

105 FERC ¶ 61,302
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Portland General Electric Company
Enron Power Marketing, Inc.

Docket Nos. EL02-114-000,
EL02-114-006,
EL02-115-001
and EL02-115-007

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued December 18, 2003)

1. On September 26, 2003, Portland General Electric Company (Portland), Federal Energy Regulatory Commission Trial Staff (Staff), the People of the State of California, ex rel. Bill Lockyer, Attorney General (California AG), the California Public Utilities Commission (CPUC), the City of Tacoma Washington (Tacoma), the Oregon Public Utility Commission (Oregon PUC), Enron Power Marketing, Inc. (EPMI), Industrial Customers of Northwest Utilities (ICNU), and Blue Heron Paper Company (Blue Heron) (collectively the parties) filed an Offer of Settlement and an Agreement and Stipulation (Settlement) resolving all issues in the above proceedings pertaining to Portland.¹ On October 16, 2003, both Staff and Tacoma filed comments supporting the Settlement. No reply comments were filed. On November 10, 2003, the Presiding Judge certified the Settlement as an uncontested partial settlement to the Commission.

2. The subject Settlement is in the public interest and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not

¹ This Settlement constitutes a complete settlement of the issues designated for investigation by the Commission, so far as Portland is concerned. Because the Settlement leaves for litigation elsewhere the issues designated for investigation by the Commission, so far as EPMI is concerned, this can only be deemed a "partial" settlement in this proceeding.

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unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

3. This order terminates Docket Nos. EL02-114-000, EL02-114-006, EL02-115-001, and EL02-115-007.

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

(S E A L)

Magalie R. Salas,
Secretary.

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Nora Mead BROWNELL, Commissioner *dissenting in part*:

1. As I explained in my separate statement in Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,073 (2003), I can no longer support making our acceptance of settlement agreements subject to a Commission reservation of authority to make future revisions under the just and reasonable standard, as opposed to the Mobile-Sierra public interest standard--unless, of course, the agreement itself includes language requesting such a reservation. If the Commission has objections to a settlement, we should articulate them when we first review it, instead of approving the settlement with the cloud of uncertainty that we might make subsequent changes under a lower-than-public-interest standard after market participants have come to rely on it. Therefore, I would have accepted this agreement without reserving the option of revisiting it under a just and reasonable standard.

Nora Mead Brownell