

108 FERC ¶ 61,145  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Power Marketing, Inc.

Docket No. EL03-153-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued August 5, 2004)

1. On January 20, 2004, Commission Trial Staff and Dynegy Power Marketing, Inc.; Dynegy Power Corp.; El Segundo Power LLC; Long Beach Generation LLC; Cabrillo Power I LLC; and Cabrillo Power II LLC (collectively Dynegy) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Dynegy that were set for hearing in Docket No. EL03-153-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order).<sup>1</sup>
2. On February 9, 2004, the California Parties<sup>2</sup> filed comments objecting to the Settlement Agreement. On February 9, 2004, the Port of Seattle, Washington (Seattle) filed comments incorporating the comments of the California Parties. On February 9, 2004, the Pacific Northwest Parties<sup>3</sup> filed comments partially opposing the settlement. On February 19, 2004, both Trial Staff and Dynegy filed reply comments in support of the settlement. In addition, Trial Staff incorporates by reference its general reply

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<sup>1</sup> American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,345 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004).

<sup>2</sup> The California Parties are the People of the State of California *ex rel.* Bill Lockyer, Attorney General; the California Electricity Oversight Board; the California Public Utilities Commission; Pacific Gas and Electric Company; and Southern California Edison Company.

<sup>3</sup> The Pacific Northwest Parties consist of the Public Utility District No. 1 of Snohomish County, Washington and the Port of Seattle, Washington.

comments submitted on October 20, 2003.<sup>4</sup> On June 1, 2004, the presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.<sup>5</sup>

3. The Settlement Agreement constitutes a reasonable resolution of these proceedings and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against Dynegy that were set for hearing in the Gaming Order. In this regard, Dynegy will be returning \$3,017,416,<sup>6</sup> the total revenues (and not merely the profits – and thus more than would be achieved in litigation<sup>7</sup>) from Dynegy's alleged participation in gaming practices. Furthermore, given our determination in the Gaming Order on Rehearing not to expand the scope of this proceeding, the release provision in Article IV, section 4.5, of the Settlement Agreement, releasing Dynegy from further scrutiny of its trading activities in California during the period January 1, 2000 through June 20, 2001 (with the exception of the ongoing proceedings in Docket Nos. IN03-10-000 and EL00-95-000, *et al.* or any investigation regarding physical withholding), is reasonable.<sup>8</sup>

4. Moreover, issues raised in the comments filed by the California Parties, the Northwest Parties and the Port of Seattle largely go to the scope of the proceeding, are thus essentially requests for rehearing of the Gaming Order and, in fact, were addressed and denied in the Gaming Order on Rehearing.<sup>9</sup> Such matters thus need not be further addressed here.

5. The California Parties have requested that we order that: (1) if the Commission or a reviewing court enlarges the scope of this proceeding, then the Settlement Agreement will not preclude the Commission or the California Parties from advocating or applying

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<sup>4</sup> The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judges' certification. Dynegy Power Marketing, Inc., 107 FERC ¶ 63,039 (2004).

<sup>5</sup> *Id.* at P 62-69.

<sup>6</sup> The Settlement Agreement provided for the payment of \$3,014,942. However, the California Parties argue that the Settlement disregards 71 MWh in cut schedules. Trial Staff calculates this amount to be \$2,474. Dynegy agreed to pay this additional amount if it would not delay approval of the Settlement. Dynegy's Reply Comments at 12 (filed February 19, 2004).

<sup>7</sup> Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71.

<sup>8</sup> *Compare* Certification, 107 FERC ¶ 63,039 at P 29, 33, 68 *with supra* note 1.

<sup>9</sup> Gaming Order on Rehearing, 106 FERC ¶ 61,020 at P 85 (2004).

any newly imposed rules, standards, or remedies; and (2) the Settlement Agreement does not preclude the Commission from ordering any appropriate remedy as to others in this proceeding or as to Dynegy in any other proceeding.

6. The Commission has previously granted the requested clarifications to settlement agreements in Partnership Order proceedings. Therefore, we will adopt the requested conditions, which are, we note, unopposed. *See Colorado River Commission of Nevada*, 106 FERC ¶ 61,022 at P 50-51 (2004).

7. This order terminates Docket No. EL03-153-000.

By the Commission. Commissioner Kelly not participating

( S E A L )

Linda Mitry,  
Acting Secretary.