

Decision 04-08-023 August 19, 2004

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.

Investigation 01-12-008
(Filed December 11, 2001)

(See Appendix A for list of appearances.)

OPINION CLOSING THIS ORDER INSTITUTING INVESTIGATION

Summary

On December 11, 2001, we initiated this investigation into the financial and operational capabilities of Enron Energy Marketing Corp. (EEMC), 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 the investigation was to gather facts to help the Commission assess the effects, if any, of those entities' financial status on their customers and on other customers in California. Named respondents in the investigation were Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), San Diego Gas and Electric Company (SDG&E), Southern California Gas

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

Company (SoCalGas), EEMC, EES, and NPC. Following a prehearing conference on December 20, 2001, the Assigned Commissioner issued a scoping memorandum which set forth issues to be addressed at hearing.

Hearings were held in January 2002, briefs were filed, and the matter submitted March 2002. This OII has been held open pending resolution of the Enron bankruptcy and the status of the Enron Electric Service Providers (ESPs). That bankruptcy has proceeded sufficiently to assure that its resolution will not impact this investigation. All Enron ESPs have had their registrations canceled. We emphasize that this OII is concerned only with customer service issues related to Enron's financial collapse and bankruptcy. Issues related to market manipulation and financial impropriety are not part of this investigation.

Background

This investigation represents another chapter in the unraveling history of the California energy crisis 2000-2001. On December 2, 2001, Enron Corporation announced that it and a number of its subsidiaries (collectively Enron) had filed voluntary petitions for Chapter 11 reorganization with the U.S. Bankruptcy Court for the Southern District of New York. Of most relevance to California were Enron's retail energy operations. At the time of the bankruptcy, a number of Enron-affiliated entities affected by the bankruptcy filing were doing business in California as ESPs. Enron Energy Marketing Corp. (ESP #1015), Enron Energy Services, Inc. (ESP #1083), and The New Power Company (ESP #1356) were registered with this Commission.²

² Enron Power Marketing's ESP registration #1086 was cancelled October 25, 2001; Enron Energy Marketing Corp. and Enron Energy Services' ESP registration was cancelled December 22, 2003. The New Power Company's ESP registration was canceled February 13, 2002.

The sudden financial collapse and ensuing bankruptcy of Enron Corporation and its subsidiaries caused concern. We believed that the collapse and bankruptcy might impair Enron's ability to serve its retail direct access (DA) energy customers in California. We were also concerned that the collapse and bankruptcy might have other impacts on California energy markets, including the investor-owned energy utilities, the Independent System Operator (ISO), and the California Department of Water Resources (DWR).

Our primary concern was that California retail energy customers continue to receive reliable energy service. We put parties on notice that facts in this investigation related to the assignment of the ESPs' direct access contracts to an investor-owned utility or to an alternative ESP might be incorporated into other proceedings.

The Scoping Memo of the Assigned Commissioner set forth the issues to be considered, whose salient points are summarized:

1. What effect will the financial collapse and ensuing bankruptcy of Enron and its subsidiaries have on:
 - a. the Enron affiliated companies' ability to serve their California retail energy customers?
 - b. price increases, and operational effects on other entities such as the investor-owned utilities, the ISO, and DWR?
 - c. the operations of the California electric and natural gas markets, and how will these impacts affect California energy customers?
2. What specific steps are the Enron affiliated ESPs and investor-owned utilities taking to ensure that the retail customers of the Enron affiliated companies will continue to receive reliable energy services?
3. What actions should the Commission take or recommend to protect California consumers in light of the bankruptcy filing?

Discussion

Events, plus other Commission decisions, have mooted all the questions posed in this investigation; therefore, it should be dismissed.

The cancellation of Enron's ESP registrations has resolved the question of protecting Enron's direct access customers. Enron Energy Marketing Corp has canceled its registration, as have Enron Energy Services and New Power Company. The Enron Corp. and affiliates' bankruptcy filing (Case No. 01-16034 (AJG), filed in the U.S. Bankruptcy Court for the Southern District of New York) has settled, or will settle all claims by California utilities and California ESP customers. (See, for example, Order Approving Settlement Agreement between Enron Energy Marketing Corp., Enron Energy Services, Inc., et al., and Pacific Gas and Electric Company in Case No. 01-16034 (AJG) dated April 20, 2004.)

This OII was driven by our concern to protect the interests of Enron's retail energy customers. The evidence presented at the hearing by Enron direct access customers provided detailed testimony regarding their concerns, especially their perceived need to continue on direct access and have their Enron contracts assigned to solvent ESPs. Those issues were resolved in D.01-09-060, which suspended direct access for electric customers; D.02-03-055 which, among other things, adopted an exemption to the suspension requirements of D.01-09-060 by permitting contract renewals and assignments whereby existing DA customers could choose a new ESP and continue on DA even if they had returned to bundled service; and D.03-05-034, which adopted rules to govern the switching exemption and set forth the concept of developing cost responsibility surcharges in lieu of an earlier DA suspension date.

The evidence shows, and we find, that the Enron financial collapse³ did not materially affect or interrupt electric and gas service³ to Enron's customers in California. The disruptions caused by the bankruptcy resulted in retail direct access billing disputes which were resolved by applicable tariff rules (e.g., Electric Rule 22 and Gas Rate Schedule G-CT) and some gas balancing service costs when direct access customers were returned to bundled service. All of the financial problems connected with customer service were resolved over time, either through customer-company negotiations, the Commission's Consumer Affairs Branch, or through the bankruptcy proceeding. In regard to customer service issues arising from the Enron bankruptcy, there is nothing left for this Commission to decide.

Comment on Draft Decision

The draft decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. No comments were filed.

Assignment of the Proceeding

Carl Wood is the Assigned Commissioner and Robert Barnett is the assigned ALJ in this proceeding.

Findings of Fact

1. The only material impact of the financial collapse on retail direct access service to customers was related to billing confusion and concern over the

³ We reiterate that this OII is concerned only with customer service issues related to the Enron financial collapse and bankruptcy. Issues regarding market manipulation and financial improprieties are not part of this investigation.

assignability of DA contracts. These impacts were alleviated through customer-utility negotiations and as a result of D.01-09-060, D.02-03-055, and D.03-05-034.

2. The Enron companies and the investor-owned utilities cooperated in returning DA customers to bundled service or, when permitted, in facilitating assignment of the Enron DA contracts to other ESPs.

3. The Energy Division of the Commission has cancelled the registrations of all Enron ESPs.

Conclusions of Law

1. Because the registration of all Enron's ESPs has been canceled and because billing disputes have been addressed by the Commission and through negotiations in the bankruptcy proceeding, no further action is required by this Commission.

2. This investigation should be closed.

O R D E R

IT IS ORDERED that this investigation is closed.

This order is effective today.

Dated August 19, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
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APPENDIX A

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