



AES Southland, Inc., Williams Energy Marketing & Trading Company	Docket No. IN01-3-000
Duke Energy Trading and Marketing Company	Docket No. EL03-152-000
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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
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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
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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
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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
Constellation Power Source	Docket No. EL03-185-000
American Electric Power Service Corporation	Docket No. EL03-137-000, <i>et al.</i>
Enron Power Marketing, Inc. and Enron Energy Services Inc.	Docket No. EL03-180-000, <i>et al.</i>
State of California, ex rel. Edmund G. Brown, Jr., Attorney General of the State of California	Docket No. EL09-56-000
v.	
Powerex Corp. (f/k/a British Columbia Power Exchange Corp.), <i>et al.</i>	

ORDER GRANTING MOTION TO OPT INTO  
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued January 11, 2011)

1. On July 22, 2010, Public Service Company of New Mexico (PNM) filed a motion for leave to opt into a number of settlement agreements that have been approved by the Commission in the captioned proceedings. PNM's motion was filed pursuant to the settlement agreement it executed with the California Parties<sup>1</sup> (PNM Settlement), which the Commission approved in *San Diego Gas & Electric Co., et al.*<sup>2</sup> As discussed below, we grant PNM's unopposed motion.

**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 February 12, 2010, PNM and the California Parties filed the PNM Settlement.<sup>3</sup> The PNM Settlement resolved matters and claims related to PNM and arising out of events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001 in Docket No. EL00-95 and related proceedings. Section 4.1.7.2 of the PNM Settlement provided that PNM may file a motion requesting Commission approval to opt into prior settlement agreements entered into between the

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<sup>1</sup> The 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, 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.

<sup>2</sup> *San Diego Gas & Electric Co., et al.*, 131 FERC ¶ 61,082 (2010) (PNM Settlement Order).

<sup>3</sup> The proceeding was under Docket Nos. EL00-95-241, EL00-98-225, EL01-10-056, IN03-10-058, EL01-68-032, PA02-2-073, EL03-137-020, EL03-180-049, ER03-746-022, EL02-71-028, EL03-168-007, EL03-200-010, and EL09-56-005.

California Parties and other suppliers, and that the California Parties would not contest such a motion.

4. On April 29, 2010, the Commission approved the PNM Settlement, finding that it was just and reasonable.<sup>4</sup>

### **PNM's Motion**

5. On July 22, 2010, PNM filed a motion for an order allowing it to opt into certain settlement agreements out of time. Specifically, PNM requests a Commission order authorizing it to opt into 23 settlement agreements between the California Parties and various other entities. These settlements include:

1. the Williams Companies, as approved in *San Diego Gas & Electric Co.*, 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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<sup>4</sup> PNM Settlement Order, 131 FERC ¶ 61,082 at P 46.

10. Portland General Electric Company, as approved in *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,151 (2007);
11. El Paso Corporation and EL Paso Marketing L.P. (f/k/a El Paso Merchant Energy L.P.), 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. AES Placerita, Inc. as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,004 (2009);
22. Constellation Energy Commodities Group and Constellation NewEnergy, Inc. as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,242 (2009); and
23. Comision Federal de Electricidad, as approved in *San Diego Gas & Elec. Co., et al.*, 128 FERC ¶ 61,256 (2009).

6. No parties to the settlement agreements listed above filed comments or answers opposing PNM's request to opt into these settlements out of time.

### **Commission Determination**

7. 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.<sup>5</sup> In this instance, none of the parties to the 23 settlements at issue has opposed PNM's request. Therefore, the Commission infers from the lack of opposition that the parties to each of the enumerated settlements assent to PNM's efforts to opt into those settlements.<sup>6</sup> Furthermore, because the Commission has previously found the PNM Settlement to be just and reasonable,<sup>7</sup> including section 4.1.7.2 of the PNM Settlement, the Commission finds that it is just and reasonable to grant PNM's motion.

### **The Commission orders:**

PNM's motion 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. Commissioners Spitzer and Moeller are not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>5</sup> 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 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 motion 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.

<sup>6</sup> 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).

<sup>7</sup> PNM Settlement Order, 131 FERC ¶ 61,082 at P 46.