

British Columbia Power Exchange
Corporation, *et al.*

Sempra Energy Trading Corp.

Docket No. EL03-173-000

Sempra Energy Trading Corp.

Docket No. EL03-201-000

State of California, *ex rel.* Edmund G. Brown, Jr.,
Attorney General of the State of California

Docket No. EL09-56-000

v.

Powerex Corp. (f/k/a British Columbia Power
Exchange Corp.), *et al.*

Williams Energy Services Corporation

Docket No. EL03-179-000

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

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

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
Pacific Gas & 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, 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
PECO Energy Company	Docket No. EL03-198-000
California Power Exchange Corporation	Docket No. ER05-167-000
California Power Exchange Corporation	Docket No. ER07-861-000
Cargill Power Markets, LLC	Docket No. EL03-144-000
Los Angeles Department of Water and Power	Docket No. EL03-157-000
Public Service Company of New Mexico	Docket No. EL03-168-000
Public Service Company of New Mexico	Docket No. EL03-200-000
Northern California Power Agency	Docket No. EL03-161-000
Northern California Power Agency	Docket No. EL03-196-000
Tucson Electric Power Company	Docket No. EL03-177-000

ORDER GRANTING MOTION TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued August 5, 2011)

1. On January 7, 2011, Sempra Energy, Sempra Energy Trading LLC, and Noble Americas Energy Solutions LLC (collectively, Sempra) filed a motion for leave to opt into a number of settlement agreements that have been approved by the Commission in the captioned proceedings. Sempra's motion was filed pursuant to the settlement

agreement it executed with the California Parties¹ (Sempra Settlement), which the Commission approved in the December 22, 2010 Order (Sempra Settlement Order).² As discussed below, we grant Sempra's unopposed motion.³

Background

2. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act to investigate, among other things, the justness and reasonableness of public utility sellers' rates in the California Independent System Operator Corporation and California Power Exchange 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 October 18, 2010, Sempra and the California Parties filed the Sempra Settlement, which resolved matters and claims related to Sempra arising out of events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001 in Docket No. EL00-95 and related proceedings.⁴ Section 4.1.7.2 of the Sempra Settlement provided that Sempra shall take action to opt in late to earlier settlement agreements between the California Parties and other suppliers, and that the

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.* Kamala D. Harris, 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 & Elec. Co., et al.*, 133 FERC ¶ 61,249 (2010).

³ On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95, documenting her decision, based on a memorandum from the Office of General Counsel's General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

⁴ The proceeding was under Docket Nos. EL00-95-251, EL00-98-233, EL01-10-062, EL01-68-037, IN03-10-064, PA02-2-079, EL03-137-026, EL03-180-055, ER03-746-029, EL02-71-033, EL03-173-008, EL03-201-010, and EL09-56-010.

California Parties would not oppose any motion by Sempra seeking Commission approval to opt in out of time.⁵

4. On December 22, 2010, the Commission approved the Sempra Settlement, finding that it was just and reasonable.⁶

Sempra's Motion

5. On January 7, 2011, Sempra filed a motion for an order allowing it to opt into certain settlement agreements out of time. Specifically, Sempra requests a Commission order authorizing it to opt into 31 settlement agreements between the California Parties and various other entities. These settlements include:

- i. the Williams Companies, as approved in *San Diego Gas & Electric Company, et al.*, 108 FERC ¶ 61,002 (2004);
- ii. the Dynegy Parties, as approved in *San Diego Gas & Electric Company et al.*, 109 FERC ¶ 61,071 (2004);
- iii. the Duke Parties or Duke, as approved in *San Diego Gas & Electric Company, et al.*, 109 FERC ¶ 61,257 (2004);
- iv. the Mirant Parties, as approved in *San Diego Gas & Electric Company, et al.*, 111 FERC ¶ 61,017 (2005);
- v. the Enron Parties, as approved in *San Diego Gas & Electric Company*, 113 FERC ¶ 61,171 (2005) and as later amended, *San Diego Gas & Electric Company, et al.*, 119 FERC ¶ 61,135 (2007);
- vi. Public Service Company of Colorado, as approved in *San Diego Gas & Electric Company, et al.*, 113 FERC ¶ 61,235 (2005);
- vii. the Reliant Parties, as approved in *San Diego Gas & Electric Company, et al.*, 113 FERC ¶ 61,308 (2005);

⁵ Motion at 5; *see also* Sempra Settlement, Settlement and Release of Claims Agreement, § 4.1.7.2.

⁶ Sempra Settlement Order, 133 FERC ¶ 61,249 at P 56.

- viii. IDACORP (Idaho Power Company and IDACORP Energy L.P.), as approved in *San Diego Gas & Electric Company, et al.*, 115 FERC ¶ 61,230 (2006);
- ix. Eugene Water & Electric Board, as approved in *San Diego Gas & Electric Company, et al.*, 119 FERC ¶ 61,092 (2007);
- x. Portland General Electric Company, as approved in *San Diego Gas & Electric Company, et al.*, 119 FERC ¶ 61,151 (2007);
- xi. El Paso Corporation and El Paso Marketing, L.P., as approved in *San Diego Gas & Electric Company, et al.*, 119 FERC ¶ 61,297 (2007);
- xii. PacifiCorp, as approved in *San Diego Gas & Electric Company, et al.*, 119 FERC ¶ 61,296 (2007);
- xiii. PPM Energy, Inc., as approved in *San Diego Gas & Electric Company, et al.*, 121 FERC ¶ 61,014 (2007);
- xiv. Conectiv Energy Supply, Inc., as approved in *San Diego Gas & Electric Company, et al.*, 122 FERC ¶ 61,008 (2008);
- xv. Midway Sunset Cogeneration Company, as approved in *San Diego Gas & Electric Company, et al.*, 123 FERC ¶ 61,004 (2008);
- xvi. Public Utility District No. 2 of Grant County, Washington, as approved in *San Diego Gas & Electric Company, et al.*, 123 FERC ¶ 61,200 (2008);
- xvii. City of Riverside, California, as approved in *San Diego Gas & Electric Company, et al.*, 123 FERC ¶ 61,242 (2008);
- xviii. City of Anaheim, California, as approved in *San Diego Gas & Electric Company et al.*, 123 FERC ¶ 61,243 (2008);
- xix. City of Azusa, California, as approved in *San Diego Gas & Electric Company, et al.*, 123 FERC ¶ 61,244 (2008);
- xx. Strategic Energy, LLC, as approved in *San Diego Gas & Electric Company, et al.*, 123 FERC ¶ 61,316 (2008);

- xxi. AES Placerita, Inc., as approved in *San Diego Gas & Electric Company, et al.*, 128 FERC ¶ 61,004 (2009);
- xxii. Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., as approved in *San Diego Gas & Electric Company, et al.*, 128 FERC ¶ 61,242 (2009);
- xxiii. Comision Federal de Electricidad, as approved in *San Diego Gas & Electric Company, et al.*, 129 FERC ¶ 61,256 (2009);
- xxiv. City of Vernon, California, as approved in *San Diego Gas & Electric Company, et al.*, 125 FERC ¶ 61,085 (2008);
- xxv. Puget Sound Energy, Inc., as approved in *San Diego Gas & Electric Company, et al.*, 128 FERC ¶ 61,002 (2009);
- xxvi. PECO/Exelon, as approved in *San Diego Gas & Electric Company, et al.*, 129 FERC ¶ 61,259 (2009);
- xxvii. Cargill Power Markets, LLC, as approved in *San Diego Gas & Electric Company, et al.*, 129 FERC ¶ 61,258 (2009);
- xxviii. City of Los Angeles acting by and through the Department of Water and Power, as approved in *San Diego Gas & Electric Company, et al.*, 129 FERC ¶ 61,257 (2009);
- xxix. Northern California Power Agency, as approved in *San Diego Gas & Electric Company, et al.*, 131 FERC ¶ 61,083 (2010);
- xxx. Public Service Company of New Mexico, as approved in *San Diego Gas & Electric Company, et al.*, 131 FERC ¶ 61,082 (2010); and
- xxxi. Tucson Electric Power Company, as approved in *San Diego Gas & Electric Company, et al.*, 131 FERC ¶ 61,259 (2010).

6. No parties to the settlement agreements listed above filed comments or answers opposing Sempra's request to opt into these settlements out of time.

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.⁷ In this instance, none of the parties to the 31 settlements at issue has opposed Sempra's request. Therefore, the Commission infers from the lack of opposition that the parties to each of the enumerated settlements assent to Sempra's efforts to opt into those settlements.⁸ Furthermore, because the Commission has previously found the Sempra Settlement to be just and reasonable,⁹ including section 4.1.7.2 of the Sempra Settlement, the Commission finds that it is just and reasonable to grant Sempra's motion.

The Commission orders:

Sempra's motion to opt into the settlement agreements listed above out of time is hereby granted, as discussed in the body of this order.

By the Commission. Commissioners Spitzer and Moeller are not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ See, e.g., *San Diego Gas & Elec. 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 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.

⁸ See, e.g., *San Diego Gas & Elec. Co.*, 120 FERC ¶ 61,201, at P 10 (2007).

⁹ Sempra Settlement Order, 133 FERC ¶ 61,249 at P 56.