

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

Williams Energy Services Company) Docket No. EL03-179-000

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

To: Presiding Administrative Law Judge Carmen A. Cintron

On August 29, 2003, the Federal Energy Regulatory Commission Trial Staff ("Staff"), on behalf of Staff and Williams Energy Services Company ("Williams") submitted an Agreement and Stipulation ("Agreement") to the Commission in full and final resolution of all issues related to Williams 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 "Order"). Pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602 (2003), and to the ruling of the Presiding Judge extending the deadline for comments on the Agreement until September 30, 2003, the California Independent System Operator Corporation ("CAISO") submits these comments on the Agreement.

I. Background

The Gaming Show Cause Order required Williams to show cause why it should not be found to have engaged in Circular Scheduling, Paper Trading,

Load Shift, and False Import, as those practices were described in the Order. In the Agreement, Williams and Staff propose to settle as to Circular Scheduling and Paper Trading by having Williams pay \$40,087 and \$5,143, respectively. They propose to settle as to Load Shift and False Import for no money.

II. Discussion

The CAISO has no objection to settlement of the Show Cause Order as to Circular Scheduling, Paper Trading, and Load Shift on the terms in the Agreement. However, the CAISO's concurrence with these portions of the Agreement is limited only to those matters set for resolution in this Docket pursuant to the Order. The CAISO does not believe that it is appropriate for this Agreement to resolve or affect any other proceeding, any pending rehearing or clarification requests with respect to the Order, or the possibility of subsequent proceedings against [party] based on the outcome of those requests, or relating to different time periods, practices, or transactions.

With respect to False Import, the Agreement, which requires Williams to pay nothing to settle with respect to this practice, 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 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.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 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 approve the Agreement with respect to the issue of False Import. Instead, we respectfully request that the Commission decline to address the Agreement until it renders a decision on the appropriate scope of the investigation into the practice of

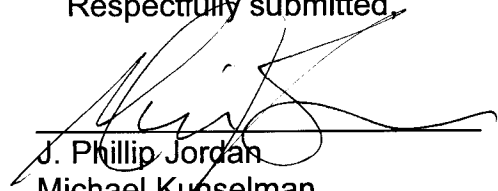
¹ On July 11, 2003, the California Parties filed a motion for expedited clarification of the Order, in which they also requested that the Commission clarify that the investigation into potential False Import transactions would include all transactions where power was exported or claimed to be exported 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 Gaming and/or Anomalous Market Behavior," Docket Nos. EL03-137, *et al.* (filed July 11, 2003) at 5-13.

False Import in response to the Requests for Rehearing and/or Clarification of the Order that are currently pending before it.²

III. Conclusion

While the CAISO would not object to approval of the Agreement with respect to Cutting Non-Firm, it requests that the Commission not rule on the Agreement before it addresses the requests for rehearing and motions for clarification pending on the issue of False Import.

Respectfully submitted,



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² The CAISO's analysis showed that, between January 1, 2000 and June 21, 2001, Williams engaged in transactions involving 1,900 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.

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.


Michael Kunselman