

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
and Philip D. Moeller.

City of Vernon, California
California Independent System
Operator Corporation

Docket Nos. EL00-105-009
ER00-2019-018

ORDER DENYING MOTION FOR STAY OR
FOR EXTENSION OF TIME

(Issued July 28, 2006)

1. On June 30, 2006, the City of Vernon, California (Vernon) filed a motion for stay of Opinion No. 479-B,¹ the Commission's June 7, 2006 order denying Vernon's request for rehearing and finding that Vernon has refund liability as to its Transmission Revenue Requirement (TRR). In the alternative, Vernon requests that the Commission extend the deadlines for complying with the refund and filing directives of Opinion No. 479-B until sixty days after the resolution of pending appeals and/or motions, to be filed with the Court of Appeals for the District of Columbia Circuit, for purposes of staying the effect of Opinion No. 479-B. The Commission concludes, among other things, that Vernon has failed to demonstrate that absent the stay it will suffer irreparable harm and, therefore, denies Vernon's motion for stay and also denies its alternative motion for extension of time.

Background

2. On April 19, 2005, the Commission issued Opinion No. 479.² Opinion No. 479 did not address the issue of a remedy: whether Vernon would (or could) be required to make refunds should the Commission determine that the TRR was not just and

¹ *City of Vernon, California*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

² *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092 (2005).

reasonable. Opinion No. 479-A largely denied rehearing, but held that Opinion No. 479 erred in postponing a decision on refunds.³

3. In Opinion No. 479-B, issued June 7, 2006, the Commission denied Vernon's request for rehearing and ordered Vernon to make refunds within 30 days of the date of the order's issuance. The Commission also required that Vernon file a refund report within 60 days of the date of the order's issuance.

Motion for Stay or Extension of Time

4. Vernon requests that the Commission stay the refund and refund reporting requirements contemplated in Opinion No. 479-B or, alternatively, extend the time for compliance until the D.C. Circuit has ruled on the merits of Vernon's appeal and/or Vernon's motion to stay the effectiveness of Opinion No. 479-B pending final resolution of the appeal (which Vernon indicates it will file should the Commission deny the instant motion). Vernon states that, pursuant to the Administrative Procedure Act, an administrative agency's decision can be stayed whenever "justice so requires." Vernon asserts that, in assessing the propriety of granting a stay, the Commission considers three factors: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest. Vernon claims that all three of the above factors are satisfied in this case.

5. Vernon claims that it will be subject to material, irreversible and irreparable harm unless a stay is granted. Vernon contends that it would be required to amend recently-issued financial statements, adjust critical financial commitments to creditors, and make substantial adjustments to its budget which was established in a formal, public process. Vernon also contends that it would incur administrative and transactional costs in preparing the necessary refund reports and filing the same with the Commission since it has only a small staff. Vernon argues that the economic, administrative and transactional costs that Vernon will be required to incur in order to comply with Opinion No. 479-B will not be reimbursed by CAISO or its members, and therefore, can not be compensated by simply reversing the refunds.

6. Vernon argues that a stay will not harm other parties since other participants in CAISO can be fully compensated for any delay in receiving refunds (assuming that Opinion No. 479-B is upheld on appeal) by a simple time value of money calculation.

³ *City of Vernon, California*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005).

7. Vernon argues that a stay will serve the public interest by protecting CAISO participants and other entities from the uncertainties associated with making refunds that Vernon argues are subject to reversal on appeal. Vernon claims, in this regard, that the need for a stay is particularly acute in this case because the Commission's authority to require municipalities, such as Vernon, to make refunds is the central issue on appeal.

8. Vernon argues that, because the Commission has previously allowed stays of refunds pending the resolution of rehearing requests,⁴ a stay is similarly warranted in this case.

9. Should the Commission deny Vernon's request for a stay, Vernon requests an extension of time for compliance with the refund requirements of Opinion 479-B until sixty days after the D.C. Circuit has ruled on Vernon's yet-to-be-filed motion to stay the effect of Opinion 479-B.⁵ Vernon asserts that such an extension of time is a reasonable and necessary measure for it to avoid incurring unnecessary costs and other irreparable harm, and to focus on achieving a prompt and efficient resolution of this matter.

10. On July 3, 2006, Vernon filed a letter requesting the Commission include in its deliberations a motion to extend stay filed on April 8, 2005 in *City of Anaheim*, Docket No. EL03-54-001, and the related Notice of Extension of Time subsequently issued by the Commission on April 20, 2005.⁶

⁴ Vernon cites *Northern Pump Company Danner No. A-1 Well*, 49 FERC ¶ 61,045 at 61,205 (1989) (*Northern Pump*), and *ISO New England, Inc.*, 94 FERC ¶ 61,015 at 61,023-24 (2001) (*ISO New England*). Both cases, we note, involve stays of refund obligations while rehearing was pending before the Commission. They stand in a very different procedural posture than the current case, where the Commission has already addressed and denied rehearing. *Northern Pump*, 49 FERC at 61,205; *ISO New England*, 94 FERC at 61,023-24.

⁵ As previously noted, if the Commission denies the instant motion, Vernon states that it intends to move the D.C. Circuit to stay the effectiveness of Opinion 479-B.

⁶ Vernon's reference to Docket No. EL03-54-001 is misplaced, as that case involved very different circumstances and the stay granted there was uniquely driven by the facts and the language of the relevant tariff – facts and language wholly ignored by Vernon's counsel in the letter claiming that Docket No. EL03-54-001 provides “additional support.” That tariff provided for an automatic stay pending appeal of an arbitration proceeding under the tariff. *City of Anaheim*, 111 FERC ¶ 61,218 at P 3 (2005). That tariff language does not apply here, as this proceeding is not the outgrowth of arbitration under the tariff, but rather was prompted by Vernon's originally filing a petition for declaratory order.

Discussion

11. To assure definiteness and finality in Commission proceedings, the Commission typically does not stay its orders.⁷ Additionally, the Commission follows a general policy of denying stays of refund obligations pending further review because there is a remedy to recover refunded amounts in the event the Commission's decision is reversed or revised.⁸ We are not persuaded that we should take a different approach and stay our orders here. Accordingly, we will deny the stay.

12. The Commission may stay its action when “justice so requires.”⁹ In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without the stay; (2) whether issuing the stay will substantially harm other parties; and (3) whether a stay is in the public interest.¹⁰ The key element in the inquiry is irreparable injury to the moving party.¹¹ If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.¹² The standard for showing irreparable harm is strict, as the D.C. Circuit has explained:

the injury must be both certain and great; it must be actual and not theoretical. Injunctive relief ‘will not be granted against something merely feared as liable to occur at some indefinite time.’ It is well established that economic loss does not necessarily constitute irreparable harm . . . [M]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough.¹³

13. The Commission finds that Vernon will not suffer irreparable harm absent a stay. Vernon’s assertions that it will incur economic, administrative and transactional costs have not been shown to be irreparable; Vernon has not demonstrated that it will suffer such harm, *i.e.*, it has not presented evidence that it will suffer harm (let alone any

⁷ *E.g., Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,142 at P 17-18 (2005) (*Midwest ISO*).

⁸ *E.g., High Island Offshore System, LLC*, 112 FERC ¶ 61,087 at P 11 (2005).

⁹ 5 U.S.C. § 705 (2000).

¹⁰ *See, e.g., Midwest ISO*, 111 FERC ¶ 61,142 at P 18.

¹¹ *Id.*

¹² *Id.*

¹³ *Wisconsin Gas Co. v. FERC*, 785 F.2d 699, 674 (D.C. Cir. 1985).

significant harm) that will not be reimbursable.¹⁴ The Commission does not accept mere allegations of harm. Vernon must show that specific and concrete harm will result.¹⁵ Because Vernon has not met the irreparable harm criterion, we need not discuss the remaining two factors for evaluating a stay request and the request for stay is denied.¹⁶

14. Additionally, because the relief requested by the motion for stay in this case is virtually identical to the relief requested by the motion for extension of time (*i.e.*, for Vernon to be allowed to defer refunds), we deny Vernon's alternative request for extension of time to comply with the directives of Opinion No. 479-B for the reasons given above.

The Commission orders:

- (A) The request for stay is hereby denied, as discussed in the body of this order.
- (B) The request for extension of time is hereby denied, as discussed in the body of this order.
- (C) Vernon is hereby ordered to make refunds within 30 days of the date of issuance of this order and to file a refund report within 60 days of the date of issuance of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁴ Indeed, the same allegations equally could be made by any entity, including any public utility, ordered to make refunds. Thus, to grant Vernon a stay based on its pleading would support our granting a stay to anyone we order to make refunds. This, in turn, would delay refunds in virtually every case, for what could be years, and would encourage otherwise frivolous litigation whose intent was solely to delay the payment of refunds.

¹⁵ *Southern California Edison Co.*, 109 FERC ¶ 61,187 at P 9-11 (2004).

¹⁶ *Id.*