.

SER/SEEHP ask that the appearance be modified to substitute Daniel A. King for David Follet if the clarification is from Sempra to either or both SER or SEEHP. The clarification is not from Sempra to either SER or SEEHP, however, but to Sempra Energy. Absent information to the contrary regarding the adopted clarification, the appearance of Follet is continued for respondent Sempra Energy.

#### **4. Motion of FPL Energy, LLC**

On September 18, 2003, FPL Energy, LLC (FPLE) filed and served a motion for modification, along with a request for leave to file the motion late. The request for leave to file late is granted.

FPLE says that it believes it is named as respondent by mistake. FPLE asserts it “does not itself own, control, operate or manage” any electric generation facilities in California. (Motion, page 2.) FPLE says that:

“If by naming FPLE an ‘Owner’ the Commission intended to name the operating company subsidiaries that actually own and control electric generating facilities in California...then the Order should be modified by removing FPLE and substituting it with FPLE’s corporate subsidiary companies that own and control facilities that may be subject to Public Utilities Code § 761.3: Blythe Energy, LLC (‘Blythe’), located in Riverside County, California, and High Winds, LLC (‘High Winds’), located in Solano County, California.” (Motion, pages 1-2.)

In support of being removed, FPLE says:

“FPLE is a Delaware limited liability company and is a direct wholly-owned subsidiary of FPL Group Capital Inc., a Florida corporation. FPL Group Capital Inc. is a wholly-owned subsidiary of FPL (‘FPL Group’), a Florida corporation and a public utility holding company exempt from registration under the Public Utility Holding Company Act of 1935 by reason of Section 3(a)(1) thereof. While FPLE is the merchant power subsidiary of FPL Group, FPLE is not an ‘electrical corporation,’ as the term is used in the Public Utility Code, because it is not a ‘corporation or person owning, controlling, operating, or managing any electric plant for compensation within’ California. Public Utility Code § 218(a) (defining ‘electrical corporation’). Accordingly, by definition the entities covered by Section 761.3 cannot include FPLE.” (Motion, page 2.)

In support of potentially adding Blythe and High Winds, FPLE says:

“Rather, the FPLE subsidiaries that may be subject to Section 761.3 are Blythe and High Winds. Upon its completion, Blythe will own and operate a 520 MW wholesale electric generating facility that will be interconnected with the Western Area Power Authority. Blythe is a Delaware limited liability company and is a wholly-owned subsidiary of FPL Energy Blythe, LLC, a Delaware limited liability company. FPL Energy Blythe, LLC is a wholly-owned subsidiary of Blythe Energy Acquisitions, LLC, a Delaware limited liability company, which is in turn a wholly-owned subsidiary of ESI Energy, LLC, a Delaware limited liability company. ESI Energy, LLC is a wholly-owned subsidiary of FPLE.

High Winds began operations in June 2003 and owns and operates 81 wind turbine generators with a nameplate capacity of up to 145.8 MW. High Winds is a Delaware limited liability company and is a wholly-owned subsidiary of FPL Energy American Wind, LLC, a Delaware limited liability company. FPL Energy American Wind, LLC is a wholly-owned liability subsidiary of FPL Energy American Wind Holdings, LLC, a Delaware limited liability company,

which is in turn a wholly-owned subsidiary of ESI Energy, LLC, which as noted above is a wholly-owned subsidiary of FPLE.” (Motion, pages 2-3.)

FPLE’s argument is not persuasive. An owner of an owner of an owner of an owner is an owner. Blythe and High Winds should perhaps also be named respondents, but FPLE should not be removed. FPLE’s motion to be removed is denied.

Finally, FPLE also asks that a second appearance be entered for respondent. The request is granted, and Joel D. Newton is added.

### **5. Respondents Generally**

The Commission has named as respondents entities that it believes are subject to § 761.3. Respondents are named, among other reasons, so that they may be notified of this proceeding, participate, comment, provide the Commission with the benefit of their expertise and views, and be made aware of their forthcoming duties and obligations. Specific jurisdictional questions may again be dealt with elsewhere as needed (*e.g.*, regarding enforcement of adopted standards).

As a general matter, I believe the Commission is not sympathetic to corporations seeking to avoid responsibility - or perhaps coincidentally avoiding responsibility as a result of other reasons for a particular corporate structure - by enveloping themselves in layers of limited liability companies, subsidiaries, affiliates, or other corporate arrangements. A named respondent may be released based on clear evidence that it is a member of a specifically excluded group (*e.g.*, nuclear power plant, qualifying facility, self-generation, publicly owned), but is unlikely to be released for other reasons at this time.

Many respondents have stated that they reserve the right to challenge the Commission naming them as respondents at the appropriate time and place.

They accept deferring the issue until later, however, and state that they intend to actively participate and help the Commission with the complex task presented by § 761.3. This approach is reasonable. The matter can be fully briefed and reconsidered at the appropriate time and place, but it appears to be unnecessary to do so now.

**IT IS RULED** that:

1. The September 15, 2003 motion of La Paloma Generating Company, LLC is granted. The appearance of Eric Eisenman is replaced with that of Tom Romesberg, as noted below, for respondent La Paloma Generating Company, LLC. Romesberg shall send a letter or other document to Process Office within 5 days of today, with service of a copy on the service list, of an electronic mail address that may be used for service on him, if such electronic mail address exists.

Tom Romesberg  
La Paloma Generating Company, LLC  
P.O. Box 175  
1760 West Skyline Road  
McKittrick, CA 93251

2. The September 15, 2003 motions of PG&E National Energy Group and PG&E Energy Trading are denied.

3. The September 15, 2003 motion of Elk Hills Power, LLC, is granted. Kelly M. Morton is removed from the service list, and Daniel A. King remains for respondent Elk Hills Power, LLC.

4. The September 15, 2003 motion of Sempra Energy Resources and Sempra Energy Elk Hills Power Corp is granted as provided herein. The respondent name is clarified and corrected from “Sempra” to “Sempra Energy,” with the appearance for respondent Sempra Energy being David Follet.

5. The September 18, 2003 request and motion of FPL Energy, LLC (FPLE) for (a) late filing its motion is granted, (b) adding the second appearance noted below for respondent FPLE is granted, and (c) removing FPLE as respondent is denied.

Joel D. Newton  
FPL Energy, LLC  
801 Pennsylvania Ave., NW  
Suite 220  
Washington, DC 20004  
Telephone: 202-347-7126  
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6. The Commission's Process Office shall make these changes to the service list as soon as reasonably possible.

Dated September 23, 2003, at San Francisco, California.

/s/ Burton W. Mattson  
Burton W. Mattson  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling On Service List on all parties of record in this proceeding or their attorneys of record.

Dated September 23, 2003, at San Francisco, California.

/s/ Antonina V. Swansen  
Antonina V. Swansen

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, *e.g.*, sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.