

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

San Diego Gas & Electric Co. Docket No. EL00-95-000

v.

Sellers of Energy and Ancillary Services Docket No. EL00-98-000

Investigation of the Practices of the California
Independent System Operator and the
California Power Exchange Docket No. IN03-10-000

Investigation of Anomalous Bidding Behavior
and Practices in the Western Markets Docket No. PA02-2-000

Fact-Finding Investigation into Possible
Manipulation of Electric and Natural Gas Prices Docket No. EL03-180-000

Enron Power Marketing, Inc. and
Enron Energy Services, Inc. Docket No. EL03-154-000

Enron Power Marketing, Inc. and
Enron Energy Services, Inc. Docket No. EL02-114-007

Portland General Electric Company Docket No. EL02-115-008

Enron Power Marketing, Inc. Docket No. EL02-113-000

El Paso Electric Company,
Enron Power Marketing, Inc., and
Enron Capital and Trade Resources Corporation

ORDER ON SETTLEMENT AGREEMENT
CORRECTION TO ORDER ISSUED NOVEMBER 30, 2005¹

(Issued December 5, 2005)

¹ 113 FERC ¶61,226 (2005) (the November 30 Order).

1. In this order, the Commission corrects a misinterpretation of Order No. 663,² which does not apply to comments on offers of settlement. The Commission erroneously applied it in its November 30 Order, which accepted a Joint Offer of Settlement and Settlement and Release of Claims Agreement (collectively, the Settlement) filed on October 11, 2005 in the instant proceedings by Enron³ and the SRP Parties⁴ (collectively, the Parties). The October 11 Settlement consists of the “Joint Offer of Settlement,” a “Joint Explanatory Statement,” and the “Settlement and Release of Claims Agreement,” filed pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure.⁵ Because Order No. 663 requires the Commission to waive all issues in non-compliant pleadings, it did so in the November 30 Order. Because the Commission’s interpretation was incorrect, this order addresses all issues raised in initial and reply comments.
2. The Settlement resolves claims and matters raised in the captioned proceedings (FERC Proceedings) arising from transactions and events in Western energy markets, including markets of the California Independent System Operator (CAISO) and the California Power Exchange (CalPX) during the period from January 16, 1997 through June 25, 2003 (the Settlement Period) as they relate to Enron.
3. Although the Parties request that the Commission receive comment on and review the Settlement without prior certification by the Presiding Administrative Law Judge, the

² 112 FERC ¶ 61,297 (2005); 70 *Fed. Reg.* 55723 (2005).

³ For purposes of the Settlement, “Enron” or the “Enron Parties” means 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. (formerly known as 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.

⁴ For purposes of the Settlement, “SRP Parties” refers to New West Energy Corporation (New West) and Salt River Project Agricultural Improvement and Power District (SRP).

⁵ 18 C.F.R. § 385.602 (2005).

Settlement was certified as a partial contested settlement on November 22, 2005.⁶ The Parties also have requested that the Commission approve the Settlement before December 31, 2005.⁷ Today's order approves the Settlement with conditions, discussed *infra*.

I. Background and Description of the Settlement

4. The Settlement will resolve claims by the SRP Parties against the Enron Debtors for refunds, disgorgement of profits, and other monetary and non-monetary remedies in the following Commission proceedings: the Refund Proceeding in Commission Docket Nos. EL00-95-000⁸ and EL00-98-000,⁹ the Partnership/Gaming Proceeding in Docket Nos. EL03-180-000, EL03-154-000, EL02-114-007, EL02-115-008, and EL02-113-000, and the Refund Related Proceedings, including Docket Nos. PA02-2-000 and IN03-10-000 for the Settlement Period. The Parties also have agreed to mutual releases of past, existing and future claims arising at the Commission and/or under the Federal Power Act (FPA)¹⁰ and the Natural Gas Act (NGA)¹¹ with respect to rates, prices, and terms or conditions for energy, ancillary services, or transmission congestion in the western electricity or western natural gas markets during the settlement period.

5. The Parties note that SRP is an intervenor in the Commission's proceedings involving refunds and the disgorgement of profits by Enron, and both it and New West have asserted claims in the Enron Bankruptcy Proceeding. SRP also has filed comments

⁶ See Certification of Partial Contested Settlement, 113 FERC ¶ 61,025 (2005).

⁷ In addition to the Commission's approval, the Settlement requires the approval of United States Bankruptcy Court for the Southern District of New York (the Enron Bankruptcy Court).

⁸ *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*.

⁹ *Investigation of Practices of the California Independent System Operator and the California Power Exchange*. This proceeding and the proceeding in Docket No. EL00-95-000, *et al.*, are collectively referred to as the California Refund Proceeding or the Refund Proceeding.

¹⁰ 18 U.S.C. § 824 *et seq.* (2000).

¹¹ 15 U.S.C. § 717 *et seq.* (2000).

on the settlement pending before the Commission in the captioned dockets¹² between and among Enron, the California Parties,¹³ the Commission's Office of Oversight and Investigations (OMOI) and the attorneys general of the states of Washington and Oregon (California Settling Parties).

6. The consideration outlined in the Settlement is based, in part, on a calculation of Enron's estimate of refund amounts associated with transactions in the CAISO and CalPX markets pursuant to the Commission's orders in the Refund Proceeding for the period October 2, 2000 through June 20, 2001. The Settlement also includes negotiated amounts for the Pre-October Period at issue in the Refund Proceeding (May 1, 2000 through October 1, 2000), as reflected in the Exhibit A allocation matrix in the California Settlement. Finally, the Settlement provides negotiated amounts for the more inclusive period associated with the Partnership/Gaming Proceeding (January 16 1997 through June 25, 2003). The Parties request that the Commission grant any necessary authority for the CalPX and the CAISO to implement the Settlement, and that the Commission waive any tariff provisions or regulations necessary to implement the Settlement.

7. The Settlement anticipates cash payments totaling \$884,065, which is the amount of SRP's allocated share of cash distributions to Opt-In Participants under the California Settlement.¹⁴ The Settlement also provides refunds against Enron's charges related to its transactions in the CAISO and CalPX markets during the Western energy crisis of 2000 and 2001 and resolves broader claims for remedies, including claims for profit disgorgement related to Enron's conduct in Western energy markets during the

¹² The Parties refer to the global settlement involving claims against Enron as the "California Settlement." The Commission accepted the California Settlement by order issued on November 15, 2005. *See* 113 FERC ¶ 61,171 (2005).

¹³ For purposes of the Settlement, the "California Parties" means collectively: Pacific Gas & Electric Company (PG&E); Southern California Edison Company (SCE); San Diego Gas & Electric Company (SDG&E); the People of the State of California, *ex rel.* Bill Lockyer, Attorney General (the California Attorney General); the California Department of Water Resources acting solely under authority and powers created by California Assembly Bill 1 from the First Extraordinary Session of 2000 – 2001, codified in sections 80000 through 80270 of the California Water Code (CERS); the California Electricity Oversight Board (CEOB); and the California Public Utilities Commission (CPUC).

¹⁴ This amount is reflected in the California Settlement's Exhibit A Allocation Matrix.

Settlement Period.¹⁵ Under the Settlement, Enron will allow, in favor of the SRP Parties, a Class 6 general unsecured claim of \$2,700,000 in the bankruptcy proceeding of EPMI,¹⁶ without offset, defense, or reduction, in accordance with the Enron Debtors' Plan of Reorganization (the Plan).¹⁷

8. As a condition to the receipt of this consideration, SRP is required to opt-into the California Settlement. The Settlement requires SRP to notify the Commission in its initial comments on the California Settlement of its intention to opt-into the California Settlement if the instant Settlement is approved. SRP has so notified the Commission in initial comments filed in the California Settlement on September 13, 2005. Although the California Settlement provides that such opt-in notices are to be filed within five days of a Commission order approving the Settlement, SRP indicated in its initial comments on the California Settlement and in the instant Settlement that it will require waiver of this opt-in time limit, because the California Settlement was filed on August 24, more than six weeks prior to the filing of the instant Settlement. In joint reply comments on the California Settlement, the California Parties, OMOI and Enron agreed that SRP should be allowed to file an opt-in notice within five days of the effective date of the Enron-SRP Settlement.

9. The Settlement also provides for non-monetary consideration. Article 6 provides that, subject to certain specified limitations, the Enron Debtors and the SRP Parties will mutually release and discharge each other as of the Settlement Effective Date from all past, existing and future claims before the Commission and/or under the FPA and NGA. Subject to specified limitations, the Enron Non-Debtor Gas Entities and the SRP Parties will release each other from Commission, FPA and NGA claims and civil claims arising

¹⁵ "Settlement Period" is defined in section 1.80 as meaning the period from January 16, 1997 through June 25, 2003, which is the period set by the Commission in its order on disgorgement of profits by Enron. *El Paso Electric Co.*, 108 FERC ¶ 61,071 (2004).

¹⁶ *In re Enron Corp., et al., Reorganized Debtors*, Case No. 01-16034 (ALG) (Bankr. S.D.N.Y.).

¹⁷ According to section 1.42 of the Settlement, the Plan is the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code confirmed by the Enron Bankruptcy Court on or about July 15, 2004.

from any transaction or occurrence described in the Initial Staff Report,¹⁸ the Final Staff Report, or in the Commission's June 25, 2003 Order in Docket No. EL03-77 with respect to the Enron-Non-Debtor Gas Entities.¹⁹

10. On October 28, the Enron Parties and the SRP Parties filed a Motion to Lodge Order of Bankruptcy Court Approving Settlement by and Among the Enron Parties and the SRP Parties (Motion to Lodge). Appended to the Motion to Lodge is the October 27 Enron Bankruptcy Court²⁰ Order Approving Settlement Agreement Among the Debtors, the Enron Non-Debtor Gas Entities, New West Energy Corporation and Salt River Project Agricultural Improvement and Power District (Bankruptcy Court Order). Judge Gonzalez approved the Settlement without condition, based on his determination that "the legal and factual bases set forth in the Motion [to lodge the Settlement Agreement] establish just cause for relief granted herein and that the Settlement Agreement is fair and reasonable"²¹ The Commission will grant the Motion to Lodge the Bankruptcy Court Order.

Comments on the Settlement

11. Initial comments on the Settlement were due on October 31, and reply comments were due on November 10. Timely initial comments were filed by Port of Seattle, Washington (Port), the Commission's Trial Staff, and the Western Parties.²² Timely reply comments were filed by the Enron Parties and SRP.

A. Comments of Port

12. Just as it opposes the California Settlement, Port opposes the Enron - SRP Settlement. The crux of its opposition is its belief that the Settlement is unfair *vis-à-vis*

¹⁸ The Initial Staff Report was released by the Commission Staff on August 13, 2002, in connection with the Commission's investigation in Docket No. PA02-2.

¹⁹ *Enron Power Marketing, Inc.*, Order Revoking Market-Based Rate Authorities and Terminating Blanket Market Certificates, 103 FERC ¶ 61,343 (2003). See section 6.6 of the Settlement.

²⁰ Judge Alfred J. Gonzalez, presiding.

²¹ Bankruptcy Court Order at 2.

²² The Western Parties consist of: the City of Santa Clara, California, d/b/a Silicon Valley Power (Santa Clara); the Public Utility District No. 1 of Snohomish County, Washington (Snohomish); Valley Electric Association, Inc. (Valley Electric); Nevada Power Company and Sierra Pacific Power Company (the Nevada Companies); and The Metropolitan Water District of Southern California (MWD).

participants in non-California Western markets and that it inequitably distributes the proceeds of the Settlement.²³ Port alleges that there remain genuine issues of material fact that prevent the Commission from determining whether the Settlement complies with the FPA. Port further avers that the Settlement would distribute Settlement proceeds in a manner that is inconsistent with prior orders of the Commission and is unjust, unreasonable, unduly preferential and unduly discriminatory. Finally, Port alleges that the Settlement is unconstitutional in that it would delegate legislative authority to an Article III court.²⁴

- **Whether there are genuine issues of material fact that would require the Commission to consider the Settlement as contested**

13. Port alleges that the record of these proceedings supports its contention that there are numerous issues of material fact with respect to the Settlement. In support of this argument, Port refers the Commission to the Affidavit of Robert F. McCullough (McCullough Affidavit), which was included as Appendix A to Port's Comments in Opposition to the California Settlement, which it filed with the Commission on September 13, 2005. The McCullough Affidavit cites numerous portions of the record that allegedly support Port's assertion of the existence of genuine issues of material fact. Rule 602 of the Commission's Rules of Practice and Procedure requires that any comment contesting an offer of settlement by alleging a dispute as to genuine issues of material fact be supported by an affidavit with specific references to portions of the record that support the allegation.²⁵ Although not filed with respect to the instant Settlement, the Commission recognizes Port's attempt to incorporate the McCullough Affidavit by reference to its earlier filing in opposition to the California Settlement.

14. Port alleges three specific factual disputes: 1) whether Enron's gaming practices and partnerships harmed consumers; 2) the amount of Enron's profits; and 3) the regional allocation of Enron's profits. Because of the existence of these factual disputes, Port asserts that the Commission cannot make any findings with respect to whether the Settlement complies with the FPA.

15. The Enron Parties dispute Port's contention that there remain any genuine issues of material fact, pointing out that the Settlement does not resolve any facts in the underlying case with regard to Port and that the Settlement expressly provides that non-settling participants are free to pursue whatever claims they may have against Enron.²⁶

²³ Affidavit of Robert F. McCullough at 3-8.

²⁴ *Citing Schechter Poultry Co. v. United States*, 295 U.S. 495 (1935).

²⁵ 18 C.F.R. § 602(f)(4) (2005).

²⁶ Enron Parties' reply comments at 2-3, *citing* section 6.7.5 of the Settlement.

The Settlement does not establish the facts that Port alleges are in dispute. It does not establish whether Enron's gaming practices harmed consumers, the amount of Enron's profits or the regional allocation of Enron's profits. The Enron Parties state that these factual issues are not relevant to the Settlement, and they are not pertinent to the issue of whether the Settlement should be approved. "Notably, Port does not actually provide any detail to support the existence of its purported dispute; it simply asserts that such a dispute exists."²⁷ The Enron Parties conclude that, because there are no remaining genuine issues of material fact, the Settlement is uncontested, despite Port's purported opposition, and that the Commission should approve the Settlement notwithstanding Port's arguments.

16. SRP's reply comments take a similar position, asserting that the Settlement does not decide any issues on the merits as they pertain to Port and that the Settlement does not deprive Port of its right to continue to litigate with Enron. "The Settlement merely ends litigation between SRP and Enron and compensates SRP, in part, for giving up SRP's claims against Enron in proceedings pending before both FERC and the bankruptcy court."²⁸

Commission Determination

17. The Commission finds that there are no material issues of genuine fact that remain in dispute, despite Port's opposition to the Settlement. Clearly, the Settlement does not resolve anything as to Port, and Port retains the ability to pursue its claims against Enron in the underlying proceedings. The Enron Parties correctly cite Commission precedent that establishes this as an uncontested settlement:

If a party's interests are not immediately and irreparably affected by approval of a settlement in a consolidated docket, that party's opposition does not create a genuine, material issue. In the absence of any genuine, material issue, we can dispose of the matter before us in a summary fashion. We shall, therefore, treat this as an uncontested offer of settlement.²⁹

Moreover, the specific terms of the Settlement itself make it clear that the Settlement establishes no facts or precedents. Specifically, section 6.7.5 provides:

[E]xcept for the purpose of enforcing the terms and conditions of this Agreement as between and among the Parties, *nothing herein shall*

²⁷ *Id.* at 4.

²⁸ SRP reply comments at 3.

²⁹ *El Paso Natural Gas Co.*, 25 FERC ¶ 61,292 (1983) at 61,673.

establish any facts or precedents as between the Parties and any third parties as to the resolution of any dispute. Each party expressly denies any wrongdoing or culpability with respect to the claims against it released in this Agreement, or any other matter addressed in this Agreement, and does not, by execution of this Agreement, admit or concede any actual or potential fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it with respect thereto.³⁰

In addition, section 2.2 of the Settlement states that “Nothing herein will affect the positions that any non-settling party wishes to assert in the allocation proceeding.” Thus, it is clear to the Commission that the Settlement does not affect Port’s ability to pursue litigation against Enron, and whatever rights it may have are unaffected by the Settlement. Although the Commission’s policy strongly supports negotiated settlements,³¹ this policy will not be applied in a way that adversely affects parties who do not join the settlement but continue their litigation. The instant Settlement is both consistent with the Commission’s policy supporting negotiated settlements and consistent with the need to preserve whatever rights non-settling participants may have in continuing litigating their claims against Enron.

- **Whether the distribution of Settlement proceeds is inconsistent with Commission precedent and prior orders in these proceedings**

18. Port asserts that the Settlement should be rejected because it provides for the allocation and distribution of proceeds prematurely. Port cites numerous Commission orders and orders of the Chief Judge that purport to prevent the distribution of Settlement proceeds until the liability phase of the Gaming/Partnership proceeding has concluded.³² The Enron Parties disagree, stating that “If the Gaming and Partnership case goes to decision and Enron is required to disgorge profits, those profits will be distributed later to non-settling parties, based on their ability to demonstrate an entitlement to the money.”³³ SRP agrees and states that what Port is really seeking is “veto power” over such

³⁰ Section 6.7.5 of the Settlement (emphasis added).

³¹ See *San Diego Gas & Electric Co.*, 112 FERC ¶ 61,292 (2005) at P1 (“We strongly encourage parties who are considering settlements to reach and finalize any outstanding settlements within the next two months.”)

³² Port comments at 28, n118.

³³ Enron Parties’ reply comments at 4.

settlements, which would have the effect of chilling any ongoing settlement discussions in these proceedings and would thwart the Commission's stated policy objectives in encouraging settlements.³⁴

Commission Determination

19. The Commission finds that the distribution and allocation of Settlement proceeds as provided by the Settlement is consistent with Commission precedent, specifically the Commission's orders approving the *Williams*, *Dynegy*, *Duke*, and *Mirant* settlements.³⁵

- **Whether the Settlement is unjust, unreasonable, unduly preferential and unduly discriminatory**

20. Port asserts that the allocation of Settlement proceeds is unjust, unreasonable, unduly preferential and unduly discriminatory. In support of this assertion, Port states that, for the years 1998 through 2001, 48.9% of EPMI's profits in the west were attributable to the Pacific Northwest.³⁶ Port avers that the Settlement "further depletes the finite amount of cash available to satisfy the claims pending against Enron before the Commission by allocating that cash to claims arising from transactions that occurred in California, without regard to whether any Enron assets will be available to satisfy any claims for transactions that occurred outside California."³⁷

21. The Enron Parties counter that Port misperceives the basic nature of the Settlement in the apparent belief "that Enron cannot settle with the California Parties because not all of Enron's allegedly illegal activities occurred in California."³⁸ The Enron Parties point out that the Settlement does not affect Port's ability to continue to litigate or to produce evidence that Enron profited at Port's expense.

³⁴ SRP reply comments at 3-4, *citing San Diego Gas & Electric Company*, 112 FERC ¶ 61,176 at P1 (2005).

³⁵ *See* 108 FERC ¶ 61,002 (2004) (order accepting *Williams* settlement); 109 FERC ¶ 61,071 (2004) (order approving *Dynegy* settlement); 109 FERC ¶ 61,107 (2004) (order accepting *Duke* settlement); and, 111 FERC ¶ 61,186 (2005) (order accepting *Mirant* settlement).

³⁶ Port comments at 28.

³⁷ *Id.*

³⁸ Enron Parties' reply comments at 5.

Commission Determination

22. The Commission disagrees with Port's characterization of the Settlement as unjust, unreasonable, unduly discriminatory, unduly preferential and unduly discriminatory. We find instead that the Settlement is a comprehensive and reasonable effort by Enron and SRP to end their litigation and resolve their legal disputes in a way that does not affect the rights of others to continue to litigate their claims in the underlying proceedings.

- **Whether the Settlement is unconstitutional**

23. Port argues that the Settlement is an unconstitutional delegation to the Bankruptcy Court of a legislative function.³⁹ The Enron Parties aver that this argument is unexplained and without merit and that there is nothing in the Settlement that would preclude Port's efforts to pursue any claims it believes it may have in the bankruptcy proceeding.⁴⁰

Commission Determination

24. Regarding Port's argument in the most favorable terms, it is unexplained and unsupported. Port's argument appears to equate the allocation and distribution of Settlement funds to a legislative activity that, when delegated to the Bankruptcy Court (an Article III tribunal), amounts to an unconstitutional delegation. Port cites as precedent for this argument *Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (*Schechter*), a landmark Supreme Court decision invalidating the Live Poultry Code as an unconstitutional delegation of legislative power to the Executive Branch. *Schechter* is inapposite for two reasons. First, there simply is no legislative function involved. The Settlement provides an allocation that will be used in the distribution of the Settlement proceeds to the Parties and the Opt-in Participants. Second, there is no delegation of legislative authority to another branch of government. Rather, a Settlement has been filed with the Commission and the Bankruptcy Court for approval, which is directly within the unique statutory and constitutional purviews of each entity. The Settlement requires the approval of both the Commission and the Bankruptcy Court, because of the discrete nature of each body's statutory and constitutional jurisdiction. Thus, the Commission finds that Port's constitutional argument is not articulated clearly enough to persuade the Commission, and Port's reliance on *Schechter* appears to be misplaced.

³⁹ Port comments at 29.

⁴⁰ Enron Parties reply comments at 6.

B. Western Parties' Comments

25. The Western Parties assert that they “support resolution of the various investigations, complaints, and other proceedings resulting from the Western Power Crisis, including those addressing Enron’s numerous wrongful actions and violations of FERC directives.”⁴¹ The thrust of Western Parties’ comments is that, because there is nothing in the Settlement for them, they will continue pursuing their claims against Enron in the underlying litigation. As long as it is clear that the Settlement does not affect their ability to do so, the Western Parties do not oppose the Settlement.⁴²

26. Western Parties point out that the Settlement is a bilateral deal between two litigants in a complex proceeding in which many issues remain to be litigated between Western Parties and Enron. As an example, Western Parties cite the termination payments that Enron still seeks to collect from them for power never delivered under contracts made when Enron was in violation of its market-based rate authority.⁴³ Western Parties point to the following language in sections 2.2 and 7.1.1:

any monetary remedy that FERC may determine to award, if any, to such [non-settling] party shall not exceed the share allocable to that party, as determined under the allocation mechanism adopted by FERC in litigation, of any profits, if any, Enron may be finally required and ordered to disgorge, including, for any party, any final order with respect to any contract termination payments that may be due Enron. Nothing herein will affect the positions that any non-settling party wishes to assert in the allocation proceeding.

Western Parties state that, if the effect of this language will not prejudice their rights in the Show Cause Proceedings, they do not object to approval of the Settlement. To this end, they ask that the Commission provide clarification that nothing in the Settlement will prejudice or affect their rights in continuing litigation with Enron.⁴⁴

27. SRP states that it does not oppose the assurance sought by Western Parties. It “clarifies that the Settlement was not intended to prejudice the litigation rights of non-settling parties in any way.” SRP points to the Settlement’s Joint Explanatory Statement, which provides that “the rights of entities not party to this Settlement Agreement will be

⁴¹ Western Parties comments at 2.

⁴² *Id.* at 1-3.

⁴³ *Id.* at 3.

⁴⁴ *Id.* at 4.

unaffected by the Settlement Agreement.”⁴⁵ SRP also notes that certain provisions its Settlement were modified to take into account the concerns expressed by Western Parties’ in comments on the California Settlement that the rights of non-settling parties to continue litigating with Enron should not be affected by that settlement.

Commission Determination

28. The agreement between Enron and the SRP Parties is bilateral in nature and, as such, resolves only those matters in controversy between them. This is made clear in a number of sections in the Settlement, including the sections identified by Western Parties. In addition, section 6.7.3 makes it clear that none of the releases or waivers set forth in the Settlement affect Enron’s ability to continue to litigate claims against non-settling parties. The logical corollary is that the releases and waivers in this bilateral agreement between Enron and the SRP Parties will not affect the ability of non-signatory parties to pursue their claims against Enron or to defend against any Enron claims against them. Therefore, the Commission finds that the Settlement will not adversely affect the rights of Non-Settling Participants to pursue litigation separately.

The Commission orders:

(A) The Commission hereby approves the Offer of Settlement and Settlement Agreement, as discussed in the body of this order.

(B) The CalPX is authorized and directed to implement the Settlement, as discussed in the body of this order.

(C) The CAISO is authorized and directed to implement the Settlement, as discussed in the body of this order.

(D) The Commission directs that the CalPX and the CAISO will be held harmless from their actions to implement the Settlement, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁴⁵ SRP reply comments at 5, *citing* Joint Explanatory Statement at 3.