



docket be terminated, and that Salt River 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 ISO Report.<sup>1</sup> As we explained therein, limiting the scope of inquiry to only those transactions that involved an export from 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

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 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.<sup>2</sup>

Even if the Commission were to dismiss the Order as to Salt River, the CAISO does not believe it would be appropriate to close the docket or to relieve Salt River of all further obligations. Rather, the docket should remain open until the consolidated proceedings have been concluded, and Salt River should remain a party and subject to discovery if it has information relevant to potential

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

<sup>2</sup> The CAISO's screens showed that, between January 1, 2000 and June 20, 2001, Salt River engaged in transactions totaling 10,506 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

gaming by other parties. There would be no prejudice to Salt River, 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**

For the reasons stated, 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 issues are dismissed as to Salt River, the docket should remain open and Salt River should remain a party until the consolidated proceedings are concluded.

Respectfully submitted,

Handwritten signature of J. Phillip Jordan in black ink, written in a cursive style. The signature is positioned above a horizontal line.

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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.

A handwritten signature in black ink that reads "J. Phillip Jordan". The signature is written in a cursive style with a horizontal line underneath it.

J. Phillip Jordan