

141 FERC ¶ 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Puget Sound Energy, Inc.

v.

Docket Nos. EL01-10-096
EL01-10-097

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
Systems Power Pool Agreement

ORDER ON REHEARING AND COMPLIANCE

(Issued November 20, 2012)

1. On July 12, 2012, Idaho Power Company and IDACORP Energy, L.P. (collectively, IDACORP) filed a request for rehearing and clarification (Rehearing Request)¹ of a June 13, 2012 Commission letter order² that conditionally approved a settlement between IDACORP and the City of Tacoma, Washington (Tacoma) in the above-referenced proceeding.

2. Also on July 12, 2012, IDACORP filed a submission to the Commission (Compliance Filing) to comply with the directives of the Settlement Order.³ Notice of the Compliance Filing was published in the *Federal Register*, 77 Fed. Reg. 56,838 (2012), with comments due on or before September 17, 2012.

¹ The Rehearing Request has been assigned Docket No. EL01-10-096.

² *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy*, 139 FERC ¶ 61,209 (2012) (Settlement Order).

³ The Compliance Filing has been assigned Docket No. EL01-10-097.

I. Background

3. On March 12, 2012, IDACORP and Tacoma filed a Settlement to resolve all issues in the referenced proceeding, except for claims between the City of Seattle and IDACORP. Those latter claims were expressly reserved for later disposition.⁴ The Settlement Judge certified the Settlement to the Commission as uncontested on April 24, 2012.

4. In separately-filed comments, PPL Companies and Powerex stated that while they did not contest the terms of the Settlement with respect to claims between the Settling Parties, they were concerned that the Settlement would extinguish non-parties' rights to bring "ripple claims" against IDACORP in the future.⁵ Specifically, PPL Companies and Powerex objected to language in the Settlement (Article II Section 4), which stated that "the only persons that have claims against IDACORP . . . are Tacoma and Seattle." PPL Companies and Powerex also objected that Article III, section 6 of the Settlement had language stating that, with the exception of the claim by the Seattle, "the Commission shall not entertain or consider any claims against IDACORP that have been or could be presented for damages . . . in connection with IDACORP's sales of energy or capacity or trading activities in markets in the Pacific Northwest during the Settlement Period," and that approval of the Settlement "shall constitute a Commission determination that except for claims by Seattle, IDACORP 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." Finally, PPL Companies and Powerex raised concerns about Article III, section 6(e), which stated that approval of the Settlement "shall constitute dismissal of IDACORP as a Respondent in the Pacific Northwest Proceedings, except for the determination of claims that may be advanced by Seattle." PPL Companies and Powerex requested that the Commission act to ensure that these portions of the Settlement would not cut off claims of non-parties.

5. In reply, IDACORP argued that possible ripple claims were irrelevant and leaving the door open to them could not be reconciled with an orderly disposition of this case. Trial Staff did not contest the Settlement. Trial Staff suggested that the circumstances that could give rise to potential ripple claims have never occurred, and the Commission

⁴ Initial Comments on the Settlement were filed on or before April 2, 2012, by IDACORP, PPL Montana, LLC and PPL EnergyPlus, LLC (collectively PPL Companies), Powerex Corp. (Powerex) and Trial Staff. Reply Comments were filed on or before April 12, 2012, by the California Parties, IDACORP, Powerex, and Trial Staff.

⁵ 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).

could weigh an interest in finality with the concern over language that foreclosed other parties' claims.

6. In its June 13, 2012 Settlement Order, the Commission weighed these interests, and found that the Settlement, properly certified as uncontested, appeared fair and reasonable and in the public interest as between the IDACORP and Tacoma, and conditionally approved it, subject to the removal of the language purporting to foreclose claims by parties other than IDACORP and Tacoma.

II. IDACORP's Rehearing Request

7. In its Rehearing Request, IDACORP reiterates its argument that ripple claims are irrelevant and illusory. IDACORP states the Settlement Order's inclusion of the definition of ripple claims from Judge Carmen A. Cintron's 2001 Recommendations and Proposed Findings of Fact (*see* footnote 5, *supra*) reflects the status of the case at the time, but it cannot fit within the case the Commission described in its Order on Remand.⁶ IDACORP argues that case is now confined to seller-specific and contract-specific claims and remedies, not market-wide claims and remedies.

8. Accordingly, argues IDACORP, a finding that Powerex committed a violation that affected its sales prices under a particular contract could not "ripple" into any finding that any upstream seller's conduct amounted to a violation that affected the price under a contract to Powerex and thus ripple claims are not only speculative, but could not even exist or arise.⁷

9. In the Settlement Order, the Commission acknowledged that the potential for ripple claims was at best speculative.⁸ Indeed Trial Staff suggested that the circumstances that could give rise to potential ripple claims have never occurred. The largely hypothetical nature of a ripple claim is also evident from the initial comments on the Settlement. Even Powerex stated that ripple claims "against the Settling Parties . . . have not (and ultimately may never be) submitted."⁹ PPL Companies indicated that "all ripple claims would become moot" if the Commission reaffirms its dismissal of this proceeding.¹⁰ Accordingly, the Commission determined the Settlement was properly certified by the Settlement Judge as uncontested, given the largely unrealizable nature of

⁶ *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy*, 137 FERC ¶ 61,001 (2011) (Order on Remand).

⁷ Rehearing Request at 12.

⁸ Settlement Order, 139 FERC ¶ 61,209 at P 7.

⁹ Powerex April 2, 2012 Comments at 8.

¹⁰ PPL Companies April 2, 2012 Comments at 3.

a non-party's ripple claim. Nevertheless, the Commission weighed the interest in finality with the possible foreclosure of a non-party's claim, and determined it could not as a policy matter approve the uncontested Settlement with language that would foreclose even remotely possible third party claims.

10. Moreover, as we noted in the Settlement Order,¹¹ there has never been any intent to foreclose ripple claims, to the extent they could arise.¹² Accordingly, we reaffirm that the Settlement between IDACORP and Tacoma cannot be used to extinguish potential claims of non-settling parties. IDACORP of course also retains its right to argue that there is no basis for a ripple claim should some party attempt to make such a claim; it simply cannot preclude non-settling parties from even making such a claim. We therefore deny rehearing on this issue.

11. A large part of IDACORP's argument is that the Settlement Order should have treated the Settlement as contested, and used a *Trailblazer*¹³ analysis to determine if it should be approved, rejected, or modified. However, since the Commission finds that the Settlement was properly certified as uncontested, there is no need for a *Trailblazer* analysis, which only arises where the Commission determines to treat a settlement as contested.

12. No person or entity objected to the fundamental aspects of the Settlement that concerned the settling parties, to wit IDACORP and Tacoma. Powerex and PPL Companies merely requested that the Commission not permit the uncontested Settlement to affect the rights of non-settling parties adversely. Accordingly, the Settlement Judge properly certified the Settlement to the Commission as uncontested on April 24, 2012. Thus, a *Trailblazer* analysis was not needed to approve the essentially uncontested Settlement as to the settling parties.

13. Next, IDACORP states that the Commission should at least clarify that it only meant to exclude Powerex and PPL Companies from any adverse impact of the Settlement, and not non-settling parties generally.¹⁴

¹¹ Settlement Order, 139 FERC ¶ 61,209 at P 7 & n.3.

¹² See, e.g., *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.").

¹³ Rehearing Request at 12 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999) (*Trailblazer*)).

¹⁴ *Id.* at 15-16.

14. As explained above, we find that the Settlement between IDACORP and Tacoma cannot be used to extinguish potential claims of non-settling parties. Therefore, the Commission here clarifies that the Settlement Order intended that *all* non-settling parties, not just Powerex and PPL Companies, should not have any rights foreclosed by the Settlement, and the Settlement language to that effect must be modified accordingly.

III. Compliance Filing

15. In its July 12, 2012 Compliance Filing, IDACORP included two alternatives to comply with the Commission's Order. Alternative 1 modifies the Settlement so that the Settlement does not extinguish the right of Powerex and PPL Companies to litigate their claims. Alternative 2 modifies the Settlement so that the Settlement extinguishes the right to litigate claims only of Tacoma and does not foreclose the rights of any non-settling party to pursue a claim. IDACORP states that the two alternatives are being submitted because the Settlement Order was "ambiguous" and IDACORP's intention is to comply with the Commission's directives. On September 17, 2012, Portland General Electric Company filed comments in support Alternative 1.

16. As noted above, the Commission intended that no non-settling third party, not just Powerex and PPL Companies, should have any potential rights extinguished by the Settlement. Accordingly, the Commission finds that Alternative 2 in the Compliance Filing is in satisfactory compliance with the Settlement Order and is accepted and approved.

The Commission orders:

(A) IDACORP's request for rehearing of the Settlement Order is denied, and the Settlement Order is clarified as discussed in the body of this order.

(B) IDACORP's Compliance Filing Alternative 2 is accepted as in compliance with the Settlement Order; Alternative 1 is rejected.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.