

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Philip D. Moeller,
and Jon Wellinghoff.

San Diego Gas & Electric Company

Docket Nos. EL00-95-000

v.

Sellers of Energy and Ancillary Services

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

EL00-98-000

Puget Sound Energy, Inc.

EL01-10-000

v.

Sellers of Energy and/or Capacity

Investigation of Anomalous Bidding Behavior and
Practices in Western Markets

IN03-10-000

Fact-Finding Investigation Into Possible Manipulation of
Electric and Natural Gas Prices

PA02-2-000

BP Energy Company

EL03-60-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 6, 2007)

1. In this order, the Commission acts on a Joint Offer of Settlement and Settlement and Release of Claims Agreement (collectively, the Settlement) filed on April 19, 2007 in the above-captioned proceedings by BP Energy Company (BP) and the California

Parties¹ (collectively, the Parties). The Settlement consists of a “Joint Explanatory Statement” and a “Settlement and Release of Claims Agreement”² among BP and the California Parties, filed pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.³ The Settlement resolves matters and claims in the above-captioned proceedings related to BP and arising from events and transactions in the Western Energy Markets⁴ during the period January 1, 2000 through June 20, 2001 (Settlement Period).

2. The Parties state that the Settlement reaches a fair and reasonable resolution of issues between BP and the California Parties. Therefore, the Parties request that the Commission approve the Settlement. In this order, the Commission approves the Settlement, finding it to be fair and reasonable and in the public interest.

I. Background and Description of the Settlement

3. The Parties state that BP made bilateral sales to CERS during the Settlement Period (CERS Bilaterals),⁵ but that BP was not a direct participant in the CAISO or

¹ The California Parties consist of Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the People of the State of California, *ex rel.* Edmund G. Brown Jr., Attorney General, the California Electricity Oversight Board, the California Public Utilities Commission, and the California Department of Water Resources acting solely under the authority and powers created by Assembly Bill 1 of the First Extraordinary Session of 2001-2002, codified in sections 80000 through 80270 of the California Water Code (CERS).

² The Settlement and Release of Claims Agreement includes: 1) a Cover Sheet that specifies, among other things, the Settlement Amount (\$18,000,0000); and 2) General Terms and Conditions.

³ 18 C.F.R. § 385.602 (2006).

⁴ The Settlement defines the Western Energy Markets as those markets for electric capacity, energy, and/or ancillary services in the Western Electricity Coordinating Council, including the California markets of the California Independent System Operator Corporation (CAISO) and the California Power Exchange Corporation (CalPX). Settlement sections 1.40 and 1.6.

⁵ Specifically, the CERS Bilaterals are bilateral sales by BP to CERS for a term less than one month during the period of January 18, 2001, through and including June 20, 2001, as to which the California Parties have sought or could seek refunds in the FERC Proceedings (*see infra* n.6), the *Lockyer v. FERC* Remand (the proceeding

(continued...)

CalPX markets during this time. Rather, BP participated in these markets indirectly through APX, Inc. (APX). The Parties state that the Settlement resolves the California Parties' claims against BP regarding the CERS Bilaterals, and any other claims between BP and the California Parties relating to transactions in the Western Energy Markets during the Settlement Period for damages, refunds, disgorgement of profits or other monetary or non-monetary remedies in the FERC Proceedings⁶ and other specified proceedings.

4. According to Settlement section 3.2, the Settlement does not affect obligations BP has or may have to market participants (*i.e.*, entities that directly sold energy to or purchased energy from the CAISO and/or the CalPX during the Settlement Period), including APX, the CAISO or the CalPX, that arose from BP's participation in APX. The Parties note that the Settlement does not provide for the participation of other market participants because BP was not a market participant in the CAISO and CalPX markets during the Settlement Period, and because the Settlement consideration relates to the

conducted by the Commission pursuant to the decision in *California ex rel. Lockyer v. FERC*, 383 F.3d 1006 (9th Cir. 2004), to the extent such proceeding concerns remedies arising from sales in the CAISO or the CalPX and/or to CERS during the Settlement Period), or other proceedings before the Commission. Settlement section 1.10.

⁶ The Settlement defines the FERC Proceedings as: the EL00-95 Proceeding (where the Commission instituted formal hearing procedures under the Federal Power Act (FPA) to investigate, among other things, the justness and reasonableness of rates of public utility sellers into the CAISO and CalPX markets for a specific period); the EL01-10 Proceeding (where the Commission ordered an evidentiary hearing to help determine whether there may have been unjust and unreasonable charges for spot market bilateral sales in the Pacific Northwest for a specific period); the Gaming/Partnership Proceeding; and proceedings in Docket Nos. PA02-2 (fact-finding investigation of manipulation of electric energy and natural gas prices in the west), EL03-60 (proceeding requiring BP to show cause why its authority to sell power at market-based rates should not be revoked), IN03-10 (investigation to determine whether individual market participants may have violated a prohibition against anomalous market behavior), and the Physical Withholding Investigation, and related appeals of orders in those proceedings, insofar as those proceedings concern BP's sales in the CAISO and CalPX markets and/or sales to CERS during the Settlement Period. Settlement section 1.18. In 2003, the Commission approved a settlement that resolved as to BP all allegations in Docket Nos. EL03-60 and PA02-2.

CERS Bilaterals. For this same reason, the Parties explain, the Settlement does not contain an allocation matrix; all of the Settlement's monetary consideration will be paid to CERS.

5. Settlement section 4.1.1 provides that BP will pay \$18,000,000 into an account to be designated by CERS. Further, the Settlement provides that BP's responsibility for CalPX wind-up charges shall be governed by the Commission settlement order *California Power Exchange Corp.*, 113 FERC ¶ 61,017 (2005), and any future Commission orders concerning a substantially similar charge by the CalPX.⁷ Article IV of the Settlement also provides for non-monetary consideration: BP is to cooperate with the California Parties in pursuit of claims or potential claims relating to the operation of the Western Energy Markets and western natural gas markets from January 1, 2000 through and including December 31, 2002.⁸

6. Settlement article V provides for releases and waivers such as: (1) all claims between BP and the California Parties shall be deemed settled as related to transactions in the Western Energy Markets during the Settlement Period, for damages, refunds, disgorgement of profits, or other monetary or non-monetary remedies in the FERC Proceedings,⁹ the *Lockyer v. FERC* Remand,¹⁰ the *BPA v. FERC* Remand,¹¹ and the *CPUC v. FERC* Remand¹² (collectively, Remand Cases);¹³ (2) BP and the California Parties will not contest the amount of refund liability and/or offsets or other relief BP incurs in the EL00-95 Proceeding, the EL01-10 Proceeding, the Remand Cases, or the outcome of the other FERC Proceedings;¹⁴ and (3) BP and the California Parties agree to

⁷ Settlement section 4.1.2.

⁸ *Id.* at section 4.2.

⁹ *See supra* n.6.

¹⁰ *California ex rel. Lockyer v. FERC*, 383 F.3d 1006 (9th Cir. 2004).

¹¹ *Bonneville Power Administration v. FERC*, 422 F.3d 908 (9th Cir. 2005).

¹² *California Public Utilities Commission v. FERC*, 474 F.3d 587 (9th Cir. 2006).

¹³ Settlement section 5.1.1.

¹⁴ *Id.* at section 5.1.2.

mutually release each other for the Settlement Period from certain claims before the Commission and/or under the FPA, and from certain past, existing and future claims for civil damages and/or equitable relief.¹⁵

7. The Settlement is subject to approval by the Commission without material change or condition unacceptable to any affected party.¹⁶ The Parties state in their request for Commission approval of the Settlement that such approval will avoid further litigation, provide monetary consideration, eliminate regulatory uncertainty, and enhance financial certainty. They state that the Settlement reaches a fair and reasonable resolution between BP and the California Parties. Accordingly, the Parties request that the Commission approve the Settlement.

II. Discussion

8. Initial comments on the Settlement were due on May 9, 2007 and reply comments were due on May 21, 2007. No comments were filed.

9. This Settlement is uncontested. The Commission finds it to be fair and reasonable and in the public interest and it is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this or any other proceeding.

The Commission orders:

The Commission hereby approves the Settlement, as discussed in the body of this order.

By the Commission. Commissioner Spitzer not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁵ *Id.* at sections 5.2-5.3.

¹⁶ *Id.* at section 6.1.1.