

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

## ORDER APPROVING UNCONTESTED AMENDMENT TO SETTLEMENT

(Issued May 17, 2007)

1. In this order, the Commission approves an uncontested Joint Offer of Settlement to Amend the Enron-California Parties Settlement Agreement (Joint Offer of Settlement) filed on March 6, 2007 by Enron Energy Services, Inc., Enron Power Marketing, Inc. (collectively, Enron) and the California Parties.<sup>1</sup> The Joint Offer of Settlement consists of a “Joint Explanatory Statement” and a “First Amendment to the Enron-California Parties Settlement Agreement” (First Amendment). Enron and the California Parties filed this Joint Offer of Settlement in order to modify the terms of the Enron-California Parties Settlement Agreement (Enron-California Parties Settlement)—*i.e.*, the settlement submitted to the Commission on August 24, 2005 by the California Parties, the Enron Parties,<sup>2</sup> the Commission’s Office of Market Oversight and Investigations, and the Attorneys General of Oregon and Washington (Additional Claimants); the Commission approved the settlement on November 15, 2005 in *San Diego Gas & Elec. Co. v. Sellers of Ancillary Serv.*, 113 FERC ¶ 61,171 (2005), *reh’g denied*, 115 FERC ¶ 61,032 (2006). The Enron-California Parties Settlement resolved Enron-related claims and matters arising from transactions and events in the Western energy markets of the California Power Exchange Corporation (CalPX) and the California Independent System Operator Corporation (CAISO) during the period January 16, 1997 through June 25, 2003.

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<sup>1</sup> The California Parties consist of Pacific Gas and Electric Company; Southern California Edison Company; San Diego Gas & Electric Company; the People of the State of California, *ex rel.* Edmund G. Brown Jr., Attorney General; The California Electricity Oversight Board; and the California Public Utilities Commission (CPUC). In addition, for the purposes of the Enron-California Parties Settlement Agreement and the First Amendment (defined herein), the California Parties also include the California Department of Water Resources acting solely under authority and powers created by California Assembly Bill 1 from the First Extraordinary Session of 2001-2002, codified in Sections 80000 through 80270 of the California Water Code (CERS).

<sup>2</sup> The Enron Parties consist of Enron Corp.; Enron Power Marketing, Inc.; Enron North America Corp. (fka 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.; ENA Upstream Company, LLC; Enron Canada Corp.; Enron Compression Services Company; and Enron MW, L.L.C.

2. The modifications to the Enron-California Parties Settlement proposed in the Joint Offer of Settlement and attached First Amendment are meant to satisfy a condition to the effectiveness of the APX Settlement—a separate settlement involving APX, Inc. (APX) and certain APX market participants, including Enron. The APX Settlement was approved by the Commission on March 1, 2007 and resolves certain matters and claims relating to APX’s participation in the CalPX and the CAISO energy markets from May 1, 2000 through June 20, 2001.<sup>3</sup> As a condition to its effectiveness, APX Settlement section 2.2 requires that Enron and the California Parties reach an agreement to modify the Enron-California Parties Settlement with respect to APX refunds and associated interest from CERS.<sup>4</sup>

3. In a Term Sheet filed with the Commission on February 7, 2007,<sup>5</sup> the California Parties<sup>6</sup> and the APX Sponsoring Parties<sup>7</sup> (including Enron) agreed to modify the Enron-California Parties Settlement as set forth in section 2.2 of the APX Settlement. Specifically, section 6.2 of the Term Sheet provides:

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<sup>3</sup> *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 118 FERC ¶ 61,168 (2007) (APX Settlement Order).

<sup>4</sup> Specifically, APX Settlement section 2.2 states:

It shall . . . be a condition to the effectiveness of this Agreement that Enron and the California Parties reach agreement in accordance with [s]ection 13.6 of the Enron-California Parties Settlement Agreement to modify the Enron-California Parties Settlement Agreement with respect to APX refunds and associated interest from CERS set forth in [s]ection 4.1.4, 4.1.5 and 4.3.3 such that the Enron-California Parties Settlement Agreement is consistent with [s]ection 4.1.1.1 of this Agreement with respect to the rights of Enron Non[-]Settling Parties.

<sup>5</sup> The California Parties and the APX Sponsoring Parties filed the Term Sheet with the Commission as part of their Joint Reply Comments on the APX Settlement. *See* APX/California Parties February 7, 2007 Reply Comments, Docket Nos. EL00-95-000, *et al.*

<sup>6</sup> Enron and the California Parties note that of the California Parties, CPUC did not execute the Term Sheet, but did join the Joint Reply Comments.

<sup>7</sup> For a list of the APX Sponsoring Parties, see APX Settlement Order, 118 FERC ¶ 61,168, at P 1 n.1, P 23 n.36.

In resolution of the condition set forth in [s]ection 2.2 of the APX Settlement relating to Enron's obligations under the Enron-California Parties Settlement Agreement, Enron shall indemnify CERS, from the Enron Settlement Reserve, for the amount of any refunds, including any interest thereon, paid to APX that result from CERS's sales to the [CA]ISO between January 17, 2001 and June 20, 2001, to the extent funds remain in the Enron Settlement Reserve after the payment of Enron's obligations to "Non-Settling Participants" (as that term is defined in the Enron-California Parties Settlement Agreement) . . . . Such indemnification shall be for an amount up to, but shall not exceed, \$7,000,000. Notwithstanding any other provision of the APX Settlement, Enron shall have the right to assert, in any forum, that CERS's sales to the [CA]ISO between January 17, 2001 and June 20, 2001, are not subject to mitigation. The provisions of this [s]ection 6.2 will be included in a modification to the Enron-California Parties Settlement Agreement pursuant to [s]ection 13.6 of that agreement, and such modification will be filed for requisite approvals on or before the Settlement Effective Date.

Thus, this Term Sheet provision—submitted as an addendum to the APX Settlement—sets forth the modifications to the Enron-California Parties Settlement that Enron and the California Parties now propose in their Joint Offer of Settlement and attached First Amendment.

4. Section 13.6 of the Enron-California Parties Settlement allows modifications if they are "in writing and signed by each of the Parties affected by the proposed modification." Enron and the California Parties state that, as the parties to the Enron-California Parties Settlement that are affected by the modifications anticipated by Term Sheet section 6.2, they may agree to modify the Enron-California Parties Settlement.

5. Enron and the California Parties state that the First Amendment, attached to the Joint Offer of Settlement, modifies the Enron-California Parties Settlement in two ways. First, the First Amendment adds a new section to the Enron-California Parties Settlement in which Enron agrees to indemnify CERS for any amount of refunds paid to APX that result from CERS's sales to the CAISO between January 17, 2001 and June 20, 2001. For indemnification, Enron will use funds in the Enron Settlement Reserve (established by the APX Settlement), in accordance with the provisions listed above in Term Sheet section 6.2.<sup>8</sup> Second, the First Amendment modifies section 4.1.5 of the Enron-California Parties Settlement by adding language providing that Enron's assignment to CERS of certain rights "shall not include the assignment of any of Enron's rights, title,

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<sup>8</sup> See Enron/California Parties March 6, 2007 First Amendment section 1, adding a new section 4.1.7 to the Enron-California Parties Settlement.

and interest in and to refunds, interest, surcharges, and other charges and payments that have been or will be paid to Enron by APX as a result of Enron's transactions with APX or transactions in which APX acted as scheduling coordinator for Enron."<sup>9</sup>

6. Enron and the California Parties request that the Commission approve their Joint Offer of Settlement, stating that approval of the Settlement will help avoid further litigation, provide monetary consideration, eliminate regulatory uncertainty, and enhance financial certainty. They further state that the First Amendment is part of a fair and reasonable resolution of issues raised by and regarding the APX Settlement.

7. Initial comments on the filing were due March 26, 2007, and reply comments were due April 5, 2007. No comments or protests were filed in this proceeding, and it is thus unopposed.

8. Pursuant to section 385.602 (Rule 602) of the Commission's regulations,<sup>10</sup> the Commission finds that Enron and the California Parties' Joint Offer of Settlement appears to be fair and reasonable and in the public interest and is hereby approved. The Commission's approval of the Joint Offer of Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

The Commission orders:

The Joint Offer of Settlement is hereby approved.

By the Commission. Commissioner Spitzer not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>9</sup> Enron/California Parties First Amendment section 2.

<sup>10</sup> 18 C.F.R. § 385.602 (2006).