

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
California Independent System Operator Corporation	Docket No. ER03-746-000
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
American Electric Power Service Corporation	Docket No. EL03-137-000, <i>et al.</i>
Puget Sound Energy, Inc.	Docket No. EL03-169-000

ORDER GRANTING MOTIONS TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued June 4, 2010)

1. On October 6, 2009, Constellation Energy Commodities Group, Inc. (CCG) and Constellation NewEnergy (NewEnergy) each filed motions (Motions) in an attempt to opt into a number of settlement agreements identified in the motion that have been approved by the Commission. The Motions were filed pursuant to the settlement agreement

between CCG and NewEnergy and the California Parties¹ (Constellation Settlement), which the Commission approved in *San Diego Gas & Electric Co., et al.*² As discussed below, we grant CCG's and NewEnergy's unopposed Motions.

Background

2. 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 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 May 8, 2009, CCG and NewEnergy and the California Parties filed the Constellation Settlement.³ The Constellation Settlement resolved matters and claims related to CCG and NewEnergy and arising out of events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001 in the captioned dockets. Section 4.1.6 of the Constellation Settlement provides that CCG and NewEnergy shall attempt to opt into settlements reached by the California Parties and other sellers prior to the Settlement Effective Date to the extent CCG and NewEnergy had not already done so.

4. On September 14, 2009, the Commission approved the Constellation Settlement, finding that it was just and reasonable.⁴

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.* Edmund G. Brown, Jr., Attorney General, and the California Public Utilities Commission. For purposes of the Constellation 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.

² *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,242 (2009) (Constellation Settlement Order).

³ The proceeding was under Docket Nos. EL00-95-228, EL00-98-213, EL01-10-046, IN03-10-047, PA02-2-063, EL03-137-013, EL03-180-042, ER03-746-013, EL02-71-020, and EL03-185-007.

⁴ Constellation Settlement Order, 128 FERC ¶ 61,242 at P 36.

California Parties' Motion

5. On October 6, 2009, CCG and NewEnergy separately filed their Motions requesting Commission authorization for them to opt into certain Commission-approved settlements, in accordance with section 4.1.6 of the Constellation Settlement.

6. Specifically, CCG requests that it be permitted to opt into the following settlements:

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. Reliant Parties, 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);
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10. Portland General Electric Company, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,151 (2007);
11. El Paso Marketing L.P. and El Paso Power Services Company, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,297 (2007);
12. PacifiCorp, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,296 (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);
20. Strategic Energy, LLC, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,316 (2008);
21. City of Vernon, California, as approved in *San Diego Gas & Electric Co., et al.*, 125 FERC ¶ 61,085 (2008);
22. NEGT Energy Trading-Power, L.P. and NEGT Energy Trading Holdings Corporation, as approved in *San Diego Gas & Electric Co., et al.*, 126 FERC ¶ 61,007 (2009);
23. Puget Sound Energy, Inc., as approved in *San Diego Gas & Electric*

Co., et al., 128 FERC ¶ 61,002 (2009);

24. AES Placerita, Inc. as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,004 (2009).

7. NewEnergy requests that the Commission authorize it to opt into the following settlements:

1. Eugene Water & Electric Board, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,092 (2007);
2. PPM Energy, Inc., as approved in *San Diego Gas & Electric Co., et al.*, 121 FERC ¶ 61,014 (2007);
3. Conectiv Energy Supply, Inc., as approved in *San Diego Gas & Electric Co., et al.*, 122 FERC ¶ 61,008 (2008);
4. City of Anaheim, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,243 (2008).

8. No parties to the settlement agreements listed above filed comments or answers opposing the Motions to opt into the settlements.

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.⁵ In this instance, none of the parties to the settlements at issue has 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

⁵ 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 or prior to the date that is five business days following the issuance of the Commission's 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 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.

Parties' efforts, on behalf of CCG and NewEnergy, to opt into those settlements.⁶ Furthermore, because the Commission has previously found the Constellation Settlement to be just and reasonable,⁷ including section 4.1.6 of the Constellation Settlement, the Commission finds that it is just and reasonable to grant the Motions.

The Commission orders:

CCG's and NewEnergy's Motions 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. Commissioner Spitzer is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ *See San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,259, at P 8 (2009); *see also San Diego Gas & Electric Co., et al.*, 120 FERC ¶ 61,201, at P 10 (2007).

⁷ *See Constellation Settlement Order*, 128 FERC ¶ 61,242 at P 36.