UNITED STATES OF AMERICA 105 FERC ¶ 61,165
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Williams Energy Marketing & Trading Company — Docket Nos. ER02-91-000, ER02-303-000

California Independent System Operator Corporation,
California Electricity Oversight Board,
California Public Utilities Commission,
Pacific Gas and Electric Company,
San Diego Gas & Electric Company, and
Southern California Edison Company

v. — Docket No. EL02-15-000

Cabrillo Power I LLC,
Cabrillo Power II LLC,
Duke Energy South Bay LLC
Geyers Power Company, LLC, and
Williams Energy Marketing and Trading Company

ORDER APPROVING UNCONTESTED SETTLEMENT, DENYING LATE INTERVENTION AND DISMISSING PARTY FROM PROCEEDING

(Issued October 31, 2003)

1. In this order the Commission approves the uncontested offer of settlement filed by Williams Energy Marketing & Trading Company (Williams), the California Independent System Operator (CAISO), Southern California Edison Company (SoCal Edison), and AES Southland, LLC (AES Southland) on July 5, 2002 in Docket Nos. ER02-91-000 and ER02-303-000. The order also denies the July 25, 2002 motion to intervene in Docket Nos. ER02-91-000 and ER02-303-000 filed by Pacific Gas and Electric Company (PG&E). Finally, this order grants the motion filed in Docket No. EL02-15-000 by Williams, CAISO, SoCal Edison and AES Southland for unconditional dismissal, without prejudice, of Williams from that proceeding. This order will benefit Williams' customers because it provides for refunds.

Background

Docket Nos. ER02-91-000 and ER02-303-000

2. Williams provides service to the CAISO pursuant to a uniform Reliability Must Run Agreement (RMR Agreement)[1] The RMR Agreement requires Williams to adjust its rates annually using the formula detailed in the RMR Agreement. It also requires Williams to submit a Schedule F filing detailing and supporting its Annual Fixed Revenue Requirements (AFRR) and its variable operation and maintenance rates (VOM) for RMR facilities. Williams made such a filing on October 12, 2002 in Docket No. ER02-91-000.

3. On November 13, 2001, Williams filed in Docket No. ER02-303-000 revised tariff sheets pertaining to the RMR Agreements for William's Alamitos Generating Station (Alamitos) and Huntington Beach Generating Station (Huntington Beach). Among other things, Williams requested permission to apply the AFRR and VOM submitted in Docket No. ER02-91-000 to the Alamitos and Huntington Beach units.

4. The Commission, in an order dated January 11, 2002, accepted Williams' filing in Docket No. ER02-303-000, suspended it subject to refund, and made it subject to the outcome of Docket No. ER02-91-000, which was then subject to ADR procedures pursuant to the RMR Agreement.[2]

Docket No. EL02-15-000

5. By a joint complaint filed on November 2, 2001, the CAISO, the California Energy Oversight Board (Oversight Board) the California Public Utilities Commission (California Commission), Southern California Edison, Pacific Gas and Electric Company and San Diego Gas & Electric Company requested an investigation into the reasonableness of the "Fixed Option Payment" payable by the CAISO to owners and operators of RMR generating units. The Complainants asked the Commission to apply a "net incremental cost" methodology to the calculation of the Fixed Option Payment Factor and requested a January 1, 2002 effective date for any refunds if the Commission adopts the net incremental methodology. The Fixed Option Payment Factor and the Annual Fixed Revenue Requirement are components of a Monthly Option Payment

[1] By letter order, dated May 28, 1999, the Commission approved an RMR Agreement and individual RMR rate schedules pursuant to a partial settlement agreement. By a letter order issued October 27, 1999, the Commission approved a subsequent offer of settlement settling more issues.

[2] Williams Energy & Trading Company, 98 FERC ¶ 61,013 (2002).

payable by the CAISO. The Fixed Option Payment Factor is currently set at 27 percent of AFRR for Alamitos and 32 percent of AFRR for Huntington Beach.

Key Settlement Provisions

6. Among other things, the Settlement removes from the AFRR recovery of any costs for Goodwill and Deferred Financing; the settlement removes from recovery through the AFRR the cost of Capital Additions placed in service from May 1, 1998 to and including June 30, 2001, but provides that Williams shall be permitted to seek recovery of the cost of any Capital Additions to Alamitos and Huntington Beach placed in service subsequent to July 1, 2000 in accordance with Article 7 of the RMR Agreement. Finally the AFFR agreed to by the parties in the Settlement is as follows:

Facility	Informational Filing	Settlement
Alamitos	$53,869,401	$44,000,000
Huntington Beach	$15,665,586	$14,000,000

7. The settlement agreement also provides that the Fixed Option Payment Factor shall remain at 27 percent for Alamitos and 32 percent for Huntington Beach effective January 1, 2002 to and including April 30, 2002. Effective May 1, 2002 to and including December 31, 2003, the Fixed Option Payment Factor shall be reduced to 15 percent for both Alamitos and Huntington Beach. The 15 percent Fixed Option Payment shall be subject to a “Most Favored Nation” provision, under which the 15 percent will be increased to match any higher Fixed Option Payment Factor agreed to by the CAISO, the California Commission and the Oversight Board for a condition one RMR unit and which is subject to the complaints in Docket No. EL02-15-000 or Docket No. EL02-20-000. The Settlement is contingent upon the Commission approving a motion filed by the Parties to the Settlement for unconditional dismissal, without prejudice, of Williams from Docket No. EL02-15-000. The effective date of the Settlement is January 1, 2002 to and including December 31, 2003.

Discussion

Docket Nos. ER02-91-000 and ER02-303-000

8. We find that the Offer of Settlement is an uncontested offer of settlement in Docket Nos. ER02-91-000 and ER02-303-000. This is because PG&E, which has filed comments opposing the settlement, is not a party to these proceedings.[3] And, although PG&E seeks late intervention in these dockets for purposes of opposing the settlement, we will deny PG&E late intervention. Under Rule 214(d) of the Commission’s Rules of

[3] See Rule 602(g) and (h) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.602(g) and (h) (2003).

Practice and Procedure, 18 C.F.R. § 385.214(d) (2003), in determining whether to grant late intervention, the Commission may consider whether, among other things: (1) the movant had good cause for failing to file the motion within the time prescribed, (2) any disruption of the proceeding might result from permitting intervention, (3) the movant's interest is not adequately represented by other parties. PG&E gives no reason for its failure to file its motion within the prescribed time period. As noted above, the proceeding in Docket No. ER02-91-000 has been the subject of ADR procedures since it was filed. Allowing PG&E to intervene at this late point in the proceeding could result in the disruption of the settlement process and prejudice to and additional burdens on the existing parties. Moreover, PG&E's principal concern is the effect of the Most Favored Nation provision contained in the settlement on future settlements in Docket No. EL02-15-000. Although we deny PG&E's intervention in Docket Nos. ER02-91-000 and ER02-303-000, it is a party to Docket No. EL02-15-000 and we will address its concerns there.

9. The settlement appears to be fair and reasonable and in the public interest. Accordingly we will approve it. The rates submitted with the settlement are accepted for filing and are designated and made effective as shown on the enclosure. The Commission's approval of the settlement does not constitute approval of or precedent regarding any principle or issue in these proceedings. The settlement provides that 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 FPA.

Docket No. EL02-15-000

10. We will grant the motion to dismiss. In its answer in opposition to the motion to dismiss Williams from this proceeding, PG&E claims that the settlement in Docket Nos. ER02-91-000 and ER02-303-000 impermissibly resolves issues pending in Docket No. EL02-15-000. But in its opposition to the motion to dismiss, it does not recite what issues those are. However, in its comments to the settlement, PG&E argues that the Most Favored Nation provision will unfairly restrict the ability of the parties in Docket No. EL02-15-000 to reach a settlement, because it creates an inadvisable benchmark that will make reaching a settlement highly improbable.

11. SDG&E also filed a response to the motion to dismiss. SDG&E does not oppose the motion to dismiss, but asks the Commission to expeditiously resolve the pending proceedings in Docket No. ER98-495-000, which concerns the proper determination of the Fixed Option Payment Factor, and in particular, whether to adopt the net incremental cost method advocated by SDG&E, PG&E, SoCal Edison, the CAISO, the California Commission and the Oversight Board in Docket No. EL02-15-000. SDG&E points out that SoCal Edison and Williams are the parties most directly affected by the amounts paid by the CAISO to Williams, because the Williams units are in SoCal Edison's service

territory. SDG&E concludes that Williams and SoCal Edison are the parties best able to assess the benefits and the burdens of the settlement terms and suggests that public policy favors approving settlements that are acceptable to those parties directly affected.

12. The CAISO, Williams, SoCal Edison and the California Commission filed a response to PG&E's opposition to the motion to dismiss. They point out that the settlement was reached after lengthy negotiations regarding certain operating costs, including the Fixed Option Payment Factor that would be applicable to Williams' RMR facilities. They state that if the settlement in Docket Nos. ER02-91-000 and ER02-303-000 is approved, there is no need, at this time, to continue litigation with respect to Williams' RMR cost issues in Docket No. EL02-15-000. They state that Williams' dismissal from this proceeding would not affect the rights or remedies of any party to continue to challenge in Docket No. EL02-15-000 the Fixed Option Payment Factor for units that are not subject to the settlement, or to challenge the Fixed Option Payment Factor for Williams after calendar year 2003. They further point out that the settlement does not apply to other generating units subsequently designated as RMR units by the CAISO.

13. We will grant the motion to dismiss in Docket No. EL02-15-000. As pointed out by SDG&E, the parties most affected by the dismissal support the settlement. Moreover, PG&E does not allege substantive problems with the settlement. PG&E's argument that the Most Favored Nation Provision is a disincentive to a further settlement is at best speculative. Moreover, as the CAISO, Williams, SoCal Edison, and the California Commission point out, the instant dismissal covers only Williams' Alamitos and Huntington Beach units, and is with prejudice for the Fixed Option Payment Factor only for 2002 and 2003. The dismissal is without prejudice to permit a settlement as to the Alamitos and Huntington Beach units after 2003. We find that the motion to dismiss, under these circumstances, is in the public interest.

The Commission orders:

(A) The proposed settlement filed by Williams, the CAISO, SoCal Edison, and AES Southland in Docket Nos. ER02-91-000 and ER02-303-000 is hereby approved.

(B) The motion to dismiss Williams from Docket No. EL02-15-000 is hereby granted.

(C) PG&E's motion to intervene in Docket Nos. ER02-91-000 and ER02-303-000 is hereby denied.

(D) Within fifteen (15) days after making the refunds required by the settlement approved by this order, Williams shall file with the Commission a compliance refund report showing revenues under the present and settlement rates, the monthly revenue refund, and the monthly interest computed, together with a summary of such information for the total refund period.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

.