

139 FERC ¶ 61,204
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

San Diego Gas & Electric Company

v.

Docket No. EL00-95-000

Sellers of Energy and Ancillary Services
into Markets Operated by the California
Independent System Operator Corporation and the
California Power Exchange Corporation

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

Docket No. EL00-98-000

Puget Sound Energy, Inc.

v.

Docket No. EL01-10-000

Sellers of Energy and/or Capacity

Investigation of Anomalous Bidding Behavior
And Practices in Western Markets

Docket No. IN03-10-000

Fact-Finding Investigation Into Possible
Manipulation of Electric and Natural Gas Prices

Docket No. PA02-2-000

American Electric Power Service Corporation

Docket No. EL03-137-000

Enron Power Marketing, Inc. and Enron Energy
Services Inc.

Docket No. EL03-180-000

California Independent System Operator Corporation

Docket No. ER03-746-000

ORDER GRANTING MOTION TO OPT INTO
SETTLEMENT AGREEMENT OUT OF TIME

(Issued June 11, 2012)

1. On February 16, 2012, the City of Seattle, Washington (Seattle) filed a motion for an order authorizing it to opt into the Commission-approved settlement between Idaho Power Company (Idaho Power) and IDACORP Energy, LP (IDACORP), the California Parties,¹ and the Commission's Office of Market Oversight and Investigations (IDACORP Settlement).² Seattle's motion was filed pursuant to the settlement agreement that it reached with the California Parties (Seattle Settlement), which the Commission approved in the Seattle Settlement Order.³ In this order, the Commission grants Seattle's unopposed motion.⁴

Background

2. In 2000, the Commission instituted formal hearing procedures under the Federal Power Act to investigate, among other things, the justness and reasonableness of public utility sellers' rates in the California Independent System Operator Corporation and California Power Exchange markets.⁵ In 2002, the Commission directed Staff to

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.* Kamala D. Harris, 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.

² *San Diego Gas & Elec. Co.*, 115 FERC ¶ 61,230 (2006).

³ *San Diego Gas & Elec. Co.*, 135 FERC ¶ 61,246 (2011).

⁴ On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95, documenting her decision, based on a memorandum from the Office of General Counsel's General and Administrative Law section, dated February 18, 2011, not to recuse herself from considering matters in those dockets.

⁵ *San Diego Gas & Elec. Co.*, 92 FERC ¶ 61,172 (2000).

commence a fact-finding investigation into the alleged manipulation of electric and natural gas prices in the West.⁶ Further, in 2003, the Commission directed Staff to investigate anomalous bidding behavior and practices in Western markets.⁷

3. In the Docket No. EL01-10 proceeding, the Commission ordered a preliminary evidentiary hearing to develop a record on whether there may have been unjust and unreasonable charges for spot market bilateral sales in the Pacific Northwest for the period December 25, 2000 through June 20, 2001.⁸ Following the evidentiary hearing, the Commission found that refunds should be denied and that purchases by the California Energy Resources Scheduling (CERS) division of the California Department of Water Resources should be excluded from the Pacific Northwest refund proceeding.⁹ However, the Ninth Circuit found that the Commission erred in excluding the CERS transactions and in failing to considering new evidence of market manipulation in determining whether prices were just and reasonable.¹⁰ On remand, the Commission set these issues for hearing and settlement judge procedures.¹¹

4. Meanwhile, on February 8, 2011, Seattle and the California Parties filed the Seattle Settlement, which resolved matters and claims related to Seattle arising out of events and transactions in the Western energy markets during the period from January 1, 2000 through June 20, 2001.¹² Section 4.13.2 of the Seattle Settlement provided that Seattle agrees to opt in late to earlier settlement agreements between the California Parties and other settling suppliers.¹³ On June 16, 2011, the Commission approved the Seattle Settlement, finding that it appeared to be fair and reasonable and in the public interest.¹⁴ On August 2, 2011, Seattle filed a motion to opt into certain settlements out of

⁶ *Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

⁷ *Investigation of Anomalous Bidding Behavior and Practices in the Western Markets*, 103 FERC ¶ 61,347 (2003).

⁸ *San Diego Gas & Elec. Co.*, 93 FERC ¶ 61,294 (2000).

⁹ *Puget Sound Energy, Inc.*, 103 FERC ¶ 61,348, *order denying reh'g*, 105 FERC ¶ 61,183 (2003).

¹⁰ *Port of Seattle v. FERC*, 499 F.3d 1016 (9th Cir. 2007).

¹¹ *Puget Sound Energy, Inc.*, 137 FERC ¶ 61,001 (2011).

¹² The proceeding was under Docket Nos. EL00-95-256, EL00-98-238, EL01-10-067, IN03-10-069, PA02-2-084, EL03-137-031, EL03-180-056, and ER03-746-034.

¹³ Seattle Settlement, Settlement and Release of Claims, § 4.13.2.

time pursuant to section 4.13.2 of the Seattle Settlement. The IDACORP Settlement was not among the settlements into which Seattle sought to opt. The Commission granted Seattle's motion to opt into the listed settlements out of time.¹⁵

Seattle's Motion

5. Seattle explains that, pursuant to the Seattle Settlement, it was not required to attempt to opt into any settlement when it believed that opting in would constitute a waiver or release of claims in the Docket No. EL01-10 proceeding. Seattle stated that it was therefore not required to opt into the IDACORP Settlement because it believed it would have to waive or release claims against Idaho Power and IDACORP. However, Seattle notes, Idaho Power and IDACORP had since contacted Seattle to ask it to reconsider its decision not to opt into the IDACORP Settlement, and they provided written assurances to Seattle that opting into the IDACORP Settlement would not require Seattle to waive or release claims against them in the Docket No. EL01-10 proceeding. Seattle also states that Idaho Power and IDACORP support Seattle's motion.

Commission Determination

6. Previously in these proceedings, 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.¹⁶ Nonetheless, Seattle has filed a motion seeking Commission authorization to opt into the IDACORP Settlement. Because Seattle is seeking specific Commission authorization to opt into this settlement, we will entertain the motion.

7. In this instance, Seattle represents that Idaho Power and IDACORP support its motion. Furthermore, because the Commission has previously found the Seattle Settlement appeared to be fair and reasonable and in the public interest,¹⁷ the Commission finds that it is reasonable to grant Seattle's motion. By granting this motion, the Commission is finding only that Seattle may opt into the IDACORP Settlement out of time, and is not making any finding with respect to Idaho Power's and IDACORP's written assurances to Seattle that are described above.

¹⁴ Seattle Settlement Order, 135 FERC ¶ 61,246 at P 26.

¹⁵ *San Diego Gas & Elec. Co.*, 137 FERC ¶ 61,036 (2011).

¹⁶ *See, e.g., San Diego Gas & Elec. Co.*, 111 FERC ¶ 61,186, at P 34 (2005).

¹⁷ Seattle Settlement Order, 135 FERC ¶ 61,246 at P 26.

The Commission orders:

Seattle's motion to opt into the IDACORP Settlement out of time is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.