

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company
Complainant,

v.

101 FERC ¶ 61,391
Docket Nos. EL00-95-045

Sellers of Energy and Ancillary Service Into
Markets Operated by the California
Independent System Operator Corporation
and the California Power Exchange Corporation,
Respondents

Investigation of Practices of the California
Independent System Operator and the
California Power Exchange

Docket No. EL00-98-042

ORDER ON MOTION FOR PARTIAL DISMISSAL

(Issued December 30, 2002)

1. On November 25, 2002, Williams Energy Marketing & Trading Company (Williams) filed a motion for partial dismissal from the California refund proceeding to the extent that those proceedings direct refunds for electric power sold by Williams to the California State Releasing Parties (the State) in light of a settlement agreement between Williams and the State.¹ For the reasons discussed below, the Commission grants Williams' motion for partial dismissal. This decision benefits customers by facilitating a

¹The Settlement Agreement defines the California State Releasing Parties as: the Governor of the State of California; the State of California Department of Water Resources, including the California Energy Resources Scheduling Division (DWR); the California Public Utilities Commission; the California Electricity Oversight Board; and the Attorney General of California.

settlement which, if later approved, would give significant benefits to the customers represented by the State.

Background/Williams' Settlement

2. Williams explains that it and the State have entered into a global settlement to resolve numerous pending disputes, including a resolution of "any and all issues and matters raised by and in connection with the state's demand for refunds from Williams" in the California refund proceeding.² The settlement agreement requires, as a condition precedent, that the Commission issue an order by December 31, 2002 "granting Williams' motion to dismiss claims for refunds due to any of the California State Releasing Parties or in relation to any Electric Power provided to the CDWR that is or may be subject to the refund proceeding from Williams or the Williams Companies."³ In turn, the agreement provides that the State will release Williams from any claims based on the alleged existence or exercise of market power during the relevant period of time. In keeping with this condition precedent, Williams requests that it be dismissed from the California refund proceeding to the extent that the proceeding directs refunds for electric power sold by Williams to the state.

3. Williams explains that it does not seek dismissal with regard to claims that non-settling entities may have in the refund proceeding, such as the Investor Owned Utilities (IOUs). Williams also states its intent that the dismissal not adversely affect any other party to the refund proceeding. It recognizes that the Commission has not yet finalized the process with regard to how refunds will flow, and the question of "who owes what to whom" in the refund proceeding is unsettled at this time. It states that:

In this respect, the Commission should dismiss claims against Williams as discussed herein and hold that whatever refunds Williams owes for power sold to the California State Releasing Parties has been satisfied in the parties' settlement and should therefore be removed from the California refund proceedings. The ISO and PX should be directed to remove from

²See Motion at 5. In *San Diego Gas & Electric Company, et al.*, 96 FERC ¶ 61,120 (2001), the Commission established the scope and methodology for calculating refunds related to transactions in the spot markets operated by the ISO and PX during the period October 2, 2000 through June 20, 2001, and established evidentiary hearing procedures to develop a factual record to implement the refund methodology).

³Motion at 5.

their compliance filing, to be filed after the Commission issues its order on refunds, those amounts to be refunded by Williams for power sold to the California State Releasing Parties. Moreover, it is important that this is done before netting any amounts Williams is owed for power sold during the refund period.^[4]

Notice of Filing and Answers

4. In response to a request by Williams, the Commission issued a Notice Shortening Answer Period on December 4, 2002, with answers due on or before December 6, 2002. Timely answers were filed by the California Power Exchange Corporation (PX); the California Independent System Operator Corporation (ISO); Pacific Gas and Electric Company and Southern California Edison Company (PG&E/SCE); M-S-R Public Power Agency and the Cities of Palo Alto, Redding and Santa Clara, California (M-S-R/Cities); the Public Utilities Commission of the State of California and the California Electricity Oversight Board (CPUC/CEOB); Northern California Power Agency (NCPA); Modesto Irrigation District (Modesto); and Duke Energy North America, L.L.C. and Duke Energy Trading and Marketing, L.L.C. (Duke). Tucson Electric Power Company (Tucson) filed a late answer on December 10, 2002, noting the short response deadline, the intervening snow storm, and the fact that the answer is only two days late.

5. CPUC/CEOB, which are parties to the settlement, support Williams' request that the Commission dismiss the California State Releasing Parties' claims against Williams, noting that such dismissal is a condition precedent to the closing of the settlement, scheduled for December 31, 2002.

6. Numerous parties raise concerns that granting of the request for partial dismissal may adversely affect other parties to the refund proceeding, despite Williams' assurances otherwise.⁵ In particular, they oppose Williams' request that the Commission direct the ISO and PX to remove from their compliance filing "those amounts to be refunded by Williams for power sold to the California State Releasing Parties." They explain that neither the ISO nor former PX spot markets facilitated direct sales from one third party to another, and these markets did not create any bilateral obligations between parties. Consequently, in the proceeding before Judge Birchman, the ISO and the PX have not stated refund obligations in terms of bilateral obligations between sellers and purchasers

⁴Motion at 7.

⁵See Answers of Modesto, Duke, Tucson, PG&E/SCE, NCPA, M-S-R/Cities and the PX.

but, rather, the calculations show only how refunds impact the position of each seller and purchaser in the ISO market.

7. Answering parties state that the issues of whether there are bilateral refunds owed by suppliers to particular claimants ("who owes what to whom") and how such obligations would be calculated are pending before Judge Birchman.⁶ They are concerned that, depending on how bilateral obligations are calculated, the partial dismissal could adversely affect their positions. PG&E/SCE provide an example where the ISO and PX determine that Williams is liable for \$500 million in total refunds, that amount would presumably be reduced to reflect the separate settlement with the State. Without a method for determining which portion of the \$500 million is attributable to purchases made by DWR, there may be substantial disputes concerning the amount of refunds owed by Williams to those who have not settled. Or, as expressed by M-S-R/Cities, Williams' abstention from paying refunds under the settlement agreement could result in shortfalls as to the amount which may be disbursed to other parties in the refund proceeding.

8. In light of the above concerns, some parties, such as M-S-R/Cities and Modesto oppose the settlement and ask that the Commission deny the request for partial dismissal. Others such as Duke and Tucson do not oppose Williams' request but rather ask that the Commission expressly confirm that the settlement will not adversely affect non-settling parties or prejudge how it will require the settlement rerun process to work in implementation of a final refund order. PG&E/SCE and the PX ask that the Commission not implement the settlement prior to the computation of refunds between individual buyers and sellers in the refund proceeding on a bilateral basis.

9. The ISO states that, because the ISO does not calculate obligations between specific parties, Williams' request that the Commission remove from the refund proceeding amounts to be refunded by Williams for power sold to the State is not feasible in a rerun of the ISO's settlement system. However, to accommodate Williams, it proposes a process to determine the bilateral obligations between the settling parties that would not require the ISO to remove amounts owed by Williams and owed to DWR in the compliance settlement rerun process. This process would involve a comparison of the bilateral obligations between the State and Williams (using either the methodology adopted by the Commission, or in absence of a Commission mandate, whatever

⁶Since the time the answers were filed, Judge Birchman issued his "Certification of Proposed Findings on California Refund Liability," San Diego Gas & Electric Company, et al., 101 FERC ¶ 63,026 (December 12, 2002).

methodology the settling parties choose) to the results of the ISO's rerun and invoicing process to "true up" the results consistent with the amount that Williams agreed to pay the State under the settlement.⁷

10. M-S-R/Cities and Modesto express concern about Williams' financial instability and contend that a payout now to the State could impair the ability of Williams to pay amounts owed to other parties. They also note that the settlement releases all claims by "Unnamed California Cities, Counties and Political Subdivisions," and ask the settling parties to clarify that M-S-R/Cities and Modesto are not included in this definition.

11. NCPA asks that the Commission not act on an expedited basis because there is currently not enough information before the parties in Docket No. EL00-95 et al. or the Commission to make a rational decision regarding the feasibility or implementation of the partial dismissal. Tucson notes that Williams has not filed its settlement agreement with the Commission and asks that the Commission require such a filing under section 205 of the Federal Power Act since it will assist parties in assessing possible adverse impacts and because it will affect rates, terms and conditions of service.

12. PG&E/SCE ask the Commission to clarify that if it grants Williams' request for partial dismissal, such ruling does not approve or otherwise rule substantively on the provisions contained in the settlement agreement.

13. The PX also protests that the settlement purports to extinguish Williams' liability to DWR without releasing the PX's liability to DWR (or to Williams). It contends that Williams cannot be allowed to compound the PX's difficulties by extinguishing its own liability to the PX while leaving in place PX's liabilities both to Williams and DWR.

Discussion

Procedural Matters

14. Given the short response time, and because the late answer will not delay the proceeding or prejudice the rights of any party, we accept Tucson's late filing.⁸

⁷The PX and Duke suggest similar "true up" arrangements.

⁸18 C.F.R. § 385.213(d) (2002).

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15. The Commission has strongly encouraged all parties involved in the California refund proceeding to resolve their disputes through settlement.⁹ As Williams notes, the settlement agreement at issue arose out of settlement proceedings instituted in Public Utilities Commission of the State of California , et al., 99 FERC ¶ 61,087. In accord with this policy, we will grant Williams' request that it be dismissed from the California refund proceeding to the extent that the proceeding directs refunds for electric power sold by Williams to the State.

16. As noted by the answering parties, the matter is complicated by the fact that the California refund proceeding does not contemplate the computation of bilateral obligations between buyers and sellers in the ISO and the PX spot markets. At the time answers were filed, the issue of whether to establish bilateral obligations and how to do so was pending in the evidentiary proceeding. In his December 12, 2002 Certification of Proposed Findings on California Refund Liability, Judge Birchman rejects the offered "bilateralization" proposals.¹⁰ The Initial Decision is now pending before the Commission. We agree with Duke that nothing in this order should be construed as pre-judgment of this issue by the Commission. Similarly, we will not rule at this time on Williams' proposal for implementing the proposed settlement in the compliance filing to be made after the Commission reviews Judge Birchman's ruling and the parties' filings in response thereto.

17. It may be possible to respect Williams' request, but to decide the matter at this time is premature. However, we emphasize that, even if it is later determined that it is necessary to calculate the bilateral obligation between Williams and the State in the refund proceeding, that calculation would not in any way supersede the proposed settlement agreement (if it is approved) or our granting of Williams' motion for partial dismissal. Moreover, our action today will not affect in any way the amount of refunds that Williams may owe to the non-settling parties.

⁹E.g., Public Utility District No. 1 of Snohomish County, Washington, et al, 100 FERC ¶ 61,296 at P 36 (2001) ("we want to strongly encourage all parties involved in disputes arising from the California crisis to seriously negotiate settlements"); Public Utilities Commission of the State of California , et al., 99 FERC ¶ 61,087 at 61,384 (2002); San Diego Gas & Electric Company, et al., 95 FERC ¶ 61,418 at 62,547 (2001) (establishing settlement conference to "settle past accounts").

¹⁰San Diego Gas & Electric Company, et al., 101 FERC ¶ 63,026 at PP 765-788.

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18. We further clarify that this order only addresses Williams' motion for partial dismissal, but does not rule substantively on the proposed settlement agreement between Williams and the State.

The Commission orders:

Williams Energy Marketing & Trading Company's motion for partial dismissal is hereby granted, to the extent discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.