

132 FERC ¶ 61,163
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, John R. Norris,
and Cheryl A. LaFleur.

American Electric Power Service Corp.

Docket No. EL02-79-000

v.

Williams Energy Marketing and
Trading Company and Sempra Energy
Trading Company

ORDER DISMISSING COMPLAINT

(Issued August 24, 2010)

1. On May 1, 2002, as amended on June 18, 2002, American Electric Power Services Corporation (AEP) filed a complaint in the above-docketed proceeding against Williams Energy Marketing and Trading Company (Williams) and Sempra Energy Trading Company (SET). AEP's complaint was filed as a result of a separate complaint filed in Docket No. EL02-38 by Nevada Power Company and Sierra Power Company (Nevada Companies) against AEP. AEP's complaint sought to establish a refund effective date so that AEP could preserve its right to obtain refunds from Williams and SET in the event that the Commission ultimately granted the complaint that Nevada Companies filed against AEP.
2. On June 26, 2003, the Commission issued an order in Docket No. EL02-38 and denied the Nevada Companies' complaint against AEP. *See Nevada Power Co. v. Enron Power Marketing, Inc., et al.*, 103 FERC ¶ 61,353, *reh'g denied*, 105 FERC ¶ 61,185 (2003) (Nevada Power Orders). On December 9, 2003, in the instant docket, AEP, Williams and SET filed a motion stating that the Commission's decision on the merits of the Nevada Companies' complaint in Docket No. EL02-38 rendered answers to AEP's complaint moot and that there was no need for the Commission to act on AEP's complaint in the instant docket once the relief requested by Nevada Companies was denied. The motion further stated that AEP, Williams, and SET agreed that Williams and SET did not need to answer AEP's complaint, but that Williams and SET retained the right to file answers in the event that petitions for review of the Nevada Power Orders in

Docket No. EL02-38 were granted and the Commission on remand reached “a different decision on the merits” of the Nevada Companies’ complaint in Docket No. EL02-38.

3. The case was, in fact, appealed, and subsequently remanded.¹ On December 18, 2008, the Commission issued its order on remand, which established a paper hearing and allowed the record to be reopened so that parties could submit specified information that would enable the Commission to address the issues remanded.² However, the paper hearing was held in abeyance to allow parties to engage in settlement discussions.³

4. On November 20, 2009, the parties submitted a “black box” settlement in Docket No. EL02-38. They noted that the settlement was a result of discussions and negotiations between the parties, facilitated by the Commission’s Dispute Resolution Service.⁴ On December 23, 2009, the Commission approved the settlement,⁵ finding:

The Settlement appears to be fair and reasonable and in the public interest and is hereby approved. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.[⁶]

5. Given that the Commission has not reached “a different decision on the merits” in Docket No. EL02-38 that would warrant addressing AEP’s complaint in the instant docket, pursuant to the terms of the December 9, 2003 motion in the instant docket,⁷ we will dismiss AEP’s complaint.

¹ See *Pub. Util. Dist. No. 1 of Snohomish County v. FERC*, 547 F.3d 1081 (9th Cir. 2008); see generally *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) (*Morgan Stanley*); *Pub. Util. Dist. No. 1 of Snohomish County v. FERC*, 471 F.3d 1053, 1085-97 (9th Cir. 2006).

² *Nevada Power Co. v. Enron Power Mktg., Inc.*, 125 FERC ¶ 61,312, at P 29-32 (2008).

³ *Id.* P 33.

⁴ Settlement Explanatory Statement at 2-3.

⁵ *Nevada Power Company and Sierra Pacific Power Company v. American Electric Power Service Corporation*, 129 FERC ¶ 61,266 (2009).

⁶ *Id.* P 14.

⁷ See *supra* P 2.

The Commission orders:

AEP's complaint in this proceeding is hereby dismissed, as discussed in the body of this order.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.