

108 FERC ¶ 61,112
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern California Power Agency

Docket No. EL03-196-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued August 2, 2004)

1. On January 15, 2004, as supplemented on March 4, 2004, Commission Trial Staff and the Northern California Power Agency (NCPA) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to NCPA that were set for hearing in Docket No. EL03-196-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information (Partnership Order).¹
2. On February 4, 2004, as supplemented on March 10, 2004, the California Parties² filed comments in opposition to the Settlement Agreement. Also on February 4, NCPA filed comments in support of the Settlement Agreement. On February 17, 2004, Trial Staff filed specific reply comments in support of the Settlement Agreement. In addition, Trial Staff incorporated by reference its General Reply Comments submitted on October 20, 2003 in Docket No. EL03-137-000, *et al.* On February 17, 2004, NCPA filed reply comments.³ On March 5, 2004, as supplemented on March 15, 2004, the

¹ Enron Power Marketing, Inc. and Enron Energy Services, Inc., *et al.*, 103 FERC ¶ 61,346 (2003), *reh'g denied*, 106 FERC ¶ 61,024 (2004).

² 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.

³ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judges' certification. Northern California Power Agency, 106 FERC ¶ 63,022 (2004).

presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.⁴

3. The Settlement Agreement constitutes a reasonable resolution of this proceeding and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against NCPA that were set for hearing in the Partnership Order. In this regard, NCPA will be returning \$22,448, the total revenues (and not merely the profits – and thus more than would be achieved in litigation⁵) from NCPA's alleged participation in gaming practices. Furthermore, given our determination in the Partnership Order on Rehearing not to expand the scope of this proceeding, the release provision in Article IV, section 4.3, of the Settlement Agreement, releasing NCPA 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.⁶

4. Moreover, issues raised in the comments filed by the California Parties largely go to the scope of these proceedings, are thus essentially requests for rehearing of the Partnership Order and, in fact, were addressed and denied in the Partnership Order on Rehearing.⁷ Such matters thus need not be further addressed here.

5. The California Parties have requested that we clarify that: (1) if the scope of the proceedings is enlarged by the Commission or a reviewing court, then the Settlement Agreement will not preclude the Commission or the California Parties from advocating or applying any newly imposed rules, standards, or remedies; (2) the Settlement Agreement does not resolve any issues raised in Docket Nos. EL00-95-000, *et al.*, IN03-10-000, PA02-2-000, or the Staff investigation of physical withholding, or other issues raised by the California Parties in their March 3, 2003 and March 20, 2003 filings; and (3) the Settlement Agreement does not preclude the Commission from ordering any appropriate remedy as to NCPA or others in any other proceeding.

6. The Commission has previously granted similar clarifications to settlement agreements in Partnership Order proceedings. Consistent with our precedent, we will

⁴ *Id.* at P 42-46.

⁵ Partnership Order, 103 FERC ¶ 61,346 at P 2, 3, 48.

⁶ *Compare* Certification, 107 FERC ¶ 63,039 at P 18 *with supra* note 1.

⁷ Partnership Order on Rehearing, 106 FERC ¶ 61,024 at P 47.

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adopt as conditions the three clarifications stated above, without the reference to the March 3, 2003 and March 20, 2003 filings.⁸

7. This order terminates Docket No. EL03-196-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ See *City of Glendale, California*, 108 FERC ¶ 61,111 at P 6 (2004) (Docket No. EL03-147-000); *Colorado River Commission of Nevada*, 106 FERC ¶ 61,022 at P 50-51 (2004).