UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Modesto Irrigation District Docket No. EL03-193-000

ORDER APPROVING SETTLEMENT AGREEMENT

(Issued May 6, 2004)

1. On February 26, 2004, Commission Trial Staff (Trial Staff) and the Modesto Irrigation District (MID) filed a Settlement Agreement that resolves all issues related to MID that the Commission set for hearing in Enron Power Marketing, Inc. and Enron Energy Services Inc., et al., 103 FERC ¶ 61,346 (2003) (Enron).

2. The California Parties[1] filed initial comments on March 17, 2004 and they state that they do not oppose the Settlement. However, in their initial comments, the California Parties express concern that the standard of review agreed to for future changes to a Commission-approved settlement is the "public interest" standard of review.[2] In addition, the California Parties request that certain clarifications be made regarding the Settlement Agreement. The California Parties seek clarification regarding the scope of the Settlement and ask that the Commission clarify that assertions made by MID in the Settlement have no legal force or effect. The California Parties also ask that

[1] The California Parties include 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.

[2] Although the Settlement Agreement itself is silent on the matter, in the Joint Explanatory Statement accompanying the Settlement Agreement Trial Staff and MID state that it is their intent that the Settlement be governed by the Mobile-Sierra "public interest" standard. United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) (Mobile); FPC v. Sierra Pacific Power, 350 U.S. 348 (1956) (Sierra).

the Commission clarify that the Settlement does not preclude the imposition of new rules, standards or remedies. Trial Staff filed reply comments in support of the Settlement on March 22, 2004 and contend that, with regard to the issues raised by the California Parties, clarification is unnecessary.[3] On March 24, 2004, the presiding administrative law judge certified the Settlement Agreement to the Commission as uncontested.

3. The subject Settlement is in the public interest and is hereby approved. The Commission's approval of this Settlement does not constitute approval or precedent regarding any principle or issue in this proceeding. Uncontested settlements, such as the Settlement at issue here, and Commission approval of such uncontested settlements, do not constitute precedent. Florida Power Corp. 70 FERC ¶ 61,321 at 61,980 (1995); see also Southern Company Services, Inc., 61 FERC ¶ 61,339 at 62,335 n.59 (1992), reh'g denied, 63 FERC ¶ 61,217 (1993).[4]

4. With regard to the California Parties' request for clarification of the scope of the proceedings (e.g., the Settlement's affect on MID partnerships other than MID and Enron Power Marketing, Inc. and Enron Energy Services, Inc.) the Settlement approved here resolves the matters at issue related only to MID in Enron.

5. With regard to the California Parties' concerns regarding the Mobile-Sierra "public interest" standard of review discussed in the Joint Explanatory Statement for future changes to the Settlement, we find that this standard of review is acceptable in the context of this settlement.

6. This order terminates Docket No. EL03-193-000.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Linda Mitry,
Acting Secretary.

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[3] Trial Staff state in their reply comments that the standard of review for future changes to the Settlement discussed in the Joint Explanatory Statement is not an issue that needs to be decided in order for the Settlement to be approved.

[4] We believe the Commission's finding here addresses the California Parties' concerns as to whether the Settlement has any type of precedental or legal effect.

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KELLY, Commissioner, dissenting in part:

I share the California Parties' concern that the parties to this settlement have specified that the "public interest" standard of review will apply to any future changes. For the reasons I have set forth in Wisconsin Power & Light Co., 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the "just and reasonable" standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I dissent from this order to the extent it approves a settlement whereby the parties specify that the standard of review that should apply if any party or the Commission seeks to overturn this settlement is the Mobile-Sierra "public interest" standard of review.

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Suedeen G. Kelly