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FERC staff defends Enron settlement offer against criticism from Snohomish and others

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Federal Energy Regulatory Commission trial staff defended itself last week against harsh criticism leveled at the proposed settlement it reached with Enron on compensation Enron should offer to two utilities for market manipulation.

FERC trial staff and Enron on March 10 filed offers of settlement to be made by Enron to the Public Utility District No. 1 of Snohomish County, Washington, and the Metropolitan Water District of Southern California.

Snohomish and Met Water rejected the proposal March 30 in a sharply worded joint filing that accused FERC staffers of failing to do their job.

"The commission's trial staff is supposed to represent the public interest and to help protect ratepayers from exploitation at the hands of utility monopolists like Enron," Snohomish and Met Water said in their joint filing. But the staffers have "fallen down on their job of protecting the interests of consumers," the rejecting parties said (Docket No. EL03-180).

Snohomish and Met Water did not explain how Enron's wholesale power marketing in the Northwest could be characterized as that of a "utility monopolist."

Senator Maria Cantwell, a Washington Democrat, on April 10 urged FERC to reject its trial staff's proposal. The same criticisms were repeated in a joint letter to FERC by US Representatives Jay Inslee and Rick Larsen, both Democrats from Washington. FERC trial staff responded by saying Snohomish can take its chances in court if it prefers.

FERC trial staff wrote in an April 10 filing at the commission, "Snohomish has approached its self-styled 'battle' against Enron on both a legal and a public relations front. Snohomish has the perfect right to litigate its case on behalf of its constituents for as long as it takes, no matter what course of action other parties to the case choose to follow. Snohomish must further recognize that it is at risk of having to pay Enron contract termination payments of about $117 million plus interest if it is

unsuccessful in that litigation."

The proposed settlement from Enron and FERC trial staff would allocate up to $10 million in Class 6 unsecured claims to "non-settling participants," as FERC put it. But that probably would amount to no more than $2.29 million, said Snohomish and Met Water. They reinforced the point with an affidavit from consultant **Robert McCullough**.

"According to Enron's current bankruptcy plan, the Class 6 unsecured claims will be paid out at the rate of 22.9 cents per dollar. This means the $10 million in unsecured claims obtained by trial staff ... is worth $2,290,000," said McCullough, who has worked for several years with Northwest utility clients.

The proposed pact also would suppress Enron evidence that might be usable in litigation, Snohomish and Met Water said. "It would withdraw from ongoing proceedings any of the evidence related to Enron's market manipulation accumulated by FERC staff, some of which remains under seal to this very day."

FERC trial staff responded that the evidence remains in the public record and in the possession of Snohomish.

As for the dollar value of the proposed settlement, FERC staff said the settlement was in keeping with other Enron settlements and needed to be weighed against the risk of achieving less through litigation.

Snohomish and Met Water were joined in their March 30 filing by the Port of Seattle and the City of Tacoma, Washington. Cantwell, at a press conference a week ago in Seattle, essentially repeated their criticisms. Other filings recommending rejection of the settlement offer came from Public Utility District No. 1 of Grays Harbor County in Washington and the attorney general of Montana.

FERC has given itself until June 30 to decide on the proposed settlement in what the commission refers to as the Gaming and Partnership Proceeding.

The legal fight is over Enron's activities in Western energy markets during Jan. 16, 1997-June 25, 2003, during which West Coast prices of electricity soared and Enron traders engaged in now-infamous devices to manipulate wholesale prices. Several parties, including Snohomish, reacted to those high prices by signing long-term contracts that they later regretted.

It is Snohomish's repudiation of a long-term contract with Enron that creates the risk in litigation of a judgment that could require the utility to pay Enron $117 million plus interest.

Last week, a day after defending itself against Snohomish's criticism, FERC seemed to offer an olive branch. It issued a notice in which it said it would act "in the near future" on petitions from Snohomish and others to be allowed to escape from their Enron contract liabilities (Docket No. EL06-64).

FERC named the case of Snohomish and three others — City of Vernon, California, and the companies Luzenac America and Ash Grove Cement — for action. The commission also invited others to petition it under FERC's authority as specified in Section 1290 of the Energy Policy Act of 2005.

"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," FERC said.

The notice of intent to act was welcomed by Cantwell, who was the primary author of Section 1290, which is also referred to as the Cantwell Amendment.

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