

140 FERC ¶ 61,091
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 31, 2012

In Reply Refer To:
Puget Sound Energy, Inc. v.
All Jurisdictional Sellers of Energy
and/or Capacity at Wholesale into
Electric Energy and/or Capacity Markets
in the Pacific Northwest, Including
Parties to the Western System Power
Pool Agreement
Docket No. EL01-10-083

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Reference: Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or
Capacity at Wholesale into Electric Energy and/or Capacity Markets in the
Pacific Northwest, Including Parties to the Western System Power Pool
Agreement

Dear Messrs. Jakubiak and Fosbre:

1. On May 14, 2012, you filed an Offer of Settlement (Settlement) on behalf of PacifiCorp and the City of Tacoma, Washington (Tacoma), which would resolve all issues in the referenced proceeding, except for claims between the City of Seattle and PacifiCorp. Those latter claims are expressly reserved for later disposition.

2. Initial Comments on the Settlement were filed by Commission Trial Staff on June 1, 2012, and by Powerex Corp. and PPL Montana, LLC and PPL EnergyPlus, LLC (collectively, PPL Companies) on June 4, 2012. The Reply Comment period was waived. The Settlement Judge certified the Offer of Settlement to the Commission as uncontested on June 12, 2012.¹

3. In separately-filed comments, PPL Companies and Powerex stated that while they do not oppose the terms of the Settlement with respect to claims between the Settling Parties, they are concerned that the Settlement would extinguish non-parties' rights to bring "ripple claims" against PacifiCorp in the future.²

4. Specifically, PPL Companies and Powerex object to language in the Settlement (Article II, Paragraph 2.4), which states that "the only persons that have claims against PacifiCorp . . . are Tacoma and Seattle." PPL Companies and Powerex also object that Article III of the Settlement has language stating that, with the exception of the claim by Seattle, "the Commission shall not entertain or consider any claims against PacifiCorp that have been or could be presented for damages . . . in connection with PacifiCorp's sales of energy or capacity or trading activities in markets in the Pacific Northwest during the Settlement Period," (Paragraph 3.6(a)) and that approval of the Settlement "shall constitute a Commission determination that except for claims by Seattle, PacifiCorp shall not be subject to further proceedings, investigations or scrutiny for claims of damages . . . for its sales of energy or capacity or trading activities in the Pacific Northwest during the Settlement Period." (Paragraph 3.6(b)). Finally, PPL Companies and Powerex oppose Article III, Paragraph 3.6(e), which states that approval of the Settlement "shall constitute dismissal of PacifiCorp as a Respondent in the Pacific Northwest Proceedings, except for the determination of claims that may be advanced by Seattle." PPL Companies and Powerex request that the Commission reject these portions of the Settlement that purport to cut off claims of non-parties.

5. Trial Staff states that they do not oppose the Settlement. In reaching this conclusion, Trial Staff indicated that they weighed the benefits and drawbacks of the Settlement and considered a number of factors, including the far-ranging nature of the release the Settlement gives to PacifiCorp (including vis-à-vis potential ripple claims) against the value of the finality it gives the two settling parties.

¹ *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 139 FERC ¶ 63,016 (2012).

² In 2001, the ALJ in the underlying docket defined "ripple claims" as "sequential claims against a succession of sellers in a chain of purchasers that are triggered if the last wholesale purchase in the chain is entitled to a refund." *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 96 FERC ¶ 63,044, at 65,300 (2001).

6. The Commission finds that the uncontested Settlement appears fair and reasonable and in the public interest as between the PacifiCorp and Tacoma, and is hereby approved, subject to the removal of any language purporting to foreclose claims by others.

7. While the potential for ripple claims is speculative, the Settlement between PacifiCorp and Tacoma cannot be used to extinguish potential claims of others. Removing such language is consistent with the history of this proceeding, which preserved potential ripple claims.³ It is also consistent with the Commission's policy to favor settlement agreements that do not impair the rights of non-parties.⁴ This also accords with our approach to addressing a similar settlement between Tacoma and IDACORP.⁵ Accordingly, the Commission approves the Settlement on the condition that the Settlement is modified so as to remove the disputed language extinguishing the rights of third parties. PacifiCorp and Tacoma are directed to submit a compliance filing within thirty days of the issuance of this order consistent with the body of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: To All Parties

³ See, e.g., *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 103 FERC ¶ 61,348, at PP 47-50 (2003) (stating that the "ALJ determined that all parties reserved their rights to pursue claims if the Commission was to direct further proceedings to determine refunds"). See also *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, Docket No. EL01-10-026, at P 10 (Nov. 23, 2011) (Order of the Chief Judge Confirming Settlement Procedures) ("This Order shall not be construed to either diminish or enlarge the right of any Party to assert its position with respect to Ripple Claims.").

⁴ See *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv.*, 113 FERC ¶ 61,171, at P 40 (2005).

⁵ See *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 139 FERC ¶ 61,209 (2012).