

120 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Philip D. Moeller,
and Jon Wellinohoff.

San Diego Gas & Electric Company	Docket No. EL00-95-197
Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket No. EL00-98-181
Puget Sound Energy, Inc.	Docket No. EL01-10-024
Investigation of Anomalous Bidding Behavior And Practices in Western Markets	Docket No. IN03-10-028
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices	Docket No. PA02-2-042
California Independent System Operator Corporation	Docket Nos. ER03-746-005 EL01-111-001 ER01-889-017 ER01-3013-008 ER01-607-008
California Municipal Utilities Association	Docket No. EL01-1-015
Salt River Project	Docket No. EL01-84-005
Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. ER01-1455-013
Public Utilities Commission of the State of California	Docket No. EL02-60-008
California Electricity Oversight Board	Docket No. EL02-62-007
Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. EL03-158-006

Enron Power Marketing, Inc. and Enron Energy Services Inc.

Docket No. EL03-180-030

Pacific Gas and Electric Company

Docket Nos. ER98-495-021
ER98-1614-010
ER98-2145-010
ER99-3603-003

Mirant Delta, LLC and Mirant Potrero, LLC

Docket Nos. ER03-215-003
ER04-227-003
ER05-343-004

Southern Company Energy Marketing, Inc. and Southern Company Services, Inc.

Docket No. ER97-4166-023

Southern Energy California, LLC

Docket No. ER99-1841-005

Southern Energy Delta, LLC

Docket No. ER99-1842-002

Southern Energy Potrero, LLC

Docket No. ER99-1833-002

Mirant Americas Energy Marketing, LP

Docket No. ER01-1265-009

Mirant California, LLC

Docket No. ER01-1267-011

Mirant Delta, LLC

Docket No. ER01-1270-011

Mirant Potrero, LLC

Docket No. ER01-1278-011

State of California, *ex rel.* Bill Lockyer, Attorney General of the State of California

Docket No. EL02-71-007

Mirant Americas Energy Marketing, Inc.

Docket No. PA03-8-003

Enron Power Marketing, Inc. and Enron Energy Services, Inc.

Docket Nos. EL03-154-024
EL02-114-025

Portland General Electric Company

Docket No. EL02-115-029

Enron Power Marketing, Inc.

Docket No. EL02-113-027

Public Service Company of Colorado
Reliant Resources, Inc.

Docket No. EL03-167-004
Docket No. EL03-170-006

Reliant Energy Services, Inc.
Idaho Power Company

Docket No. EL03-59-006
Docket Nos. EL03-156-006
EL03-189-007
EL03-189-008

Cities of Anaheim, Azusa, Banning, Colton,
And Riverside, California

Docket No. EL00-111-011

Portland General Electric Company

Docket No. EL03-165-005

Duke Energy Trading and Marketing Company

Docket No. EL03-152-006

Williams Energy Services Corporation

Docket No. EL03-179-007

Williams Energy Marketing &
Trading Company

Docket No. PA03-11-004

AES Southland Company and Williams Energy
Marketing & Trading Company

Docket No. IN01-3-005

ORDER ON MOTION TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued August 30, 2007)

1. On July 9, 2007, PacifiCorp filed a Motion for Leave to Opt into Settlement Agreements Out of Time in an attempt to opt into a number of settlement agreements identified in the motion that have been approved by the Commission. PacifiCorp's motion was filed pursuant to the settlement recently approved in *San Diego Gas & Electric Co., et al.*¹ As discussed below, because no parties to the settlement agreements listed in the motion filed answers opposing PacifiCorp's request to opt into the settlements, the Commission finds that permitting PacifiCorp to opt into the settlement agreements listed below is fair and reasonable and in the public interest. The Commission therefore considers the lack of comment from parties to these settlements as constituting their consent to PacifiCorp's efforts to opt into those settlements.

¹ 119 FERC ¶ 61,296 (2007).

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 rates of public utility sellers into the California Independent System Operator Corporation (CAISO) and the California Power Exchange Corporation (CalPX) markets for a specific period. Also in 2000, the Commission ordered an evidentiary hearing to help determine whether there may have been unjust and unreasonable charges for spot market bilateral sales in the Pacific Northwest for a specific period.

3. In 2002, the Commission directed Staff to commence a fact-finding investigation of manipulation of electric energy and natural gas prices in the West. In 2003, the Commission directed its Office of Market Oversight and Investigations to conduct an investigation to determine whether individual market participants may have violated a prohibition against anomalous market behavior. Also in 2003, the Commission instituted the Gaming/Partnership Proceeding by issuing an order directing forty-three entities, including PacifiCorp, to show cause why they should not be found to have participated in activities that constitute gaming and/or anomalous market behavior in violation of the CAISO and CalPX tariffs.

4. On April 11, 2007, PacifiCorp and the California Parties² filed a Joint Offer of Settlement and Settlement and Release of Claims Agreement (PacifiCorp Settlement) in eight proceedings.³ The PacifiCorp Settlement resolved matters and claims related to PacifiCorp and arising out of events and transactions in the Western Energy Markets⁴ during the period from January 1, 2000 through June 20, 2001.

² The California parties include Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the People of the State of California, *ex rel* Edmund G. Brown Jr., Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission and the California Department of Water Resources.

³ The proceedings were Docket Nos. EL00-95-000, EL00-98-000, EL01-10-000, IN03-10-000, PA02-2-000, EL03-163-000, EL03-197-000 and ER03-746-000.

⁴ The Settlement defined the Western Energy Markets as those markets for electric capacity, energy, and/or ancillary services in the territories covered by the Western Electricity Coordinating Council, including the California markets of the CAISO and CalPX. PacifiCorp Settlement, sections 1.88 and 1.9.

5. Section 4.1.7 of the PacifiCorp Settlement required PacifiCorp to opt into each subsequent and substantially similar settlement reached by the California Parties with other suppliers. PacifiCorp also was required to attempt to opt into substantially similar settlements reached by the California Parties prior to the PacifiCorp Settlement's effective date, to the extent that PacifiCorp had not already done so.

6. On June 21, 2007, we approved the PacifiCorp Settlement, finding that the PacifiCorp Settlement was fair and reasonable and in the public interest.⁵

PacifiCorp's Motion and Responses

7. On July 9, 2007, PacifiCorp filed a motion for leave to opt into settlement agreements out-of-time. PacifiCorp requests permission to opt into ten settlement agreements between the California Parties and various other entities. These settlements include:

- i. the Williams Companies settlement approved in *San Diego Gas & Electric Co., et al.*, 108 FERC ¶61,002 (2004);
- ii. the Dynergy, Inc. settlement approved in *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,071(2004);
- iii. the Duke Companies settlement approved in *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,257 (2004);
- iv. the Mirant Companies settlement approved in *San Diego Gas & Electric Co., et al.*, 111 FERC ¶ 61,017 (2005);
- v. the Enron Companies settlement approved in *San Diego Gas & Electric Co., et al.*, 113 FERC ¶ 61,171 (2005) and as later amended;
- vi. the Public Service Company of Colorado settlement approved in *San Diego Gas & Electric Co., et al.*, 113 FERC ¶ 61,235 (2005);
- vii. the Reliant Companies settlement approved in *San Diego Gas & Electric Co., et al.*, 113 FERC ¶ 61,308 (2005);
- viii. the Idacorp Energy, LP settlement approved in *San Diego Gas & Electric Co., et al.*, 115 FERC ¶ 61,230 (2006);
- ix. the Eugene Water & Electric Board settlement approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,092 (2007); and
- x. the Portland General Electric Company settlement approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,151 (2007).

⁵ *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,296 at P 43.

8. Idaho Power Company and Idacorp Energy, LP, (IDACORP), were the only entities to file an answer in response to PacifiCorp's motion.⁶ IDACORP notes that the IDACORP settlement provided a date certain by which persons could elect to be bound by the IDACORP settlement's terms. While PacifiCorp did not opt into the IDACORP settlement within the time frame provided, IDACORP affirmatively consents to PacifiCorp's opting into the IDACORP settlement at this time.

Discussion

A. Procedural Matters

9. As noted above, included within IDACORP's answer was a request for leave to file out-of-time. Given the absence of any undue prejudice or delay and given IDACORP's interest in the settlements at issue, we find good cause to grant IDACORP's request and accept the untimely answer.

B. Commission Determination

10. 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.⁷ In this instance, none of the parties to the ten settlements at issue has opposed PacifiCorp's request. Therefore, the Commission infers from the lack of opposition that the parties to each of the enumerated settlements assent to PacifiCorp's effort to opt into those settlements.

11. Furthermore, because the Commission has previously found the PacifiCorp settlement to be fair and reasonable and in the public interest,⁸ including section 4.1.7 of the settlement, the Commission finds that it is fair and reasonable and in the public interest to grant PacifiCorp's motion.

⁶ IDACORP's Answer included a request for leave to file out of time.

⁷ See, e.g., *San Diego Gas & Electric Co., et al.*, 111 FERC ¶ 61,186 at P 34.

⁸ *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,296 at P 2.

The Commission orders:

PacifiCorp's motion 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 not participating.

(S E A L)

Kimberly D. Bose,
Secretary.