

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

San Diego Gas & Electric Company)	
v.	)	Docket No. EL00-95-000
Sellers of Energy and Ancillary Services)	
)	
Investigation of Practices of the California)	
Independent System Operator and the	)	Docket No. EL00-98-000
California Power Exchange)	
)	
Enron Power Marketing, Inc.	)	Docket No. EL03-180-000
and Enron Energy Services Inc.)	
)	
Enron Power Marketing, Inc.)	
and Enron Energy Services Inc.	)	Docket No. EL03-154-000
)	
El Paso Electric Company,	)	Docket No. EL02-113-000
Enron Power Marketing, Inc., and)	
Enron Capital and Trade Resources Corp.)	
)	
Portland General Electric Company	)	Docket No. EL02-114-007
)	
Enron Power Marketing, Inc.	)	Docket No. EL02-115-008
)	
Fact-Finding Investigation Into Possible)	
Manipulation of Electric and Natural Gas	)	Docket No. PA02-2-000
Prices)	
)	
Investigation of Anomalous Bidding Behavior	)	Docket No. IN03-10-000
and Practices in Western Markets)	
)	
Puget Sound Energy, Inc.)	
v.	)	Docket No. EL01-10-000
All Jurisdictional Sellers of Energy and/or)	
Capacity at Wholesale Into Electric)	
Energy and/or Capacity Markets in the)	
Pacific Northwest)	

JOINT OFFER OF SETTLEMENT

Enron,¹ the City of Tacoma, Washington on behalf of its Department of Public Utilities, d/b/a Tacoma Power ("Tacoma"), and the Trial Staff of the Federal Energy Regulatory Commission ("Commission") (collectively, the "Parties" and individually, a "Party"), submit this Joint Offer of Settlement (the "Settlement") that resolves certain matters and claims raised in the above-captioned proceedings (the "FERC Proceedings") relating to Enron's actions and transactions in the western energy markets during the period January 16, 1997 through June 25, 2003. In addition, the Settlement resolves one of the few remaining disputes involving Enron in the FERC Proceedings.

As required by Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, 18 C.F.R. § 385.602 (2006), the Parties attach the following documents:

- A Joint Explanatory Statement (Attachment A); and
- The Settlement and Release of Claims Agreement entered into among the Settling Parties on June 26, 2006 (the "Settlement Agreement") (Attachment B).

¹ For purposes of this filing, "Enron" or the "Enron Parties" means the Enron Debtors and the Enron Non-Debtor Gas Entities. The "Enron Debtors" are Enron Corp.; Enron Power Marketing, Inc. ("EPMI"); Enron North America Corp. (f/k/a Enron Capital and Trade Resources Corp.); Enron Energy Marketing Corp.; Enron Energy Services Inc.; Enron Energy Services North America, Inc.; Enron Capital & Trade Resources International Corp.; Enron Energy Services, LLC; Enron Energy Services Operations, Inc.; Enron Natural Gas Marketing Corp.; and ENA Upstream Company, LLC. The "Enron Non-Debtor Gas Entities" are Enron Canada Corp.; Enron Compression Services Company; and Enron MW, L.L.C.

Comments on the Settlement should be filed in the above-captioned FERC Proceedings.²

In accordance with Rules 602(d)(2) and 602(f), 18 C.F.R. §§ 385.602(d)(2) and (f), initial comments are due on July 17, 2006, and reply comments are due on July 26, 2006. As set forth in the Joint Explanatory Statement, the Settlement Agreement will terminate if the Commission does not approve the Settlement Agreement by September 27, 2006. Enron, Tacoma and Trial Staff therefore respectfully request Commission approval of the Settlement Agreement by such date. The Commission's approval by September 27, 2006 is appropriate in light of the Commission's consideration and approval of several similar settlements and is needed for the

² The Commission has indicated that the investigations in Docket Nos. PA02-2 and IN03-10 were initiated pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2005), and has held that there are no parties to such investigation, and that comments cannot be filed in those dockets. *See, e.g., Fact Finding Investigation of Potential Market Manipulation of Electric and Natural Gas Prices, et al.*, 105 FERC ¶ 61,063 (2003), *reh'g denied*, 105 FERC ¶ 61,281 (2003) (appeal pending).

Parties to reap the full economic benefits negotiated for in the Settlement Agreement, to eliminate additional litigation expense, to effectuate judicial economy, and to protect the interests of remaining participants.

Respectfully submitted,

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Dated: June 26, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I have this day, served the foregoing document upon the EL03-180 listserv and served a hard copy to the Presiding Administrative Law Judge in Docket No. EL03-180, and the Commission Trial Staff.

Dated at Washington, DC this 26th day of June, 2006.

/s/ Gregory S. Wagner

Gregory S. Wagner

Attachment A

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

San Diego Gas & Electric Company)	
v.)	Docket No. EL00-95-000
Sellers of Energy and Ancillary Services)	
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and Enron Energy Services Inc.)	Docket No. EL03-154-000
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El Paso Electric Company,)	Docket No. EL02-113-000
Enron Power Marketing, Inc., and)	
Enron Capital and Trade Resources Corp.)	
)	
Portland General Electric Company	)	Docket No. EL02-114-007
)	
Enron Power Marketing, Inc.	)	Docket No. EL02-115-008
)	
Fact-Finding Investigation Into Possible)	
Manipulation of Electric and Natural Gas)	Docket No. PA02-2-000
Prices)	
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Investigation of Anomalous Bidding Behavior)	Docket No. IN03-10-000
and Practices in Western Markets)	
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Puget Sound Energy, Inc.)	
v.)	Docket No. EL01-10-000
All Jurisdictional Sellers of Energy and/or)	
Capacity at Wholesale Into Electric)	
Energy and/or Capacity Markets in the)	
Pacific Northwest)	

JOINT EXPLANATORY STATEMENT

Enron,³ City of Tacoma, Washington on behalf of its Department of Public Utilities, d/b/a Tacoma Power ("Tacoma"), and the Trial Staff of the Federal Energy Regulatory Commission ("Commission") (collectively, the "Parties" and individually, a "Party"), submit for Commission review and approval the attached Settlement and Release of Claims Agreement (the "Settlement Agreement"). The Settlement Agreement resolves, as between Tacoma and Enron, certain matters as to Enron for disgorgement of profits, and other monetary or non-monetary remedies in the above-captioned proceedings (the "FERC Proceedings"). The FERC Proceedings involve Enron's activities in the Western energy markets during the period January 16, 1997 through June 25, 2003 (the "Show Cause Period").

I. INTRODUCTION

This Explanatory Statement is provided to comply with Rule 602(c)(1)(ii) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(c)(1)(ii) (2006). Except as otherwise defined herein, the capitalized terms used in this Explanatory Statement have the meaning set forth in Article 1 of the Settlement Agreement. This Explanatory Statement is not intended to, and does not, alter any of the provisions of the Settlement Agreement.

³ For purposes of this filing, "Enron" or the "Enron Parties" means the Enron Debtors and the Enron Non-Debtor Gas Entities. The "Enron Debtors" are Enron Corp.; Enron Power Marketing, Inc. ("EPMI"); Enron North America Corp. (f/k/a Enron Capital and Trade Resources Corp.); Enron Energy Marketing Corp.; Enron Energy Services Inc.; Enron Energy Services North America, Inc.; Enron Capital & Trade Resources International Corp.; Enron Energy Services, LLC; Enron Energy Services Operations, Inc.; Enron Natural Gas Marketing Corp.; and ENA Upstream Company, LLC. The "Enron Non-Debtor Gas Entities" are Enron Canada Corp.; Enron Compression Services Company; and Enron MW, L.L.C.

II. BACKGROUND AND OVERVIEW OF SETTLEMENT AGREEMENT

Tacoma is a party in numerous FERC proceedings involving Enron, including those involving the potential disgorgement of unjust profits by Enron related to its activities and compliance with FERC tariffs, policies and directives during the Show Cause Period.

Through the settlement judge procedures established by the Chief Judge in these proceedings, Enron and Tacoma negotiated and executed the Settlement Agreement.

If the Settlement Agreement is approved, Tacoma will be allowed in Enron's Bankruptcy Proceedings claims totaling \$3,288,519.71, without offset, defense or reduction, representing the full amount of Tacoma's timely-filed proof of claim in those Bankruptcy Proceedings. This figure consists of an allowed Class 6 general unsecured claim of \$2,288,519.71 with regard to Tacoma's proof of claim in the Bankruptcy Proceedings, and a \$1,000,000 allocated portion of the Trial Staff Claim, in the form of an allowed Class 6 general unsecured claim, in accordance with Section 4.1.2 of the Trial Staff Settlement with respect to the Phase One Partnership/Gaming Proceeding.

The Settlement Agreement is subject to the approval of this Commission and the Enron Bankruptcy Court, which approvals are being sought contemporaneously. Once fully approved, the Settlement Agreement will resolve, as between Tacoma and Enron, all claims for relief or rights to remedies that may arise from the above-captioned Commission proceedings (*i.e.*, the Partnership/Gaming Proceeding in Docket Nos. EL03-180-000, EL03-154-000, EL02-114-007, EL02-115-008, and EL02-113-000; the Investigation Proceedings in Docket Nos. PA02-2-000 and IN03-10-000; the Refund Proceeding in Docket Nos. EL00-95-000 and EL00-98-000 and the Pacific Northwest Proceeding, Docket No. EL01-10-000). Finally, the Settlement Agreement includes general mutual releases of claims by the Parties against each other.

The rights of entities not parties to the Settlement Agreement are, by the express terms thereof, excluded from and not affected by the Settlement Agreement.

III. REQUEST FOR COMMISSION APPROVAL

The Parties request the Commission's approval by September 27, 2006 in order for the Parties to reap the full economic benefits negotiated for in the Settlement Agreement, to eliminate additional litigation expense, to effectuate judicial economy, and to protect the interests of remaining participants. The Settlement Agreement has been executed by the Parties and will generally become effective following certain approvals, including the approval of this Commission, without material change or condition unacceptable to any Party. In addition, to the extent, if at all, any waivers of tariff provisions or regulations are necessary to implement the Settlement Agreement, the Parties jointly request that such waivers be granted.

The Commission has actively encouraged parties to these proceedings to informally settle their disputes rather than continue to litigate.⁴ The Settlement Agreement fulfills the Commission's goal by resolving uncertainty and forestalling continued litigation expense. To that end, the Settlement Agreement sets forth the mutual covenants and releases agreed to between the Parties.

⁴ *San Diego Gas & Elec. Co.*, 112 FERC ¶ 61,176, at ¶ 1 (2005) ("We strongly encourage parties who are considering settlement to reach and finalize any outstanding settlements within the next two months."). See also Statement of FERC Chairman Joseph T. Kelliher on the announcement of the settlement agreement between Enron, the California Parties and FERC Staff (July 15, 2005), at <http://www.ferc.gov/whats-new/hd-current/07-15-05-kelliher.asp>.

IV. DESCRIPTION OF PROCEEDINGS

A. The Enforcement Proceeding, Docket No. PA02-2-000

On February 13, 2002, the Commission directed its Staff to commence a fact-finding investigation in Docket No. PA02-2.⁵ On May 6, 2002, as part of this investigation, FERC publicly released memoranda, prepared by attorneys working on behalf of Enron, that described Enron trading strategies in the California ISO and PX markets. On March 26, 2003, Commission Staff issued its Final Report on Price Manipulation in Western Markets (the “Final Staff Report”). The Final Staff Report found that the Market Monitoring and Information Protocols (“MMIP”) contained in the California ISO and PX tariffs put participants on notice that misconduct that arose from abuses of market power, and that adversely affected the efficient operations of the California ISO and PX markets, were violations of the California ISO and PX tariffs. It further stated that Commission Staff’s preliminary analysis of spot-market clearing prices, as compared to generation input costs during May to October 2000, revealed what appeared to be instances of potential anomalous bidding behavior, as defined in the MMIP.

B. The Partnership/Gaming Proceedings, Docket Nos. EL03-180-000, EL03-154-000, EL02-114-007, EL02-115-008, and EL02-113-000

On June 25, 2003, the Commission, acting in Docket Nos. EL03-137-000, *et al.*,⁶ issued an order directing 43 named entities, including Enron,⁷ to show cause why they had not participated in activities that constitute gaming and/or anomalous market behavior in violation of

⁵ *Fact-Finding Investigation of Potential Market Manipulation of Electric and Natural Gas Prices*, 98 FERC ¶ 61,165 (2002).

⁶ The lead docket subsequently was changed to Docket No. EL03-152-000. *American Elec. Power Serv. Corp., et al.*, Order of Chief Judge Severing Parties and Holding Further Proceedings In Abeyance and Establishing New Lead Docket for Consolidated Proceedings, Docket Nos. EL03-137-000, *et al.* (Nov. 4, 2003).

⁷ Docket No. EL03-154-000.

the California ISO and PX Tariffs (“Gaming Proceeding”).⁸ On the same day, the Commission issued an order in Docket Nos. EL03-180-000, *et al.*, directing Enron⁹ and 23 other named market participants to show cause why they had not worked in concert through partnerships, alliances, or other arrangements to engage in activities that constitute Gaming Practices under the California ISO and PX Tariffs (“Partnership Proceeding”).¹⁰ The Commission established hearing proceedings to be held before an Administrative Law Judge in both the Gaming Proceeding and the Partnership Proceeding. On January 26, 2004, the Chief Judge consolidated the Gaming Proceeding and the Partnership Proceeding,¹¹ and, on January 30, 2004, issued an errata order consolidating Enron-related issues from Docket Nos. EL02-114-007 and EL02-115-008 with the Gaming Proceeding and the Partnership Proceeding.¹²

On July 22, 2004, the Commission issued an order¹³ affirming the Initial Decision in Docket No. EL02-113-000 (a case examining the activities of Enron and El Paso Electric Company),¹⁴ consolidating that docket and others with Docket Nos. EL03-180-000 and EL03-154-000, and directing proceedings before the Administrative Law Judge in Docket Nos. EL03-180-000 and EL03-154-000 (the consolidated proceedings are defined in the Settlement Agreement as the “Partnership/Gaming Proceeding”). The Commission directed a “comprehensive review of all evidence relevant to Enron conduct that violated or may have

⁸ *American Elec. Power Serv. Corp., et al.*, 103 FERC ¶ 61,345 (2003) (“Gaming Order”).

⁹ Docket No. EL03-180-000.

¹⁰ *Enron Power Mktg., Inc. and Enron Energy Servs. Inc., et al.*, 103 FERC ¶ 61,346 (2003) (“Partnership Order”).

¹¹ *Enron Power Mktg., Inc. and Enron Energy Servs. Inc., et al.*, Order of Chief Judge Consolidating Gaming and Partnership Proceedings for Hearing and Decision, Docket Nos. EL03-180-000, *et al.* (Jan. 26, 2004).

¹² *Enron Power Mktg., Inc. and Enron Energy Servs. Inc., et al.*, Errata, Docket Nos. EL03-180-000, *et al.* (Jan. 30, 2004).

¹³ *El Paso Elec. Co., Enron Power Mktg., Inc., and Enron Capital and Trade Resources Corp.*, 108 FERC ¶ 61,071 (2004) (“July 22 Order”).

¹⁴ *Enron Power Mktg., Inc.*, 104 FERC ¶ 63,010 (2003) (Initial Decision).

violated Commission tariffs or orders and the appropriate remedy for such violations.”¹⁵ The Commission also expanded the scope of the proceeding, so as to examine “all of [Enron’s] wholesale power sales in the Western Interconnect[ion] for the period January 16, 1997 to June 25, 2003.”¹⁶

Of the original respondents named in the Gaming Order and the Partnership Order, by mid-2005, only Enron remained to proceed to hearing.¹⁷

V. SUMMARY OF SETTLEMENT AGREEMENT TERMS

The Settlement Agreement will resolve, as to Tacoma, all rights to participate solely as to Enron or to receive any monetary or non-monetary relief from Enron in the FERC Proceedings. The principal terms of the Settlement Agreement are briefly described below, with reference to the Articles and Sections of the Settlement Agreement that contain such terms.

A. Effective Date

The Settlement Agreement has been executed by the Parties and will generally become effective on the Settlement Effective Date, which shall occur two Business Days following the date that the Settlement Agreement has been approved by this Commission and the Enron Bankruptcy Court, without material change or condition unacceptable to any Party. *Sections* 1.42, 2.3, 7.1.1, 7.1.2, and 7.1.3.

B. Termination

Unless otherwise agreed to by the Parties, the Settlement and the Settlement Agreement terminate if, prior to the Settlement Effective Date, this Commission or the Enron Bankruptcy Court acts to disapprove or materially alter the Settlement Agreement. *Sections* 2.4, 7.1.3. The

¹⁵ July 22 Order at ¶ 3.

¹⁶ *Id.* at ¶ 2 (emphasis in original).

¹⁷ Commission Trial Staff has negotiated and has filed motions to dismiss or offers of settlement with respect to all of the other Respondents named in the Gaming Order and the Partnership Order.

Settlement Agreement, unless otherwise agreed to by the Parties, also terminates if the Commission and/or the Enron Bankruptcy Court fails to approve the Settlement Agreement, without material changes, on or prior to September 27, 2006. *Sections 2.4, 7.1.3.*

C. Periods Covered

The Settlement includes negotiated amounts for the period associated with the Partnership/Gaming Proceeding (January 16, 1997 through June 25, 2003). The Settlement Agreement resolves all rights or claims for relief as between Enron and Tacoma through the Settlement Effective Date. *Sections 6.5 and 6.6.* The Settlement Agreement also contains other mutual releases between Enron and Tacoma. *Article 6.*

D. Monetary Consideration

Enron will allow in Enron's Bankruptcy Proceedings claims totaling \$3,288,519.71, without offset, defense or reduction, representing the full amount of Tacoma's timely-filed proof of claim in those Bankruptcy Proceedings. This figure consists of an allowed Class 6 general unsecured claim of \$2,288,519.71 with regard to Tacoma's proof of claim in the Bankruptcy Proceedings, and a \$1,000,000 allocated portion of the Trial Staff Claim, in the form of an allowed Class 6 general unsecured claim, in accordance with Section 4.1.2 of the Trial Staff Settlement with respect to the Phase One Partnership/Gaming Proceeding. *Section 4.1.1.*

E. Releases and Waivers

In return for the specified consideration, subject to the Required Approvals, all rights, claims for relief or remedies of Tacoma for refunds, disgorgement of profits, or other remedies from Enron in the FERC Proceedings or otherwise shall be deemed settled. *Section 6.1.* In return for the specified consideration, subject to the Required Approvals, all rights, claims and remedies against Tacoma by Enron through the Settlement Effective Date shall be deemed settled including, without limitation, claims respecting delivered power under contracts between

EPMI and Tacoma, or any other remedies claimed in the FERC Proceedings or otherwise.

Section 6.2.

Subject to certain specified limitations, the Settlement Agreement provides also for Enron and Tacoma to mutually release and discharge each other as of the Settlement Effective Date from all past, existing and future claims before the Commission and/or under the Federal Power Act ("FPA"), Natural Gas Act ("NGA") and any amendments to the FPA or NGA pursuant to the Energy Policy Act of 2005, from time immemorial to the Settlement Effective Date, that Enron or Tacoma:

- (i) Charged, collected or paid unjust, unreasonable or otherwise unlawful rates, terms or conditions for electric energy, ancillary services, or transmission congestion or natural gas in the Western electricity, natural gas or associated markets; or
- (ii) Manipulated the Western electricity or natural gas or associated markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of electricity or natural gas market manipulation, fraud or misrepresentation discussed in the Initial Staff Report or Final Staff Report, or any other forms of electricity or natural gas market manipulation), or otherwise violated any applicable tariff, regulation, law, rule or order relating to the Western electricity or natural gas markets.

Section 6.5.

The Settlement Agreement also provides, subject to certain specified limitations, for Tacoma, on the one hand, and Enron, on the other hand, to mutually release the other from all past, existing, and future claims for civil damages and/or equitable relief concerning, pertaining to, or arising from allegations that Enron or Tacoma, to the Settlement Effective Date:

- (i) Charged, collected or paid unjust, unreasonable or otherwise unlawful rates, terms or conditions for energy, ancillary services, transmission congestion or natural gas in the Western electricity or natural gas markets;
- (ii) Manipulated the Western electricity or natural gas market in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, fraud or misrepresentation or other alleged forms of market manipulation discussed in the Initial Staff Report or Final Staff Report, or any other forms of wrongful conduct);

- (iii) Was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule or order relating to transactions in the Western electricity or natural gas markets;
- (iv) Claimed, charged, collected or retained profits associated with transactions made while the seller was in violation of orders or directives of FERC, including orders granting market-based rate authority or placing express or implied conditions on behavior relating to such authority;
- (v) Breached, defaulted or failed to perform any obligation under any contract, or any guarantee of performance, for the purchase or sale of electricity, natural gas (physical or financial) or related transactions, or engaged in fraud or misrepresentation in connection therewith; or
- (vi) Guaranteed, or issued any guarantee to the other of any obligation for the benefit of Enron or Tacoma, if any, to guarantee any obligation under any transaction.

Section 6.6.

The Settlement Agreement further provides for Enron to release Tacoma from any and all claims, obligations, causes of action and liabilities:

- (i) under any of Sections 542, 544, 545, 547, 548, 549, or 553 of the Bankruptcy Code to avoid any alleged transfer to or seek turnover from Tacoma;
- (ii) under Section 550 of the Bankruptcy Code to recover any such alleged transfer;
- (iii) under Section 510(c) of the Bankruptcy Code to subordinate any claim of Tacoma; and
- (iv) under Sections 502(d) or 502(j) of the Bankruptcy Code and any claims arising under or in connection with contract(s) and/or transactions for the purchase and sale of electric power and related products and services between Tacoma and EPMI.

Section 6.3.

VI. INFORMATION REQUIRED BY THE CHIEF ADMINISTRATIVE LAW JUDGE

Pursuant to the Notice to the Public issued by the Chief Administrative Law Judge on October 15, 2003, errata issued October 23, 2003, this Explanatory Statement addresses the following questions: (i) what are the issues underlying the Settlement and what are the major

implications; (ii) whether any of the issues raise policy implications; (iii) whether other pending cases may be affected; (iv) whether the Settlement involves issues of first impression, or if there are any previous reversals on the issues involved; and (v) whether the proceeding is subject to the just and reasonable standard or whether there is *Mobile-Sierra* language making it the standard, i.e., the applicable standards of review.

The issues underlying the Settlement are those set for hearing in the Partnership/Gaming Proceeding as described in Part IV above. If the Settlement is approved and becomes effective as described therein, the Settlement resolves all issues set for hearing as between Tacoma and Enron. There are no policy implications of the Settlement as it provides in Section 6.7.4 that nothing therein "shall establish any facts or precedents as between the Parties and any third parties as to any dispute." The Settlement also provides that "[n]othing herein will affect the positions that any Non-Settling Participant wishes to assert in any proceeding" (Section 2.2), and that "the FERC Proceedings shall not be deemed settled" as to any Non-Settling Participant. Sections 6.1, 6.2.

If the Settlement is approved and become effective as described therein, certain proceedings before other forums will be withdrawn. The Settlement does not involve issues of first impression or previous reversals on the issues involved. The Settlement, to the extent it is subject to modification,¹⁸ is governed by the "public interest" standard under *Mobile-Sierra*.¹⁹

¹⁸ The Settlement becomes effective on the Settlement Effective Date, regardless of whether the FERC Settlement Order is subject to requests for rehearing or appeals, and regardless of whether such order is subsequently modified or reversed by FERC or a court. *Sections* 1.25, 1.41, 2.3. To the extent a Party seeks modification of the Settlement, Section 10.6 shall govern.

¹⁹ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

VII. COMMENTS

In accordance with Rules 602(d)(2) and 602(f), 18 C.F.R. § 602(d)(2) and (f) (2006), initial comments are due on July 17, 2006 and reply comments are due on July 26, 2006.²⁰

VIII. CONCLUSION

The Settlement Agreement provides regulatory certainty for Enron and Tacoma and promotes administrative efficiency for the Commission. The Settlement Agreement resolves Enron's potential liability to Tacoma in the FERC Proceedings. To those ends, the Settlement Agreement sets forth the mutual covenants and releases agreed to between the Parties with respect to the FERC Proceedings. The Settlement resolves one of the few remaining disputes involving Enron in the FERC Proceedings, and is a major step toward resolving the remaining issues in these proceedings. The Settlement is in the public interest and therefore should be expeditiously approved by the Commission.

Dated: June 26, 2006

²⁰ The Commission has indicated that Docket Nos. PA02-2-000 and IN03-10-000 are investigations initiated pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2005), and has held that there are no parties to such investigations, and that comments cannot be filed in those dockets. *See, e.g., Fact Finding Investigation of Potential Market Manipulation of Electric and Natural Gas Prices, et al.*, 105 FERC ¶ 61,063 (2003), *reh'g denied*, 105 FERC ¶ 61,281 (2003) (appeal pending).

Attachment B

SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT

This Agreement is entered into, as of June 26, 2006, by and among each of the Enron Parties and the City of Tacoma, Washington on behalf of its Department of Public Utilities, d/b/a Tacoma Power ("Tacoma"), and Trial Staff. Each of the Enron Parties, Tacoma and Trial Staff is a "Party," and collectively they are "Parties" to this Agreement. Unless otherwise expressly provided for herein, each capitalized term used in this Agreement shall have the meaning set forth for such term in Article 1 or as defined elsewhere in this Agreement.

RECITALS

Whereas, various of the Parties are engaged in or interested in complex and disputed regulatory proceedings, bankruptcy proceedings, appellate proceedings, litigation, and investigations regarding numerous issues and allegations arising from events in the Western electricity and natural gas markets;

Whereas, certain of the Enron Parties are debtors in the Bankruptcy Cases;

Whereas, Tacoma has filed proofs of claim and asserted claims against certain of the Enron Parties in the Bankruptcy Cases and the FERC Proceedings (hereinafter defined as the "Tacoma Claims");

Whereas, the Parties have determined that it is preferable to settle the disputes addressed herein, rather than engage in costly, protracted and uncertain litigation;

Whereas, Trial Staff, the Enron Debtors, as defined herein, and certain non-debtor affiliates have entered into the Trial Staff Settlement, as defined herein, and the Trial Staff Settlement is subject to approval by the Enron Bankruptcy Court and the FERC as defined therein;

Whereas, this Agreement contemplates a comprehensive resolution of all disputes and other matters between the Enron Parties and Tacoma, except as expressly reserved in Section 6.7, (i) through the settlement of the regulatory proceedings, bankruptcy proceedings, appellate proceedings, litigation, proofs of claim, and claims identified herein, solely as to the portions thereof pertaining to the disputes between the Enron Parties and Tacoma, and (ii) by effectuating the transactions, granting of rights and benefits, and assumption of obligations specified and provided for herein.

Now, Therefore, in consideration of the mutual covenants and agreements, and other good and valuable consideration provided for herein, intending to be legally bound, and to resolve definitively and for all time, any and all present, past and potential differences and disputes between them, except as expressly reserved in Section 6.7, and subject to and upon the terms and conditions hereof, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

The following capitalized terms, which are in addition to other terms with initial capital letters defined in the body of this Agreement, when used in this Agreement shall have the meanings specified in this Article.

- 1.1. "**Agreement**" means this Settlement and Release of Claims Agreement as the same may be amended, modified, supplemented, or replaced from time to time by written agreement of the Parties.
- 1.2. "**Allowed Claim**" has the meaning set forth in Section 4.1.1.
- 1.3. "**Bankruptcy Cases**" means, collectively, the cases commenced under Chapter 11 of the Bankruptcy Code by the Enron Debtors and certain affiliates on or after the Initial Petition Date, styled *In re Enron Corp. et al.*, Chapter 11 Case No. 01-16034 (AJG) Jointly Administered, pending before the Enron Bankruptcy Court.
- 1.4. "**Bankruptcy Code**" means Title 11 of the United States Code, as the same may be amended from time to time.
- 1.5. "**Bankruptcy Proceedings**" means, collectively, the Bankruptcy Cases and all related adversary proceedings, claims objection proceedings, and appeals pending before the Enron Bankruptcy Court and the United States District Court for the Southern District of New York, and any proceedings on remand.
- 1.6. "**Bankruptcy Rule 9019 Motion**" has the meaning set forth in Section 7.2.
- 1.7. "**Business Day**" means a calendar day falling within Monday through Friday except for Federal holidays.
- 1.8. "**California Parties**" means collectively, Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, the People of the State of California, ex rel. Bill Lockyer, Attorney General, the California Department of Water Resources acting solely under authority and powers created by California Assembly Bill 1 from the First Extraordinary Session of 2000-2001, codified in Sections 80000 through 80270 of the California Water Code, the California Electricity Oversight Board, and the California Public Utilities Commission.
- 1.9. "**EEMC**" means Enron Energy Marketing Corp.
- 1.10. "**EESI**" means Enron Energy Services Inc.
- 1.11. "**EESO**" means Enron Energy Services Operations, Inc.
- 1.12. "**ENA**" means Enron North America Corp. (f/k/a Enron Capital and Trade Resources Corp.).

- 1.13. "**ENE**" means Enron Corp.
- 1.14. "**Enron**" or the "**Enron Parties**" means the Enron Debtors and the Enron Non-Debtor Gas Entities.
- 1.15. "**Enron Bankruptcy Court**" means the court before which the Bankruptcy Cases are pending: United States Bankruptcy Court, Southern District of New York.
- 1.16. "**Enron Bankruptcy Court Order**" means the Enron Bankruptcy Court order granting the Required Approval with respect to the Bankruptcy Proceedings, in accordance with Sections 7.1 and 7.1.2 of this Agreement, regardless of whether such order or orders are subject to appeal; provided that such order or orders have not been stayed pending such appeal.
- 1.17. "**Enron Debtors**" means ENE; EPMI; ENA; EEMC; EESI; Enron Energy Services North America, Inc. ("EESNA"); Enron Capital & Trade Resources International Corp. ("ECTRIC"); Enron Energy Services, LLC ("EESL"); EESO; Enron Natural Gas Marketing Corp. ("ENGMC"); and ENA Upstream Company, LLC. ("ENAU"), all as debtors in possession (or reorganized debtors) on behalf of themselves and their respective estates.
- 1.18. "**Enron Non-Debtor Gas Entities**" means, collectively, Enron Canada Corp. ("ECC"); Enron Compression Services Company ("ECS"); and Enron MW, L.L.C. ("EMW").
- 1.19. "**Enron PX Collateral**" means the cash collateral and letter of credit proceeds held by the PX in Bank of New York segregated escrow sub-account Number 028269 identified to EPMI, including associated interest.
- 1.20. "**EPMI**" means Enron Power Marketing, Inc.
- 1.21. "**Execution Date**" means the date this Agreement has been executed by all Parties.
- 1.22. "**FERC**" means the Federal Energy Regulatory Commission.
- 1.23. "**FERC Proceedings**" means *Enron Power Marketing, Inc., et al.*, FERC Docket Nos. EL03-180, EL03-154, EL02-114-007, EL02-115-008, and EL02-113, and any subsequent proceeding to determine the distribution of funds in such proceedings ("Partnership/Gaming Proceeding"); *San Diego Gas & Electric Co., et al.*, FERC Docket Nos. PA02-2 and IN03-10 ("Investigation Proceedings"); FERC Docket Nos. EL00-95, *et al.* ("Refund Proceeding"); FERC Docket No. EL02-71 ("Quarterly Reports Proceeding"); *Enron Power Marketing, Inc. et al.*, Docket Nos. EL03-77 and RP03-311 ("Revocation Proceeding"); *Puget Sound Energy, Inc.*, Docket No. EL01-10 ("Pacific Northwest Proceeding"); and, any related appeals and/or petitions for review and any proceedings on remand relating to any of the foregoing proceedings.
- 1.24. "**FERC Settlement Order**" means a FERC order meeting the requirements for a Required FERC Approval in accordance with Article 7 of this Agreement, regardless of whether such order is subject to requests for rehearing or appeals, and regardless of

- whether such order is subsequently modified or reversed by FERC or a court; provided that on the Settlement Effective Date, such order is not stayed pending such rehearing or appeal.
- 1.25. "**Final Non-appealable Order**" shall mean a final non-appealable order from the Enron Bankruptcy Court, which order has not been reversed, stayed, modified, amended or vacated and as to which (a) any appeal taken, petition for certiorari or motion for rehearing or reconsideration that has been filed, has been finally determined or dismissed or (b) the time to appeal, seek certiorari or move for reconsideration or rehearing has expired and no appeal, petition for certiorari or motion for reconsideration or rehearing has been timely filed.
 - 1.26. "**Final Staff Report**" means the Final Report entitled "Final Report On Price Manipulation In Western Markets -- Fact Finding Investigation Of Potential Manipulation Of Electric And Natural Gas Prices" issued by FERC staff on March 26, 2003 in Docket No. PA02-2.
 - 1.27. "**Governmental Authority**" means any "governmental unit" as defined in Section 101 of the Bankruptcy Code.
 - 1.28. "**Initial Petition Date**" means December 2, 2001, the date certain of the Enron Debtors filed petitions for relief under Chapter 11 of the Bankruptcy Code and commenced the Bankruptcy Cases in the Enron Bankruptcy Court.
 - 1.29. "**Initial Staff Report**" means the Initial Report released by FERC staff on August 13, 2002, in connection with the FERC investigation in Docket No. PA02-2.
 - 1.30. "**ISO**" means the California Independent System Operator Corporation, a California public benefit corporation.
 - 1.31. "**Nevada Companies**" means Nevada Power Company, Sierra Pacific Power Company, and Sierra Pacific Resources.
 - 1.32. "**Non-Settling Participant**" means individuals and entities with "party" status in the FERC Proceedings other than the Enron Parties, Tacoma, the California Parties, Salt River, Nevada Companies, Santa Clara, Valley Electric and Trial Staff.
 - 1.33. "**Party**" and "**Parties**" have the meanings set forth in the preamble to this Agreement.
 - 1.34. "**Phase One Partnership/Gaming Proceedings**" means any and all of the FERC proceedings, and any related appeals and/or petitions for review and/or any proceedings on remand relating thereto, involving *Enron Power Marketing, Inc., et al.*, FERC Docket Nos. EL03-180, EL03-154, EL02-114-007, EL02-115-008, and EL02-113, save and except for those occurring in Phase Two Partnership/Gaming Proceedings as defined in Section 1.35 of this Agreement.
 - 1.35. "**Phase Two Partnership/Gaming Proceedings**" means proceedings in or arising from FERC Docket Nos. EL03-180, EL03-154, EL02-114-007, EL02-115-008, and EL02-

113 following a FERC order concerning distribution among one or more beneficiaries of awards arising from Phase One Partnership/Gaming Proceedings.

- 1.36. "**Plan**" means the Supplemental Modified Fifth Amended Joint Plan of Affiliated Debtors Pursuant to Chapter 11 of the Bankruptcy Code confirmed by the Enron Bankruptcy Court on or about July 15, 2004, in the Bankruptcy Cases as it may be amended, modified, or supplemented from time to time in accordance with the terms thereof.
- 1.37. "**PX**" means the California Power Exchange Corporation, a California public benefit corporation.
- 1.38. "**Required Approval**" and "**Required Approvals**" means the approvals set forth in Article 7.
- 1.39. "**Salt River**" means Salt River Project Agricultural & Improvement District.
- 1.40. "**Santa Clara**" means the City of Santa Clara, California, d/b/a Silicon Valley Power and any affiliates, subsidiaries, predecessors or successors in interest that may exist.
- 1.41. "**Scheduled Liabilities**" means the liability schedules prepared and filed by Enron with the Enron Bankruptcy Court at or about the time Enron filed its Bankruptcy Case, reflecting sums owed to various third parties, including any liabilities that may have been owed to Tacoma.
- 1.42. "**Settlement Effective Date**" has the meaning set forth in Section 2.3.
- 1.43. "**Settlement Period**" means the period January 16, 1997 through June 25, 2003. This is the time period set by FERC in its order directing an administrative law judge to determine the total amount of disgorgement of profits by Enron for its wholesale power sales in the Western Interconnect for violations of tariffs on file or orders of FERC. *El Paso Elec. Co.*, 108 FERC ¶ 61,071 (2004).
- 1.44. "**Tacoma Allocation of Trial Staff Claim**" has the meaning set forth in Section 4.1.1.
- 1.45. "**Tacoma Claims**" means those claims filed by Tacoma in the Bankruptcy Cases on February 4, 2002 against ENE, and as superseded and supplemented by claims filed on October 15, 2002 and September 2, 2003 against EPMI, as set forth in timely filed Proofs of Claims (Nos. 813, 13952 and 24045, respectively) (the "POC's"), and all claims, counterclaims, interventions, and/or defenses set forth in the FERC Proceedings.
- 1.46. "**Trial Staff**" means the Trial Staff of the Federal Energy Regulatory Commission.
- 1.47. "**Trial Staff Claim**" means the Class 6 general unsecured claim in the amount of up to \$10,000,000 that EPMI agreed, as set forth in Section 4.1.2 of the Trial Staff Settlement, to allocate in either the Phase One Partnership/Gaming Proceeding or Phase Two Partnership/Gaming Proceeding to Non-Settling Participants (as defined in

Section 1.32 of the Trial Staff Settlement) to the extent such Non-Settling Participants have filed a timely Proof of Claim against EPMI in the Bankruptcy Proceedings.

- 1.48. **"Trial Staff Settlement"** means the Settlement and Release of Claims Agreement entered into by the Enron Parties and the Trial Staff as of March 9, 2006.
- 1.49. **"Trial Staff Settlement Effective Date"** has the meaning set forth in Section 2.3 of the Trial Staff Settlement.
- 1.50. **"Valley Electric"** means Valley Electric Association, Inc. and any affiliates, subsidiaries, predecessors or successors in interest that may exist.

2. CONDITIONS TO EFFECTIVENESS; SETTLEMENT EFFECTIVE DATE; TERMINATION

- 2.1. **Agreement Binding on Execution Date.** Except as provided in Section 2.4, this Agreement shall be a binding obligation of each Party immediately upon the Execution Date.
- 2.2. **Conditions Precedent to Certain Obligations.** The occurrence of the Settlement Effective Date is a condition precedent to (i) the obligation of a Party to make payments, to allow or release claims or defenses, or to withdraw from FERC Proceedings under Articles 4, 5, and 6 hereof, and (ii) the effectiveness of all such obligations, allowances, releases or withdrawals specified hereunder. It shall be a further condition to the effectiveness of this Agreement that, in accordance with Section 7.1.1, the FERC Settlement Order shall be deemed and construed, unless the FERC Settlement Order makes an express, specific finding to the contrary, as an order finding and concluding: (i) that the monetary consideration provided by Enron in accordance with Section 4.1.1 herein shall fully resolve and be in final satisfaction of any and all remedies for any and all liabilities of any of the Enron Parties to, and shall be deemed to be disgorged in favor of, Tacoma in any of the dockets that comprise the Partnership/Gaming Proceeding, save and except those asserted by any Non-Settling Participant in connection with any of the termination payment claims and/or defenses, and any Non-Settling Participant in the FERC Proceedings that is not a Party to this Agreement may continue to seek remedies from Enron in the FERC Proceedings; provided, however, that any monetary remedy that FERC may determine to award in the Partnership/Gaming Proceeding, if any, to such Non-Settling Participant shall not exceed the share allocable to that Non-Settling Participant, as determined under the allocation mechanism adopted by FERC in litigation, of any profits, if any, Enron may be finally required and ordered to disgorge, including, for any party, any final order with respect to any contract termination payments that Enron claims it is due. Nothing herein will affect the positions that any Non-Settling Participant wishes to assert in any proceeding.
- 2.3. **Settlement Effective Date.** The "Settlement Effective Date" shall occur two Business Days following the latest of the following dates: (i) the date the Required FERC Approval (as defined in Section 7.1.1) has been obtained provided that no notice has

been timely and properly given by a Party as to such approval in accordance with Section 7.1.3 (unless the Parties agree in writing, on or before September 29, 2006, that the Settlement Effective Date has occurred notwithstanding any such timely notice given in accordance with Section 7.1.3), (ii) the date the Required Enron Bankruptcy Court Approval (as defined in Section 7.1.2) has been obtained provided that no notice has been timely and properly given by a Party as to such approval in accordance with Section 7.1.3 (unless the Parties agree in writing, on or before September 29, 2006, that the Settlement Effective Date has occurred notwithstanding any such timely notice given in accordance with Section 7.1.3); and (iii) the Trial Staff Settlement Effective Date (as defined in Section 1.48). On the Settlement Effective Date, Enron shall provide Tacoma written notice of the occurrence of the Settlement Effective Date.

- 2.4. **Termination.** This Agreement shall terminate in the event any of the following occurs, and not otherwise: (i) as to the FERC Settlement Order, FERC issues an order denying approval of this Agreement, or a Party provides to the other Party written notice of its lack of consent to an unacceptable material change or condition in accordance with Section 7.1.3 and the Parties do not agree in writing on or before September 29, 2006 that the Settlement Effective Date has occurred notwithstanding the existence of such unacceptable material change or condition; (ii) as to the Enron Bankruptcy Court Order, the Enron Bankruptcy Court issues an order denying approval of this Agreement, or a Party provides to the other Party written notice of its lack of consent to an unacceptable material change or condition in accordance with Section 7.1.3 and the Parties do not agree in writing on or before September 29, 2006 that the Settlement Effective Date has occurred notwithstanding the existence of such unacceptable material change or condition; (iii) FERC issues an order denying approval of the Trial Staff Settlement or FERC's order acting on the Trial Staff Settlement requires a material change or condition to the Trial Staff Settlement that is unacceptable (subject to the exercise of reasonable discretion) to the adversely affected Party and the adversely affected Party provides to the other Party written notice of its lack of consent to such unacceptable material change or condition in accordance with Section 7.1.3 and the Parties do not agree in writing on or before September 29, 2006 that the Settlement Effective Date has occurred notwithstanding the existence of such unacceptable material change or condition; or (iv) the Settlement Effective Date has not occurred by September 29, 2006, unless all Parties consent voluntarily in writing to an extension of such date. Upon the occurrence of the Settlement Effective Date, this Agreement shall not thereafter terminate for any reason. The Parties agree that from and after the Settlement Effective Date (a) they shall be bound by the terms of this Agreement notwithstanding any order or ruling reversing, remanding or otherwise modifying this Agreement on rehearing, reconsideration, appeal or remand of the Enron Bankruptcy Court Order and/or the FERC Settlement Order, and (b) they shall use reasonable efforts to defend and preserve the terms of this Agreement against any such order or ruling.
- 2.5. **Effect of Termination.** In the event of termination pursuant to Section 2.4, this Agreement, except for the provisions set forth in this Section 2.5, Sections 6.7.4 and its subparts, and in Article 9 and Section 10.4, shall be of no further force or effect, with

all rights, claims, defenses, duties, and obligations of the Parties thereafter restored as if this Agreement had never been executed.

3. SETTLEMENT AND ACKNOWLEDGMENT

- 3.1. **Acknowledgement of Compromise.** The payments and other consideration called for in this Agreement, along with the covenants and obligations herein, settle and compromise the Tacoma Claims and the claims and/or defenses of the Enron Parties against Tacoma in the various proceedings described herein and prevent costly, protracted and uncertain litigation.

4. MONETARY CONSIDERATION PROVIDED BY THE PARTIES

- 4.1. **Monetary Consideration.** The monetary settlement consideration exchanged by the Parties shall be comprised of the following:

- 4.1.1. **Allowed Unsecured Claim.** On the Settlement Effective Date, Class 6 general unsecured claims against EPMI under the Plan shall be allowed to or for the benefit of Tacoma in the amount of \$3,288,519.71 in satisfaction of the full amount of POC No. 24045 without offset, defense or reduction on account of any claim, counterclaim or defense the Enron Parties have or may have against Tacoma or with regard to the same and which will be entitled to receive the same treatment as all other Class 6 holders, as follows: (i) a Class 6 general unsecured claim against EPMI under the Plan shall be allowed Tacoma in the amount of \$2,288,519.71 with respect to POC No. 24045 (the "Allowed Claim"), and (ii) a \$1,000,000 portion of the Trial Staff Claim, in the form of a Class 6 general unsecured claim against EPMI under the Plan, shall be allocated to Tacoma in accordance with Section 4.1.2 of the Trial Staff Settlement with respect to the Phase One Partnership/Gaming Proceeding ("Tacoma Allocation of Trial Staff Claim"). Tacoma's unsecured claim is not a Joint Liability Claim as that term is defined in the Plan and the Bankruptcy Code.

- 4.1.1.1. **Right to Sell, Transfer and/or Assign.** Enron agrees that Tacoma is free to sell, assign, convey, or otherwise transfer all or any portion of the Allowed Claim and/or the Tacoma Allocation of Trial Staff Claim to any other person or entity, subject to any requirements that may be imposed thereon by Federal Rule of Bankruptcy Procedure 3001(e) and other applicable law. Enron shall, upon the reasonable request of Tacoma, execute and/or deliver such further documents, agreements, instruments, and accounts and other books of record, and shall cooperate and do such other and further acts, as may be necessary to effectuate Tacoma's sale, assignment, conveyance, or transfer of the Allowed Claim and/or the Tacoma Allocation of Trial Staff Claim.

- 4.1.1.2. **Disallowance of the Tacoma Claims.** Except as provided above in Section 4.1.1, the Tacoma Claims, other than to the extent of its Allowed Claim and the Tacoma Allocation of Trial Staff Claim specified in Section 4.1.1, shall,

on the Settlement Effective Date, be disallowed and expunged and to the extent previously disallowed, will not be subject to reconsideration under Section 502 of the Bankruptcy Code. Within five (5) Business Days after the Settlement Effective Date, Tacoma will execute and file any and all documentation, substantially in form and substance as reasonably requested by Enron, that Enron has identified as reasonably necessary to effectuate the disallowance and expungement of the Tacoma Claims. The Scheduled Liabilities specifically related to any of the Tacoma Claims are intended to be settled in full under this Agreement. Upon the Settlement Effective Date, all Scheduled Liabilities related to any of the Tacoma Claims as set forth in the liability schedules, except to the extent of the unsecured claims to be allowed pursuant to Section 4.1.1, shall be disallowed in their entirety.

- 4.1.1.3. **Distribution Schedule.** Provided Enron has received any documentation reasonably required for distributions under the Plan, if the Settlement Effective Date occurs on or before September 29, 2006, Enron shall cause the first distribution on the Allowed Claim and the Tacoma Allocation of Trial Staff Claim to occur as soon as practicable within 110 days of the Settlement Effective Date in accordance with the Plan. Tacoma agrees that it (and its transferees) will cooperate with Enron in facilitating the allocation or distribution of the Allowed Claim and the Tacoma Allocation of Trial Staff Claim, including the execution of stipulations to allow, in whole or in part, reduce, or expunge claims, as appropriate.

5. NON-MONETARY CONSIDERATION

- 5.1. **Assignment of Allocated Disgorgement Claims.** Simultaneously with the Settlement Effective Date, in return for the consideration provided to Tacoma by Enron pursuant to Section 4.1.1 (which Tacoma shall retain after the Settlement Effective Date), Tacoma shall transfer, assign, and convey, and shall be deemed to have transferred, assigned and conveyed, to Enron any and all of Tacoma's rights and/or claims to allocable shares, as determined under the allocation methodology adopted by FERC in litigation, of any profits, if any, Enron may be finally required and ordered to disgorge in the Partnership/Gaming Proceeding, and will, upon the reasonable request of Enron, execute and/or deliver such further documents, agreements, instruments, and accounts and other books of record, and shall cooperate and do such other and further acts, as may be reasonably necessary to effectuate Tacoma's transfer, conveyance and assignment of those rights to allocable shares to Enron.

5.2. Withdrawals from Proceedings.

- 5.2.1 **Tacoma's Withdrawals.** Within ten (10) Business Days of the Settlement Effective Date, Tacoma shall, solely with respect to all Enron Parties, withdraw all pleadings, testimony, related exhibits, discovery requests of any type, and all additional requests for relief filed with FERC and terminate its participation (solely as to Enron) in the FERC Proceedings; provided, however, that Tacoma's withdrawals and terminations apply only to the extent that such documents and

participation seek relief from Enron, and do not apply to such documents and participation which seek relief from other entities but may nevertheless address Enron's conduct for purposes of securing such relief from others. Tacoma shall with respect to all Enron Parties take no position (including, without limitation, Tacoma shall not make any witness available on a voluntary basis and shall use reasonable efforts to quash any attempts to compel cooperation of such witness by subpoena or otherwise) regarding any matter withdrawn hereunder from the FERC Proceedings before the FERC or in any other forum, including, but not limited to, withdrawal from and refraining from continued participation in any appeals or remands of FERC orders issued in any of the dockets that comprise the FERC Proceedings, except to the extent that Tacoma's participation in such proceedings (including, without limitation, the presentation of witnesses) relates to relief sought by Tacoma from entities other than Enron. Tacoma's withdrawal from the FERC Proceedings will include, without limitation: (i) withdrawal of its appeals and participation, if any, solely as to its requests for relief from Enron and agreement to take no position seeking relief from Enron in any forum arising out of the Partnership/Gaming Proceeding, including but not limited to *Pacific Gas and Electric Company, et al. v. FERC*, Case No. 05-71008, *et al.*, pending before the United States Court of Appeals for the Ninth Circuit, and *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, Case No. 05-76211, pending before the United States Court of Appeals for the Ninth Circuit, or any subsequent related proceedings (including any potential proceedings on remand in FERC Docket No. EL03-180, *et al.*); (ii) withdrawal of its appeals and participation, if any, solely as to its requests for relief from Enron and agreement to take no position seeking relief from Enron in any forum arising out of the Investigation Proceedings; (iii) withdrawal of its appeals and participation, if any, solely as to its requests for relief from Enron and agreement to take no position seeking relief from Enron in any forum arising out of the Refund Proceeding, including but not limited to *California Public Utilities Commission, et al. v. FERC*, Case No. 01-71051, *et al.*, pending before the United States Court of Appeals for the Ninth Circuit, or any subsequent related proceedings (including any potential proceedings on remand in FERC Docket Nos. EL00-95, *et al.*); (iv) withdrawal of its appeals and participation, if any, solely as to its requests for relief from Enron and agreement to take no position seeking relief from Enron in any forum arising out of the Quarterly Reports Proceeding, including but not limited to *State of California, ex rel. Bill Lockyer, Attorney General v. FERC*, Case No. 02-73093, pending before the United States Court of Appeals for the Ninth Circuit, or any subsequent related proceedings (including any potential proceedings on remand in FERC Docket No. EL02-71); (v) withdrawal of its appeals and participation, if any, solely as to its requests for relief from Enron and agreement to take no position seeking relief from Enron in any forum arising out of the Revocation Proceeding, including but not limited to *Enron Power Marketing, Inc., et al. v. FERC*, Case No. 04-1040, pending before the United States Court of Appeals for the District of Columbia Circuit, or any subsequent related proceedings (including any potential proceedings on remand in FERC Docket No. EL03-77, *et al.*); (vi) withdrawal of its appeals and participation, if

any, solely as to its requests for relief from Enron and agreement to take no position seeking relief from Enron in any forum arising out of the Pacific Northwest Proceeding, including but not limited to *Port of Seattle, Washington, et al. v. FERC*, Case No. 03-74139, *et al.* pending before the United States Court of Appeals for the Ninth Circuit, or any subsequent related proceedings (including any potential proceedings on remand in FERC Docket No. EL01-10); and (vii) its agreement to take no position regarding any request for retroactive revocation of any Enron entity's market-based rate or blanket marketing authority in any forum. Subject to Enron's right to enforce the terms of this Agreement, and notwithstanding anything in this Agreement that may be interpreted to the contrary, Enron expressly acknowledges and agrees that nothing in this Agreement shall affect in any way the right of Tacoma to participate in any proceeding, including appeals, and to advance arguments therein, including arguments that Enron's conduct adversely affected electric and gas markets and market prices and that any other entity may have been involved in a partnership, alliance or other arrangement with Enron, to the extent that Tacoma's participation concerns (a) pursuit of relief from entities other than Enron, or (b) approvals and enforcement of this Agreement.

5.2.2. **Enron's Withdrawals.** Subject to Tacoma's rights to enforce the terms of this Agreement, nothing in this Agreement shall affect in any way the right of Enron to participate in any proceeding, and advance arguments therein, including appeals, to the extent those proceedings concern (a) pursuit of entities or issues other than Tacoma, or (b) approvals and enforcement of this Agreement.

5.2.3. **Additional Consideration Exchanged.** Simultaneous with the Settlement Effective Date, additional non-monetary consideration shall be, and shall be deemed to have been, exchanged in the form and substance of the mutual releases described in Article 6.

6. SCOPE OF SETTLEMENT AND RELEASES; RELEASES AND WAIVERS

6.1. **Settlements of Proceedings by Tacoma.** Subject to the Required Approvals under this Agreement, all claims as to or against Enron by Tacoma from time immemorial to the Settlement Effective Date, for refunds, disgorgement of profits, or other monetary or non-monetary remedies in the FERC Proceedings or the Bankruptcy Proceedings shall be deemed resolved with prejudice and settled simultaneously with the Settlement Effective Date; provided that the FERC Proceedings shall not be deemed settled as to any Non-Settling Participant.

6.2. **Settlement of Proceedings by Enron.** Subject to the Required Approvals under this Agreement, all claims as to or against Tacoma by Enron from time immemorial to the Settlement Effective Date, including without limitation, claims respecting delivered power under contracts between EPMI and Tacoma, or any other remedies claimed in the FERC Proceedings or otherwise, shall be deemed resolved with prejudice and settled simultaneously with the Settlement Effective Date; provided that the FERC

Proceedings shall not be deemed settled as between Enron and any Non-Settling Participant.

- 6.3. **Releases by Enron under the Bankruptcy Code.** Effective on the Settlement Effective Date, each of the Enron Debtors, acting on behalf of themselves and on behalf of each of their respective estates and on behalf of any party (or parties) purporting to act on behalf of the estates of each of the Enron Debtors, and on behalf of the Reorganized Debtors (as defined in the Plan), releases Tacoma from any and all claims, obligations, causes of action and liabilities including (i) under any of Sections 542, 544, 545, 547, 548, 549, or 553 of the Bankruptcy Code to avoid any alleged transfer to or seek turnover from Tacoma, (ii) under Section 550 of the Bankruptcy Code to recover any such alleged transfer, (iii) under Section 510(c) of the Bankruptcy Code to subordinate any claim of Tacoma, and (iv) under Sections 502(d) or 502(j) of the Bankruptcy Code and any claims arising under or in connection with contract(s) and/or transactions for the purchase and sale of electric power and related products and services between Tacoma and EPMI.
- 6.4. **Impact of Settlement on Enron PX Collateral.** Tacoma shall not oppose any request by Enron made to FERC, the California Power Exchange Corporation, the California Independent System Operator Corporation, the Enron Bankruptcy Court, and/or any other party or forum for the release to Enron of the Enron PX Collateral.
- 6.5. **FERC, Federal Power Act and Natural Gas Act Releases.** Subject to Section 6.7 below, Tacoma and Enron shall, as of the Settlement Effective Date, be deemed to have forever released the other, and their agents, employees, representatives, officers, directors and affiliates, from all existing and future claims before FERC and/or under the Federal Power Act (FPA), Natural Gas Act (NGA) and any amendments to the FPA or NGA pursuant to the Energy Policy Act of 2005, from time immemorial to the Settlement Effective Date, that Enron or Tacoma:
 - 6.5.1. Charged, collected or paid unjust, unreasonable or otherwise unlawful rates, terms or conditions for electric energy, ancillary services, or transmission congestion or natural gas in the Western electricity, natural gas or associated markets; or
 - 6.5.2. Manipulated the Western electricity or natural gas or associated markets in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, forms of electricity or natural gas market manipulation, fraud or misrepresentation discussed in the Initial Staff Report or Final Staff Report, or any other forms of electricity or natural gas market manipulation), or otherwise violated any applicable tariff, regulation, law, rule or order relating to the Western electricity or natural gas markets.
- 6.6. **Civil Claims Releases.** Subject to Section 6.7 below, Tacoma and Enron shall, as of the Settlement Effective Date, be deemed to have forever released the other, and their agents, employees, representatives, officers, directors and affiliates, from all past, existing and future claims for civil damages and/or equitable relief concerning,

pertaining to, or arising from allegations, from time immemorial to the Settlement Effective Date, that Enron or Tacoma:

- 6.6.1. Charged, collected or paid unjust, unreasonable or otherwise unlawful rates, terms or conditions for energy, ancillary services, transmission congestion or natural gas in the Western electricity or natural gas markets;
- 6.6.2. Manipulated the Western electricity or natural gas market in any fashion (including, but not limited to, claims of economic or physical withholding, gaming, fraud or misrepresentation or other alleged forms of market manipulation discussed in the Initial Staff Report or Final Staff Report, or any other forms of wrongful conduct);
- 6.6.3. Was unjustly enriched by the foregoing released claims or otherwise violated any applicable tariff, regulation, law, rule or order relating to transactions in the Western electricity or natural gas markets;
- 6.6.4. Claimed, charged, collected or retained profits associated with transactions made while the seller was in violation of orders or directives of FERC, including orders granting market-based rate authority or placing express or implied conditions on behavior relating to such authority;
- 6.6.5. Breached, defaulted or failed to perform any obligation under any contract, or any guarantee of performance, for the purchase or sale of electricity, natural gas (physical or financial) or related transactions, or engaged in fraud or misrepresentation in connection therewith; or
- 6.6.6. Guaranteed, or issued any guarantee to the other of any obligation for the benefit of Enron or Tacoma, if any, to guarantee any obligation under any transaction.

6.7. Reservations and Limitations on Releases.

- 6.7.1. **Cooperation with Investigations; Participation in Proceedings.** Tacoma may continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that, as of the Settlement Effective Date, Tacoma shall withdraw from and not prosecute any litigation, administrative proceedings or investigations solely with respect to Enron insofar as such prosecution would be inconsistent with the foregoing released claims. Enron may continue to cooperate with all state and federal investigations and to participate in all matters before FERC; provided that, as of the Settlement Effective Date, Enron shall withdraw from and not prosecute any litigation, administrative proceedings or investigations solely with respect to Tacoma insofar as such prosecution would be inconsistent with the foregoing released claims.
- 6.7.2. **Claims Reservation.** Nothing within, nor any provision of, this Agreement shall in any way or manner be construed as constituting any waiver or release of any claims, which are hereby expressly reserved, by (1) Enron for rights to or interests in refunds or remedies, including off sets to refund obligations in other FERC

proceedings, such as and including the Refund Proceedings, as to or against Tacoma, if any, which have been transferred and/or assigned by Enron to the California Parties pursuant to a Settlement and Release of Claims Agreement dated August 24, 2005 with the FERC's Office of Market Oversight and Investigations, the California Parties and the Additional Claimants (as those terms are therein defined) that sets forth a comprehensive resolution of the matters therein described, including complex and disputed regulatory proceedings, bankruptcy and adversary proceedings, appellate proceedings, litigation, and investigations regarding numerous issues and allegations arising from events in the California and western electricity and natural gas markets (the "California Settlement"), (2) Enron, as to any claim or defense, positions, grounds, arguments or theories of relief as to any of the Non-Settling Participants, (3) Enron and Trial Staff as to any and all claims and/or defenses as between themselves which are hereby expressly reserved for resolution, settlement and compromise as provided in the Trial Staff Settlement, (4) Tacoma as to any and all claims and/or defenses it may have with respect to any entities other than Enron.

- 6.7.3. **Existing or Future Proceedings.** Subject to the provisions of Section 6.7.1, Tacoma shall remain free to participate in any existing or future proceeding, or to initiate any proceeding, addressing matters not settled in this Agreement, including, but not limited to, generic issues concerning market structure, scheduling rules, generally applicable market rules, and generally applicable price mitigation.
- 6.7.4. **No Third Party Beneficiaries or Admissions.** This Agreement is not intended to confer upon any person or entity that is not a Party any rights or remedies hereunder, and no one, other than a Party, is entitled to rely on any representation, warranty, covenant, release, waiver or agreement contained herein. Moreover, except for the purpose of enforcing the terms and conditions of this Agreement as between and among the Parties, nothing herein shall establish any facts or precedents as between the Parties and any third parties as to any dispute. Each Party expressly denies any breach, liability, wrongdoing or culpability with respect to the claims against it contemplated to be released in this Agreement, or any other matter addressed in this Agreement, and does not, by execution of this Agreement, admit or concede any actual or potential breach, fault, wrongdoing or liability in connection with any facts or claims that have been or could have been alleged against it with respect thereto. Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement:
- 6.7.4.1. Is or may be deemed to be, or may be used as, an admission of, or evidence of, the validity of any released claim, or of any wrongdoing or liability of any of the Parties;
- 6.7.4.2. Is or may be deemed to be, or may be used as, an admission of, or evidence of, any fault or omission of any of the Parties in any civil, criminal, regulatory or administrative proceeding in any court, administrative agency, regulatory authority, or other tribunal; or

6.7.4.3. Shall be offered in evidence or alleged in any pleading, except to obtain the Required Approvals, or to enforce the terms of and obtain the benefits of this Agreement. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to them or the settlement contemplated by this Agreement in any way be construed as, offered as, received as, used as or deemed to be evidence of any kind in any action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce the terms or obtain the benefits of this Agreement or to obtain the Required Approvals.

6.8. **Effectiveness of Releases; Waiver of Unknown Claims.** The Parties acknowledge and agree that, except as expressly reserved in Section 6.7, it is their intention that the releases granted pursuant to this Article 6 shall be effective on the Settlement Effective Date to bar all causes of action and demands for monetary relief, including costs, expenses, attorneys' fees, damages, losses and liabilities of every kind, known or unknown, suspected or unsuspected, specified in this Article 6. In furtherance of this intention, the Enron Parties and Tacoma with respect to the specific matters released herein, each knowingly, voluntarily, intentionally and expressly waive, as against each other, any and all rights and benefits conferred by California Civil Code Section 1542 and any law of the United States and any state or territory of the United States or principle of common law that is similar to Section 1542. Section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

In connection with such waiver and relinquishment, the Enron Parties and Tacoma each acknowledge they are aware they may hereafter discover facts in addition to or different from those which they know or believe to be true and with respect to the subject matter of this Agreement, but it is their intention hereby, except as expressly reserved in Section 6.7, to fully, finally and forever settle and release all matters, disputes, differences, known or unknown, suspected or unsuspected, that are set forth in this Article 6. This Agreement is intended to include in its effect all claims encompassed within this Agreement and releases set forth in this Article 6, including those which the Enron Parties and Tacoma may not know or suspect to exist at the time of execution of this Agreement, and this Agreement contemplates the extinguishment of all such claims, except as expressly reserved in Section 6.7. The releases set forth in this Article 6 shall be, and remain in effect as, full and complete releases, notwithstanding the discovery or existence of any such additional or different facts relating to the subject matter of this Agreement.

7. REQUIRED APPROVALS; OBTAINING REQUIRED APPROVALS

7.1. This Agreement shall be subject to approval as set forth in this Article 7 by the Enron Bankruptcy Court and FERC:

7.1.1. **Required FERC Approval.** The FERC, by issuance of a FERC Settlement Order(s), shall approve the terms of this Agreement and the Trial Staff Settlement without material change or condition unacceptable to any Party (in the exercise of its reasonable discretion) (if so approved, then such approval shall be a "Required FERC Approval"). The FERC Settlement Order(s) shall be deemed and construed, unless the FERC Settlement Order(s) makes an express, specific finding to the contrary, as an order finding and concluding that the monetary consideration provided by Enron in accordance with Section 4.1.1 hereof, and in accordance with the Trial Staff Settlement, shall fully resolve and be in final satisfaction of any and all remedies for any and all liabilities of any of the Enron Parties to, and shall be deemed to be disgorged in favor of Tacoma in any of the dockets that comprise the Partnership/Gaming Proceeding, save and except those asserted by any other parties, including the Non-Settling Participants, in connection with any of the termination payment claims and/or defenses, and any Non-Settling Participant may continue to seek remedies from Enron in the FERC Proceedings; provided, however, that any monetary remedy that FERC may determine to award in the Partnership/Gaming Proceeding, if any, to such Non-Settling Participant shall not exceed the share allocable to that party, as determined under the allocation mechanism adopted by FERC in litigation, of any profits, if any, Enron may be finally required and ordered to disgorge, including, for any party, any final order with respect to any contract termination payments that may be due Enron. Nothing herein will affect the positions that any Non-Settling Participant wishes to assert in any proceeding.

7.1.2. **Required Enron Bankruptcy Court Approval.** The Enron Bankruptcy Court, by entry of the Enron Bankruptcy Court Order, shall approve this Agreement in a Final Non-appealable Order without material change or condition unacceptable to any Party in the exercise of its reasonable discretion (if so approved, then such approval shall be a "Required Enron Bankruptcy Court Approval"). As provided in Section 7.2 below, the Enron Debtors shall request in the Bankruptcy Rule 9019 Motion that the approvals and findings contained in the Enron Bankruptcy Court Order become effective immediately upon entry notwithstanding the ten (10) day stay provided for in Bankruptcy Rule 6004(g).

7.1.3. **Notice of Material Unacceptable Change or Condition.** If any approval described in this Article 7 (Section 7.1.1 or 7.1.2) includes a material change or condition to the terms of this Agreement that adversely affects any Party as described in Section 7.1.1 and/or 7.1.2, then such Party so affected shall provide to the other Parties written notice of such material change or condition (and its lack of consent thereto) within two (2) Business Days of the date of the issuance of such approval. If such Party gives notice of its lack of consent in the manner described above, the affected approval shall not be deemed to be a "Required

FERC Approval" or a "Required Enron Bankruptcy Court Approval" (as the case may be), and shall not fulfill the condition that such Required Approval has been obtained for the purpose of the definition of the Settlement Effective Date unless the Parties agree in writing on or before September 29, 2006 that the Settlement Effective Date has occurred notwithstanding the existence of such unacceptable material change or condition.

- 7.2. **Enron Bankruptcy Court Motion.** On or about the same day this Agreement is filed at FERC, the Enron Debtors and the Reorganized Debtors (as defined in the Plan) shall file a motion requesting Enron Bankruptcy Court approval of this Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule 9019 Motion"), together with a form of order approving the Bankruptcy Rule 9019 Motion. The Bankruptcy Rule 9019 Motion and form of order shall be filed in a form acceptable to Tacoma and the Enron Debtors.
- 7.3. **Requests for Approval.** The Parties jointly shall request that FERC review this Agreement without prior certification by an Administrative Law Judge. The Parties will cooperate in obtaining Enron Bankruptcy Court approval of this Agreement and in preparing a motion requesting such approval and a proposed order approving this Agreement in a form acceptable to the Parties. The Bankruptcy Rule 9019 Motion shall include a request that the Enron Bankruptcy Court's approvals and findings become effective immediately upon entry notwithstanding the ten (10) day stay provided for in Bankruptcy Rule 6004(g).
- 7.4. **Stay.** As promptly as possible after the date hereof, but in no event later than June 26, 2006, the Parties shall jointly move for an express continuation of all current stays in effect in *Enron Power Marketing, Inc., et al.*, Docket No. EL03-180-000, *et al.* (the "Stayed Proceeding"), which stay shall remain in full force and effect as to the Parties hereto until the earlier of (a) the date FERC rules on this Agreement and the Trial Staff Settlement, or (b) the date one or more of such agreements are terminated (the "Stay Period"). No collateral estoppel or other prejudice to any Party's rights, claims or defenses shall arise during or on account of the Stay Period and none of the Parties shall have any argument based on the doctrine of laches or similar equitable grounds due to inaction during the applicable Stay Period.
- 7.4.1. **No Filings.** Commencing on the date hereof and continuing throughout the applicable Stay Period, the Parties shall not file in a Stayed Proceeding any motion or other pleading requesting relief from FERC in respect of the stayed actions or proceedings, except as may be necessary to continue the stay or to effectuate approval of or to enforce the terms of this Agreement. Moreover, except as may be agreed by written modification of this Agreement, the Parties shall not file any new proceeding, action, motion, or pleading in the Enron Bankruptcy Court, FERC or any other forum asserting any claim, cause of action or defense that would or could become released or relinquished by this Agreement. The Parties agree that after the Settlement Effective Date they shall not seek to amend or reopen the Enron Bankruptcy Court Order, regardless of any

rehearing or appeal granted with respect to the FERC Settlement Order, and they will oppose any such requests made by any other parties.

- 7.4.2. **Cooperation.** The Parties shall cooperate, at their own expense, to the extent necessary to expeditiously effectuate and implement all of the terms and conditions of this Section 7.4 and shall exercise their reasonable efforts to obtain the stays and deferrals herein described.
- 7.4.3. **Proceedings as to Other Parties.** Nothing in this Section 7.4 shall preclude any Party from taking such actions in or with respect to the Stayed Proceedings or other proceedings as may be necessary to preserve or advance its rights or defenses with respect to parties to such proceedings other than Enron during the applicable Stay Period.

8. REPRESENTATIONS, WARRANTIES, AND COVENANTS

- 8.1. **Representations of Parties.** Representations and warranties of Enron Debtors are not made herein as such matters are to be addressed by the Enron Bankruptcy Court in the Enron Bankruptcy Court Order. Each of the Enron Non-Debtor Gas Entities, Tacoma and Trial Staff makes the following representations and warranties, for itself only, to each other Party, to be effective from and after the Execution Date:
- 8.1.1. **Organizational Status, Power and Authority.** Tacoma is a municipal corporation under the laws of the State of Washington. Except for ECS, EMW, Tacoma and Trial Staff, it is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation. It possesses all necessary power and authority to execute, deliver and perform its obligations under this Agreement.
- 8.1.2. **Authority to Execute.** The execution, delivery, election to participate in and performance of this Agreement (i) are within its powers, (ii) have been duly authorized by all necessary action on its behalf and all necessary consents or approvals have been obtained and are in full force and effect, and (iii) do not violate any of the terms and conditions of any applicable law, or materially violate any contracts to which it is a party.
- 8.1.3. **Binding Obligation.** This Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms.
- 8.1.4. **Ownership of Claims.** Except as set forth in this Agreement, it is the sole owner of the bankruptcy, civil, FERC and any and all other claims and rights that are being addressed, resolved and compromised by it pursuant to this Agreement and, except as provided in this Agreement, there has been no sale, assignment, transfer, pledge or hypothecation, or attempted sale, assignment, transfer, pledge or hypothecation, by it of any such rights or claims, whether directly, indirectly, by operation of law or otherwise. Notwithstanding anything contained in this Agreement to the contrary, the Parties acknowledge and agree that Tacoma may assign or has assigned certain of its additional entitlements pursuant to this

Agreement (subject to the Required Approvals), including without limitation its entitlements to receive distributions of any nature or kind (including without limitation monetary payments); provided however, all distributions on allowed claims against EPMI shall be governed by the Bankruptcy Code, the Plan and its administrators, and subject to their requirements.

8.1.5. **No Insiders.** None of the representatives of Tacoma who have acted as negotiators or decision-makers for Tacoma in connection with this Agreement, and none of the representatives of Trial Staff who have acted as negotiators or decision-makers for Trial Staff in connection with this Agreement, are current or former employees, current or former insiders, or current or former affiliates of Enron Corp. or any of its subsidiaries or affiliates. For purposes of the immediately preceding sentence, the terms “insider” and “affiliate” shall have the meanings given to them in Section 101 of the Bankruptcy Code.

8.2. **Further Assurances.** The Parties covenant among themselves that at all times from and after the Settlement Effective Date, they will, upon the reasonable request of the other Parties, their successors and assigns, execute and/or deliver such further documents, agreements, instruments, and accounts and other books of record, and shall cooperate and do such other and further acts, as may be reasonably necessary to effectuate the terms and provisions of this Agreement.

9. GOVERNING LAW; INTERPRETATION

9.1. **Governing Law.** To the extent not governed by federal law, this Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws principles.

9.2. **Entire Agreement.** This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof and there are no agreements, understandings, representations, or warranties among the Parties other than those set forth or referred to herein. Each of the Parties expressly disclaims any reliance upon any representations or warranties not stated herein.

9.3. **Headings.** The headings or titles of Articles, Sections and Exhibits used in this Agreement (in bold typeface) are for convenience only and shall be disregarded in interpreting this Agreement.

9.4. **Parties Represented by Counsel.** The Parties acknowledge that they have sought the advice of, and have been advised by, legal counsel of their choice in connection with the negotiation of this Agreement, and that the Parties have willingly entered into this Agreement with a full understanding of the legal and financial consequences of this Agreement.

9.5. **Drafting of Agreement.** The Parties acknowledge that (i) this Agreement is the result of negotiations among, and has been reviewed by, each Party and its respective counsel, and (ii) all Parties contributed to the drafting of this Agreement. Accordingly, this Agreement shall be deemed to be the product of all Parties, and no ambiguity shall be

construed in favor of or against any Party on the basis that it drafted the ambiguous provision.

9.6. **Rules of Interpretation.** The following rules of interpretation shall apply to this Agreement, including all Exhibits:

9.6.1. **Singular; Plural.** Unless the context otherwise requires, words used in this Agreement shall include in the singular number the plural and in the plural number the singular.

9.6.2. **Self Reference; Incorporation by Reference; Cross Reference.** Except as otherwise specified herein, all references in this Agreement to an "Article," "Section," or "Exhibit" shall mean an Article, Section, or Exhibit of this Agreement. The words "hereof," "herein," and "hereunder," and words of similar import when used in this Agreement, including the Exhibits, shall, unless otherwise specified, refer to this Agreement as a whole and not to any particular Article, Section, Exhibit or provision of this Agreement, and all references to Articles, Sections or Exhibits shall be to all subparts of such Articles, Sections or Exhibits. All Exhibits or Appendices shall be deemed to be incorporated by reference and made a part of this Agreement.

9.6.3. **Inclusive of Permitted Successors.** Unless otherwise stated, any reference in this Agreement to any person or entity shall include its permitted successors and assigns and, in the case of any Governmental Authority, any entity succeeding to its functions and capabilities.

9.6.4. **Inclusive References.** When used herein, the words "include," "includes," and "including" shall not be limiting and shall be deemed in all instances to be followed by the phrase "without limitation."

10. MISCELLANEOUS

10.1. **Notices.** All notices, demands and other communications between or among any of the Parties hereunder shall be in writing and shall be deemed to have been duly given: (i) when personally delivered; (ii) upon actual receipt (as established by confirmation of receipt or otherwise) during normal business hours, otherwise on the first (1st) Business Day thereafter, if transmitted by facsimile or telecopier with confirmation of receipt; (iii) on the date of receipt when mailed by certified mail, return receipt requested, postage prepaid; or (iv) on the date of receipt when sent by overnight courier; in each case, to the addresses set forth in Section 10.2, or to such other addresses as a Party may from time to time specify by notice to the other Parties given pursuant to this Section 10.1. Email addresses are provided for convenience only and do not constitute notice.

10.2. **Parties' Addresses.** Notices required under this Agreement shall be delivered to:

If to the Enron Parties:

Enron Corp.
Office of Corporate Secretary
1221 Lamar, Suite 1600
Houston, Texas 77010
Facsimile: 713-853-2534
Email: Not Applicable

Enron Wholesale Services
1221 Lamar, Suite 1600
Houston, Texas 77010
Facsimile: 713-646-3490
Attention: Legal Department
Email: michelle.neal@enron.com

With a copy to:

Charles A. Moore
LeBoeuf, Lamb, Greene & MacRae, L.L.P
1000 Main Street, Suite 2550
Houston, TX 77002
Telephone: 713-287-2000
Facsimile: 713-287-2100
Email: cmoore@llgm.com

If to Tacoma:

Superintendent, Tacoma Power
3628 South 35th Street
Tacoma, Washington 98409
Telephone: 253-502-8203
Facsimile: 253-502-8378

With a copy to:

Michael J. Kurman
Arent Fox PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339
Telephone: 202-857-6345
Facsimile: 202-857-6395
Email: kurman.michael@arentfox.com

If to Trial Staff:

Joel M. Cockrell
Trial Staff Counsel
Federal Energy Regulatory Commission
888 1st Street, N.E.
Washington D.C. 20426
Telephone: 202-502-8153
Facsimile: 202-208-0118
Email: joel.cockrell@ferc.gov

- 10.3. **Successors and Assigns.** Subject to Section 10.7, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective permitted successors and assigns.
- 10.4. **Costs.** Except as provided in this Agreement, each of the Parties shall pay its own costs and expenses, including attorneys' fees, incurred in connection with the disputes that are settled herein and the negotiation, preparation and implementation of this Agreement including costs and expenses incurred in preparing stipulations, making motions and seeking and obtaining the Required Approvals.
- 10.5. **Taxes.** The Parties acknowledge and agree that, notwithstanding any other provision set forth herein or the termination of the contracts relating to the purchase or sale of electricity or natural gas or related transactions ("Contracts"), the provisions of the Contracts relating to "Taxes" (as that term may be defined in each particular Contract), if any, shall not be terminated by this Agreement, and each Party shall remain obligated under such provisions. Without limiting the generality of the foregoing, to the extent a Party is obligated or responsible for paying and/or reimbursing the other Party for Taxes under the terms of a particular Contract, such Party shall remain obligated to pay or reimburse the other Party for such Taxes under such Contract notwithstanding the execution and delivery of this Agreement. If any sales or similar taxes (excluding any taxes imposed on either Party's net income) are imposed with respect to the termination payments and responsibility for such taxes is not set forth in the Contracts, the Party responsible for paying such taxes under applicable law shall pay all such taxes in accordance with applicable law. Upon request, each Party that has purchased a commodity or service from another Party under the Contracts (as applicable, each a "Purchaser"), shall provide to the selling Party an appropriate certificate of exemption or other appropriate evidence of exemption for each jurisdiction in which the transactions occurred and for which Purchaser could provide such valid exemption certificate or other evidence of exemption.
- 10.6. **Modifications.** This Agreement may be modified only if in writing and signed by each of the Parties affected by the proposed modification. No waiver of any provision of this Agreement or departure from any term of this Agreement shall be effective unless in writing and signed by Tacoma with respect to any waiver requested by the Enron Parties and by the Enron Parties with respect to any waiver requested by Tacoma. No modification will be effective unless any approval of the FERC or the Enron Bankruptcy Court that may be required with respect to such modification, if any, has

been received. Absent agreement of all Parties to the proposed change, the standard of review for any changes to this Agreement proposed by a Party, a non-party or FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “Mobile-Sierra” doctrine).

- 10.7. **Assignments.** Subject to the provisions hereof, Enron acknowledges that Tacoma intends to sell, transfer and/or assign, and may have sold, transferred and/or assigned, any or all interest in its \$2,288,519.71 Allowed Claim and/or its \$1,000,000 Tacoma Allocation of Trial Staff Claim allowed under Section 4.1.1 and Enron expressly consents to such assignment, sale or transfer. Except as provided in this Section 10.7, no Party shall assign or transfer this Agreement or its rights or obligations hereunder (with the exception of the unsecured claims allowed in Section 4.1.1) without the prior written consent of the other affected Parties; provided, however, that any Party may, without the consent of the other Parties (and without relieving itself from liability hereunder), transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party, provided that the assignee agrees in writing to be bound by the terms and conditions hereof (without limiting the foregoing, it is acknowledged that Enron may transfer or assign this Agreement without the consent of the other Parties (and without relieving itself from liability hereunder) to any entity or trust succeeding to all or any part of Enron’s bankruptcy estate in connection with its administration, liquidation and/or wind-up under or pursuant to the Plan) and which assignee agrees in writing to be bound by the terms and conditions hereof. Notwithstanding the preceding provisions and any and all other provisions of this Agreement, nothing contained in this Section 10.7, or elsewhere in this Agreement shall be construed to preclude or have the effect of precluding any past, present or future assignments by Tacoma or its assignees of its entitlements to receive distributions of any nature or kind (including without limitation monetary payments stemming from the portion of the Trial Staff Claim allocated to and allowed Tacoma); and Tacoma and its assignees shall be and remain fully entitled to make any such assignments without the consent of the Enron Parties; provided however, that all distributions on allowed claims against EPMI shall be governed by and consistent with the Bankruptcy Code and the Plan and its administrators, and subject to their requirements.
- 10.8. **Joint and Several Liability.** Nothing in this Agreement shall be deemed to create any joint and several liability among Tacoma or among the Enron Parties or to create a Joint Liability Claim as that term is defined in the Plan and the Bankruptcy Code.
- 10.9. **Consents; Acceptance.** Unless otherwise expressly provided herein, any consent, acceptance, satisfaction, cooperation, or approval required of a Party under this Agreement shall not be unreasonably withheld or delayed.
- 10.10. **Choice of Forum.** Nothing in this Agreement is intended to effect a choice of forum, as between the FERC and the Enron Bankruptcy Court, for the resolution of any dispute, if any, that may arise under this Agreement.

10.11. **Public Announcements.** The Parties agree to share their respective written publicity and press releases prior to the execution of this Agreement and prior to consummation of the economic exchanges contemplated herein, and to make such changes as the Parties agree are necessary to address reasonable concerns of any Party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives. This Agreement may be executed in any number of counterparts, each of which, when executed, will be deemed to be an original and all of which taken together will be deemed to be one and the same instrument. This Agreement may be executed by signature via facsimile or .pdf (portable document format) transmission, which shall be deemed to be the same as an original signature.

[SIGNATURES APPEAR ON THE PAGES THAT FOLLOW]

**ENRON SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON**

ENRON CORP.

By: *K Wade Cline*
Name: K. Wade Cline
Title: Managing Director and General Counsel
Date: 6/23/06

ENRON NORTH AMERICA CORP.

By: *L. Don Miller*
Name: L. Don Miller
Title: President and Chief Executive Officer
Date: 6/23/06

ENRON POWER MARKETING, INC.

By: *L. Don Miller*
Name: L. Don Miller
Title: President and Chief Executive Officer
Date: 6/23/06

ENRON ENERGY MARKETING CORP.

By: *K Wade Cline*
Name: K. Wade Cline
Title: Chief Executive Officer
Date: 6/23/06

ABA

**ENRON SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON PARTIES**

ENRON ENERGY SERVICES, INC.

By: *K Wade Cline*
Name: K. Wade Cline
Title: Chief Executive Officer
Date: 6/23/06

ENA UPSTREAM COMPANY, LLC

By: *L. D. Miller*
Name: L. Don Miller
Title: President and Chief Executive Officer
Date: 6/23/06

ENRON CANADA CORP.

By: *L. D. Miller*
Name: L. Don Miller
Title: President, Chief Executive Officer and
Managing Director
Date: 6/23/06

ENRON COMPRESSION SERVICES COMPANY

By: *L. D. Miller*
Name: L. Don Miller
Title: President
Date: 6/23/06

ABA

**ENRON SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON**

ENRON MW, L.L.C.

By: Enron North America Corp., the Sole Member

By: *L. Don Miller*
Name: L. Don Miller
Title: President and Chief Executive Officer
Date: 6/23/06

ENRON ENERGY SERVICES NORTH AMERICA, INC.

By: *K. Wade Cline*
Name: K. Wade Cline
Title: Chief Executive Officer
Date: 6/23/06

**ENRON CAPITAL & TRADE RESOURCES INTERNATIONAL
CORP.**

By: *L. Don Miller*
Name: L. Don Miller
Title: President and Chief Executive Officer
Date: 6/23/06

ARA

**ENRON SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON**

ENRON ENERGY SERVICES, L.L.C.

By: Enron Corp., 98.16% interest Member

By: *K Wade Cline*
Name: K. Wade Cline
Title: Managing Director and General Counsel
Date: 6/23/06

By: Enron Capital Management II Limited Partnership, 0.04% interest Member

By: Enron Capital II Corp., its General Partner

By: *K Wade Cline*
Name: K. Wade Cline
Title: President
Date: 6/23/06

By: Enron Capital Management III Limited Partnership, 1.8% interest Member

By: Enron Capital IV Corp., its General Partner

By: *K Wade Cline*
Name: K. Wade Cline
Title: President
Date: 6/23/06

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**ENRON SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON**

ENRON ENERGY SERVICES OPERATIONS, INC.

By: *K Wade Cline*
Name: K. Wade Cline
Title: Chief Executive Officer
Date: 6/23/06

ENRON NATURAL GAS MARKETING CORP.

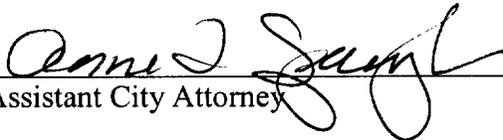
By: *L. D. Miller*
Name: L. Don Miller
Title: President and Chief Executive Officer
Date: 6/23/06

ABA

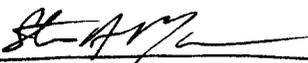
**TACOMA SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON**

By: 
Name: Mark Crisson
Title: Director of Utilities
Date: 6-26-06

Approved:


Chief Assistant City Attorney

Approved:


Finance Director

**FERC TRIAL STAFF SIGNATURE PAGE
TO
SETTLEMENT AND RELEASE OF CLAIMS AGREEMENT
BETWEEN
TACOMA AND ENRON**

FERC TRIAL STAFF

By: Joel Cockrell
Name: Hollis Alpert
Joel Cockrell
Edith Gilmore
Title: Trial Staff Counsel

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