

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator
Corporation, et. al.

v.

Cabrillo Power I LLC, et. al.

)
)
)
)
)
)
)

Docket No. EL02-15-000

JOINT RESPONSE TO PACIFIC GAS & ELECTRIC COMPANY'S OPPOSITION TO
THE MOTION TO DISMISS WILLIAMS ENERGY MARKETING & TRADING
COMPANY

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

Dated: August 06, 2002

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

| | | |
|---|---|------------------------|
| California Independent System Operator Corporation, et. al. |) | Docket No. EL02-15-000 |
| |) | |
| v. |) | |
| |) | |
| Cabrillo Power I LLC, et. al. |) | |

Joint Response To Pacific Gas & Electric Company's Opposition To The Motion To Dismiss Williams Energy Marketing & Trading Company

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“ISO”), Southern California Edison Company (“Edison”), the Public Utilities Commission of the State Of California (“CPUC”), and Williams Energy Marketing & Trading Company (“Williams”) (hereinafter “Joint Parties”)¹ respond to the Answer of Pacific Gas and Electric Company Opposing Joint Motion To Dismiss Williams Energy Marketing & Trading Company (“PG&E’s Protest”).²

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

¹ Counsel for Edison, the CPUC and Williams have authorized the ISO to file this joint motion on behalf of the Joint Parties.

² Although the Joint Parties realize that the Commission’s regulations generally prohibit answers to responsive pleadings, the Joint Parties believe that a good cause exists to allow an answer in this case because the present reply is necessary to develop a complete and accurate record. See *Buckeye Pipe Line Co.*, 45 FERC ¶ 61,046 (1998) (allowing an answer that helped explain issues important to the case); *El Paso Natural Gas Co.*, 79 FERC ¶ 61,079 (1977) (allowing an answer in order to achieve a complete record).

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 Joint 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 at issue in these proceedings and the Williams RMR dockets could be dismissed.

The FOPF with respect to Williams' RMR units is, however, also at issue in the current docket. Because the settlement reached by the Joint Parties resolves the FOPF factor applicable to Williams through calendar year 2003, to continue litigation of this issue in the present docket could only undermine the settlement, lead to confusion and waste the parties' and the Commission's resources. Accordingly, the Joint Parties have sought the dismissal of Williams from the present action, conditioned on the Commission's approval of the Williams Settlement. Williams' dismissal from this proceeding would in no way affect the rights or remedies of any party to continue to challenge in this docket the reasonableness of FOPF for units that are not affected by the Williams Settlement, or to challenge the FOPF for Williams after calendar year 2003. Moreover, the Williams Settlement in no way purports to apply to any other generating units subsequently designated by the ISO as RMR units. Nevertheless, PG&E has protested Williams' dismissal from the complaint on file in this action and has, in effect, challenged the proposed settlement.

PG&E's protest does not allege that there are substantive problems with the proposed Williams Settlement. Rather, PG&E simply contends that the Commission should not consider matters outside the scope of a proceeding merely because they are pending in a different docket. There is nothing new or inappropriate about the proposed Williams Settlement. Parties before the Commission routinely settle matters that require the termination of multiple dockets in which related issues have been raised – that is the essence of a comprehensive settlement. Moreover, to effectuate the full settlement, the Joint Parties have moved to dismiss Williams in this proceeding, giving the parties to this proceeding a procedural vehicle to object to the dismissal in this proceeding. Thus, PG&E has an adequate opportunity to protect its interests in this proceeding by responding to the motion to dismiss.

Interestingly, however, PG&E has not set forth in its opposition to the motion to dismiss any explanation of how PG&E's interests in this proceeding would be adversely affected by the dismissal of Williams. As stated above, the dismissal of Williams in this proceeding does not adversely affect PG&E's ability to proceed with litigation regarding the FOPF for RMR Agreements, the costs of which are flowed through to PG&E. Further, dismissal of Williams from this proceeding in no way affects the determination of the reasonableness of the FOPF for units that are not subject to the Williams Settlement. The Williams Settlement is clear that it is a negotiated agreement for the sole purpose of settling certain issues, and that Commission approval of the settlement is not to constitute approval of, or precedent regarding any principle or issue in any proceeding. (See Williams Settlement section V).

PG&E also contends that Williams' dismissal is inappropriate because PG&E has been deprived of an opportunity to comment on the terms of the Williams Settlement, as filed in the Williams RMR dockets. However, that contention is untrue. To the contrary,

PG&E has filed an opposition to the Williams Settlement in the Williams RMR dockets. The Commission will have an opportunity to consider this opposition in evaluating the Williams Settlement.

Accordingly, there is no factual, legal or policy basis for PG&E's protest to Williams' dismissal from this docket. Thus, the Commission should reject PG&E's protest. If the Commission approves the Williams Settlement, as the Joint Parties believe it should, then Williams should be dismissed from the current proceeding.

Finally, it should be noted that the current settlement does not, in any way, diminish the need for the Commission to issue a final ruling on the FOPF issue currently pending before the Commission in Docket ER98-495-000 et.al., and the Joint Parties urge the Commission to issue such a ruling as soon as possible.

Respectfully submitted,

Jeanne M. Solé

By: Jeanne M. Solé

Attorney for
California Independent System Operator Corporation

Dated: August 06, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing **JOINT RESPONSE TO PACIFIC GAS & ELECTRIC COMPANY'S OPPOSITION TO THE MOTION TO DISMISS WILLIAMS ENERGY MARKETING & TRADING COMPANY** upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Folsom, California, this 6th 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

Dated: August 06, 2002



August 06, 2002

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

RE: DOCKET NO. EL02-15-000

Dear Secretary:

Enclosed please find for electronic filing with the Commission the **JOINT RESPONSE TO PACIFIC GAS & ELECTRIC COMPANY'S OPPOSITION TO THE MOTION TO DISMISS WILLIAMS ENERGY MARKETING & TRADING COMPANY** 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