

DRAFT**E-59**

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

Sempra Energy Trading Corporation

Docket Nos. EL03-173-000
and EL03-201-000

ORDER APPROVING CONTESTED SETTLEMENT

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1. On October 31, 2003, Commission Trial Staff and Sempra Energy Trading Corporation (Sempra) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Sempra that were set for hearing in Docket No. EL03-173-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order)¹ and in Docket No. EL03-201-000 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).²

2. On November 20, 2003, the California Parties³ filed comments objecting to the Settlement Agreement. On November 20, 2003, the California Independent System Operator Corporation (CAISO) filed comments opposing the Settlement Agreement. On November 20, 2003, the Port of Seattle, Washington (Seattle) filed comments incorporating by reference most of the comments of the California Parties. Also on November 20, 2003 the Pacific Northwest Parties⁴ filed comments partially opposing the

¹ American Electric Power Service Corporation, *et al.*, 103 FERC ¶ 61,345 (2003), *reh'g denied*, 106 FERC ¶ 61,020 (2004).

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

³ The California Parties are 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.

⁴ The Pacific Northwest Parties consist of the Public Utility District No. 1 of

settlement. On November 20, 2003, Public Service Company of New Mexico (PSNM) filed initial comments in support of the Settlement Agreement insofar as it settles matters involving transactions involving PSNM. On December 1, 2003, both Trial Staff and Sempra filed reply comments in support of the settlement. In addition, Trial Staff incorporates by reference its general reply comments submitted on October 20, 2003 in Docket No. EL03-137-000, *et al.*⁵ On March 18, 2004, the presiding judges in the two proceedings jointly certified the Settlement Agreement to the Commission as contested, but recommending its approval.⁶

3. The Settlement Agreement constitutes a reasonable resolution of these proceedings and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against Sempra that were set for hearing in the Gaming and Partnership Orders. In this regard, Sempra will be returning \$7,238,516, the total revenues (and not merely the profits – and thus more than would be achieved in litigation⁷) from Sempra's participation in alleged gaming practices. Furthermore, given our determination in the Gaming and Partnership Orders on Rehearing not to expand the scope of these proceedings, the release provision in Article IV, section 4.8, of the Settlement Agreement, releasing Sempra from further scrutiny of its trading activities in California during the period January 1, 2000 through June 20, 2001 (with the exception of the ongoing proceedings in Docket Nos. IN03-10-000 and EL00-95-000, *et al.*), is reasonable.⁸

4. Issues raised in the comments filed by the CAISO, the California Parties, Seattle and the Pacific Northwest Parties go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming and Partnership Orders and, in fact, were addressed and denied in the Gaming and Partnership Orders on Rehearing.⁹ Such matters thus need not be further addressed here.

Snohomish County, Washington; the City of Tacoma, Washington; and the Port of Seattle, Washington.

⁵ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judges' certification. Sempra Energy Trading Corporation, 106 FERC ¶ 63,032 (2004).

⁶ *Id.* at P 54-58.

⁷ Gaming Order, 103 FERC ¶ 61,345 at P 1, 2, 71; Partnership Order, 103 FERC ¶ 61,346 at P 2, 3, 48.

⁸ *Compare* Certification, 106 FERC ¶ 63,032 at P 16 *with supra* note 1.

⁹ Gaming Order on Rehearing, 106 FERC ¶ 61,020 at P 85 (2004); Partnership

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5. The California Parties have requested that we clarify, among other things, that: (1) if the scope of the proceedings is enlarged by a reviewing court, then the Settlement Agreement will not preclude the Commission or the California Parties from advocating or applying any newly imposed rules, standards, or remedies; and (2) the Settlement Agreement does not resolve any issues raised in Docket Nos. EL00-95-000, *et al.*, or IN03-10-000. We will approve these requested clarifications. *See Colorado River Commission of Nevada*, 106 FERC ¶ 61,022 at P 50-51 (2004).

6. This order terminates Docket Nos. EL03-173-000 and EL03-201-000.

By the Commission.

Secretary

Order on Rehearing, 106 FERC ¶ 61,024 at P 47 (2004).