

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

Aquila Merchant Services, Inc.)	Docket No. EL03-138-000
(f/k/a Aquila, Inc.))	
)	
Aquila Merchant Services, Inc.)	Docket No. EL03-181-000
(f/k/a Aquila, Inc.))	(Not Consolidated)

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

**To: Presiding Administrative Law Judge Carmen A. Cintron
Presiding Administrative Law Judge Isaac D. Benkin**

On August 29, 2003, Aquila Merchant Services Inc. (“AMS”) 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 AMS set for hearing on June 25, 2003 in *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 (2003) (the “Gaming Show Cause Order” or the “Gaming Order”), and in *Enron Power Marketing, Inc. And Enron Energy Services, Inc., et al.*, 103 FERC ¶ 61,346 (2003) (the “Partnership Show Cause Order” or the “Partnership Order”). Pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2003), and to the rulings of the Presiding Judges extending the deadline for comments on the Agreement until September 30, 2003, the

California Independent System Operator Corporation (“CAISO”) timely submits these comments on the Agreement.

I. Background

The Gaming Show Cause Order required AMS to show cause why it should not be found to have engaged in False Import, Cutting Non-Firm and Circular Scheduling, as those practices were described in the Order. The Partnership Show Cause Order required AMS to show cause why it should not be found to have engaged in False Import with Public Service Company of New Mexico (“PSNM”). In the Agreement, AMS and Staff propose to settle False Import (in both the docket established by the Gaming Order and the docket established by the Partnership Order) for no money, and also to settle Cutting Non-Firm in the Gaming Order docket for no money. They propose to settle Circular Scheduling in the Gaming Order docket by having AMS pay \$ 75,975.42.

II. Discussion

The CAISO supports the Agreement insofar as it proposes to settle Cutting Non-Firm in the Gaming Order docket by having AMS pay no money and Circular Scheduling in the same docket by having AMS pay \$75,975.42.

The CAISO does not support the proposal to settle False Import at this time, in both dockets, for no money. That proposal appears to rest 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 a 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 Gaming Order (and, by extension, the Partnership 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 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

¹ On July 11, 2003, the California Parties filed a motion for expedited clarification of the Gaming 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

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 approve the Agreement with respect to the issue of False Import. Instead, we respectfully request that the Commission decline to rule on 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 motions for clarification of the Order that are currently pending before it.²

The CAISO notes that neither the Agreement, if approved by the Commission, nor Aquila's payment of the amount required by the Agreement, will affect Aquila's potential liability under any other proceeding now ongoing, or prevent the institution of future Show Cause or other proceedings against Aquila based on time periods, practices or transactions different from those made relevant to Aquila in the Gaming Order or the Partnership Order, nor does the Agreement purport to do so. In addition, even if the Agreement is approved, Aquila will still have a responsibility to respond to discovery from *all parties*, in

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

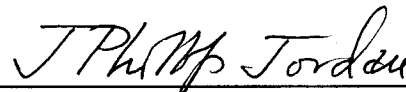
² The CAISO's screens showed that, between January 1, 2000 and October 1, 2000, Aquila engaged in transactions totaling 15,357 MW that may have constituted "ricochet" or "megawatt laundering." See "Supplemental Analysis of Trading and Scheduling Strategies Described in Enron Memos," Submitted to Federal 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.

addition to the responsibility to respond to discovery from Staff (which Aquila acknowledges in ¶ 4.4 of the Agreement).

III. Conclusion

While the CAISO supports the Agreement insofar as it deals with the practices of Cutting Non-Firm and Circular Scheduling, the CAISO requests that the Commission not approve the Agreement until it has addressed the requests for rehearing and motions for clarification pending with respect to the practice of False Import.

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