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SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7647  
WWW.SWIDLAW.COM

MICHAEL KUNSELMAN  
DIRECT DIAL: (202) 424-7757  
FAX: (202) 295-8465  
JPJORDAN@SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
TEL. (212) 973-0111  
FAX (212) 891-9598

October 3, 2003

The Honorable Magalie Salas  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, DC 20426

Re: **American Electric Power Service Corporation**  
**Docket No. EL03-169-000**

Dear Secretary Salas:

On September 30, 2003, the California Independent System Operator Corporation ("ISO") filed with the Commission comments concerning a proposed settlement in the above-captioned proceeding. We have since discovered that that pleading contains inaccuracies. The ISO, therefore, has enclosed an original and fourteen copies of the corrected version of the comments concerning the proposed settlement in the above-captioned proceeding.

Also enclosed are two extra copies of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance. Please contact the undersigned if you have any questions regarding this filing.

Sincerely,



Michael Kunselman

Counsel for the California  
Independent System Operator Corporation

Enclosures

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OFFICE OF THE SECRETARY  
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FEDERAL ENERGY  
REGULATORY COMMISSION

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UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION  
FEDERAL ENERGY REGULATORY COMMISSION

Puget Sound Energy, Inc.

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Docket No. EL03-169-000

**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION ON AGREEMENT AND STIPULATION**

**To: Presiding Administrative Law Judge Carmen A. Cintron**

On August 28, 2003, Puget Sound Energy, Inc. ("Puget Sound"), on behalf of Puget Sound and the Federal Energy Regulatory Commission Trial Staff ("Staff"), submitted an Agreement and Stipulation ("Agreement") to the Commission in full and final resolution of all issues related to Puget Sound set for hearing on June 25, 2003 in *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 (2003) (the "Show Cause Order" or the "Order"). Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2003), and to the ruling of the Presiding Judge extending the deadline for comments on the Agreement until September 30, 2003, the California Independent System Operator Corporation ("CAISO") submits these comments on the Agreement.

**I. Background**

The Gaming Show Cause Order required Puget Sound to show cause why it should not be found to have engaged in False Import, Paper Trading, and

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>

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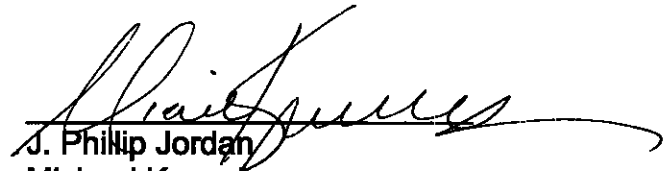
<sup>2</sup> The CAISO's analysis showed that, between January 1, 2000 and June 21, 2001, Puget Sound engaged in transactions involving 288,783 MW that may have constituted "ricochet" or megawatt laundering." See "Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos," Submitted 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.

**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,

Charles F. Robinson,  
General Counsel  
Gene Waas,  
Regulatory Counsel  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 916-7049

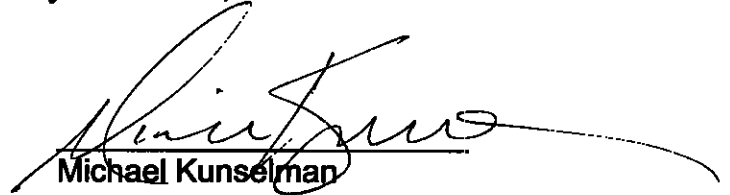
  
J. Phillip Jordan  
Michael Kunselman  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Tel: (202) 424-7500

Dated: October 3, 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 3<sup>rd</sup> day of October, 2003.



Michael Kunselman