

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

Public Service Company of New Mexico) Docket No. EL03-168-000

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

On August 25, 2003, Commission Trial Staff ("Staff") filed a Motion To Dismiss Show Cause Proceeding ("Motion"), in resolution of all issues related to Public Service Company of New Mexico ("PNM") 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 PNM 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 PNM be dismissed from the Show Cause proceeding established by the Order, that this docket be terminated, and that PNM be relieved from further obligation with respect to this docket.

II. Discussion

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 an 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 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

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

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 ISO 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.²

Even if the Commission were to dismiss the Order as to PNM on the False Import issue, the CAISO does not believe it would be appropriate to close the docket or to relieve PNM of all further obligations. Rather, the docket should remain open until the consolidated proceedings have been concluded, and PNM should remain a party and subject to discovery if it has information relevant to potential gaming by other parties. There would be no prejudice to PNM, and it would serve the interests of efficiency, in light of the short discovery periods in these proceedings, to avoid the cumbersome process of obtaining discovery from

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

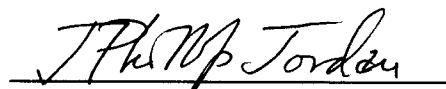
² The CAISO's screens showed that, between January 1, 2000 and June 20, 2001, PNM engaged in transactions totaling 2,452 MW that potentially constituted "Ricochet" or "megawatt laundering." See "Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos," Submitted to Federal Energy Regulatory Commission Staff in Response to Final Report on Price

a non-party. It is especially appropriate to maintain PNM's party status, because PNM has been implicated in megawatt laundering/ricochet/false import transactions with other entities (e.g., through "parking" arrangements), and it is important that discovery into these transactions be facilitated to the extent possible.

III. Conclusion

The CAISO requests that the Commission defer ruling on the Motion until it has addressed the requests for rehearing and motions for clarification pending on the issue of False Import. In any event, even if the Motion is eventually granted insofar as the specific False Import transactions with respect to PNM are concerned, the docket should not be closed and PNM should remain a party and subject to discovery, including discovery on parking arrangements it might have had with other entities.

Respectfully submitted,


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Dated: September 30, 2003

Manipulation in The Western Market by Department of Market Analysis, California ISO, June 2003, at Table 10.

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