

143 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

San Diego Gas & Electric Company

Docket No. EL00-95-270

v.

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. EL00-98-250

Puget Sound Energy, Inc.

Docket No. EL01-10-115

v.

Sellers of Energy and/or Capacity

Investigation of Anomalous Bidding Behavior
And Practices in Western Markets

Docket No. IN03-10-078

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

Docket No. PA02-2-093

American Electric Power Service Corporation

Docket No. EL03-137-039

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

Docket No. EL03-180-068

California Independent System Operator Corporation

Docket No. ER03-746-044

State of California, *ex rel.* Bill Lockyer,
Attorney General of the State of California

Docket No. EL02-71-041

v.

British Columbia Power Exchange
Corporation, *et al.*

ORDER ON MOTION TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued June 3, 2013)

1. On February 27, 2013, Energy Services Ventures, Inc. (ESV) and Chevron U.S.A., Inc. (CES) (collectively, the Settling Assignees) filed a motion for an order authorizing the Settling Assignees to opt into certain Commission-approved settlements in the above-captioned proceedings. The motion was filed pursuant to the settlement agreement (Settlement) between the Settling Assignees and the California Parties,¹ and which the Commission approved.² In this order, the Commission grants the Settling Assignees' motion.³

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

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.*, 142 FERC ¶ 61,083 (2013) (Settlement Order).

³ On March 11, 2011, Commissioner Cheryl A. LaFleur issued a memorandum to the file in sixty dockets, including Docket No. EL00-95-000, 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.

California Power Exchange markets. In 2002, the Commission directed Staff to commence a fact-finding investigation into the alleged manipulation of electrical and natural gas prices in the West. Further, in 2003, the Commission directed Staff to investigate anomalous bidding behavior and practices in Western markets.

3. On October 31, 2012, the Settling Assignees and the California Parties filed the Settlement, which resolved matters and claims arising out of events and transactions in the Western energy markets during the period from January 1, 2000 through June 20, 2001.⁴ Section 4.12.2.1 of the Settlement provides that the Settling Assignees may file a motion with the Commission requesting authorization to opt in late to earlier settlement agreements between the California Parties and other settling suppliers.⁵

4. On February 1, 2013, the Commission approved the Settlement, finding that it appeared to be fair and reasonable and in the public interest.⁶

Settling Assignees' Motion

5. In their motion, the Settling Assignees request Commission authorization for it to opt into certain Commission-approved settlements, in accordance with section 4.12.2.1 of the Settlement. Specifically, the Settling Assignees request that they be permitted to opt into settlements between the California Parties and the following:

- i. the Williams Companies, as approved in *San Diego Gas & Electric Co.*, 108 FERC ¶ 61,002 (2004);
- ii. the Dynegy Parties, as approved in *San Diego Gas & Electric Co.*, 109 FERC ¶ 61,071 (2004);

⁴ As explained the Settlement Order, the Settlement resolved certain claims as they related to California Polar Power Brokers, LLC (Cal Polar) and the Settling Assignees. As also explained in the Settlement, Cal Polar ceased active business operations in 2002 and, in 2003, assigned to ESV all of its receivables held on Cal Polar's account in the California Independent System Operator Corporation and California Power Exchange Corporation markets, as well as certain collateral and other rights with respect to those markets. ESV subsequently assigned a portion of its rights to CES. Settlement Order, 142 FERC ¶ 61,083 at n.3.

⁵ Settlement, Settlement and Release of Claims, § 4.12.2.1.

⁶ Settlement Order, 142 FERC ¶ 61,083 at P 21.

- iii. the Duke Parties or Duke, as approved in *San Diego Gas & Electric Co.*, 109 FERC ¶ 61,257 (2004);
- iv. the Mirant Parties, as approved in *San Diego Gas & Electric Co.*, 111 FERC ¶ 61,017 (2005);
- v. the Enron Parties, as approved in *San Diego Gas & Electric Co.*, 113 FERC ¶ 61,171 (2005) and as later amended, *San Diego Gas & Electric Co., et al.*, 119 FERC ¶ 61,135 (2007);
- vi. Public Service Company of Colorado, as approved in *San Diego Gas & Electric Co.*, 113 FERC ¶ 61,235 (2005);
- vii. Reliant Parties, as approved in *San Diego Gas & Electric Co.*, 113 FERC ¶ 61,308 (2005)
- viii. Idacorp (Idaho Power Company and IDACORP Energy L.P.), as approved in *San Diego Gas & Electric Co.*, 115 FERC ¶ 61,230 (2006);
- ix. Eugene Water & Electric Board, as approved in *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,092 (2007);
- x. Portland General Electric Company, as approved in *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,151 (2007);
- xi. PacifiCorp, as approved in *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,296 (2007);
- xii. PPM Energy, Inc., as approved in *San Diego Gas & Electric Co.*, 121 FERC ¶ 61,014 (2007);
- xiii. Conectiv Energy Supply, Inc., as approved in *San Diego Gas & Electric Co.*, 122 FERC ¶ 61,008 (2008);
- xiv. City of Anaheim, California, as approved in *San Diego Gas & Electric Co.*, 123 FERC ¶ 61,243 (2008);
- xv. City of Azusa, California, as approved in *San Diego Gas & Electric Co.*, 123 FERC ¶ 61,244 (2008);
- xvi. Strategic Energy, LLC, as approved in *San Diego Gas & Electric Co.*, 123 FERC ¶ 61,316 (2008); and

- xvii. Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., as approved in *San Diego Gas & Electric Co.*, 128 FERC ¶ 61,242 (2009).

6. No parties to the above-listed settlements above filed comments or answers opposing the Settling Assignees' 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.⁷ Nonetheless, the Settling Assignees have filed the motion seeking Commission authorization to opt into certain Commission-approved settlements. Because the Settling Assignees are seeking specific Commission authorization to opt into the settlements listed above, we will entertain the motion.

8. In this instance, none of the parties to the settlements listed above has opposed the motion. Therefore, the Commission infers from the lack of opposition that the parties to each of these settlements assent to the Settling Assignees' effort to opt into those settlements out of time.⁸ Furthermore, because the Commission has previously found that the Settlement appeared to be fair and reasonable and in the public interest,⁹ the Commission finds that it is reasonable to grant the Settling Assignees' motion.¹⁰

⁷ *See, e.g., San Diego Gas & Elec. Co.*, 111 FERC ¶ 61,186, at P 34 (2005). We note that certain provisions of most of the listed 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's settlement order shall have no right to participate in that settlement absent the written consent of the California Parties and (in most instances) the relevant settling supplier. *See, e.g., Constellation Settlement, Settlement and Release of Claims*, § 8.1. Thus, these settlements set forth the process for opting into them out of time.

⁸ *See San Diego Gas & Elec. Co.*, 120 FERC ¶ 61,201, at P 10 (2007).

⁹ Settlement Order, 142 FERC ¶ 61,083 at P 21.

¹⁰ As noted above, the Commission determined that whether an entity may opt into a settlement out of time is an issue for the settling parties to determine, and thus the Commission is not required to act on such motions to opt into settlements.

The Commission orders:

The Settling Assignees' motion to opt into certain settlements out of time is hereby granted, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.
Commissioner Moeller is voting present.

(S E A L)

Kimberly D. Bose,
Secretary.