

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

Williams Energy Marketing  
& Trading Company

)  
)  
)  
)  
)  
)  
)

Docket No. ER02-91-000

Docket No. ER02-303-000

(Not Consolidated)

---

**MOTION FOR RECEIPT OF LATE FILED REPLY COMMENTS AND REPLY**  
**COMMENTS TO PACIFIC GAS & ELECTRIC COMPANY'S COMMENTS**  
**OPPOSING OFFER OF SETTLEMENT**

Jeanne M. Solé

Attorney for  
California Independent System Operator  
Corporation

151 Blue Ravine Road  
Folsom, California 95630  
Telephone: (916) 351-4400  
Facsimile: (916) 608-7222  
E-mail: [jsole@caiso.com](mailto:jsole@caiso.com)

Dated: August 9, 2002

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

Williams Energy Marketing	)	Docket No. ER02-91-000
& Trading Company	)	
	)	Docket No. ER02-303-000
	)	
	)	(Not Consolidated)
	)	

---

**MOTION FOR RECEIPT OF LATE FILED REPLY COMMENTS AND REPLY  
COMMENTS TO PACIFIC GAS & ELECTRIC COMPANY'S COMMENTS  
OPPOSING OFFER OF SETTLEMENT**

The California Independent System Operator Corporation ("ISO") respectfully files this motion for receipt of late-filed reply comments and reply comments to the Comments of Pacific Gas and Electric Company Opposing Offer of Settlement ("PG&E's Comments").

1. Background.

Last year, Williams had made a filing proposing certain rate revisions with respect to the reliability-must-run units ("RMR") that Williams operates, pursuant to agreements with the ISO, in Edison's former service area. *See e.g.*, Docket Nos. ER02-91-000 and ER02-303-000 ("Williams RMR Dockets"). After lengthy negotiations, the ISO and the other parties in the Williams RMR Dockets ("Settling Parties") have reached a settlement regarding certain operating costs, including the Fixed Option Payment Factor ("FOPF") that would be applicable to the Williams' RMR facilities ("the Williams Settlement"). The Williams Settlement is intended to, and if approved by the Commission, would result in substantial savings of the costs that Edison ratepayers incur as the result of Williams' RMR charges. The Williams Settlement is now awaiting the Commission's approval. If the Commission approves the Williams Settlement,

there would be no need, at this time, for the parties to continue litigation with respect to Williams' RMR costs and the Williams RMR Dockets could be dismissed.

The FOPF with respect to Williams' RMR units is also at issue in docket EL02-15-000. Because the settlement reached resolves the FOPF applicable to Williams through calendar year 2003, to continue litigation of this issue in docket EL02-15-000 could only undermine the settlement in the Williams RMR Dockets, lead to confusion and waste the parties' and the Commission's resources. Accordingly, the Settling Parties have sought the dismissal of Williams from EL02-15-000, conditioned on the Commission's approval of the Williams Settlement. Williams' dismissal from EL02-15-000 would in no way affect the rights or remedies of any party to continue to challenge in that docket the reasonableness of FOPF for units that are not affected by the Williams Settlement. Moreover, the Williams Settlement in no way purports to apply to any other generating units subsequently designated by the ISO as RMR units.

PG&E has filed comments opposing the Williams Settlement in the above captioned dockets and has protested Williams' dismissal from docket EL02-15-000. PG&E's Comments contend that settlement of the FOPF was procedurally inappropriate and that its interests are adversely affected by the "most favored nation" ("MFN") provision of the Williams Settlement. Neither of these items support rejection of the proposed Williams Settlement by the Commission.

2. Motion for receipt of late-filed reply comments.

The ISO respectfully requests the Commission to receive these late-filed reply comments. The ISO mistakenly relied on a fifteen (rather than ten) day reply period and overlooked the August 5 reply date in the Offer of Settlement filing. Nonetheless, these reply comments will

assist the Commission to evaluate PG&E's comments and no party will be prejudiced by receipt by the Commission of these reply comments out of time.

3. PG&E has had ample opportunities to appraise the Commission of any adverse impacts of the Williams Settlement on its rights.

Distilled to their essence, PG&E's procedural complaints suggest that PG&E has had no fair opportunity to protect its interests as they relate to the Williams Settlement. This contention is not accurate. First, PG&E was appraised early on by the ISO that settlement of the FOPF was under discussion in the Williams RMR Dockets. PG&E could have at that time sought to intervene in the Williams RMR Dockets and to participate in the settlement discussions. More importantly, PG&E has had, and has availed itself of, ample opportunities to appraise the Commission of any adverse effects of the Williams Settlement on its interests. PG&E had the opportunity to, and did, protest the motion to dismiss filed in docket EL02-15-000, and to file its comments on the Williams Settlement in this docket. Thus, PG&E's procedural complaints are misplaced.

Further, contrary to PG&E's suggestion, there is nothing in the Commission's rules that prohibit settlements that include issues that are under review in different proceedings, provided that the appropriate filings are made in all the relevant dockets. To the contrary, Rule 602 specifically contemplates that settlements may address issues in more than one proceeding since it permits (but does not require) that participants request the Commission to consolidate various proceedings in addressing the offer of settlement. See Rule 602(b)(3), C.F.R. § 385.602(b)(3). PG&E could have requested consolidation or other procedural relief to assure its ability to comment on the Williams Settlement, but chose instead to intervene in the Williams RMR Dockets and submit its comments in these dockets. Moreover, the Offer of Settlement was

properly filed in the Williams RMR Dockets, and the motion to dismiss, with the Offer of Settlement appended, in docket EL02-15-000. In this manner, all parties in all the relevant dockets were given the opportunity to review the Williams Settlement and appraise the Commission of any concerns.

Further, there is nothing in the Commission's rules that prohibit a subset of the parties in a case from settling a subset of the issues in a case. In this case there is nothing inappropriate about a subset of the parties in docket EL02-15-000 filing a motion to dismiss. Parties that were not signatories to the motion have had full opportunities to respond.

In sum, contrary to PG&E's contentions, there is nothing procedurally inappropriate as to the Williams Settlement and PG&E has had, and has availed itself of, ample opportunities to appraise the Commission of any adverse impacts of the settlement on its interests.

4. The MFN clause does not adversely affect PG&E's interests.

The one substantive issue raised in PG&E's Comments relates to the MFN clause in the Williams Settlement which requires that the FOPF for Williams be increased in the event that certain of the Settling Parties agree to a higher FOPF for certain generating units. PG&E contends that this clause will adversely affect its interests because the relevant Settling Parties are unlikely to agree to a higher FOPF as to the relevant units, as a result of the clause, and because the FOPF agreed to with Williams will become a benchmark for other generating unit owners. PG&E's concerns are overstated and provide no basis for rejecting the Williams Settlement. Further, PG&E provides no evidence to support its contentions. See Rule 602(f)(4), C.F.R. § 385.602(f)(4)(parties alleging that there is a genuine issue of material fact as to an offer of settlement must substantiate such claim).

The Settling Parties bound by the MFN clause carefully crafted the clause to exclude generating units for which they considered that an FOPF above that agreed with Williams could possibly be justified. These parties would not agree to an FOPF above 15% for the generating units covered by the MFN clause irrespective of whether an MFN clause is in place or not. Thus, PG&E's concerns are misplaced. PG&E has introduced no evidence to support the view that an FOPF above 15% would be appropriate for any generating unit covered by the MFN clause.

Further, the fact that the 15% number might now be viewed as a benchmark by other generators does not support rejection of the Williams Settlement. First, PG&E has introduced no evidence to demonstrate that this is indeed the case. Further, the ISO will independently evaluate any proposed settlement as to the appropriate FOPF for any unit based on the specific facts that relate to such a unit. The ISO has no intention of granting blanket FOPFs of 15% to all generating units subject to the MFN clause, and PG&E has introduced no evidence that suggests that this is the case.

In sum, PG&E's concerns regarding the MFN clause are unsupported and overstated. They do not provide a basis for rejecting the Williams Settlement.

5. Conclusion.

The ISO respectfully requests that the Commission accept these reply comments out of time. PG&E's Comments provide no basis for rejecting the Williams Settlement. The ISO urges the Commission to approve the settlement expeditiously.

Respectfully submitted,

Jeanne M. Solé

---

By: Jeanne M. Solé

Attorney for  
California Independent System Operator Corporation

Dated: August 9, 2002

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing MOTION FOR RECEIPT OF LATE FILED REPLY COMMENTS AND REPLY COMMENTS TO PACIFIC GAS & ELECTRIC COMPANY'S COMMENTS OPPOSING OFFER OF SETTLEMENT on each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, California, this 9th day of August, 2002.

---

Jeanne M. Solé, Attorney for  
California Independent System Operator Corporation

151 Blue Ravine Road  
Folsom, California 95630  
Telephone: (916) 351-4400  
Facsimile: (916) 608-7222  
E-mail: [jsole@caiso.com](mailto:jsole@caiso.com)





The Honorable Magalie Roman Salas  
Secretary  
FEDERAL ENERGY REGULATORY COMMISSION  
888 First Street, N.E.  
Washington, D.C. 20426

RE: DOCKET NOS. ER02-91-000 AND ER02-303-000 (Not Consolidated)

Dear Secretary:

Enclosed please find for electronic filing with the Commission the  
MOTION FOR RECEIPT OF LATE FILED REPLY COMMENTS AND REPLY  
COMMENTS TO PACIFIC GAS & ELECTRIC COMPANY'S COMMENTS  
OPPOSING OFFER OF SETTLEMENT in the above-captioned matter.

Your courtesy and cooperation in this matter are appreciated.

Very truly yours,

Jeanne M. Solé

Enclosures

cc: All Parties of Record