

108 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Glendale, California

Docket Nos. EL03-147-000
and EL03-182-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued August 2, 2004)

1. On January 26, 2004, Commission Trial Staff and the City of Glendale, California (Glendale) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Glendale that were set for hearing in Docket No. EL03-147-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order)¹ and in Docket No. EL03-182-000 in its 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).²
2. On February 17, 2004, the California Parties³ filed comments in opposition to the Settlement Agreement. On February 25, 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.

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

² Enron Power Marketing, Inc. and Enron Energy Services, Inc., *et al.*, 103 FERC ¶ 61,346 (2003), *reh'g denied*, 106 FERC ¶ 61,024 (2004).

³ 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.

EL03-137-000, *et al.* On February 25, 2004, Glendale filed reply comments.⁴ On June 4, 2004, the presiding judges in the two proceedings jointly certified the Settlement Agreement to the Commission as contested, but recommending its approval.⁵

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 Glendale that were set for hearing in the Gaming and Partnership Orders. In this regard, Glendale will be returning \$25,000, more than the total revenues (and more than the profits – and thus more than would be achieved in litigation⁶) from Glendale's alleged participation in gaming practices.

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 Gaming and Partnership Orders and, in fact, were addressed and denied in the Gaming and Partnership Orders 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 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 Glendale in any other proceeding. Glendale does not object to the three conditions imposed by the Commission in *Colorado River Commission of Nevada*, 106 FERC ¶ 61,022 at P 50-51 (2004) (*Colorado River*), but it argues that the inclusion of issues raised by the California Parties in their March 3, 2003 and March 20, 2003 filings goes beyond previously approved conditions and would undo the Settlement Agreement.

⁴ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judges' certification. *City of Glendale*, 107 FERC ¶ 63,040 (2004) (Certification).

⁵ *Id.* at P 36-39.

⁶ Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71; Partnership Order, 103 FERC ¶ 61,346 at P 2, 3, 48.

⁷ Gaming Order on Rehearing, 106 FERC ¶ 61,020 at P 85 (2004); Partnership Order on Rehearing, 106 FERC ¶ 61,024 at P 47 (2004).

Docket Nos. EL03-147-000 and EL03-182-000

3

6. We disagree with the California Parties that the issues raised in their March 3, 2003 and March 20, 2003 filings should be included in the second clarification. Consistent with our precedent, we will adopt as conditions the three clarifications stated above without the reference to the March 3, 2003 and March 20, 2002 filings. *See Colorado River*, 106 FERC ¶ 61,022 at P 50-51.

7. This order terminates Docket Nos. EL03-147-000 and EL03-182-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Magalie R. Salas,
Secretary.