

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

104 FERC ¶ 61,153

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

America Electric Power Co.	Docket No. PA03-1-000
Aquila Merchant Services, Inc.	Docket No. PA03-2-000
Coral Energy Resources, LP	Docket No. PA03-3-000
CMS Marketing Services & Trading	Docket No. PA03-4-000
Dynegy, Inc.	Docket No. PA03-5-000
Duke Energy Trading and Marketing, LLC	Docket No. PA03-6-000
El Paso Merchant Energy, LP	Docket No. PA03-7-000
Mirant Americas Energy Marketing, LP	Docket No. PA03-8-000
Reliant Resources, Inc.	Docket No. PA03-9-000
Sempra Energy Trading Corp.	Docket No. PA03-10-000
Williams Energy Marketing & Trading Company	Docket No. PA03-11-000

ORDER ACCEPTING SUBMISSION OF INFORMATION WITH RESPECT TO
INTERNAL PROCESSES FOR REPORTING TRADING DATA

(Issued July 29, 2003)

1. This order accepts submissions from the above-named companies showing that they have corrected their internal processes for reporting trading data to the trade press or that they no longer sell natural gas at wholesale by responding to specific questions set forth later in an April 30, 2003 order. This order is part of the ongoing reform of the natural gas and electricity price index publishing process. Participants in the reform process have included index publishers, market participants, the Commission, the Commodity Futures Trading Commission and the National Association of Regulatory Utility Commissioners.

BACKGROUND

2. On April 30, 2003, the Commission issued an order directing the above-named companies to show that they had corrected their internal processes for reporting trading data to the trade press or that they no longer sold natural gas at wholesale by responding to specific questions set forth later in this order. The order adopted company specific

recommendations contained in Chapter III of Staff's Final Report on Price Manipulation in Western Markets (Docket No. PA02-2-000 issued March 26, 2003.)

2. In Chapter III, of the Final Report, entitled Manipulation of Published Natural Gas Price Indices, Staff extensively described the reporting practices of companies that admitted to providing false data to the trade press and described in detail the responses to an October 22, 2002 data request regarding reporting practices.¹ We will not repeat that detailed information here but we will note several of Staff's conclusions. First, with respect to the five companies that admitted false reporting, several common themes prevailed. Reporting was done by trading desks and the traders themselves, with little if any internal oversight by management or trading desk heads.

3. The Final Report recognized that there had been movement within the industry to make fundamental changes to the price reporting process. It acknowledged that most of the companies involved in natural gas trading and marketing had implemented or were in the process of implementing new procedures for reporting trading information. In many cases, the reporting function was being moved to the companies' risk management offices. Suggestions for reform and strides toward reform have come from market participants, risk officers, the trade publications themselves, new entrants into price reporting, government agencies, and consumer groups, among others.

4. Since the issuance of the Final Report, there has been significant progress made in improving the index publishing process. On April 24, 2003, the Commission and the CFTC held a conference on Natural Gas Price Formation. Comments were submitted before and after the conference under Docket No. AD03-7. On June 25, 2003, the Commission held a follow up Staff Technical Conference and Workshop on Energy Price Discovery and Indices in AD03-7, in which participants responded to questions published in a June 13, 2003, Staff Paper on Price Formation Issues. Most recently, on July 2, 2003, the Staff held a workshop in connection with the June 25 Staff Technical Conference to explore the concept of a "safe harbor" for addressing inadvertent errors made by buyers and sellers of natural gas and electricity in reporting to index publishers and similar entities. The index reform process is ongoing in Docket No. AD03-7.

5. The April 30, 2003 order directed the above-named companies to show the following:

¹Final Report pp. III-3 through III-28.

Those employees, including trading desk heads and managers, who participated in manipulations or attempted manipulations of the published price indices have been disciplined.

The company has a clear code of conduct in place for reporting price information.

All trade data reporting is done by an entity within the company that does not have a financial interest in the published index (preferably the chief risk officer).

The company is cooperating fully with any government agency investigating its past price reporting practices.

COMPANY RESPONSES

Those employees, including trading desk heads and managers, who participated in manipulations or attempted manipulations of the published price indices have been disciplined.

6. All of the companies that have concluded that any of their employees provided inaccurate information to index publishers (America Electric Power Co. (AEP), Duke Energy Trading and Marketing, LLC (DETM), Sempra Energy Trading Corp. (SET), Mirant Americas Energy Marketing, LP (Mirant), Aquila Merchant Services, Inc. (AMS), El Paso Merchant Energy, LP (EPME), CMS Marketing Services & Trading (CMS), Williams Energy Marketing & Trading Company (Williams), and Dynegy, Inc. (Dynegy)) state that they have disciplined the employees or the employees are no longer employed by the company.

7. Two companies, Reliant Resources, Inc. (Reliant) and Coral Energy Resources, LP (Coral), concluded that none of their employees attempted to manipulate the published price indices. Therefore, Reliant and Coral stated that they did not find it necessary to discipline any employees.

The company has a clear code of conduct in place for reporting price information.

8. Five companies (DETM, AEP, Coral, SET, and Mirant) state that they are currently reporting price information to index publishers. All of those companies state

that there is a clear code of conduct in place for price reporting. The other six companies state that they are not currently reporting any information to index publishers.

9. AMS, EPME, Dynegy and CMS have shut down or are in the process of shutting down their trading operations. As such, they would have little, if any, information to report to index publishers and they are no longer reporting any information to index publishers. All of those companies do, however, have codes of conduct in place regarding communication with the index publishers.

10. Williams and Reliant are still trading electricity and natural gas, but have suspended reporting information to index publishers. Reliant states that while it has suspended reporting any information to index publishers since May 2002, it expects to "resume reporting to the Trade Press once reliable, industry-wide reporting procedures have been agreed upon, including agreement as to an appropriate internal code of conduct for all reporting entities."² Reliant further states that it has been participating in and endorses the effort of the Committee of Chief Risk Officers (CCRO) "Best Practices for Energy Price Indices" which addresses the issue of submitting data to index publishers. Williams states that it has no plan to resume reporting information to index publishers. Williams states that its employees are prohibited from communicating with any members of the trade press and any employee who violates that policy shall be subject to disciplinary action.

All trade data reporting is done by an entity within the company that does not have a financial interest in the published index (preferably the chief risk officer).

11. Four of the five companies that are currently reporting (DETM, AEP, SET and Mirant) have moved the reporting function to the risk office, the other (Coral) indicated that as of July 1, 2003 all trade data will be transmitted by its Risk Control Department. In addition, Reliant states that it intends to move the price reporting function to the risk management department when it resumes reporting to index publishers.

12. DETM describes its current reporting process in detail. It has specific processes for reporting four specific products: (1) Daily Gas Price Submission; (2) Monthly Gas Price Submissions; (3) Daily Power Price Submissions; and (4) Hourly Power Price Submissions. In all cases DETM reports transaction-level data that has been verified by the mid-office to the industry publications. For gas transactions, DETM reports all fixed-

²RES response at 3.

price purchases and sales. For power transactions, DETM currently reports sales but not purchases because it only has confidentiality agreements with the index publishers for sales. DETM states that it is currently working on confidentiality agreements for reporting purchases and anticipates that will be completed in a few weeks, at which time DETM will begin reporting fixed-price purchases as well. DETM further states that in all cases, a copy of the submitted report sent to the publications is stored on a network drive for five years.

13. Mirant, DETM and Reliant explicitly endorse the CCRO Best Practices which recommends that all reporting to index publishers be done by an entity that does not have a financial interest in the index, such as the risk management office. The CCRO recommendation is:

Data providers should verify and submit data to index publishers through a department that is independent of the front office (e.g., corporate risk control, middle office or back office). Data providers should verify the accuracy and completeness of the data submitted. Data providers should confirm to the index publishers that all such data is being provided by a department independent of the front office, and that the data comprises of actual transactions undertaken by the reporting entity.³

The company is cooperating fully with any government agency investigating its past price reporting practices.

14. All of the companies state that they are fully cooperating with any ongoing investigation of their past reporting practices by any government agency.

DISCUSSION

15. The Commission finds that all eleven companies have met the requirements in the April 30 order. That is they have all shown that they are either no longer selling natural gas at wholesale or they have met the four requirements stated in paragraph 5.

16. The Commission notes that some investigations into companies' price reporting practices are ongoing. Therefore, while some companies state that they have concluded that none of their employees manipulated or attempted to manipulate the published indices, that conclusion could change. In such cases, disciplinary action and subsequent

³CCRO "Best Practices for Energy Price Indices", February 27, 2003.

notification to the Commission would be necessary in order to be in compliance with the April 30 order. In addition, ongoing cooperation with any government agency investigating price reporting practices is necessary for compliance with the April 30 order.

17. The Commission notes that Reliant, DETM and Mirant have explicitly endorsed the CCRO Best Practices for index reporting. As described in paragraph 4, one of the issues facing the industry is the concern that honest mistakes in reporting will be seen as attempts to manipulate the published indices. Some companies have stopped reporting information to index publishers due to concerns that they will be subject to prosecution or civil actions if such errors occur. The July 2 Staff Workshop explored proposed ways to address this issue. The CCRO Best Practices contain the essential elements recommended in Chapter III of the Final Report (price, volume, location, buy/sell indicator, counterparty, and audits of the data submission process). Accordingly, the CCRO Best Practices have the attributes that give confidence that discrepancies are due to human error rather than manipulation.

18. In the April 30 order we stated that we believed the serious lack of reporting standards and controls by jurisdictional wholesale sellers of natural gas uncovered by Staff in this investigation warrants ordering the eleven companies to make the showings that they had put in place internal standards and formal processes for reporting information to index publishers. We further stated that we believed this was an important step toward restoring the credibility of published indices and that the required demonstration should send notice to the involved companies and the industry that we are intent on ensuring that published price indices are accurate and reliable measures of trading activity. The responses described in this order, along with the progress made at the April 24 conference, the June 25 conference and the July 2 workshop are additional steps in the process of restoring the credibility of the published indices. We commend all of the parties involved in these efforts.

Docket No. PA03-1-000, et al.

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The Commission orders:

The companies listed in the caption to this order have met the requirements of the April 30 order.

By the Commission

(S E A L)

Magalie R. Salas,
Secretary.