

Williams Energy Marketing & Trading Company	Docket No. PA03-11-000
AES Southland, Inc., Williams Energy Marketing & Trading Company	Docket No. IN01-3-000
Duke Energy Trading and Marketing Company	Docket No. EL03-152-000
California Independent System Operator Corporation	Docket No. ER01-889-000
Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC	Docket No. ER01-1455-000
California Independent System Operator Corporation	Docket No. ER01-3013-000
California Independent System Operator Corporation	Docket No. ER03-746-000
Public Utilities Commission of the State of California	Docket No. EL02-60-000

v.

Sellers of Long Term Contracts to the California
Department of Water Resources

California Electricity Oversight Board	Docket No. EL02-62-000
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v.

Sellers of Energy and Capacity Under Long Term
Contracts with the California Department of Water
Resources

Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC	Docket No. EL03-158-000
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Pacific Gas & Electric Company	Docket Nos. ER98-495-000 ER98-1614-000 ER98-2145-000 ER99-3603-000
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Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. ER03-215-000
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Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. ER04-227-000
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Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. ER05-343-000
Southern Company Energy Marketing, Inc. and Southern Company Services, Inc.	Docket No. ER97-4166-000
Southern Energy California, L.L.C.	Docket No. ER99-1841-000
Southern Energy Delta, L.L.C.	Docket No. ER99-1842-000
Southern Energy Potrero, L.L.C.	Docket No. ER99-1833-000
Mirant Americas Energy Marketing, LP	Docket No. ER01-1265-000
Mirant California, LLC	Docket No. ER01-1267-000
Mirant Delta, LLC	Docket No. ER01-1270-000
Mirant Potrero, LLC	Docket No. ER01-1278-000
Mirant Americas Energy Marketing, LP	Docket No. PA03-8-000
Enron Power Marketing, Inc. and Enron Energy Services Inc.	Docket No. EL03-180-000
Enron Power Marketing, Inc. and Enron Energy Services Inc.	Docket No. EL03-154-000
Enron Power Marketing, Inc.	Docket No. EL02-115-000
Portland General Electric Company	Docket No. EL02-114-000
El Paso Electric Company, Enron Power Marketing, Inc., Enron Capital and Trade Resources Corporation	Docket No. EL02-113-000
Public Service Company of Colorado	Docket No. EL03-167-000
Reliant Resources, Inc., <i>et al.</i>	Docket No. EL03-170-000
Reliant Energy Services, Inc., <i>et al.</i>	Docket No. EL03-59-000
Idaho Power Company	Docket No. EL03-156-000

Idaho Power Company	Docket No. EL03-189-000
Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California, <i>et al.</i>	Docket No. EL00-111-000
Salt River Project Agricultural Improvement and Power District, <i>et al.</i>	Docket No. EL01-84-000
California Independent System Operator Corporation	Docket No. ER01-607-000
Portland General Electric Company	Docket No. EL03-165-000
El Paso Merchant Energy, L.P.	Docket No. EL03-187-000
PacifiCorp	Docket No. EL03-163-000
PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.)	Docket No. EL03-197-000
City of Riverside, California	Docket No. EL03-150-000
City of Anaheim, California	Docket No. EL03-145-000
City of Azusa, California	Docket No. EL03-146-000
City of Vernon, California	Docket Nos. EL00-105-000, ER00-2019-000
City of Vernon, California	Docket No. EL08-54-000
American Electric Power Service Corporation	Docket No. EL03-137-000, <i>et al.</i>
Puget Sound Energy, Inc.	Docket No. EL03-169-000
Constellation Power Source, Inc.	Docket No. EL03-185-000

ORDER GRANTING MOTION TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued June 4, 2010)

1. On January 12, 2010, the California Parties¹ filed a motion for a Commission order allowing PECO/Exelon, which includes Exelon Corporation, Exelon Generation Company, LLC, Commonwealth Edison Company, and PECO Energy Company (PECO/Exelon), to opt into a number of settlement agreements identified in the motion that have been approved by the Commission in the captioned proceedings. The California Parties' motion was filed pursuant to their settlement agreement with PECO/Exelon (PECO/Exelon Settlement), which the Commission approved in *San Diego Gas & Electric Co., et al.*² As discussed below, we grant the California Parties' unopposed motion.

Background

2. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act (FPA) to investigate, among other things, the justness and reasonableness of public utility sellers' rates in the CAISO and CalPX markets (Docket Nos. EL00-95-000 and EL00-98-000). In 2002, the Commission directed Staff to commence a fact-finding investigation into the alleged manipulation of electric and natural gas prices in the west (Docket No. PA02-2-000). Also, in 2003, the Commission directed Staff to investigate anomalous bidding behavior and practices in western markets (Docket No. IN03-10-000).

3. On November 20, 2008, PECO/Exelon and the California Parties filed the PECO/Exelon Settlement.³ The PECO/Exelon Settlement resolved matters and claims

¹ The California Parties consist of Pacific Gas and Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the People of the State of California, *ex rel.* Edmund G. Brown, Jr., Attorney General, the California Public Utilities Commission, and the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code.

² *San Diego Gas & Electric Co., et al.*, 129 FERC ¶ 61,259 (2009) (PECO/Exelon Settlement Order).

³ The proceeding was under Docket Nos. EL00-95-218, EL00-98-203, EL01-10-042, IN03-10-043, PA02-2-059, EL03-137-009, EL03-180-038, ER03-746-010, EL02-71-015, EL03-198-005, ER05-167-003, and ER07-861-001.

related to PECO/Exelon and arising out of events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001 in the captioned dockets. Section 4.1.7 of the PECO/Exelon Settlement, among other things, authorizes the California Parties, on behalf of PECO/Exelon, to opt into settlements reached by the California Parties with other sellers prior to the settlement effective date to the extent that PECO/Exelon had not done so already.

4. On December 17, 2009, the Commission approved the PECO/Exelon Settlement, finding that it was just and reasonable.⁴

California Parties' Motion

5. On January 12, 2010, the California Parties filed the motion for a Commission order allowing PECO/Exelon to opt into settlement agreements out of time. Specifically, the California Parties request a Commission order authorizing PECO/Exelon to opt into 24 settlement agreements between the California Parties and various other entities. These settlements include:

1. the Williams Companies, as approved in *San Diego Gas & Electric Co.*, 108 FERC ¶ 61,002 (2004);
2. the Dynegy Parties, as approved in *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,071 (2004);
3. the Duke Parties or Duke, as approved in *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,257 (2004);
4. the Mirant Parties, as approved in *San Diego Gas & Electric Co., et al.*, 111 FERC ¶ 61,017 (2005);
5. the Enron Parties, as approved in *San Diego Gas & Electric Co., et al.*, 113 FERC ¶ 61,171 (2005) and as later amended, *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,135 (2007);
6. Public Service Company of Colorado, as approved in *San Diego Gas & Elec. Co., et al.*, 113 FERC ¶ 61,235 (2005);

⁴ PECO/Exelon Settlement Order, 129 FERC ¶ 61,259 at P 39.

7. Reliant Parties, as approved in *San Diego Gas & Electric Co., et al.*, 113 FERC ¶ 61,308 (2005);
8. Idaho Power Company and IDACORP Energy L.P., as approved in *San Diego Gas & Electric Co., et al.*, 115 FERC ¶ 61,230 (2006);
9. Eugene Water & Electric Board, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,092 (2007);
10. Portland General Electric Company, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,151 (2007);
11. PacifiCorp, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,296 (2007);
12. El Paso Marketing LP and El Paso Power Services Company, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,297 (2007);
13. PPM Energy, Inc., as approved in *San Diego Gas & Electric Co., et al.*, 121 FERC ¶ 61,014 (2007);
14. Conectiv Energy Supply, Inc., as approved in *San Diego Gas & Electric Co., et al.*, 122 FERC ¶ 61,008 (2008);
15. Midway Sunset Cogeneration Company, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,004 (2008);
16. Public Utility District No. 2 of Grant County, Washington, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,200 (2008);
17. City of Riverside, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,242 (2008);
18. City of Anaheim, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,243 (2008);
19. City of Azusa, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,244 (2008);
20. Strategic Energy, LLC, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,316 (2008);

21. City of Vernon, California, as approved in *San Diego Gas & Electric Co., et al.*, 125 FERC ¶ 61,085 (2008);
22. Puget Sound Energy, Inc., as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,002 (2009);
23. AES Placerita, Inc. as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,004 (2009); and
24. Constellation Energy Commodities Group and Constellation NewEnergy, Inc. as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,242 (2009).

6. No parties to the settlement agreements listed above filed comments or answers opposing the California Parties' request, on behalf of PECO/Exelon, to opt into the settlements.

Commission Determination

7. Previously, the Commission determined that whether an entity may opt into a settlement after the period for opting in has expired is an issue for the settling parties to determine.⁵ In this instance, none of the parties to the 24 settlements at issue has opposed the California Parties' request. Therefore, the Commission infers from the lack of opposition that the parties to each of the enumerated settlements assent to the California Parties' efforts, on behalf of PECO/Exelon, to opt into those settlements.⁶ Furthermore, because the Commission has previously found the PECO/Exelon Settlement to be just and reasonable,⁷ including section 4.1.7 of the PECO/Exelon Settlement, the

⁵ See, e.g., *San Diego Gas & Electric Co., et al.*, 111 FERC ¶ 61,186, at P 34 (2005). We note that certain provisions of these settlements provide that, with respect to late opt-ins, any participant that has not provided notice to participate in a settlement on or prior to the date that is five business days following the issuance of the Commission's order on the settlement shall have no right to participate in that settlement absent the written consent of the California Parties and the Settling Supplier. Therefore, the Commission is not required to act on the motion to opt into these settlements out of time. Rather, the settlements themselves set forth the agreed-upon procedures by which a party might seek to opt in out of time, and provide that whether a party may opt in under these circumstances is ultimately a matter for the parties to the settlements to decide.

⁶ See *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,259, at P 8 (2009); see also *San Diego Gas & Electric Co., et al.*, 120 FERC ¶ 61,201, at P 10 (2007).

⁷ See PECO/Exelon Settlement Order, 129 FERC ¶ 61,259 at P 39.

Commission finds that it is just and reasonable to grant the California Parties' motion.

The Commission orders:

The California Parties' motion, on behalf of PECO/Exelon, to opt-into the settlement agreements out of time listed above is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.