UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, and Joseph T. Kelliher.

San Diego Gas & Electric Company Complainants v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents	Docket No. EL00-95-100, *et al.*
Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket No. EL00-98-000, *et al.*

ORDER ON MOTIONS FOR RELEASE OF COLLATERAL

(Issued January 31, 2005)

1. On December 28, 2004, Dynegy Power Marketing, Inc. (Dynegy) and Williams Power Company, Inc. (Williams) submitted a joint motion (Joint Motion) renewing their earlier requests[1] that the Commission direct the California Power Exchange (CalPX) to release collateral posted with it by Dynegy and Williams. The Joint Motion, the Williams Motion and the Dynegy Motion are not opposed. For reasons set out below, the Commission will grant the Joint Motion and direct the CalPX to release the collateral posted by Dynegy and Williams. This order will benefit customers by creating incentives for parties to settle remaining claims in *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services, et al.*, Docket Nos. EL00-95-000, *et al.* and EL00-98-000, *et al.* (the Refund Proceeding), which in turn will bring certainty and finality to the Refund Proceeding.

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[1] *See* Williams' Motion for Release of Collateral filed on August 30, 2004 (Williams Motion), and Dynegy's Conditional Motion for Release of Collateral, filed on September 13, 2004 (Dynegy Motion).

I. **Background**

2. As a condition for participating in markets operated by the CalPX, companies such as Williams and Dynegy were required to post certain collateral with the CalPX. Although the CalPX is no longer in operation, it continues to maintain the collateral that was posted until the refund obligations for each market participant is determined through ongoing calculations by the California Independent System Operator (CAISO) in the Refund Proceeding, and until the Commission authorizes the release of such collateral.[2] As a result, the CalPX currently maintains the following collateral at issue in the Joint Motion: for Williams, the CalPX maintains a $5 million bond, $1 million letter of credit, and $1,114,367 in cash;[3] and, for Dynegy, the CalPX maintains two letters of credit, one for $1 million and another for $5 million.[4]

3. In separate orders issued last year, the Commission approved global settlements of numerous complaints arising out of Williams' and Dynegy's sale of electricity and natural gas into California during the market disruptions of 2000 and 2001.[5] Subsequent to the Commission's order in the Williams settlement, which did not address the collateral held by the CalPX, Williams filed a motion requesting that the Commission direct the CalPX to release its collateral. Williams argued that, in light of the July 2, 2004 settlement and an earlier settlement approved by the Commission in 2002, its refund liability and obligations in the Refund Proceeding "are largely and substantially resolved."[6] The Commission's order approving the Williams Settlement did not address the Williams' collateral held by the CalPX.

4. On September 13, 2004, Dynegy filed two pleadings addressing the collateral issue: 1) an answer in support of Williams' motion, asserting that the Commission should, in addition to directing the release of collateral requested by Williams, authorize the CalPX "to release any collateral held with respect to any party that has settled its

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[2] *See PG&E Trading-Power, L.P. v. California Power Exchange Corp.*, 102 FERC ¶ 61,091 (2003); *Powerex Corp. v. California Power Exchange Corp.*, 102 FERC ¶ 61,328 (2003), *reh'g denied*, 104 FERC ¶ 61,119 (2003); *Constellation Power Source, Inc. v. California Power Exchange Corp.*, 100 FERC ¶ 61,124 (2002), *order on reh'g*, 100 FERC ¶61,391(2002).

[3] Williams Motion at 2.

[4] Dynegy Motion at 2.

[5] *See San Diego Gas & Electric Co., et al.*, 108 FERC ¶ 61,002 (2004) (Williams Settlement Order); and, *San Diego Gas & Electric Co., et al.*, 109 FERC ¶ 61,071 (2004) (Dynegy Settlement Order).

[6] Williams Motion at 3.

refund liability, unless some extraordinary circumstances exist (*e.g.*, bankruptcy);"[7] and, 2) Dynegy filed a "Conditional Motion for Release of Collateral" asserting that, upon Commission approval of Dynegy's settlement of California-related matters,[8] the Commission should direct the CalPX to release Dynegy's collateral.

5. The Dynegy Settlement was not conditioned upon a Commission order directing the CalPX to release Dynegy's collateral. The Settlement provides:

> **Dynegy Parties' Collateral.** The California Parties[9] … will not oppose a request of any of the Dynegy Parties for a FERC order directing the [Cal]PX to release any and all collateral posted by any of the Dynegy Parties; provided, however, that the release of such collateral shall neither be a part of, nor a condition to, this Agreement.[10]

While the CalPX did not take a position on the collateral issue in its comments on the Dynegy Settlement, it did state that, "to the extent such a request is granted, the Commission should authorize the release of collateral by an express order."[11] The Commission's October 25 Order approving the Dynegy settlement did not address the release of Dynegy's collateral held by the CalPX.

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[7] *See* Answer of Dynegy Power Marketing, Inc. in Support of Williams Power Company, Inc. Motion for Release of Collateral at 2 (Dynegy Answer).

[8] The Dynegy Settlement Agreement was filed with the Commission on June 28.

[9] The California Parties include: Pacific Gas & Electric Company (PG&E); Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E); the California Department of Water Resources acting through its Electric Power Fund (CERS), separate and apart from its powers and responsibilities with respect to the State Water Resources Development System; the California Electricity Oversight Board (CEOB); the California Public Utilities Commission (CPUC); and the People of the State of California, *ex rel.* Bill Lockyer, Attorney General.

[10] *See* section 6.2 of the Dynegy Settlement and Release of Claims Agreement in San Diego Gas & Electric Company, *et al.*, Docket Nos. EL00-95-000, *et al.*, at 14 (the Dynegy Settlement).

[11] *See* CalPX Initial Comments on the Dynegy Settlement filed on July 19, 2004 at 8.

6. On October 1, 2004, a settlement was filed by Duke, the California Parties, Other Claimant Parties[12] and the Commission's Office of Market Oversight and Investigations (OMOI) resolving matters and claims arising from events in the CAISO and CalPX energy and ancillary services markets during the period from January 1, 2000 through June 23, 2001 as they relate to Duke (the Duke Settlement). This settlement also resolved a number of class action proceedings pending in state and federal courts, subject to the approval of the relevant courts. Unlike the Williams and Dynegy Settlements, the Duke Settlement provided for the distribution by CalPX of Duke's collateral:

> **Duke Parties' Collateral.** The California Parties acknowledge and agree that … the Duke Parties shall be entitled to a release by the [Cal]PX of any and all collateral posted by any of the Duke Parties. FERC's approval of this Agreement in the FERC Settlement Order shall constitute direction to the [Cal]PX to release any and all of the Duke Parties' collateral as provided herein.[13]

In the order approving the Duke Settlement, the Commission directed the CalPX to implement the terms of the settlement, including the distribution of collateral.[14]

7. On December 28, 2004, Williams and Dynegy filed a renewed joint motion for release of collateral, asserting that the Commission-approved settlements in their respective proceedings "resolve over 95 percent of potential refund liability for Dynegy and Williams and provide additional financial protections for non-settling parties sufficient to address any concerns regarding the release of this collateral."[15] The Joint Motion points out that both settlements provide specific financial protections to cover refunds to non-settling parties. The Dynegy settlement guarantees that the entire settlement proceeds will be available to pay refunds to any non-settling party: "any shortfall in refunds will be completely backstopped by the California Parties to the extent of the settlement proceeds."[16] The Williams Settlement requires Williams to maintain a surplus escrow account of $10 million pending resolution of the Refund Proceeding to

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[12] For purposes of the Duke Settlement, the "Other Claimant Parties" are: the San Diego District Attorney's Office (SDDA); the Attorney General of the State of Washington in her capacity as chief law enforcement officer of the State; and to the greatest extent permitted by law (Washington Attorney General); and the Attorney General of the State of Oregon in his capacity as chief law enforcement officer of the State, and to the greatest extent permitted by law (Oregon Attorney General).

[13] *See* section 6.2 of the Duke Settlement and Release of Claims Agreement, at 29.

[14] Duke Settlement Order, 109 FERC ¶61,257 at Para. 57 and Ordering Paragraph D.

[15] Williams and Dynegy Joint Motion at 3.

[16] Dynegy Motion at 5.

cover Williams' refund obligations: "The Williams Surplus Escrow was created to ensure that whatever remaining obligations Williams has in the Refund Proceeding, as determined by the Commission, are fully satisfied, and, accordingly, requiring the [Cal]PX to retain Williams' collateral is superfluous."[17]

II. Commission Determination

8. In approving the Williams and Dynegy settlements, the Commission determined that each settlement will provide significant benefits, including certainty and finality on major issues, to parties to the settlement. In addition, the Commission found that neither settlement would adversely affect the interests of those parties that choose to continue to litigate their claims against Williams and Dynegy in the Refund Proceeding rather than opting into the settlements. Given the fact that the settlements resolve nearly all of Williams' and Dynegy's potential refund obligations and that each settlement provides sufficient protections to assure that their respective refund obligations to non-settling parties will be met, the Commission finds that it is appropriate for the CalPX to release Williams' and Dynegy's collateral.

9. We do not believe that this is inconsistent with prior Commission orders addressing the collateral issue. Specifically, the Commission's October 7 Rehearing Order in *PG&E Co. v. CalPX*[18] declined to allow the release of collateral and chargeback funds that were improperly collected until after the completion of the Refund Proceeding. However, the situation in that case is distinguishable from the situation presented in the Williams and Dynegy motions. In essence, the Williams and Dynegy settlements constitute a determination of "who owes what to whom" in the Refund Proceeding with respect to the participants in each settlement. The financial interests of non-settling parties are provided for by specific protections built into each settlement. For this reason, the Commission finds that the distribution of collateral is appropriate.

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[17] Williams Motion at 7.

[18] 109 FERC ¶ 61,027 (2004) (October 7 Rehearing Order).

The Commission orders:

(A) The CalPX is authorized and directed to distribute any collateral it holds for Williams and Dynegy.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.