

1. On August 2, 2011, City of Seattle, Washington (Seattle) filed a motion for an order authorizing it to opt into certain Commission-approved settlements in the above-captioned proceedings. The motion was filed pursuant to the settlement agreement between Seattle and the California Parties,¹ which the Commission approved in the Seattle Settlement Order.² In this order, the Commission grants Seattle'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.⁴ 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.⁵ Further, in 2003, the Commission directed Staff to investigate anomalous bidding behavior and practices in western markets.⁶

3. On February 8, 2011, Seattle and the California Parties filed the Seattle Settlement, which resolved matters and claims related to Seattle arising out of events and

¹ 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.*, 135 FERC ¶ 61,246 (2011) (Seattle Settlement Order).

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 *San Diego Gas & Elec. Co.*, 92 FERC ¶ 61,172 (2000).

⁵ *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

⁶ *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 103 FERC ¶ 61,347 (2003).

transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001.⁷ Section 4.13.2 of the Seattle Settlement provides that Seattle agrees to opt in late to earlier settlement agreements between the California Parties and other settling suppliers.⁸

4. On June 16, 2011, the Commission approved the Seattle Settlement, finding that it appeared to be fair and reasonable and in the public interest.⁹

Seattle's Motion

5. On August 2, 2011, Seattle filed its motion requesting Commission authorization for it to opt into certain Commission-approved settlements out of time, in accordance with section 4.13.2 of the Seattle Settlement. Specifically, Seattle requests that it be permitted to opt into the following settlements:

- i. the Williams Companies, as approved in *San Diego Gas & Elec. Co.*, 108 FERC ¶ 61,002 (2004);
- ii. the Mirant Parties, as approved in *San Diego Gas & Electric. Co.*, 111 FERC ¶ 61,017 (2005);
- iii. the Enron Parties, as approved in *San Diego Gas & Electric. Co.*, 113 FERC ¶ 61,171 (2005) and as later amended, *San Diego Gas & Elec. Co., et al.*, 119 FERC ¶ 61,135 (2007);
- iv. the Reliant Parties, as approved in *San Diego Gas & Electric. Co.*, 113 FERC ¶ 61,308 (2005);
- v. Eugene Water & Electric Board, as approved in *San Diego Gas & Electric. Co.*, 119 FERC ¶ 61,092 (2007);
- vi. Conectiv Energy Supply, Inc., as approved in *San Diego Gas & Electric. Co.*, 122 FERC ¶ 61,008 (2008);

⁷ The proceeding was under Docket Nos. EL00-95-256, EL00-98-238, EL01-10-067, IN03-10-069, PA02-2-084, EL03-137-031, EL03-180-056, and ER03-746-034.

⁸ Seattle Settlement, Settlement and Release of Claims, § 4.13.2.

⁹ Seattle Settlement Order, 135 FERC ¶ 61,246 at P 26.

- vii. Midway Sunset Cogeneration Company, as approved in *San Diego Gas & Elec. Co.*, 123 FERC ¶ 61,004 (2008);
- viii. NEGT Energy Trading-Power, L.P. (f/k/a PG&E Energy Trading Power, L.P.), as approved in *San Diego Gas & Elec. Co.*, 126 FERC ¶ 61,007 (2009);
- ix. Cargill Power Markets, LLC, as approved in *San Diego Gas & Elec. Co.*, 129 FERC ¶ 61,258 (2009); and
- x. Tucson Electric Power Company, as approved in *San Diego Gas & Elec. Co.*, 131 FERC ¶ 61,259 (2010).

6. No parties to the settlements listed above filed comments or answers opposing Seattle's motion to opt into these settlements out of time.

Commission Determination

7. Previously in these proceedings, 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.¹⁰ Nonetheless, Seattle has filed a motion seeking Commission authorization to opt into the listed settlements. Because Seattle is seeking specific Commission authorization to opt into these settlements, we will entertain the motion.

8. In this instance, none of the parties to the settlements listed above has opposed Seattle's motion. Therefore, the Commission infers from the lack of opposition that the parties to each of the listed settlements assent to Seattle's effort to opt into those settlements out of time.¹¹ Furthermore, because the Commission has previously found

¹⁰ See, e.g., *San Diego Gas & Electric Co.*, 111 FERC ¶ 61,186, at P 34 (2005). We note that certain provisions of most of the listed 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 settlement order shall have no right to participate in that settlement absent the written consent of the California Parties and (in most instances) the relevant settling supplier. Thus, these settlements set forth the process for opting into them out of time.

¹¹ See *San Diego Gas & Electric Co.*, 120 FERC ¶ 61,201, at P 10 (2007).

the Seattle Settlement appeared to be fair and reasonable and in the public interest,¹² the Commission finds that it is reasonable to grant Seattle's motion.¹³

The Commission orders:

Seattle's motion to opt into the settlements 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.

¹² Seattle Settlement Order, 135 FERC ¶ 61,246 at P 26.

¹³ As noted above, the Commission has determined in these proceedings that whether an entity may opt into a settlement between the California Parties and a settling supplier out of time is an issue for the settling parties to determine, and thus the Commission is not required to act on such motions to opt into settlements out of time.