

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company  
Complainant,

Docket No. EL00-95-147

v.

Sellers of Energy and Ancillary Services  
Into Markets Operated by the California  
Independent System Operator and the  
California Power Exchange Corporation,  
Respondents.

Docket No. EL00-98-134

Investigation of Practices of the California  
Independent System Operator Corporation  
and the California Power Exchange

ORDER ON CLARIFICATION AND NOTICE

(Issued February 23, 2006)

1. On February 17, 2006, Idacorp,<sup>1</sup> California Parties,<sup>2</sup> and the Commission's Office of Market Oversight and Investigations (collectively, "Settling Parties") filed a Joint Offer of Settlement (Idacorp Settlement) pertaining to events and transactions in western energy markets, including the California refund proceeding.<sup>3</sup> On the same day,

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<sup>1</sup> "Idacorp" refers to IDACORP Energy LP and Idaho Power Company.

<sup>2</sup> For purposes of the Idacorp Settlement, "California Parties" means, collectively Southern California Edison Company (SCE), Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), the People of the State of California *ex rel.* Bill Lockyer, Attorney General (California Attorney General), the California Department of Water Resources acting solely under authority and power created by California Assembly Bill 1 from the First Extraordinary Session of 2000-2001, codified in sections 80000 through 80270 of the California Water Code (CERS), the California Electricity Oversight Board (CEOB), and the California Public Utilities Commission (CPUC).

<sup>3</sup> See Joint Offer of Settlement, *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, Docket Nos. EL00-95-000, *et al.* (Feb. 17, 2006).

Idacorp filed a notice<sup>4</sup> requesting the Commission to “clarify at an early date” whether it expects parties to bind themselves to the Idacorp Settlement within the time frame provided in the January 26, 2006 Order issued in the above-captioned docket.<sup>5</sup> In this order, we clarify the January 26 Order and modify the time frame within which we will require parties to bind themselves to the Idacorp Settlement. As discussed further below, we find that March 9, 2006, the deadline for filing initial comments on the Idacorp Settlement, is a reasonable date by which to expect parties to elect to bind themselves to the Idacorp Settlement, provided the Commission’s disposition of the settlement does not substantively modify it.<sup>6</sup> This time frame should allow parties sufficient time to review and determine their position with respect to the Idacorp Settlement. The Commission contemplates issuing a merits order on Idacorp’s cost filing, if still necessary, shortly thereafter.

### **Background**

2. On January 20, 2006, to facilitate their settlement efforts, the California Parties<sup>7</sup> and Idacorp together filed a request to defer action on the cost filing Idacorp submitted in the refund proceeding.<sup>8</sup> On January 26, 2006, the Commission granted the requested deferral “for a limited period of time.”<sup>9</sup> Concerned that the incipient settlement could potentially further delay completion of the refund proceeding, the Commission required the California Parties and Idacorp to file their settlement with the Commission on or before February 17, 2006.<sup>10</sup> The Commission further required Idacorp to notify the Commission on that date whether or not it still sought Commission action on its cost filing.<sup>11</sup> In addition, to minimize “any possible delay” resulting from the deferred action,

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<sup>4</sup> Notice of IDACORP Energy LP and Idaho Power Company Regarding Cost Filing, Docket Nos. EL00-95-147 and EL00-98-134 (Feb. 17, 2006 (Notice)).

<sup>5</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services*, 114 FERC ¶ 61,069 (2006) (January 26 Order).

<sup>6</sup> Idacorp notes that, in the transmittal materials accompanying the Idacorp Settlement, the Settling Parties make clear that a Commission determination of a binding opt-in date earlier than that provided for in the settlement will not be deemed to be a material change. *See* Notice at n.4.

<sup>7</sup> For purposes of that filing, “California Parties” included: SCE, PG&E, SDG&E, the California Attorney General and the CEOB.

<sup>8</sup> Letter Requesting Deferred Action on Cost Filing, Docket Nos. EL00-95-000 *et al.* (Jan. 20, 2006) (Request for Deferral).

<sup>9</sup> January 26 Order, 114 FERC ¶ 61,069 at P 2.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

the Commission required parties “five business days after the date the Idacorp Settlement is filed to notify the Commission of their intention to opt-in or opt-out of the settlement.”<sup>12</sup>

3. In the instant filing, Idacorp makes three requests. First, Idacorp notifies the Commission that it still seeks a cost filing on the merits, to the extent there are parties who do not opt-in to the Idacorp Settlement. Second, Idacorp also asks the Commission to defer action on its cost filing until after the opt-in period contemplated in Article VIII of the Settlement and Release of Claims Agreement (Settlement Agreement), which is part of its filed settlement. Section 8.1 of the Settlement Agreement gives participants five business days following the Settlement Effective Date – the date the Commission issues an order approving the Idacorp Settlement – to opt-in to the Idacorp Settlement. Idacorp requests this deferral because it believes that issuance of a Commission decision on its cost filing prior to the deadline for making binding opt-in decisions on its settlement would alter incentives for parties. In addition, Idacorp points out that the Settlement Agreement requires those who opt-in to the settlement to withdraw their comments on Idacorp’s cost filing. Idacorp asserts that, because of this provision, the Commission should defer action until the Settlement Agreement’s opt-in date in order to know which comments to rely on in making its determination on Idacorp’s cost filing. Finally, Idacorp asks the Commission to clarify that it did not intend for parties to make binding opt-in/opt-out elections in the time frame provided in the January 26 Order.

### **Commission Determination**

4. The January 26 Order states that “parties have five business days after Idacorp files its settlement to notify the Commission whether they intend to opt-in or opt-out of the settlement.”<sup>13</sup> We clarify that we intended that these elections would be binding elections, and not simply “statements of intention,” as Idacorp suggests in its Notice.<sup>14</sup> As we explained in the January 26 Order, the California Independent System Operator, Inc. is unable to calculate refunds unless it has all of the final, approved cost offset information, including that pertaining to Idacorp.<sup>15</sup> Accordingly, the Commission was concerned lest Idacorp’s requested deferral result in further delay of the finalization of Idacorp’s cost offset, and further protract this already lengthy proceeding. At the time of

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<sup>12</sup> *Id.* at P 3. *See also id.* at Ordering Paragraph (D).

<sup>13</sup> *Id.*

<sup>14</sup> While we recognize that this time frame is more compressed than the time frame provided in other refund proceeding-related settlements, the Idacorp Settlement is unique, since it generated an eleventh-hour request for deferral of action on Idacorp’s cost filing.

<sup>15</sup> *See id.* at P 2.

the January 26 Order, we considered five business days – which, in this case, would mean by February 27, 2006 – to constitute a reasonable period of time under the circumstances for parties to make their elections.

5. However, now that we have been asked to clarify the January 26 Order, and given the impending February 27, 2006 deadline for making binding elections, we are concerned that parties may not have sufficient notice and remaining time to decide whether or not to opt-in to the Idacorp Settlement. In the transmittal materials accompanying the settlement, in accordance with our regulations, the Settling Parties require parties to submit initial comments by March 9, 2006. We find that, by the time parties file comments on the Idacorp Settlement, parties should have a clear idea whether they intend to opt-in to the settlement, as filed. Moreover, giving parties approximately two additional weeks to consider whether to opt-in to the Idacorp Settlement could promote settlement, and is not likely to have a detrimental impact on the time frame for resolving the refund proceeding. Accordingly, we will require parties to notify the Commission whether they intend to opt-in or opt-out of the Idacorp Settlement by March 9, 2006. We emphasize that these elections are binding on the parties, unless the Commission were subsequently to modify materially the Idacorp Settlement.

6. Finally, the Commission will defer action on Idacorp's cost filing until after March 9, 2006. However, if, after this date, the Commission determines that there remain non-settling parties to the Idacorp Settlement who may be affected by Idacorp's cost filing, the Commission contemplates issuing a merits order on Idacorp's cost filing shortly thereafter. In the instant filing, Idacorp has informed the Commission that it still seeks action on its cost filing under such circumstance. Furthermore, by that time, the Commission will know which, if any, comments on Idacorp's cost filing will be withdrawn.

The Commission Orders:

(A) Parties are hereby given until March 9, 2006, to notify the Commission whether they intend to opt-in or opt-out of the Idacorp Settlement, consistent with the body of this order. These elections are binding on the parties provided the Commission's disposition of the settlement does not substantively modify it.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.