

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Termination Payment Claims Subject To Review Under Section 1290 Of the Energy Policy Act of 2005	Docket No. EL06-64-000
Public Utility District No. 1 of Snohomish County, Washington v. Enron Power Marketing, Inc.	Docket No. EL05-139-000
Luzenac America, Inc.	Docket No. EL06-8-000
City of Vernon, California	Docket No. EL06-3-000
Ash Grove Cement Company	Docket No. EL06-63-000

NOTICE OF INTENT TO ACT AND ANNOUNCING DATE
FOR FILING CLAIMS UNDER SECTION 1290 OF THE
ENERGY POLICY ACT OF 2005

(Issued April 11, 2006)

1. On August 5, 2005, as amended on December 7, 2005, the Public Utility District No. 1 of Snohomish County, Washington (Snohomish) submitted a petition pursuant to section 1290 of the Energy Policy Act of 2005 (EPAAct 2005)¹ requesting that the Commission exercise its exclusive jurisdiction to review a claim for a \$116.8 million

¹ Pub L. No. 109-58, 119 Stat. 594, 984 (2005).

termination payment, plus interest, sought by Enron Power Marketing, Inc. (Enron) in a bankruptcy complaint proceeding.² Snohomish requests that the Commission deny Enron's claim.

2. On October 12, 2005, the City of Vernon, California (Vernon) submitted a petition requesting, among other things, that the Commission exercise its exclusive jurisdiction, pursuant to EAct 2005, to review a claim for a \$14.0 million termination payment granted, subject to a pending appeal, to Mirant Americas Energy Marketing, L.P. (Mirant).³ Vernon requests that the Commission deny Mirant's claim.

3. On October 20, 2005, Luzenac America, Inc. (Luzenac) submitted a petition requesting, among other things, that the Commission exercise exclusive jurisdiction, pursuant to EAct 2005, to review a claim for a \$6.8 million termination payment sought by Enron in a separate bankruptcy complaint proceeding.⁴ Luzenac requests that the Commission deny Enron's claim.

4. On March 21, 2006, Ash Grove Cement Company (Ash Grove) submitted a petition requesting, among other things, that the Commission exercise its exclusive jurisdiction, pursuant to EAct 2005, to review a claim for a \$4.2 million termination payment sought by Enron in a separate bankruptcy complaint proceeding.⁵ Ash Grove requests that the Commission deny Enron's claim.

5. The applicants in each of the above-noted proceedings assert that EAct 2005, section 1290 grants exclusive jurisdiction to the Commission to address whether a

² See Enron Power Marketing Inc.'s Complaint for Declaratory Relief Pursuant to the Bankruptcy Code and Rules and for Damages, *Enron Power Marketing, Inc. v. Public Utility District No. 1 of Snohomish County*, Case No. 01-16034 (AJG) (Bankr., S.D.N.Y. filed Jan. 31, 2003).

³ See Final Judgment, *Mirant Americas Energy Marketing, L.P. v. City of Vernon, California*, Case No. 03-04440 (DML), Bankr, N.D. Tex. (Nov. 30, 2004), *aff'd*, *In re Mirant Corp.*, 2005 WL 1206881, slip op (N.D. Tex. May 17, 2005), *appeal pending* Case No. 05-10734 (5th Cir. filed June 1, 2005).

⁴ See Enron Power Marketing Inc.'s Complaint for Declaratory Relief Pursuant to the Bankruptcy Code and Rules and for Damages, *Enron Power Marketing, Inc. v. Luzenac America, Inc.*, Case No. 01-16034 (AJG) (Bankr., S.D.N.Y. filed Feb. 10, 2003).

⁵ See Enron Power Marketing Inc.'s Complaint for Declaratory Relief Pursuant to the Bankruptcy Code and Rules and for Damages, *Enron Power Marketing, Inc. v. Ash Grove Cement Co.*, Case No. 01-16034 (AJG) (Bankr., S.D.N.Y. filed August 13, 2003).

termination payment must be made under the parties' respective supply agreements. Section 1290 provides as follows:

- (a) Application – This section applies to any contract entered into in the Western Interconnection prior to June 20, 2001, with a seller of wholesale electricity that the Commission has --
 - (1) found to have manipulated the electricity market resulting in unjust and unreasonable rates; and
 - (2) revoked the seller's authority to sell any electricity at market-based rates.
- (b) Relief – Notwithstanding section 222 of the Federal Power Act (as added by section 1262 [sic]), any provision of title 11, United States Code, or any other provision of law, in the case of a contract described in subsection (a), the Commission shall have exclusive jurisdiction under the [FPA] (16 U.S.C. 791a, *et seq.*) to determine whether a requirement to make termination payments for power not delivered by the seller, or any successor in interest of the seller, is not permitted under a rate schedule (or contract under such a schedule) or is otherwise unlawful on the grounds that the contract is unjust and unreasonable or contrary to the public interest.
- (c) Applicability – This section applies to any proceeding pending on the date of enactment of this section involving a seller described in subsection (a) in which there is not a final, nonappealable order by the Commission or any other jurisdiction determining the respective rights of the seller.

6. The Commission hereby gives notice that it intends to act on the above captioned filings in the near future. In order to process any additional termination payment claims made under section 1290 of EPAct 2005 efficiently and on a comprehensive basis, we request additional potential applicants, if any, to file their claims for relief, along with all supporting documentation and legal arguments as to why they believe section 1290 applies to their specific contracts, on or before May 15, 2006.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.