

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

Tucson Electric Power Company) Docket No. EL03-177-000

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

On August 26, 2003, Commission Trial Staff ("Staff") filed a Motion To Dismiss Show Cause Proceeding ("Motion"), in resolution of all issues related to Tucson Electric Power Company ("Tucson Electric") set for hearing *in American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 (2003) ("the Gaming Show Cause Order" or "Order"). 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 Tucson Electric to show cause why it should not be found to have engaged in False Import, as that practice was described in the Order. In the Motion, Staff requested that Tucson Electric be dismissed from the Show Cause proceeding established by the Order, that this docket be terminated, and that Tucson Electric be relieved from further obligation

with respect to this docket. While as of the time of the Motion, the Commission had not acted on a request from California Parties to add Tucson Electric to the list of Identified Entities under the Paper Trading practice, Staff concluded that there is no basis for maintaining the Order against Tucson Electric on that practice.

II. Discussion

The CAISO agrees with Staff that Tucson Electric need not be required to respond to the Order on the practice of Paper Trading. As the Motion notes, the CAISO informed Tucson Electric on August 6, 2003, that it had determined that the 53 Ancillary Service buy-back transactions by Tucson Electric that the CAISO had identified in its June 2003 Report could be “attributed to congestion/transmission on the branch group where the import was located” and therefore were not considered to be Paper Trading by the CAISO. In other words, whether Tucson Electric in fact had the capacity available to provide the Ancillary Services at the time it sold them to the CAISO, as Tucson Electric claims (see Exhibit A to Motion (Affidavit of David Hutchens), at paragraph 11), is irrelevant.¹

¹ Mr. Hutchens, at paragraph 11, states that the CAISO in its June 2003 Report and data submitted to Identified Entities in mid-July 2003, “accused Tucson of Paper Trading.” Referring to the CAISO’s series of reports on the Enron trading strategies, or its data provided to Identified Entities and filed with the Commission in mid-July 2003, as “accusing” any specific party of engaging in any specific strategy, is to mischaracterize the reports and the data. As the CAISO noted in the reports and has noted in other forums, the CAISO’s analyses and reports were screening efforts, intended to identify transactions meriting explanation by the participants or further investigation by parties with the benefit of compulsory process. The screens were in some respects over-inclusive, but the ISO’s investigation in other respects may have been under-inclusive. See, e.g., “Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos,” Submitted to Federal Energy Regulatory Commission Staff in Response to Final

With respect to False Import, the Motion 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 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.² 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

Report on Price Manipulation in The Western Market by the Department of Market Analysis, California ISO, June 2003, at 3-4.

² 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'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 dismiss this specific show cause proceeding with respect to the issue of False Import. Instead, we respectfully request that the Commission decline to rule on the Motion until it renders a decision on the appropriate scope of the investigation into the practice of False Import in response to the pending requests for rehearing and/or motions for clarification of the Order.³

Finally, even if the Commission were to dismiss the Gaming Show Cause Order as to Tucson Electric on both issues, the CAISO does not believe it would be appropriate to close the docket or to relieve Tucson Electric of all further obligations. Rather, the docket should remain open until the consolidated proceedings have been concluded, and Tucson Electric should remain a party and subject to discovery if it has information relevant to potential gaming by other

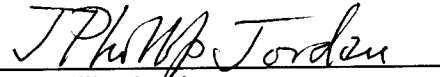
³ An Affidavit of David Hutchens, attached to the Motion as Exhibit A, states, at paragraph 7, that in one transaction in which Tucson Electric may have engaged in a ricochet trade involving an out-of-market ("OOM") sale to the CAISO, Tucson Electric sold to the CAISO at the same price at which Tucson Electric had purchased the power from the California Power Exchange ("PX"). Mr. Hutchens erred. Exhibit 1 to the Affidavit shows that the clearing price in the PX (column N) was \$214, while Tucson Electric sold to the CAISO (column P) at \$250.

parties. There would be no prejudice to Tucson Electric, and it would serve the interests of efficiency, especially in light of the short discovery periods in these proceedings, to avoid the cumbersome process of obtaining discovery from a non-party.

III. Conclusion

The CAISO does not object to relieving Tucson of any need to respond on Paper Trading, but requests that the Commission defer ruling with respect to False Import until it has addressed the requests for rehearing and motions for clarification pending on that practice. In any event, even if both issues are dismissed as to Tucson Electric, the docket should remain open and Tucson Electric should remain a party until the consolidated proceedings have been concluded.

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