

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

**City of Azusa, California**

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**Docket No. EL03-146-000**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO MOTION TO DISMISS SHOW CAUSE PROCEEDING**

On August 28, 2003, Commission Trial Staff (“Staff”) filed a Motion To Dismiss Show Cause Proceeding (“Motion”), in resolution of all issues related to the City of Azusa, California (“Azusa”) set for hearing in *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 (2003) (“the Gaming Show Cause Order” or “Order”), specifically in *City of Azusa, California*, Docket No. EL03-146-000. Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, and to the Commission’s “Notice of Extension of Time” in this docket, dated September 8, 2003, the California Independent System Operator Corporation (“CAISO”) timely submits this answer to the Motion.

**I. Background**

The Gaming Show Cause Order required Azusa to show cause why it should not be found to have engaged in Paper Trading, as that practice was described in the Order. In the Motion, Staff requested that Azusa be dismissed from the Show Cause proceeding established by the Order, that Docket No.

EL03-146-000 be terminated, and that Azusa be relieved from further obligation with respect to that docket.

## **II. Discussion**

The CAISO opposes Staff's request that the Commission relieve Azusa of further obligation with respect to the practice of Paper Trading. As the Motion indicates, the California Parties' submission of March 3, 2003 in the 100-Day Discovery Proceeding contained allegations that Azusa engaged in this practice in specific hours, and the CAISO's market notice of July 3, 2003 indicated that payments to Azusa for Ancillary Services had been rescinded because the generating capacity that was to provide the Ancillary Services had not been available. Motion at PP. 2.3, 2.4. Staff's reasons for suggesting dismissal of Azusa, despite the Commission's apparent reliance on these very materials in issuing the Show Cause Order, *see id.*, were (i) "after examining, and questioning, Azusa's portfolio analysis" Staff is satisfied that Azusa had sufficient unloaded capacity to meet its potential Ancillary Service obligations at the time it submitted Ancillary Service bids;<sup>1</sup> and (ii) Azusa's rescinded payment of \$4,450 occurred outside of the time period relevant to this proceeding, and "by itself does not indicate that Azusa was participating in a prohibited gaming practice." Motion at P. 3.2. The CAISO submits that Staff has, in effect, requested not a

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<sup>1</sup> The CAISO reiterates that it does not agree with the Commission's conclusion in the Order that if an entity had sufficient capacity to meet its commitments, then the practice of offering and then repurchasing Ancillary Services represented legitimate arbitrage rather than Gaming behavior. The ISO has sought rehearing of this issue, and that rehearing is currently pending before the Commission.

dismissal of the Show Cause Order as to Azusa, but instead a finding of fact, on the merits, in favor of Azusa. Staff is saying, simply enough, that *it* has satisfied itself that Azusa always had sufficient capacity to back up its Ancillary Service bids.<sup>2</sup> But Azusa has been subjected to no discovery nor cross-examination, and neither the CAISO nor any other party is privy to the “portfolio analysis” that Staff relied on to satisfy itself that Azusa always had sufficient capacity.<sup>3</sup> In these circumstances, it would be inappropriate for the Commission to dismiss Azusa from the proceeding. To do so would be to make a finding on the merits without having really investigated those merits through the procedure that the Commission initiated in the Gaming Show Cause Order.

In opposing dismissal of Azusa on the issue of Paper Trading, the CAISO does not mean to cast any aspersions on Staff’s good faith or its competence. To the contrary, the CAISO has complete faith in both. In many circumstances, the Commission rightly relies upon Staff investigations to make decisions whether to initiate proceedings or even take enforcement action. But in this situation, the Commission initiated a trial-type proceeding before a Presiding Judge, and Staff’s suggestion of dismissal would amount to a short-circuiting of that procedure. In the Gaming Show Cause Order, the Commission invited

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<sup>2</sup> Although the CAISO concedes that the \$4,450 in rescinded Ancillary Services payments referenced in the ISO’s July 3, 2002 Market Notice does not, itself, demonstrate that Azusa was engaging in a Gaming Practice, this fact does not mean that Azusa should be dismissed from consideration. All evidence relating to Azusa should be considered, including the evidence submitted by the California Parties in the 100-Day Discovery proceeding.

<sup>3</sup> Based on an initial review by CAISO Staff of supporting documentation submitted to the Commission by Azusa, the data submitted by Azusa appears to be nothing more than a record of schedules and bids submitted to the CAISO’s computerized scheduling system and does not appear to provide information on the actual resources backing these schedules, which would be

Identified Entities to *settle* with Staff rather than go through the full proceeding. Order at P. 73. It did not, however, suggest that the entire process of responding to the Order, followed by discovery and cross-examination, could be cut off so long as an Identified Entity could convince Staff that the Identified Entity was “clean,” -- during a very short period when Staff was dealing with many dozens of Identified Entities and without the use of any compulsory process.

Finally, even if the Commission were to dismiss the Show Cause Order as to Azusa on the issue of Paper Trading, the CAISO does not believe it would be appropriate to close the docket or to relieve Azusa of all further obligations. Rather, the docket should remain open until the entire Show Cause proceeding has been concluded, and Azusa should remain a party and subject to discovery if it has information relevant to potential gaming by other parties. There would be no prejudice to Azusa, and there is no reason for other parties to have to go through the cumbersome process of obtaining discovery from a non-party, in order to obtain discovery, if necessary, from Azusa.

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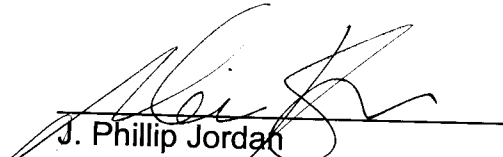
necessary to perform the type of “portfolio analysis” necessary to verify that sufficient resources were available to support A/S schedules.

**III. Conclusion**

For the reasons stated, the CAISO objects to relieving Azusa of further obligations with respect to the practice of Paper Trading. In any event, even if Azusa were to be relieved from further obligations with respect to this practice, the docket should remain open and Azusa should be subject to discovery as a party.

Respectfully submitted,

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Dated: September 30, 2003

## CERTIFICATE OF SERVICE

In accordance with the order issued by the Presiding Administrative Law Judge I hereby certify that I have this day served the foregoing document by posting an electronic copy on the Listserv for this proceeding, as maintained by the Commission.

Dated at Washington, DC, on this 30<sup>th</sup> day of September, 2003.

  
Michael Kunselman