

For these reasons, I concur in part with today's order.

William L. Massey,
Commissioner.

Brownell, Commissioner, *concurring*:

1. We are adopting behavioral rules for market participants in the electric and natural gas markets. No one can question the good intention behind these behavioral rules. As I have stated before, if there are violations of our rules, regulations or policies, we must be willing to punish and correct. Concurrently, if there is misconduct by market participants that is intended to be anticompetitive, we must have the ability to remedy those market abuses.

2. Conversely, when we originally proposed behavioral rules, I had a number of concerns. I was concerned that the use of vague terms would create uncertainty and, thereby, undermine the good intentions of the rules. I feared that subsequent applications of the proposed behavior rules to real world actions could result in overly proscriptive "rules of the road" that will dampen business innovation and creative market strategies. The net effect would be less competition and the associated higher costs to consumers. I was concerned that we may be proposing a model that simply does not fit with the larger lessons we have learned in fostering competition over the past two decades, particularly in the gas market.

3. It is difficult to strike the right balance. I have carefully weighed the comments and believe the revisions and clarifications to the proposed behavioral rules achieve the appropriate balance. We clarify that these rules do not impose a "must offer" requirement. We revise the definition of manipulation to relate to actions that are "intended to or foreseeably could" manipulate markets. We add the exclusion that action taken at the direction of an RTO or ISO does not constitute manipulation.

4. Commenters also challenge the sufficiency of the term "legitimate business purpose" in distinguishing between prohibited and non-prohibited behavior. We clarify that transactions with economic substance, in which a seller offers or provides a service to a buyer where value is exchanged for value, are not prohibited behavior. Behavior driven by legitimate profit maximization or that serves important market functions is not manipulation. Moreover, I think it is important to recognize that scarcity pricing is the market response to a supply/demand imbalance that appropriately signals the need for infrastructure. For example, the high prices of 2000–2001 that reflected supply/demand fundamentals resulted in the first new power plants being constructed in California in ten years; price risk being hedged through the use of long-term contracting; and renewed efforts to correct a flawed market design.

5. We have also adopted measures that require accountability. A complaint must be brought to the Commission within 90 days after the calendar quarter that the manipulative action was alleged to have occurred. The 90-day time limit strikes an appropriate balance between providing sufficient opportunity to detect violations and the market's need for finality. The Order

also places a similar time limit on Commission action. As a matter of prosecutorial policy, the Commission will only initiate a proceeding or investigation within 90 days from when we obtained notice of a potential violation through either a hotline call; conversations with our enforcement staff; or notification from a market monitor.

6. While these rules are designed to provide adequate opportunity to detect, and the Commission to remedy, market abuses and are clearly defined so that they do not create uncertainty, disrupt competitive commodity markets or prove simply ineffective, competitive markets are dynamic. We need to periodically evaluate the impact of these behavior rules on the electric and natural gas markets. We have directed our Office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these behavioral rules on an annual basis and include their analysis in the State of the Market Report.

Nora Mead Brownell.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 17, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application*: Conduit Exemption.

b. *Project Nos.*: 12475–000 and 12476–000.

c. *Date filed*: October 20, 2003.

d. *Applicant*: Southern Nevada Water Authority (Authority).

e. *Names of Projects*: Sloan Small Conduit Hydroelectric Project and Sloan Las Vegas Valley Water District (LVVWD) Interconnection Small Conduit Hydroelectric Project.

f. *Location*: The projects would be located, respectively, in an existing Rate-of-Flow Control (ROFC) station upstream of the Sloan Pumping Plant, and in a 130–K ROFC station that is planned to be constructed downstream, on the outlet side of the Sloan Pumping Plant, in eastern Las Vegas, Clark County, Nevada. The Authority's water is diverted from the Colorado River via Lake Mead.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact*: Mr. Rodney J. Clark, Southern Nevada Water

Authority, 1900 East Flamingo Road, Suite 170, Las Vegas, NV 89119, (702) 862–3428.

i. *FERC Contact*: James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis*:

The applications are ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents*: The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the applications be filed with the Commission by December 17, 2003. All reply comments must be filed with the Commission by January 2, 2004.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Projects*: The proposed Sloan Project would consist of: (1) A generating unit with a rated capacity of 607 kilowatts replacing the pressure dissipating valve in a 54-inch pipeline in the ROFC station, and (2) the other two pipelines in the station, to be used as bypass facilities. The average annual energy production would be 3.2 gigawatt hours. The proposed Sloan LVVWD Project would consist of: (1) A generating unit with a rated capacity of 600 kilowatts installed in lieu of a pressure dissipating valve in one of two pipelines in the 130–K ROFC station serving LVVWD Zone 1985, and (2) the other Zone 1985 pipeline in the station, to be used as a bypass facility. The average annual energy production would be 1.95 gigawatt hours. Power produced by the two projects would help offset the energy requirements of operating the Sloan Pumping Plant.