

128 FERC ¶ 61,260
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, and Philip D. Moeller.

San Diego Gas & Electric Company, <i>et al.</i>	Docket No. EL00-95-000
Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket No. EL00-98-000
Williams Energy Services Corporation	Docket No. EL03-179-000
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices	Docket No. PA02-2-000
Williams Energy Marketing & Trading Company	Docket No. PA03-11-000
AES Southland, Inc., Williams Energy Marketing & Trading Company	Docket No. IN01-3-000
Investigation of Anomalous Bidding Behavior and Practices in the Western Markets	Docket No. IN03-10-000
Puget Sound Energy, Inc., <i>et al.</i>	Docket No. EL01-10-000
Duke Energy Trading and Marketing Company	Docket No. EL03-152-000
State of California, <i>ex rel.</i> Bill Lockyer, Attorney General of the State of California, <i>et al.</i>	Docket No. EL02-71-000
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, <i>et al.</i>	Docket No. EL02-60-000
California Electricity Oversight Board, <i>et al.</i>	Docket No. EL02-62-000
Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero	Docket No. EL03-158-000
Enron Power Marketing, Inc. and Enron Energy Services Inc., <i>et al.</i>	Docket No. EL03-180-000
Pacific Gas and Electric Company	Docket Nos. ER98-495-000 ER98-1614-000 ER98-2145-000 ER99-3603-000
Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. ER03-215-000
Mirant Delta, LLC and Mirant Potrero, LLC	Docket No. ER04-227-000
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, Inc.	Docket No. PA03-8-000
Enron Power Marketing, Inc. and Enron Energy Services Inc.	Docket No. EL03-154-000
Enron Power Marketing, Inc. and Enron Energy Services Inc.	Docket No. EL02-115-000
Portland General Electric Company	Docket No. EL02-114-000
Enron Power Marketing, Inc.	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
PacifiCorp	Docket No. EL03-163-000
PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.)	Docket No. EL03-197-000
El Paso Merchant Energy, L.P.	Docket No. EL03-187-000
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

ORDER ON MOTION TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued September 16, 2009)

1. On November 10, 2008, the California Parties¹ filed a Motion for an Order Authorizing the City of Vernon 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. The California Parties' motion was filed pursuant to the settlement agreement with the City of Vernon (Vernon), which the Commission approved in *San Diego Gas & Electric Co., et al.*² As discussed below, because no parties to the settlement agreements listed in the motion filed answers opposing the California Parties' request, on behalf of Vernon, to opt into the settlements, the Commission finds that permitting Vernon 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 Vernon's efforts to opt into those settlements.

2. Also, PPM Energy, Inc. (PPM), IDACORP Energy L.P. and Idaho Power Company (collectively, IDACORP) requested leave to opt into Vernon's settlement agreement. California Parties consented to IDACORP's and PPM's requests, and the Commission finds that permitting IDACORP and PPM to opt into the agreement is fair and reasonable and in the public interest.

¹ For purposes of the November 10, 2008 Motion, 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, and the California Public Utilities Commission. For purposes of the Vernon Settlement, California Parties means the aforementioned entities as well as 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. California Parties, November 10, 2008 Motion, EL00-95-000, at 4 n.1.

² *San Diego Gas & Electric Co., et al.*, 125 FERC ¶ 61,085 (2008).

Background

3. 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 electrical 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).

4. On July 16, 2008, Vernon and the California Parties filed a Joint Offer of Settlement, a Joint Explanatory Statement and a Settlement and Release of Claims Agreement (collectively, Vernon Settlement).³ The Vernon Settlement resolved claims related to Vernon arising out of events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001 and concerning Vernon's transmission revenue requirements.

5. Section 4.1.7.2 of the Vernon Settlement authorized the California Parties, on behalf of Vernon, to opt into settlements reached by the California Parties with other suppliers. Also, section 8.1 of the Vernon Settlement states that entities that fail to opt into the Vernon Settlement within "5 Business Days following the Settlement Effective Date shall have no right to participate in the settlement contemplated under this Agreement, absent the written agreement of the California Parties, and shall be deemed a Non-Settling Participant for purposes of the Agreement."

6. On October 23, 2008, the Commission approved the Vernon Settlement, finding that it was fair and reasonable and in the public interest.⁴

California Parties' Motion

7. On November 10, 2008, the California Parties filed a Motion for an Order Authorizing the City of Vernon to Opt Into Settlement Agreements Out of Time. The California Parties request that the Commission issue an order authorizing Vernon to opt into the following 20 settlement agreements between the California Parties and:

³ The proceeding was under Docket Nos. EL00-95-216, EL00-98-201, EL01-10-040, IN03-10-042, PA02-2-057, EL03-137-007, EL03-180-036, ER03-746-008, EL02-71-012, EL00-105-011, ER00-2019-020 and EL08-54-001.

⁴ San Diego Gas & Electric Co., *et al.*, 125 FERC ¶ 61,085 at P 19.

1. The Williams Companies, as approved in *San Diego Gas & Electric Co., et al.*, 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 & Electric Co., et al.*, 113 FERC ¶ 61,235 (2005);
7. The Reliant Parties or Reliant, as approved in *San Diego Gas & Electric Co., et al.*, 113 FERC ¶ 61,308 (2005);
8. IDACORP (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 & Elec. 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 (El Paso Marketing L.P), 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); and
20. Strategic Energy, LLC, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,316 (2008).

8. No parties to the settlement agreements listed above filed comments or answers opposing the California Parties' request, on behalf of Vernon, to opt into the settlements. In fact, PPM and IDACORP made filings in support of the motion to opt into the settlements.⁵

Commission Determination

9. 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.⁶ In this instance, none of the parties to the 20 settlements at issue has

⁵ See IDACORP Energy L.P. and Idaho Power Co. November 10, 2008 Answer, Docket No. EL00-95-216 (IDACORP Answer); PPM Energy, Inc. November 19, 2008 Answer, Docket No. EL00-95-216 (PPM Answer); *see also* California Parties Notice Regarding Participation in the Vernon Settlement by IDACORP and PPM Energy, EL00-95-216 (California Parties Notice).

⁶ 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
(continued....)

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 Vernon, to opt into those settlements.⁷

10. Furthermore, because the Commission has previously approved the Vernon Settlement,⁸ including section 4.1.7.2 of the Vernon Settlement, the Commission finds that it is just and reasonable to grant the California Parties' motion.

PPM and IDACORP Requests

11. PPM and IDACORP filed answers to the California Parties' motion consenting to Vernon opting into their settlement agreements and requesting leave to opt into the Vernon Settlement.⁹ On November 21, 2008, California Parties, pursuant to the terms of section 8.1 of the Vernon Settlement, provided written consent for PPM and IDACORP to participate in the Vernon Settlement as of the date of a Commission order allowing Vernon to opt into the IDACORP settlement and the PPM settlement.¹⁰

Commission Determination

12. As discussed above, the Commission has 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. Here, California Parties have filed a notice, consenting to PPM's and IDACORP's participation in the Vernon Settlement.¹¹

or prior to the date that is five business days following the issuance of the FERC settlement order 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 California Parties' motions 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.

⁷ See *San Diego Gas & Electric Co., et al.*, 120 FERC ¶ 61,201, at P 10 (2007).

⁸ *San Diego Gas & Electric Co.*, 125 FERC ¶ 61,085 at P 19.

⁹ PPM Answer at 3; IDACORP Answer at 2.

¹⁰ California Parties Notice at 3.

¹¹ *Id.*

13. Also, because the Commission has previously approved the Vernon Settlement,¹² including section 8.1 of the Vernon Settlement, the Commission finds that it is just and reasonable for IDACORP and PPM to participate in the Vernon Settlement.¹³

The Commission orders:

(A) The California Parties' motion, on behalf of Vernon, to opt into the settlement agreements out of time listed above is hereby granted as discussed in the body of this order.

(B) IDACORP and PPM requests to participate in the Vernon Settlement are hereby granted as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² *San Diego Gas & Electric Co.*, 125 FERC ¶ 61,085 at P 19.

¹³ As noted above, the Commission is not required to act on such motions to opt into settlements because the settlements themselves set forth the agreed-upon procedures by which a party might seek to opt in.