

108 FERC ¶ 61,260
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Modesto Irrigation District

Docket No. EL03-159-000

ORDER APPROVING CONTESTED SETTLEMENT

(Issued September 21, 2004)

1. On November 3, 2003, Commission Trial Staff and Modesto Irrigation District (Modesto) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Modesto that were set for hearing in Docket No. EL03-159-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order).¹
2. On November 24, 2003, the California Independent System Operator Corp. (CAISO) filed comments opposing the settlement. Also on November 24, 2003 the California Parties² filed comments objecting to the Settlement Agreement. On December 3, 2003, both Trial Staff and Modesto filed reply comments in support of the settlement. In addition, Trial Staff incorporates by reference its general reply comments submitted on October 20, 2003.³ On March 22, 2004, the presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.⁴

¹ American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,345 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (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 judge's certification. Modesto Irrigation District, 106 FERC ¶ 63,034 (2004).

⁴ *Id.* at P 38-41.

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 Modesto that were set for hearing in the Gaming Order. In this regard, Modesto will be returning \$14,304, the total revenues (and not merely the profits – and thus more than would be achieved in litigation⁵) from Modesto’s alleged participation in gaming practices.

4. Moreover, issues raised in the comments filed by the CAISO and the California Parties 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.⁶ Such matters thus need not be further addressed here.

5. The California Parties have requested that we order that: (1) the Settlement does not preclude imposing new rules, standards or additional remedies upon Modesto if the scope of the proceeding is subsequently enlarged by a reviewing entity; (2) the Settlement does not resolve the issues in Docket Nos. EL00-95, EL03-180, IN03-10, PA02-2, EL03-193; the undocketed Staff investigation of physical withholding; and issues raised by the California Parties in their March 3, 2003 and March 20, 2003 filings; and (3) the Settlement does not preclude the Commission from ordering any appropriate remedy for Modesto or others in any other proceeding. Furthermore, there is a request that the docket not be closed so that Modesto can remain subject to discovery requests as a party.

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 Commission of Nevada*, 106 FERC ¶ 61,022 at P 50-51 (2004) (*Colorado River*).

7. We deny the request that the docket not be closed. In *Colorado River* the Commission denied a request that dockets be kept open so that the respondents remain subject to discovery as parties.⁷ Keeping the respondents “on the hook” for discovery after they no longer are parties and no longer have an interest in the proceeding is unfair and onerous. In any event, the Commission’s rules of discovery are sufficient to provide parties with a means to discover information from non-parties, should that prove necessary or appropriate. *See* 18 C.F.R. §§ 385.404, 385.409 (2004).

⁵ Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71.

⁶ Gaming Order on Rehearing, 106 FERC ¶ 61,020 at P 85 (2004).

⁷ 106 FERC ¶ 61,022 at P 52 n.26.

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8. This order terminates Docket No. EL03-159-000.

By the Commission. Commissioner Kelly not participating.

Magalie R. Salas,
Secretary.