

106 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

San Diego Gas & Electric Company,  
Complainant

v.

Docket No. EL00-95-089

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

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

Docket No. EL00-98-076

Puget Sound Energy, Inc.

v.

Docket No. EL01-10-013

All Jurisdictional Sellers of Energy and/or  
Capacity at Wholesale into Electric Energy  
and/or Capacity Markets in the Pacific  
Northwest, Including Parties to the Western  
Systems Power Pool Agreement

Nevada Power Company and Sierra Pacific  
Power Company

v.

Docket No. EL02-33-006

Enron Power Marketing, Inc.  
El Paso Merchant Energy  
American Electric Power Services, Corp.

State of California, ex rel. Bill Lockyer,  
Attorney General of the State of California

v.

Docket No. EL02-71-003

British Columbia Power Exchange Corp.  
Coral Power, LLC  
Dynegy Power Marketing, Inc.  
Enron Power Marketing, Inc.  
Mirant Americas Energy Marketing, Inc.  
Reliant Energy Services, Inc.  
Williams Energy Marketing & Trading Co.

All Other Public Utility Sellers of Energy and  
Ancillary Services to the California Energy  
Resources Scheduling Division of the  
California Department of Water Resources

All Other Public Utility Sellers of Energy and  
Ancillary Services into Markets Operated by  
California Power Exchange and California  
Independent System Operator

## ORDER PARTIALLY DISMISSING COMPLAINTS

(Issued January 6, 2004)

1. On August 8, 2003, the California Parties<sup>1</sup> and Indicated Attorneys General<sup>2</sup> (Indicated AGs) and El Paso<sup>3</sup> filed a motion in the above captioned proceedings for the

---

<sup>1</sup> The California Parties are the Public Utilities Commission of the State of California, the People of the State of California ex rel. Bill Lockyer, Attorney General, the California Department of Water Resources, the California Electricity Oversight Board, Pacific Gas and Electric Company, and Southern California Edison Company.

<sup>2</sup> The Indicated Attorneys General are the Nevada Attorney General's Bureau of Consumer Protection and the Attorney General of Washington.

<sup>3</sup> The movants state that, for purposes of this pleading, El Paso comprises El Paso Corporation, El Paso Natural Gas Company, and El Paso Merchant Energy, L.P. They state that the pleading does not relate to El Paso Electric Company.

partial dismissal of El Paso and El Paso Releases<sup>4</sup> from the proceedings as to the California Parties and Indicated AGs. The movants explain that they have reached a comprehensive settlement (Master Settlement Agreement)<sup>5</sup> resolving California Parties' and Indicated AGs' claims against El Paso in these proceedings. Movants indicate that the partial dismissal would effectuate the releases and withdrawals with prejudice of all claims, liabilities and proposed remedies sought by the California Parties and Indicated AGs in the captioned proceedings against El Paso and El Paso Releases. Movants also request that the dismissal be void ab initio if the effective date under the Master Settlement Agreement never occurs.

2. The motion clarifies that the movants seek to withdraw with prejudice claims relating to El Paso by the California Parties, and the partial dismissal "is not intended to affect the claims of non-settling entities in any of the captioned proceedings, or to compromise or limit in any way remedies that may result from such claims as to the non-settling parties" nor to terminate the proceedings.<sup>6</sup> Specifically, the movants state that the motion for partial dismissal is without prejudice to including El Paso in refund calculations for the purpose of determining refunds that may be due to or from non-El Paso parties in the Refund Proceeding in Docket Nos. EL00-95-045 and EL00-98-042.

3. Automated Power Exchange, Inc. (APX) responded to the motion, expressing concern that, if it is held primarily liable for all transactions that it scheduled in the markets of the California Independent System Operator (CAISO), acting as scheduling coordinator for El Paso, then El Paso could leave APX responsible for the amounts that the partial dismissal relieves El Paso from paying. APX urges that, if the Commission grants the motion, the Commission should clarify that either: (1) a partial dismissal does not limit APX's ability to pass refund amounts through to El Paso and does not relieve El Paso of any liability for its sales into the California markets through APX, or, in the alternative, (2) to the extent El Paso is released for its sales into the CAISO markets, that release also applies to any sales made through a scheduling coordinator, such as APX. In other words, APX seeks assurance that its liability as a scheduling coordinator should be adjusted to reflect the release of the underlying seller's obligation.

4. We will grant the motion and dismiss the captioned complaints against El Paso with prejudice as to the California Parties and the Indicated AGs as described and

---

<sup>4</sup> The movants state that "Releases" are defined in the Master Settlement Agreement as including an entity's current or former directors, officers, employees, affiliates, parents, subsidiaries, predecessors, successors, assigns, and attorneys.

<sup>5</sup> The Master Settlement Agreement was filed with the San Diego Superior Court on June 26, 2003.

<sup>6</sup> Motion at 3.

conditioned in the motion. This action will not affect in any way the amount of refunds that El Paso may owe to any non-settling parties. This dismissal will be void ab initio if the effective date under the Master Settlement Agreement never occurs. To address APX's concern, we will clarify that, to the extent any liability is imposed on APX in the Refund Proceeding in connection with El Paso's sales,<sup>7</sup> its liability should be adjusted to reflect the elimination of the El Paso refund amounts as to the California Parties and the Indicated AGs.

The Commission orders:

The movants' motion to dismiss the complaints against El Paso in Docket Nos. EL00-95, EL00-98, EL01-10, EL02-33, and EL02-71 with prejudice as to California Parties and Indicated AGs is hereby granted.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.

---

<sup>7</sup> See San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services, et al., 105 FERC ¶ 61,066 at P 159-172, reh'g pending (finding that sellers who used APX's services should be liable for refunds in the proceeding, but that joint and several liability is appropriate for recovery of refund liabilities where data for apportionment is insufficient).