

121 FERC ¶ 61,291
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services	Docket Nos. EL00-95-000
Investigation of Practices of the California Independent System Operator and the California Power Exchange	EL00-98-000
Puget Sound Energy, Inc. v. Seller of Energy and/or Capacity	EL01-10-000
Enron Power Marketing, Inc. and Enron Energy Services, Inc.	EL03-180-000
Enron Power Marketing, Inc. and Enron Energy Services, Inc.	EL03-154-000
El Paso Electric Company, Enron Power Marketing, Inc., and Enron Capital and Trade Resources Corp.	EL02-113-000
Portland General Electric Company	EL02-114-007
Enron Power Marketing, Inc.	EL02-115-008
Fact-Finding Investigation Into Possible Manipulation of Electric and Natural Gas Prices	PA02-2-000
Investigation of Anomalous Bidding Behavior and Practices in Western Markets	IN03-10-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued December 21, 2007)

1. In this order, the Commission acts on a settlement filed on September 20, 2007 in the above-captioned proceedings between Enron¹ and Public Utility District No. 2 of Grant County, Washington (Grant) (collectively, the Parties). The settlement consists of a “Joint Offer of Settlement,” a “Joint Explanatory Statement,” and a “Settlement and Release of Claims Agreement”² (collectively, the Settlement). The Settlement was filed by the Parties pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure,³ and the Parties have requested Commission approval by December 21, 2007.
2. The Settlement resolves, as between Enron and Grant, matters and claims in the above-captioned proceedings (i.e., the FERC Proceedings) emanating from Enron’s actions and transactions in western energy markets during the period from January 16, 1997 through June 25, 2003 (Settlement Period).⁴
3. In addition to the Commission’s approval, the Settlement requires the approval of the United States Bankruptcy Court for the Southern District of New York (the Enron Bankruptcy Court).⁵ The Parties sought approval of the Settlement from the Commission

¹ Enron consists of the Enron Debtors and the Enron Non-Debtor Gas Entities. The Enron Debtors are Enron Corp.; Enron Power Marketing, Inc. (EPMI); Enron North America Corp. (f/k/a Enron Capital and Trade Resources Corp.); Enron Energy Marketing Corp.; Enron Energy Services Inc.; Enron Energy Services North America, Inc.; Enron Capital & Trade Resources International Corp.; Enron Energy Services, LLC; Enron Energy Services Operations, Inc; Enron Natural Gas Marketing Corp.; and ENA Upstream Company, LLC. The Enron Non-Debtor Gas Entities are Enron Canada Corp.; Enron Compression Services Company; and Enron MW, L.L.C.

² The Settlement and Release of Claims Agreement includes a Letter Designating Assignee of Allowed Claim.

³ 18 C.F.R. § 385.602 (2007).

⁴ The Settlement Period is derived from the Commission’s July 22, 2004 Order directing proceedings before an ALJ to review all evidence relevant to Enron’s conduct that violated or may have violated Commission tariffs and to determine the appropriate remedy for such violations, including an examination of Enron’s wholesale power sales in the Western Interconnect. *See* Joint Explanatory Statement at 8, *citing El Paso Elec. Co., Enron Power Mktg., Inc., and Enron Capital and Trade Resources Corp.*, 108 FERC ¶ 61,071 (2004).

⁵ Section 1.2 of the Settlement defines the “Bankruptcy Cases” collectively as cases commenced under Chapter 11 of the Bankruptcy Code, by the Enron Debtors and

and the Enron Bankruptcy Court contemporaneously. On November 9, 2007, Enron and Grant filed a Joint Motion to Lodge Order of Bankruptcy Court Approving Settlement by and Among the Enron Parties and Public Utility District No. 2 of Grant County, Washington (Motion to Lodge). Appended to the Motion to Lodge is the October 4, 2007 order of the Enron Bankruptcy Court approving the Settlement (Bankruptcy Court Order). Presiding Judge Arthur J. Gonzalez found that “the legal and factual bases set forth . . . establish that the Settlement Agreement is fair and reasonable”⁶

4. The Parties state that the Settlement reaches a fair and reasonable resolution of issues as between Enron and Grant. 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

5. On June 25, 2003, the Commission issued two orders requiring a total of 53 entities, including Enron, to show cause if they had engaged in activities that constitute gaming and/or anomalous market behavior in violation of the California Independent System Operator Corporation (CAISO) and California Power Exchange Corporation (CalPX) tariffs.⁷ Grant is not a named respondent in those Commission proceedings.

6. On January 26, 2004, Chief Administrative Law Judge Curtis Wagner issued an order consolidating the Gaming and Partnership Proceedings.⁸ On January 30, 2004, the Chief Judge issued an errata consolidating Enron-related issues from Docket Nos. EL02-114-000 and EL02-115-000 with the Gaming and Partnership Proceedings.⁹

certain affiliates on or after December 2, 2001 in *In re Enron Corp. et al.*, Chapter 11 Case No. 01-16034 (AJG) Jointly Administered, pending before the Enron Bankruptcy Court.

⁶ Bankruptcy Court Order at 2.

⁷ *American Elec. Power Serv. Corp.*, 103 FERC ¶ 61,345 (2003), *reh’g denied*, 106 FERC ¶ 61,020 (2004) (*Gaming Order*); *Enron Power Marketing, Inc.*, 103 FERC ¶ 61,346 (2003) (*Partnership Order*). Collectively, these orders are referred to as the *Partnership/Gaming Orders*.

⁸ *Enron Power Marketing, Inc.*, “Order of the Chief Judge Consolidating Gaming and Partnership Proceedings for Hearing and Decision,” Docket No. EL03-180-000, *et al.* (2004).

⁹ *Enron Power Marketing, Inc.*, Errata, Docket No. EL03-180-000, *et al.* (2004).

7. On July 22, 2004, the Commission issued an Order Affirming the Initial Decision in Docket No. EL02-113-000, pertaining to the adjudication of Enron's liability resulting from its relationship with El Paso Electric Company.¹⁰ The July 22 Order also consolidated that docket and others with Docket Nos. EL03-180-000 and EL03-154-000, and directed further proceedings before the Presiding Administrative Law Judge in the consolidated dockets.

8. On July 20, 2005, the Chief Judge issued an order suspending the procedural schedule and scheduling a settlement conference between Enron and the remaining non-settling parties in these proceedings. After the Commission's Trial Staff unsuccessfully engaged the parties in settlement discussions, the Chief Judge issued an order designating Administrative Law Judge Judith A. Dowd as a settlement judge and scheduling a settlement conference. The instant settlement is one of a litany of settlements between Enron and other parties seeking to resolve all outstanding disputes as to Enron.¹¹

9. The Settlement filed with the Commission on September 20, 2007 is meant to resolve, as between Enron and Grant, all claims or rights to remedies stemming from the captioned Commission proceedings. The Settlement will also resolve certain non-Commission proceedings, including those pending at the Enron Bankruptcy Court as between Enron and Grant. The monetary and non-monetary consideration involved in the Settlement is described below.

10. Pursuant to the monetary consideration provisions in Settlement sections 4.1 – 4.1.1.3, Enron will allow Grant claims totaling \$3,000,000.00, without offset, defense or reduction, in the Enron Bankruptcy Proceedings. This amount represents the full amount of Grant's timely-filed proof of claim in the Enron Bankruptcy Proceedings (POC No. 16077). Settlement section 4.1.1 provides that this monetary settlement consideration exchanged by the Parties shall be comprised of a Class 6 general unsecured claim against EPMI under the Bankruptcy Plan in the amount of \$3,000,000.00 with respect to POC No. 16077. Grant's unsecured claim is not a Joint Liability Claim as defined in the Bankruptcy Code.¹²

¹⁰ *El Paso Elec. Co.*, 108 FERC ¶ 61,071 at P 32 (2004); *see Enron Power Marketing, Inc.*, 104 FERC ¶ 63,010 (2003) (the July 22 Order).

¹¹ *See, e.g., San Diego Gas & Elec. Co.*, 120 FERC ¶ 61,017 (2007); *Enron Power Marketing, Inc., et al.*, 116 FERC ¶ 61,299 (2006); *Enron Power Marketing, Inc., et al.*, 115 FERC ¶ 61,376 (2006); *Enron Power Marketing, Inc., et al.*, 115 FERC ¶ 61,377 (2006); *San Diego Gas & Elec. Co.*, 114 FERC ¶ 61,067 (2006).

¹² Settlement section 4.1.1.

11. Under section 5.2.1 of the Settlement, Grant agrees to withdraw all pleadings, testimony, exhibits, discovery requests, and additional requests for relief filed with the Commission and will terminate its participation as to Enron in the “FERC Proceedings.”¹³ This section also requires Grant to withdraw or refrain from further participation in specific proceedings pending in federal court.

12. Under section 6.4 of the Settlement, Enron and Grant mutually agree to release each other from past, existing and future claims arising at the Commission and/or under the Federal Power Act (FPA)¹⁴ and the Natural Gas Act (NGA),¹⁵ and any amendments to the FPA or NGA pursuant to EPAct from any legal theory or cause of action during the Settlement Period that Enron and Grant: (1) charged, collected or paid unlawful rates, terms or conditions for electric energy, ancillary services, transmission congestion or natural gas in the western energy markets; or (2) manipulated the western electricity or natural gas markets in any fashion.

13. Subject to certain reservations and limitations listed in settlement section 6.6, settlement section 6.5 states that Grant and Enron shall, as of the initial distribution of funds to Grant, be deemed to have forever released the other, and their agents, employees, representatives, officers, directors and affiliates, from all past, existing and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations, for the Settlement Period.

II. Initial and Reply Comments on the Settlement

14. Initial comments on the Settlement were due on October 10, 2007 and reply comments were due on October 22, 2007. No comments were filed.

¹³ “FERC Proceedings” is defined in section 1.23 of the Settlement as: “*Enron Power Mktg., Inc., et al.*, FERC Docket Nos. EL03-180, EL03-154, EL02-114-007, EL02-115-008, and EL02-113, and any subsequent proceeding to determine the distribution of funds in such proceedings (*Partnership/Gaming Proceeding*); *San Diego Gas & Electric Co., et al.*, FERC Docket No. EL00-95, *et al.* (*Refund Proceeding*); FERC Docket Nos. PA02-2 and IN03-10 (*Investigation Proceedings*); *State of California v. British Columbia Power Exchange Corp., et al.*, FERC Docket No. EL02-71 (*Quarterly Reports Proceeding*); *Enron Power Mktg., Inc. et al.*, Docket No. EL03-77 and RP03-311 (*Revocation Proceeding*); *Puget Sound Energy, Inc.*, Docket No. EL01-10 (*Pacific Northwest Proceeding*); and, any related appeals and/or any petitions for review and any proceedings on remand relating to the foregoing proceedings.”

¹⁴ 16 U.S.C. § 824 *et seq.* (2000).

¹⁵ 15 U.S.C. § 717 *et seq.* (2000).

15. This Settlement is uncontested. The Commission finds it to be a fair and reasonable resolution of the issues, and in the public interest. As such, the Settlement is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in the FERC Proceedings 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)

Nathaniel J. Davis, Sr.
Deputy Secretary.