



Cutting Non-Firm as those practices were described in the Order. In the Agreement, Puget Sound and Staff propose to settle as to Cutting Non-Firm for \$17,092. They propose to settle as to False Imports and Paper Trading for no money.

## **II. Discussion**

The CAISO has no objection to settlement of the Show Cause Order as to Cutting Non-Firm and Paper Trading on the terms in the Agreement. However, the CAISO's concurrence with these portions of the Agreement is limited only to those matters set for resolution in this Docket pursuant to the Order. The CAISO objects to the proposed condition of this settlement that the Commission provide assurance that "at no time shall Puget be subject to further scrutiny or investigation by the Commission for its trading activities in the State of California during the period January 1, 2000 through June 20, 2001, except for those issues that may be raised in Docket No. IN03-10-000." Agreement at P. 4.5. It is not in the public interest to prevent the possibility of bringing additional show cause proceedings against Puget Sound, should facts turn up that would justify such proceeding based on time periods, practices or transactions different from those made relevant to Puget Sound in the Gaming Show Cause Order.

With respect to False Import, the Agreement, which requires Puget Sound 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 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 ISO Report.<sup>1</sup> 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

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<sup>1</sup> 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 Gaming and/or Anomalous Market Behavior," Docket Nos. EL03-137, *et al.* (filed July 11, 2003) at 5-13.

Commission compiled its list of entities that appear to have engaged in False Import based on those entities that were named in the ISO 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 response to the Requests for Rehearing and/or Clarification of the Order that are currently pending before it.<sup>2</sup>

The CAISO also objects to the terms of the Agreement with respect to the issue of Paper Trading. The Agreement states that, based on hourly transaction data provided by Puget Sound and an accompanying affidavit, Staff is satisfied that Puget Sound always had resources available to back up its Ancillary Services bids into California during January 2000 through June, 2001. Agreement at P. 3.3. The CAISO submits that this provision of the Agreement is different than the others, in that it reflects the result of a finding on the merits made by Staff based on evidence provided by only one party, Puget Sound. However, Puget Sound has been subjected to no discovery nor cross-examination, and neither the CAISO nor any other party is privy to any evidence beyond the affidavit and data provided by Puget Sound that accompanies the

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<sup>2</sup> The CAISO's analysis showed that, between January 1, 2000 and June 21, 2001, Puget Sound engaged in transactions involving 288,783 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 Report on Price Manipulation in The Western Market by Department of Market Analysis, California ISO, June 2003, at Table 10.

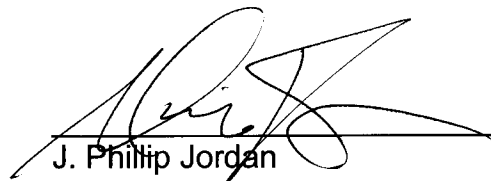
Agreement. Under these circumstances, it would be inappropriate for the Commission to accept a settlement that dismissed Puget Sound from the Show Cause proceeding with respect to this issue. To do so would be to make a finding on the merits without having really investigated those merits through the procedure that the Commission initiated in the Order.

In opposing the Agreement on this issue, 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 settlement for no money (which, in effect, is really no more than a request for dismissal) would amount to a short-circuiting of that procedure.

### III. Conclusion

While the CAISO would not object to approval of the Agreement with respect to Cutting Non-Firm Schedules and Paper Trading, 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. Moreover, the CAISO objects to the proposed condition of this settlement that "at no time shall Puget be subject to further scrutiny or investigation by the Commission for its trading activities in the State of California during the period January 1, 2000 through June 20, 2001, except for those issues that may be raised in Docket No. IN03-10-000."

Respectfully submitted,



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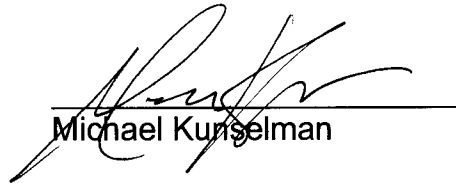
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Dated: September 30, 2003

## 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