

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell and Joseph T. Kelliher.

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| San Diego Gas & Electric Company | Docket Nos. EL00-95-098 |
| | EL00-95-114 |
| | EL00-95-117 |
| | EL00-95-124 |

v.

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator and the
California Power Exchange

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| Investigation of Practices of the California Independent System Operator and the California Power Exchange | Docket Nos. EL00-98-086 |
| | EL00-98-101 |
| | EL00-98-104 |
| | EL00-98-111 |

ORDER ON AUDITOR SELECTION

(Issued June 20, 2005)

1. In this order, we address a request for Commission approval of an auditor proposed by Williams Power Company, Inc. (Williams) and consented to by other parties to verify Williams' fuel cost allowance (FCA) claim for submission to the California Independent System Operator Corporation (CAISO). Williams submitted the instant request pursuant to the March 18, 2005 Order¹ in which we granted Williams' request to retain an auditor other than Ernst and Young (E&Y), whose services are used by other FCA claimants, due to the conflict of interests. In its filing, Williams and other parties opposing Williams' FCA claim jointly propose to engage FTI Consulting, Inc. (FTI). In this order, we grant Williams' request and approve FTI as an independent auditor to perform the audit of Williams' FCA claim. We also remind Williams and FTI that in accordance with the timelines established in the March 18 Order, Williams is requested to

¹ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 110 FERC ¶ 61,293 (2004) (March 18 Order).

submit its FCA calculations and supporting documentation to FTI within two weeks of the date of issuance of this order; thereafter, FTI will have 120 days to audit Williams' FCA claim.

2. This order benefits customers by allowing the audit of Williams' FCA claim to proceed in accordance with previously established timelines, which will facilitate calculation of refunds for electricity purchases made in organized spot markets in California during the period from October 2, 2000 through June 20, 2001 (Refund Period).

Background

3. After determining that the rates produced by the California Power Exchange (PX) and the CAISO spot markets were unjust and unreasonable during the Refund Period, the Commission declared that prices for this period must be reset. To accomplish this, the Commission first adopted a mitigated market clearing price (MMCP) to serve as a proxy for competitively-set market clearing prices, and required refunds of any amounts in excess over this MMCP. In the order issued March 26, 2003, the Commission subsequently modified the MMCP formula to use natural gas producer prices plus a tariff transportation allowance. Recognizing that this revised methodology might reduce the MMCP to a point below sellers' actual fuel costs, the Commission provided sellers with the opportunity to make FCA claims to recover the difference between their actual fuel costs for mitigated sales and the proxy for gas prices used in calculating the MMCP.²

4. The March 26 Order was followed by a series of orders providing guidance on calculation and allocation of FCA.³ The audit requirement for FCA claims was first established by the May 12 Order, in which we directed that before the FCA claims are submitted directly to the CAISO, they must be verified by an independent auditor and

² *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 102 FERC ¶ 61,317 (2003) (March 26 Order).

³ *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 103 FERC ¶ 61,078 (2003); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 107 FERC ¶ 61,166 (2004) (May 12 Order); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,219 (2004) (September 2 Order); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 108 FERC ¶ 61,311 (2004); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,074 (2004) (October 27 Order); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 109 FERC ¶ 61,297 (2004); and March 18 Order.

attested to by a responsible company official. In the September 2 Order, we approved E&Y to be the sole auditor responsible for conducting independent review of all FCA claims, and required generators making FCA claims to pay the auditing costs.

5. In the September 2 Order and the October 27 Order, the Commission denied Williams' request for Commission permission to engage a different auditor to verify its FCA claim. Specifically, we found:

. . . Williams' contention that it would not be able to utilize Ernst & Young's services due to potential conflict of interests to be without merit. For the second time on rehearing, Williams makes this contention and fails to provide any explanation other than that Ernst & Young performed work as Williams' auditor on other matters. Ernst & Young is one of the "big four" accounting firms that employs a great number of professional accountants to work on various projects. Ernst & Young is bound by professional ethics standards, and we expect that Ernst & Young will undertake every precaution to avoid any potential conflict of interests when performing the claim verification task for parties to the instant proceeding.⁴ (*footnotes omitted*).

6. On rehearing of the October 27 Order, Williams argued that it must use a different auditor, due to the fact that E&Y had informed Williams that it could not perform the FCA audit work for Williams because doing so would violate the Sarbanes-Oxley Act of 2002.⁵

7. In the March 18 Order, we granted Williams' rehearing request and allowed it to use a different auditor to verify its FCA claim. Consistent with the process to select the original auditor, we directed that Williams and parties that had filed notices of opposition to Williams' FCA claim⁶ must all agree on the choice of the independent auditor and inform the Commission of their choice within 10 days of issuance of that order. If parties were unable to agree, they were directed to submit a list of no more than three proposed

⁴ See October 27 Order at P 11.

⁵ 15 U.S.C. §§ 7201 *et seq.* (2004).

⁶ Those parties are: City of Pasadena, California; Powerex; City of Seattle, Washington; City of Redding, California, Silicon Valley Power of the City of Santa Clara, California; the City of Vernon; California (Vernon); Californians for Renewable Energy, Inc.; the Northern California Power Agency; the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California; Enron Power Marketing, Inc.; and Exelon Corp (Exelon).

auditors to the Commission, from whom the Commission would choose the auditor for the parties. We also stated that once the choice of the auditor for Williams was approved, Williams would have two weeks to prepare its claim and supporting documentation for submission to the auditor, after which the auditor would have 120 days to audit Williams' claim.

Williams' Filing

8. On March 28, 2005, Williams filed a request for Commission approval of FTI as an auditor for its FCA claim. In support, Williams states that FTI is a publicly traded, multidisciplinary consultancy, which employs professionals who have conducted many similar analyses related to the utility industry. Williams has attached to this filing resumes of the FTI personnel who may be assigned to perform the audit. Williams also informs the Commission that its choice of auditor has been authorized by all parties⁷ that have filed notices of opposition to Williams' FCA claim.

Notice of Filing and Comments

9. Notice of Williams' filing was published in the *Federal Register*, 70 Fed. Reg. 18,387 (2005), with comments, protests, or interventions due on April 8, 2005. City of Vernon, California (Vernon) filed a motion to intervene and comments. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

10. In its comments, Vernon states that its consent to using FTI to audit Williams' FCA claim is based upon the assumption that "the 'independent review' conducted by FTI [will be] of the same quality and type as the audits" performed by E&Y for other FCA claimants.⁸

Commission Determination

11. We accept Williams' proposal to select FTI as the independent FCA auditor for Williams' FCA claim. Based on the representations made by Williams in its filing in regard to FTI's credentials, we find that FTI has sufficient expertise for performing the audit of Williams' FCA claim. Moreover, there is no opposition to Williams' proposed choice of an auditor. All parties that have filed notices of opposition to Williams' FCA

⁷ On March 29, 2005, Williams submitted a filing informing the Commission that Exelon, whose consent Williams was unable to obtain at the time of filing its request for auditor approval, does not oppose Williams' proposal to engage FTI as the FCA auditor.

⁸ See Vernon's Comments at 3, April 8, 2005.

claim have consented to Williams' proposal. For these reasons, we approve FTI as an independent auditor to perform the audit of Williams' FCA claim for direct submission to the CAISO. We also remind Williams and FTI that in accordance with the timelines established in the March 18 Order, Williams is requested to submit its FCA calculations and supporting documentation to FTI within two weeks of the date of issuance of this order; thereafter, FTI will have 120 days to audit Williams' FCA claim.⁹

Commission orders:

(A) Williams' request for Commission approval of FTI as independent auditor for Williams' FCA claim is hereby granted.

(B) Williams is hereby requested to submit its FCA calculations and supporting documentation to FTI within two weeks of the date of issuance of this order, after which FTI will have 120 days to audit Williams' FCA claim.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.

⁹ See March 18 Order at P 91.