

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

Investigation of Certain Enron-Affiliated QFs Docket Nos. EL03-17-000

Zond Windsystems Holding Company	QF87-365-005
Victory Garden Phase IV Partnership	QF90-43-004
Sky River Partnership	QF91-59-005

and

Southern California Edison Company EL03-19-000

v.

Enron Generating Facilities:

Victory Garden Phase IV Partnership	QF90-43-005
Sky River Partnership	QF91-59-006
Cabazon Power Partners LLC	QF95-186-005
Zond Wind System Partners, Ltd. Series 85-A	QF85-687-002
Zond Wind System Partners, Ltd. Series 85-B	QF85-686-002

(Consolidated)

**ORDER ON JOINT MOTION TO SUSPEND PROCEDURAL SCHEDULE  
AND HOLD PROCEEDINGS IN ABEYANCE**

(Issued January 7, 2003)

1. The parties to the above-captioned consolidated proceedings filed a Joint Motion to Suspend Procedural Schedule and Hold Proceedings in Abeyance on January 2, 2003 (the "Joint Motion").<sup>1</sup> The Joint Motion indicates that the parties have entered into a Memorandum of Understanding memorializing an agreement in principle among themselves to settle disputes concerning certain facilities' compliance with Commission-imposed ownership requirements and other matters. It requests that these proceedings be held in abeyance until January 15, 2003 to permit the finalization of what the parties characterize as "definitive settlement agreements."

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<sup>1</sup> The parties represent that Commission Staff (a "participant" rather than a "party" under Commission regulations) does not oppose the Joint Motion.

2. The Joint Motion also contemplates a temporary stay on discovery. It suggests that movants would inform the presiding judge whether the “definitive settlement agreements” have been finalized on or before January 16, 2003, and if so, the presiding judge would then lift the stay to facilitate discovery by Commission Staff/other participants with the objective of achieving a comprehensive settlement including those participants as well.

3. In consideration of the Commission’s December 19, 2002 Order on Petition for Declaratory Order Instituting Hearing Procedures and Consolidating Proceedings, as well as the January 2, 2003 Order of Chief Judge Modifying Phase [Track] II Schedule, I suspended the procedural schedule in these (now consolidated) proceedings by order issued January 3, 2003. The purposes of my January 3, 2003 order were: (1) to ensure that all consolidated participants were afforded an opportunity to address a vigorously contested issue with respect to whether the QFs bear the burden of proof in these proceedings; and (2) to suspend previously-established procedural deadlines rendered unrealistic by the Commission’s December 19, 2002 Order on Petition for Declaratory Order Instituting Hearing Procedures and Consolidating Proceedings and the January 2, 2003 Order of Chief Judge Modifying Phase [Track] II Schedule.

4. In addition to suspending the previously-established procedural schedule, my January 3, 2003 order granted leave to any participant which had not already filed a memorandum of law addressing the burden of proof issue to do so on or before January 15, 2003. It also granted leave for any opposing participant to file a responding memorandum of law on or before January 22, 2003. The order stated that I would schedule a prehearing conference for purposes of establishing a modified procedural schedule for these consolidated proceedings in my subsequent order determining the burden of proof issue.

5. My January 3, 2003 order has already suspended the previously-established procedural schedule. I therefore deem the Joint Motion to be **MOOT** insofar as it requests suspension of the procedural schedule—irrespective of the difference in purpose. The Joint Motion is **DENIED** insofar as it contemplates a stay on discovery. There is scant if any hardship in permitting discovery to proceed in parallel to the parties’ indicated settlement efforts—particularly since any non-party participant may temporarily forbear from conducting discovery if it considers such forbearance to be in its best interest.

6. Consistent with their request, the parties are directed to provide a settlement status report to the presiding judge via conference call on or before January 16, 2003.

7. It now appears possible that an order determining the burden of proof in these proceedings may be unnecessary and would, if issued, constitute an advisory opinion. This possibility notwithstanding, memoranda of law addressing this issue may be filed in accordance with my January 3, 2003 order. If necessary, a modified procedural schedule will be established in a subsequent order following a prehearing conference, though not necessarily in an order determining the burden of proof.

8. My January 3, 2003 order shall remain effective, except as expressly modified herein.

**SO ORDERED.**

**H. Peter Young**  
**Presiding Administrative Law Judge**