

128 FERC ¶ 61,259
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, and Philip D. Moeller.

San Diego Gas & Electric Company	Docket No. EL00-95-000
Investigation of Practices of the California Independent System Operator and the California Power Exchange	Docket No. EL00-98-000
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices	Docket No. PA02-2-000
Investigation of Anomalous Bidding Behavior And Practices in Western Markets	Docket No. IN03-10-000
Puget Sound Energy, Inc.	Docket No. EL01-10-000
Duke Energy Trading and Marketing Company	Docket No. EL03-152-000
State of California, <i>ex rel.</i> Bill Lockyer, Attorney General of the State of California	Docket No. EL02-71-000
Enron Power Marketing, Inc. and Enron Energy Services Inc.	Docket Nos. EL03-180-000 EL03-154-000 EL02-115-000
Portland General Electric Company	Docket No. EL02-114-000
Enron Power Marketing, Inc.	Docket No. EL02-113-000
Public Service Company of Colorado	Docket No. EL03-167-000
Idaho Power Company	Docket Nos. EL03-156-000 EL03-189-000
Cities of Anaheim, Azusa, Banning, Colton, And Riverside, California	Docket No. EL00-111-000

Salt River Project	Docket No. EL01-84-000
California Independent System Operator Corporation	Docket No. ER01-607-000
Portland General Electric Company	Docket No. EL03-165-000
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
PPM Energy, Inc. (a/k/a PacifiCorp Power Marketing, Inc.)	Docket No. EL03-197-000

ORDER ON MOTION TO OPT INTO
SETTLEMENT AGREEMENTS OUT OF TIME

(Issued September 16, 2009)

1. On July 23, 2009, the California Parties¹ filed a Motion for an Order Authorizing Puget Sound Energy, Inc. to Opt Into Settlements Out of Time in an attempt to opt into a number of settlement agreements identified in the motion that have been approved by the Commission. The California Parties' motion was filed pursuant to the settlement agreement with Puget Sound Energy, which the Commission recently approved in *San Diego Gas & Electric Co., et al.*² As discussed below, because no parties to the settlement agreements listed in the motion filed answers opposing the California Parties' request, on behalf of Puget Sound Energy, Inc. (Puget), to opt into the settlements, the Commission finds that permitting Puget to opt into the settlement agreements listed below is fair and reasonable and in the public interest. The Commission therefore

¹ For purposes of the July 23, 2009 Motion, 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, and the California Public Utilities Commission. For purposes of the Puget Settlement, California Parties means the aforementioned entities as well as 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. California Parties, July 23, 2009 Motion at 2 n.1.

² San Diego Gas & Electric Co., et al., 128 FERC ¶ 61,002 (2009).

considers the lack of comment from parties to these settlements as constituting their consent to Puget's efforts to opt into those settlements.

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 electrical 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 May 8, 2009, Puget and the California Parties filed a Joint Offer of Settlement, a Joint Explanatory Statement and a Settlement and Release of Claims Agreement (collectively, Puget Settlement).³ The Puget Settlement resolved matters and claims related to Puget and arising out of events and transactions in the western energy markets during the period from January 1, 2000 through June 20, 2001 in the captioned dockets.

4. Section 4.1.7 of the Puget Settlement authorized the California Parties, on behalf of Puget, to opt into subsequent settlements reached by the California Parties with other suppliers that are substantially similar to, and not inconsistent with, the Puget Settlement. Section 4.1.7 of the Puget Settlement also authorizes the California Parties, on behalf of Puget, to opt into settlements reached by the California Parties with other sellers prior to the Settlement Effective Date to the extent that Puget has not done so already. Also, section 8.1 of the Puget Settlement states that entities that fail to opt into the Puget Settlement within "5 Business Days following issuance of the FERC Settlement Order shall have no right to participate in the settlement contemplated under this Agreement, absent the written agreement of the California Parties and Settling Supplier, and shall be deemed a Non-Settling Participant for purposes of the Agreement."

5. On July 1, 2009, the Commission approved the Puget Settlement, finding that it was just and reasonable.⁴

³ The proceeding was under Docket Nos. EL00-95-225, EL00-98-210, EL01-10-044, IN03-10-045, PA02-2-061, EL03-137-012, *et al.*, EL03-180-041, *et al.*, ER03-746-012, EL02-71-018, and EL03-169-008.

⁴ San Diego Gas & Electric Co., *et al.*, 128 FERC ¶ 61,002 at P 31.

California Parties' Motion

6. On July 23, 2009, the California Parties filed a Motion for an Order Authorizing Puget Sound Energy, Inc. to Opt Into Settlements Out of Time. The California Parties request a Commission order authorizing Puget to opt into 16 settlement agreements between the California Parties and various other entities. These settlements include:

- i. the Dynegy Parties, as approved in *San Diego Gas & Electric. Co., et al.*, 109 FERC ¶ 61,071 (2004);
- ii. the Duke Parties or Duke, as approved in *San Diego Gas & Electric. Co., et al.*, 109 FERC ¶ 61,257 (2004);
- iii. 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 & Elec. Co., et al.*, 119 FERC ¶ 61,135 (2007);
- iv. Public Service Company of Colorado, as approved in *San Diego Gas & Electric. Co., et al.*, 113 FERC ¶ 61,235 (2005);
- v. Idacorp (Idaho Power Company and IDACORP Energy L.P.), as approved in *San Diego Gas & Electric. Co., et al.*, 115 FERC ¶ 61,230 (2006);
- vi. Eugene Water & Electric Board, as approved in *San Diego Gas & Electric. Co., et al.*, 119 FERC ¶ 61,092 (2007);
- vii. Portland General Electric Company, as approved in *San Diego Gas & Electric. Co., et al.*, 119 FERC ¶ 61,151 (2007);
- viii. PPM Energy, Inc., as approved in *San Diego Gas & Electric. Co., et al.*, 121 FERC ¶ 61,014 (2007);
- ix. Conectiv Energy Supply, Inc., as approved in *San Diego Gas & Electric. Co., et al.*, 122 FERC ¶ 61,008 (2008);
- x. Midway Sunset Cogeneration Company, as approved in *San Diego Gas & Electric. Co., et al.*, 123 FERC ¶ 61,004 (2008);
- xi. Public Utility District No. 2 of Grant County, Washington, as approved in *San Diego Gas & Elec. Co., et al.*, 123 FERC ¶ 61,200 (2008);

- xii. City of Riverside, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,242 (2008);
- xiii. City of Anaheim, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,243 (2008);
- xiv. City of Azusa, California, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,244 (2008);
- xv. Strategic Energy, LLC, as approved in *San Diego Gas & Electric Co., et al.*, 123 FERC ¶ 61,316 (2008);
- xvi. AES Placerita, Inc. as approved in *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,004 (2009).

7. No parties to the settlement agreements listed above filed comments or answers opposing the California Parties' request, on behalf of Puget, to opt into the settlements.

Commission Determination

8. 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.⁵ In this instance, none of the parties to the sixteen settlements at issue has opposed the California Parties' request. Therefore, the Commission infers from the lack of opposition that the parties to each of the enumerated settlements assent to the California Parties' efforts, on behalf of Puget, to opt into those settlements.⁶

⁵ 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 FERC settlement order 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 CA Parties' motions 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.

⁶ See *San Diego Gas & Electric Co., et al.*, 120 FERC ¶ 61,201 at P 10.

9. Furthermore, because the Commission has previously found the Puget Settlement to be just and reasonable,⁷ including section 4.1.7 of the Puget Settlement, the Commission finds that it is just and reasonable to grant the California Parties' motion.⁸

The Commission orders:

The California Parties' motion, on behalf of Puget, to opt-into the settlement agreements out of time listed above is hereby granted as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ *San Diego Gas & Electric Co., et al.*, 128 FERC ¶ 61,002 at P 31.

⁸ As noted above, the Commission is not required to act on such motions to opt into settlements because the settlements themselves set forth the agreed-upon procedures by which a party might seek to opt in.