

# DRAFT

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UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Morgan Stanley Capital Group

Docket Nos. EL03-160-000  
EL03-195-000

## ORDER APPROVING CONTESTED SETTLEMENT AGREEMENT

( )

1. On August 29, 2003, Commission Trial Staff (Trial Staff) and Morgan Stanley Capital Group (MSCG) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to MSCG that were set for hearing in Docket No. EL03-160-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order)<sup>1</sup> and in Docket No. EL03-195-000 in its Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information (Partnership Order).<sup>2</sup>
2. On September 30, 2003, the California Independent System Operator Corporation (ISO) filed comments objecting in part to the Settlement Agreement. On September 30, 2003, the California Utilities<sup>3</sup> and the Port of Seattle, Washington (Seattle) filed comments opposing the Settlement Agreement. Also on September 30, 2003, Public

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<sup>1</sup> American Electric Power Service Corp., et al., 103 FERC ¶ 61,345 (2003), reh'g denied, 106 FERC ¶ 61,020 (2004).

<sup>2</sup> Enron Power Marketing, Inc. and Enron Energy Services, Inc., et al., 103 FERC ¶ 61,346 (2003), reh'g denied, 106 FERC ¶ 61,024 (2004).

<sup>3</sup> The California Utilities are Pacific Gas and Electric Company and Southern California Edison Company. The other entities who joined the California Utilities in other filings in related proceedings are the People of the State of California ex rel. Bill Lockyer, Attorney General; the California Electricity Oversight Board; and the California Public Utilities Commission (State Parties). The State Parties separately reached a settlement with MSCG that resolved, inter alia, MSCG's so-called long-term contracts case. The terms of that settlement preclude the State Parties' participation in this matter. California Utilities Comments at 2 n.1.

Service Company of New Mexico (PSNM) filed comments in support of the Settlement Agreement. Automated Power Exchange (APX) filed comments on September 30, 2003.

3. On October 20, 2003, Trial Staff filed general reply comments addressing the California Parties' objections under several dockets in this proceeding. Also on October 20, 2003, Trial Staff filed specific reply comments in support of the Settlement Agreement. On October 22, 2003, Trial Staff filed a motion to supplement its general reply comments in order to address the "Information to be Provided with Settlement Agreements," as described in a Notice to the Public issued by the Chief Administrative Law Judge on October 15, 2003. Also on October 20, 2003, MSCG filed reply comments responding to the objecting parties' comments. On November 21, 2003, the presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.<sup>4</sup>

4. The Settlement Agreement constitutes a reasonable resolution of these proceedings and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against MSCG that were set for hearing in the Gaming and Partnership Orders. In this regard, MSCG will be returning \$857,089.00, the total revenues (and not merely the profits—and thus more than could be achieved in litigation<sup>5</sup>) pertaining to MSCG's alleged participation in the gaming practices of Cutting Non-Firm and Circular Scheduling.

5. Issues raised by the ISO, the California Utilities, Seattle, PSNM, and APX go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming and Partnership Orders, and, in fact, were addressed in the rehearing orders issued on January 22, 2003.<sup>6</sup> Such matters thus need not be further addressed here.

6. This order terminates Docket Nos. EL03-160-000 and EL03-195-000.

By the Commission.

Secretary

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<sup>4</sup> The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judge's certification. See Morgan Stanley Capital Group, 105 FERC ¶ 63,028 (2004) (Certification).

<sup>5</sup> See Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71.

<sup>6</sup> See supra notes 1 and 2. To the extent that these issues are addressed in the rehearing order, we incorporate by reference the discussion of these issues in that order.

