



## **Background**

2. On June 25, 2003, the Commission issued orders in the Gaming and Partnership Proceedings<sup>3</sup> requiring numerous entities to show why they should not be found to have engaged in Gaming Practices in violation of the tariffs of either the California Independent System Operator Corporation or the California Power Exchange. By mid-2004, the Commission had issued orders either dismissing proceedings against, or approving settlements involving, all of the named entities,<sup>4</sup> except for Enron.

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<sup>3</sup> *Enron Power Mktg., Inc.*, 103 FERC ¶ 61,346 (2003).

<sup>4</sup> *El Paso Electric Co.*, 104 FERC ¶ 61,115 (2003); *Portland General Electric Co.*, 105 FERC ¶ 61,302 (2003); *City of Redding, Cal.*, 106 FERC ¶ 61,023 (2004); *American Electric Power Serv. Corp.*, 106 FERC ¶ 61,025 (2004); *Puget Sound Energy, Inc.*, 106 FERC ¶ 61,026 (2004); *Williams Energy Serv. Corp.*, 106 FERC ¶ 61,027 (2004); *San Diego Gas & Electric Co.*, 106 FERC ¶ 61,028 (2004); *Idaho Power Co.*, 106 FERC ¶ 61,208 (2004); *Aquila Merchant Serv., Inc.*, 106 FERC ¶ 61,234 (2004); *PacifiCorp*, 106 FERC ¶ 61,235 (2004); *Portland General Electric Co.*, 106 FERC ¶ 61,236 (2004); *Morgan Stanley Capital Group Inc.*, 106 FERC ¶ 61,237 (2004); *Powerex Corp.*, 106 FERC ¶ 61,304 (2004); *Avista Corp.*, 107 FERC ¶ 61,055 (2004); *Modesto Irrigation Dist.*, 107 FERC ¶ 61,116 (2004); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 108 FERC ¶ 61,002 (2004); *Northern Cal. Power Agency*, 108 FERC ¶ 61,112 (2004); *Coral Power, L.L.C.*, 108 FERC ¶ 61,115 (2004); *Dynegy Power Mktg., Inc.*, 108 FERC ¶ 61,145 (2004); *Modesto Irrigation Dist.*, 108 FERC ¶ 61,260 (2004); *City of Glendale, Cal.*, 108 FERC ¶ 61,111 (2004); *Sempra Energy Trading Corp.*, 108 FERC ¶ 61,114 (2004); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 109 FERC ¶ 61,071 (2004); *Colorado River Com'n of Nevada*, 109 FERC ¶ 61,081 (2004); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 109 FERC ¶ 61,257 (2004); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 111 FERC ¶ 61,017 (2005); *Mirant Americas Energy Mktg., LP*, 111 FERC ¶ 61,488 (2005); *Pub. Serv. Co. of New Mexico*, 112 FERC ¶ 61,033 (2005); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 113 FERC ¶ 61,171 (2005); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 113 FERC ¶ 61,235 (2005); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 113 FERC ¶ 61,244 (2005); *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Serv.*, 114 FERC ¶ 61,067 (2006); *Enron Power Mktg., Inc.*, 115 FERC ¶ 61,376 (2006); *Enron Power Mktg., Inc.*, 115 FERC ¶ 61,377 (2006); *Enron Power Mktg., Inc.*, 116 FERC ¶ 61,298 (2006); *Enron Power Mktg., Inc.*, 116 FERC ¶ 61,299 (2006); *Enron Power Mktg., Inc.*, 117 FERC ¶ 61,109 (2006); *Enron Power Mktg., Inc.*, 117 FERC ¶ 61,257 (2006).

3. On June 21, 2007, the Initial Decision<sup>5</sup> concluded that Enron violated its market-based rate authority and engaged in gaming and anomalous market behavior by itself and in concert with others. Consequently, the Initial Decision found that Enron's market-based rate authority must be revoked as of January 16, 1997. The Initial Decision also required that Enron disgorge \$1,617,454,868.50 of unjust profits for the period January 16, 1997 through June 25, 2003, and concluded that the termination payment that Enron was seeking from Snohomish should also be disgorged as unjust profits.<sup>6</sup>

4. Subsequent to the issuance of the Initial Decision, but prior to the Commission's final approval or review, Enron entered into a settlement agreement with Snohomish and the Commission's Trial Staff (Trial Staff). Pending submission and approval of the settlement, the Administrative Law Judge (ALJ) stayed the deadline to file briefs on exceptions.<sup>7</sup> The settlement among Enron, Snohomish, and Trial Staff was approved by the Commission as uncontested on January 8, 2008.<sup>8</sup>

5. The presiding ALJ then established a briefing schedule for briefs on and opposing exceptions related to the Initial Decision. The City of Redding, California (Redding) filed the only brief on exceptions, accompanied by a motion to intervene out-of-time for the limited purpose of submitting a brief on exceptions, staying the effectiveness of the Initial Decision pending review under Commission Rule 708(d).<sup>9</sup> The California Parties and Snohomish filed answers opposing Redding's motion to intervene, to which Redding filed an answer.

6. Thereafter, the Commission issued the June 5 Order denying Redding's motion to intervene and vacating the Initial Decision as moot. Requests for rehearing of the June 5 Order were filed by the California Parties, Snohomish, Port and Tacoma on July 7, 2008. The Northern California Power Agency (NCPA) and Redding subsequently filed answers opposing the requests for rehearing. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, 18

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<sup>5</sup> *Enron Power Mktg., Inc., et al.*, 119 FERC ¶ 63,013 (2007) (Initial Decision).

<sup>6</sup> *Id.* P 181.

<sup>7</sup> Notice of Extension of Time, Docket No. EL03-180-000, *et al.* (July 17, 2007).

<sup>8</sup> *Enron Power Mktg., Inc.*, 122 FERC ¶ 61,015 (2008).

<sup>9</sup> 18 C.F.R. § 385.708(d) (2008).

C.F.R. § 385.713(d) (2008), answers to requests for rehearing are not permitted. Accordingly, we will reject the answers filed by NCPA and Redding.

7. In their requests for rehearing, the California Parties, Snohomish, Port and Tacoma state that the Commission erred in vacating the Initial Decision as moot. They argue that vacatur of the Initial Decision departs from Commission precedent and practice and is contrary to the terms of the Uncontested Settlement approved by the Commission in its January 8, 2008 Order.

### **Discussion**

8. After reviewing the arguments presented, our precedent and the record in this proceeding, we grant rehearing and we rescind our vacatur of the Initial Decision.

9. As we stated in our January 8, 2008 Order Approving Uncontested Settlement:

Settling Parties explain that they do not request that the Identified Orders be vacated; rather, they request that Enron-specific remedies be nullified and therefore not “be given *res judicata* or *collateral estoppel* effect with respect to any claims against Enron before the Commission or in any other forum; the findings and conclusions stated therein may not be hereafter cited as precedent or decisional authority against Enron before the Commission or in other proceedings.”<sup>10</sup>

Therefore, under the terms of the Settlement, the settling parties reasonably expected that the Initial Decision would not be vacated as a result of the Commission’s approval of the Settlement. In these circumstances, we will grant rehearing.

10. In granting rehearing, we emphasize that the Initial Decision is not a Commission decision, that it does not constitute precedent with respect to any legal or factual issue, and thus that the Commission’s grant of rehearing in these dockets should not be construed as any indication that the Commission does or does not concur with any legal or factual analysis or findings of the presiding ALJ.

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<sup>10</sup> *Enron Power Mktg., Inc.*, 122 FERC ¶ 61,015 at P 36 (citing Joint Explanatory Statement at 29); *see also* Settlement Agreement Sections 2.2 and 7.1.1.

11. As to the finality or effect of the Initial Decision, we reiterate that, to the extent the Gaming/Partnership Proceeding has not been resolved with respect to parties other than Enron, the Commission's approval of the Settlement does not resolve any claim or any other issue with respect to parties other than Enron.

The Commission orders:

(A) The requests for rehearing filed by California Parties, Snohomish, Port and Tacoma are hereby granted, as discussed in the body of this order.

(B) The vacatur of the June 21, 2007 Initial Decision is hereby rescinded.

By the Commission. Commissioner Moeller is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.