

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

City of Vernon, California

102 FERC ¶ 63,009
Docket No. EL02-103-000

**SETTLEMENT JUDGE'S CERTIFICATION OF
UNCONTESTED SETTLEMENT**

(Issued January 13, 2002)

TO THE COMMISSION:

1. Pursuant to Rules 602 and 603 of the Commission's Rules of Practice and Procedure, I am herewith certifying to the Commission an executed Offer or Settlement and allied papers which, if approved by the Commission, would dispose of all issues set for hearing in this docket.
2. The proposed settlement is uncontested.¹
3. By order issued October 11 , 2002 (101 FERC ¶ 61,051), the Commission set for hearing the question whether the City of Vernon, California ("Vernon") had correctly calculated the revised level of its Transmission Revenue Balancing Account ("TRBA") which it had filed on June 28, 2002 as an amendment to its Transmission Owner Tariff. Vernon is a Participating Transmission Owner ("PTO") under the tariff of the California Independent System Operator Corporation's tariff. The TRBA's level is taken into account in calculating the transmission revenue requirements of PTOs. As a "new" PTO who joined after the formation of the ISO, Vernon was given certain "free" Firm Transmission Rights or "FTRs". The issue set for hearing in this case involves the revenues that Vernon has earned from the disposition and use of its "free" FTRs; are such revenues to be considered in calculating Vernon's TRBA or are they to be ignored? Vernon took the position that such revenues should not be included in the calculation of its TRBA. Several intervenors, including the so-called Original Participating Transmission Owners, protested Vernon's methodology, arguing that the FTR revenues must be included in the calculation.

¹ In Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent Sys. Operator Corp., 101 FERC ¶ 61,392, sl. order at 4, n.8 (2002), the Commission made it clear that a settlement judge may certify an uncontested settlement.

4. The Commission's October 11, 2002 order found that "based on the record before us, we cannot find that a new Participating TO such as Vernon should retain revenues received from the usage by others of FTRs, as Vernon asks, or instead should reflect those revenues as part of its Usage Charge revenue credits. Therefore we will set Vernon's TRBA projection for hearing and investigation." The order then went on to direct that the hearing be held in abeyance pending reference of the case to a settlement judge under Rule 603.

5. On October 18, 2002, the Chief Judge appointed me to serve as the settlement judge. Settlement conferences were held before me on October 29, 2002 and November 6, 2002. Following the second conference a term sheet was distributed, and the parties met in private in an effort to hammer out a resolution of the dispute. Their efforts bore fruit in the form of the settlement offer that is now before the Commission.

6. The settlement offer was filed on December 26, 2002. It is the form of an agreement executed by representatives of Southern California Edison Company, the City of Vernon, California, Sempra Energy, Pacific Gas and Electric Company and the California Independent System Operator Corporation (hereinafter collectively referred to as "the Settling Parties"). The submission included a motion supported by all of the active parties to shorten the comment period on and to expedite approval of the settlement proposal. On January 2, 2003, with the concurrence of the Chief Administrative Law Judge, I granted the motion for a shortened comment period. Only one comment was timely filed. It came from the Commission's Trial Staff and concluded that "the Trial Staff believes that the settlement is fair, reasonable, and in the public interest, and should be approved."

7. On January 7, 2003, the Settling Parties submitted a corrected page 5 to the Offer of Settlement. The corrected page added a heading that had been erroneously redacted from the version originally filed and corrected a typographical error which had designed section 3.1 as section "2.2."

8. An outline of the terms of the settlement is as follows:

a. Section 1.1 of the settlement provides that Vernon will retain, and thus will not credit, all of its revenues from the "free" FTRs received during the period from January 1, 2001 through June 30, 2002.

b. Section 1.2 deals with the treatment of revenues associated with the "free" FTRs during the period beginning on July 1, 2002. It provides that section 3.25 of Vernon's TO tariff will be amended, effective July 1, 2002, so that all net FTR revenue will be included in the tariff's definition of Transmission Revenue Credit. On a going-forward basis, therefore, the net

FTR revenues will be included in the calculation of Vernon's TRBA adjustment. A new definition of the term "Net FTR Revenue" will be added to the tariff. The text of the definition will be found in paragraph 3.19a of Appendix A to the Offer of Settlement.

c. Section 1.3 of the settlement requires Vernon, when it develops its TRBA adjustments, to include a forecast of its net FTR revenue as part of its forecast of its Transmission Revenue Credits. Section 1.4 requires Vernon to include with each adjusted TRBA filing data supporting its recorded net FTR revenue. Simultaneously with the filing, Vernon must submit the data to the CAISO for verification.

d. Section 2.1 commits Vernon not to oppose the use of the settlement's methodology in certain other proceedings that also involve new PTOs, including those in Docket Nos. ER00-2019-000 et al., EL03-14-000, EL03-15-000 and EL03-21-000. Vernon may otherwise participate in those proceedings. The obligation "not to oppose" does not preclude Vernon from opposing the application of the principles used in sections 1.2 through 1.4 to some, but not all, of the new PTOs on the ground of undue discrimination.

e. Section 3.1 (formerly 2.2) of the settlement proposal provides that application to Vernon of the methodology used in sections 1.2 through 1.4 will terminate upon the effective date of a final Commission order in one of certain enumerated proceedings, resolving the question of how new PTOs that have received the "free" FTRs will treat usage charges and sale, auction, or other transfer revenues associated with those FTRs. After such, a final order is issued. Vernon will use the methodology prescribed by the Commission in such order.

f. Section 3.2 contains additional termination provisions. The settlement shall terminate in its entirety, one the earlier of: (i) the termination of any approved settlement in Docket 00-2019 that addresses the treatment by new PTOs of revenues associated with "free" FTRs; or (ii) the date a new Commission proceeding is instituted (either by a §205 filing by CAISO or a complaint case under §206) that "supersedes or otherwise displaces" the treatment of such revenues provided in Docket No.00-2019. However, the settlement shall not terminate before termination of the application of sections 1.2, 1.4 and 1.4 pursuant to section 3.1 of the settlement agreement.

g. Sections 4 and 5 contain some of the usual provisions found in settlement agreements. Final approval of the settlement terminates this

docket and any petition for judicial review and resolves Vernon's pending request for rehearing. The settlement is not a "settled practice," nor does it constitute a precedent or bind any party in any future proceeding before the Commission or the California Public Utilities Commission. If the Commission rejects or modifies the settlement in any material respect, any party adversely affected may withdraw from the settlement within 20 days thereafter.

h. Attached to the settlement offer are (x) a draft Commission letter order, approving it; and (y) Revised Vernon Tariff Sheets, in both clean and black-line forms

9. The attention of the Commission is respectfully drawn to the motion of Vernon, which is supported by the other active parties and not opposed by either the Trial Staff or the California Electricity Oversight Board, seeking expedited approval of the settlement. Vernon points out that on December 9, 2002, it filed with the Commission its TRBAA for calendar year 2003, using the same methodology it used for the June 26, 2002 filing in the instant docket. "Prompt approval of this settlement," Vernon explains, "would allow ISO rates to be collected for the period beginning January 1, 2003 without a need to take into account that there could be changes in the Vernon TRBAA as a result of this proceeding." Vernon goes on to say that "[t]his certainty and administrative convenience would benefit all participants and, thus, expedited approval is in the public interest."

10. In consideration of the foregoing, I am herewith certifying to the Commission the following documents:

- a. Transmittal letter dated December 26, 2002 from counsel for Vernon.
- b. Explanatory Statement and Motion for Shortened Comment Periods and Expedited Approval.
- c. Offer of Settlement, executed in counterparts by representatives of Southern California Edison Co., Sempra Energy, the City of Vernon, Pacific Gas and Electric Company and the California Independent System Operators.
- d. Draft letter order approving settlement.
- e. Exhibit A to Settlement (Part 1): Revised Vernon T.O. Tariff Sheets.
- g. Exhibit A to Settlement (Part 2): Black-Line Version of Revised Vernon

TO Tariff Sheets.

h. Initial Comments of the Commission Trial Staff on Offer of Settlement.

i. Transmittal letter dated January 7, 2003 by counsel for Vernon, on behalf of all the Settling Parties.

j Appendix A: Corrected page 5 to Offer of Settlement.

k. Appendix B: Black-line version of corrected page 5 to Offer of Settlement

Respectfully submitted this 13th day of January, 2003.

Isaac D. Benkin
Settlement Judge

DRAFT

**FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426**

In Reply Refer To:
Docket No. EL02-103-000
and EL02-103-001

McCarthy, Sweeney & Harkaway, P.C.
2175 K Street, N.W. Suite 600
Washington, DC 20037

Attention: Channing D. Strother, Jr.
Attorney for City of Vernon

Dear Mr. Strother:

1. You filed an Offer of Settlement ("Settlement") on behalf of the Settling Parties in the above-referenced docket on December 26, 2002. The Settlement reflects a comprehensive settlement of all issues in this docket.
2. Comments were filed by the Commission Trial Staff on January 2, 2003. No Reply Comments were filed. On January 7, 2003, the Settling Parties filed a corrected page 5 as errata to the Settlement. The Settlement Judge certified the Settlement to the Commission January 13, 2003, uncontested.
3. The subject Settlement is in the public interest and is hereby approved. The rates submitted with the Settlement documents are in compliance with order No. 614 (*FERC Statutes and Regulations* ¶ 31,096 (2001)) and are accepted for filing as designated. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal power Act, 16 U.S.C. §824e (1994).

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4. This letter terminates Docket No. EL02-103-000 and EL02-103-001.

By direction of the Commission.

Secretary

cc: All parties

Secretary
505 Van Ness Avenue
San Francisco, CA 55101-2147