

106 FERC ¶ 61,208
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Idaho Power Company

Docket No. EL03-156-000

ORDER APPROVING CONTESTED SETTLEMENT AGREEMENT

(Issued March 4, 2004)

1. On October 16, 2003, Commission Trial Staff (Trial Staff) and Idaho Power Company (Idaho Power) filed a Settlement Agreement. The Settlement Agreement resolves all issues related to Idaho Power that were set for hearing in Docket No. EL03-156-000 in the Commission's Order to Show Cause Concerning Gaming and/or Anomalous Market Behavior (Gaming Order).¹

2. On November 5, 2003, the California Independent System Operator Corporation (ISO) and the Pacific Northwest Parties² filed comments objecting in part to the Settlement Agreement. On November 5, 2003, the California Parties³ and the Port of Seattle, Washington (Seattle) filed comments opposing the Settlement Agreement.

3. On October 20, 2003, Trial Staff filed general reply comments addressing the California Parties' objections. 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 (as modified on October 23, 2003). On November 17, 2003, Trial Staff filed specific reply comments in support of the Settlement Agreement. Also on November 17, 2003, Idaho Power filed reply

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

² The Pacific Northwest Parties are Public Utility District No. 1 of Snohomish County, Washington; the City of Tacoma, Washington; and Port of Seattle, Washington.

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.

comments responding to the objecting parties' comments. On December 18, 2003, the presiding judge certified the Settlement Agreement to the Commission as contested, but recommending its approval.⁴

4. The Settlement Agreement constitutes a reasonable resolution of this proceeding and will be approved. The Settlement Agreement reasonably addresses and resolves the charges against Idaho Power that were set for hearing in the Gaming Order. In this regard, Idaho Power will be returning \$83,373.00, the total revenues (and not merely the profits—and thus more than could be achieved in litigation⁵) associated with Idaho Power's alleged participation in the gaming practice of Circular Scheduling. Furthermore, given our determination in our order on rehearing not to expand the scope of this proceeding, the release provision in Article IV, section 5, of the Settlement Agreement, releasing Idaho Power 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, EL03-180-000, et al., and EL00-95-000, et al.) is reasonable.⁶

5. Issues raised by the ISO, Pacific Northwest Parties, the California Parties, and Seattle go to the scope of these proceedings, are thus essentially requests for rehearing of the Gaming Order, and, in fact, were addressed in the rehearing order issued on January 22, 2003.⁷ Such matters thus need not be further addressed here.

6. This order terminates Docket No. EL03-156-000.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Acting Secretary.

⁴ The terms of the Settlement Agreement and these various pleadings are described in more detail in the presiding judge's certification. See Idaho Power Company, 105 FERC ¶ 63,048 (2004) (Certification).

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

⁶ Compare Certification, 105 FERC ¶ 61,048 at P 25, 34, 40, 42, 50-52, 58, with supra note 1.

⁷ See supra note 1. To the extent that these issues are addressed in the rehearing order, we incorporate by reference the discussion of these issues in that order.