

those practices were described in the Order. In the Agreement, Portland and Staff propose to settle Cutting Non-Firm by having Portland pay \$12,730, and to settle False Import for no money. While the Order also identified Portland as a potential participant in Circular Schedules and Paper Trading, the Commission declined to investigate Portland further on those practices because the evidence indicating Portland's potential use of those practices also indicated that the revenues associated with the transactions were, with respect to each practice, less than the \$10,000 threshold established by the Commission.

II. Discussion

The CAISO has no objection to settlement of Cutting Non-Firm on the terms in the Agreement.

With respect to False Import, the Agreement, which requires Portland to pay nothing to settle with respect to this practice, rests on Staff's interpretation of the Gaming Show Cause Order. In Staff's view, a False Import transaction requires that a seller (i) engage in a transaction involving export of energy from and re-import of energy into the State of California, (ii) involve a third party in the export-plus-import chain, and (iii) sell the allegedly imported power to the CAISO at a price above the then-applicable price cap in the CAISO's Real Time Market. Moreover, Staff's position is that the Commission made subject to the Gaming Show Cause Order only those False Imports that occurred between May 1, 2000 and October 2, 2000. The CAISO disagrees with this interpretation. In our Request for Rehearing and/or Clarification of the Order, filed on July 25, 2003,

we asked the Commission to clarify that the investigation into potential False Import transactions would include all exports scheduled on a Day-Ahead or Hour-Ahead basis that could be associated with a subsequent sale of real time energy as an import, which is the screen that the CAISO's Department of Market Analysis used to identify potential False Import transactions in the CAISO Report.¹ As we explained therein, limiting the scope of inquiry to only those transactions that involved an export from the State of California, a third-party, and a sale to the CAISO above the then-applicable price cap would be inconsistent with the Commission's rationale for concluding that False Import transactions constitute a Gaming Practice in the first place. The rationale was that they involved a misrepresentation to the CAISO that the applicable power had been imported from outside the CAISO system, when, in fact, the generation was California generation that had never left the CAISO system. We also noted that the Commission compiled its list of entities that appear to have engaged in False Import based on those entities that were named in the CAISO Report as possibly having engaged in Ricochet (*i.e.*, false import) transactions. We therefore urge the Commission, at this time, not to approve the Agreement with respect to the issue of False Import. Instead, we respectfully request that the Commission decline to address the Agreement until it renders a decision on the appropriate scope of the investigation into the practice of False Import in

¹ On July 11, 2003, the California Parties filed a motion for expedited clarification of the Order, in which they also requested that the Commission clarify that the investigation into potential False Import transactions would include all transactions where power was exported or claimed to be exported from California via any market other than Real-Time, and then re-imported in Real Time. "California Parties' Motion for Expedited Clarification of Order to Show Cause Concerning

response to the requests for rehearing and/or motions for clarification of the Order that are currently pending before it.²

The CAISO objects to dismissal with prejudice of *any* claims against Portland for *any* trading activity at issue in the consolidated proceedings, as Portland requests in the Agreement, at ¶ 3.4; it is not in the public interest to prevent the possibility of bringing additional show cause proceedings against Portland, should facts turn up that would justify such proceedings. In addition, neither the Agreement, if approved by the Commission, nor payment of the Settlement Amount, will affect Portland's potential liability under any other proceeding now ongoing, or prevent the institution of future Show Cause or other proceedings against Portland based on time periods, practices or transactions different from those made relevant to Portland in the Gaming Show Cause Order.

III. Conclusion

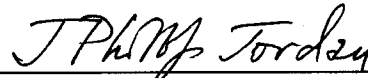
While the CAISO would not object to approval of the Agreement with respect to Cutting Non-Firm, it requests that the Commission not rule on the Agreement before it addresses the requests for rehearing and motions for clarification pending on the issue of False Import. The CAISO objects to dismissal with prejudice of *any* claims against Portland for *any* trading activity at issue in the consolidated proceedings, as Portland requests in the Agreement, at

Gaming and/or Anomalous Market Behavior," Docket Nos. EL03-137, *et al.* (filed July 11, 2003) at 5-13.

² The CAISO's analysis showed that, between January 1, 2000 and June 21, 2001, Portland engaged in transactions involving 9,775 MW that may have constituted "ricochet" or megawatt laundering." See "Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos," Submitted to Federal Energy Regulatory Commission Staff in Response to Final

¶ 3.4; it is not in the public interest to prevent the possibility of bringing additional show cause proceedings against Portland, should facts turn up that would justify such proceedings.

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 30th day of September, 2003.


J. Phillip Jordan