

139 FERC ¶ 61,209  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 13, 2012

In Reply Refer To:  
Docket No. EL01-10-078

William Fosbre  
Chief Deputy City Attorney  
City of Tacoma  
PO Box 11007  
Tacoma, WA 98411

Lawrence G. Acker  
Dewey & LeBoeuf, LLP  
1101 New York Avenue, NW  
Suite 1100  
Washington, DC 20005

Reference: Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western System Power Pool Agreement

Dear Messrs. Fosbre and Acker:

1. On March 12, 2012, Idaho Power Company and IDACORP Energy, L.P. (collectively, IDACORP) and the City of Tacoma, Washington (Tacoma) filed an amended Offer of Settlement, including a Stipulation and Agreement (Settlement), which would resolve all issues in the referenced proceeding, except for claims between the City of Seattle and IDACORP. Those latter claims are expressly reserved for later disposition.
2. Initial Comments on the Settlement were filed on or before April 2, 2012, by IDACORP, PPL Companies, Powerex, and Trial Staff. Reply Comments were filed on or before April 12, 2012, by the California Parties, IDACORP, Powerex, and Trial Staff.

The Settlement Judge certified the Settlement to the Commission as uncontested on April 24, 2012.<sup>1</sup>

3. In separately-filed comments, PPL Companies and Powerex stated that while they do not oppose the terms of the Settlement with respect to claims between the Settling Parties, they are concerned that the Settlement would extinguish non-parties' rights to bring "ripple claims" against IDACORP in the future.<sup>2</sup>

4. Specifically, PPL Companies and Powerex object to language in the Stipulation and Agreement (Article II Section 4), which states that "the only persons that have claims against IDACORP . . . are Tacoma and Seattle." PPL Companies and Powerex also object that Article III, section 6 of the Settlement has language stating that, with the exception of the claim by the Seattle, "the Commission shall not entertain or consider any claims against IDACORP that have been or could be presented for damages . . . in connection with IDACORP's sales of energy or capacity or trading activities in markets in the Pacific Northwest during the Settlement Period," and that approval of the Settlement "shall constitute a Commission determination that except for claims by Seattle, IDACORP shall not be subject to further proceedings, investigations or scrutiny for claims of damages . . . for its sales of energy or capacity or trading activities in the Pacific Northwest during the Settlement Period." Finally, PPL Companies and Powerex oppose Article III, section 6(e), which states that approval of the Settlement "shall constitute dismissal of IDACORP as a Respondent in the Pacific Northwest Proceedings, except for the determination of claims that may be advanced by Seattle." PPL Companies and Powerex request that the Commission reject these portions of the Settlement that purport to cut off claims of non-parties.

5. In reply, IDACORP states that possible ripple claims are irrelevant and cannot be reconciled with an orderly disposition of this case. Trial Staff states, in reply, that they do not oppose the Settlement. Trial Staff suggests that the circumstances that could give rise to potential ripple claims have never occurred, and the Commission may weigh an interest in finality with the possible elimination of other parties' claims.

---

<sup>1</sup> *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 139 FERC ¶ 63,004 (2012).

<sup>2</sup> In 2001, the ALJ in the underlying docket defined "ripple claims" as "sequential claims against a succession of sellers in a chain of purchasers that are triggered if the last wholesale purchase in the chain is entitled to a refund." *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 96 FERC ¶ 63,044, at 65,300 (2001).

6. The Commission finds that the uncontested Settlement appears fair and reasonable and in the public interest as between the IDACORP and Tacoma, and is hereby approved, subject to the removal of any language purporting to foreclose claims by others.

7. While the potential for ripple claims is speculative, the Settlement between IDACORP and Tacoma cannot be used to extinguish potential claims of others. Removing such language is consistent with the history of this proceeding, which preserved potential ripple claims.<sup>3</sup> It is also consistent with the Commission's policy to favor settlement agreements that do not impair the rights of non-parties.<sup>4</sup> Accordingly, the Commission approves the Settlement on the condition that the Settlement is modified so as to remove the disputed language extinguishing the rights of third parties. IDACORP and Tacoma are directed to submit a compliance filing within thirty days of the issuance of this order consistent with the body of this order.

By direction of the Commission. Commissioner Moeller is not participating.

Kimberly D. Bose,  
Secretary.

cc: To All Parties

---

<sup>3</sup> See, e.g., *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 103 FERC ¶ 61,348, at PP 47-50 (2003) (stating that the "ALJ determined that all parties reserved their rights to pursue claims if the Commission was to direct further proceedings to determine refunds"). See also *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, Docket No. EL01-10-026, at P 10 (Nov. 23, 2011) (Order of the Chief Judge Confirming Settlement Procedures) ("This Order shall not be construed to either diminish or enlarge the right of any Party to assert its position with respect to Ripple Claims.")

<sup>4</sup> See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 113 FERC ¶ 61,171, at P 40 (2005).