

*STATEMENT ON TODAY'S FERC ACTIONS*

**PAT WOOD III**

**MARCH 26, 2003**

Our remaining actions on today's agenda arise from a severe disruption that took place in the energy markets of the Western United States three years ago. As noted by an earlier Commission, the markedly lower availability of hydro power that summer shifted significant reliance to natural gas-fired power generation, particularly in California, which had, two years before, revised its power market structure. The increased natural gas demand was not easily handled by the natural gas infrastructure. The rules that governed the revised California market were not well-suited for a supply-constrained market, and as we will lay out more fully today, this environment allowed certain market participants to take advantage of customers in both commodity markets.

Today we take up, as promised, the "Big Four" dockets relating to events in Western power and gas markets in 2000-2001. A tremendous amount of work by market participants and by our Staff and the Administrative Law Judges have gotten us to this point today and I am grateful for the substantial effort undertaken by all.

One basket of items – that related to the El Paso Natural Gas Pipeline Company – has been removed from our decision making today. Last week parties on both sides of the CPUC v. El Paso case requested we postpone action today due to a settlement in principle that parties have reached. Because the settled items in this case may affect a separate set of complaints regarding the allocation of capacity on El Paso Pipeline and a certificate application to add new capacity to El Paso Pipeline, these items have been struck as well. Since the oral argument in the CPUC v. El Paso case in early December, Staff and Commissioners have been immersed in substantial review of the record in this case, and I want to particularly thank those who worked hard, including through the holiday season, to put together an exceptionally clear and thorough analysis and Order.

The second of the items we will take up today is the Staff Report on its investigation of the Western Energy Markets. In that report, which we will hear next, a number of issues relating to gas and power markets are taken up in substantial detail. Staff has made 31 recommendations in that report for Commission action. We will discuss these recommendations. Some of those we act on today; others will be taken up shortly. A central conclusion of the Staff Report is that markets for natural gas and power in California are closely tied together, and that dysfunctions in each fed off one another. The first part of the Staff Report focuses on issues in the gas markets, particularly upon the reliance on

reported gas index prices to establish the appropriate mitigated market clearing price in the California Refund Proceeding.

Concerned by the potential for the indices to be manipulated, Staff raised this issue in its Interim Report released in August 2002 and the Commission asked for public comments on Staff's recommendations. Based on further evidence uncovered during the Staff investigation and by other agencies investigating these issues that there has been manipulation, today we adopt a revised version of Staff's August recommendation to adjust the gas price methodology used in the California Refund Proceeding's calculation of the mitigated market clearing price, while allowing suppliers to be made whole for their actual gas purchases upon a showing to the Commission of their actual daily gas costs.

The Staff Report also, as directed, performed an extensive study on the correlation between spot markets and forward markets and concluded that there is a statistically significant linkage between spot prices and shorter term (1-2 years) contracts.

The Staff report also reviews numerous other issues in the Western power markets, including the Enron strategies and the role of Enron's Online trading platform. Based on a study performed by the California ISO, a number of market participants (both FERC-regulated and non-FERC-regulated) have been identified as having engaged in these strategies and entered into business relationships with Enron that raise concerns. Under our current law, the Commission can seek disgorgement of profits in these cases, provided that a violation of a then-existing tariff is shown. The Staff Report also identifies other potential past violations of tariffs. In addition to Staff's investigation, a number of parties in the "100 Day Discovery" process initiated in November have identified many of the same events, as well as other items. These were filed on March 3rd and responded to on March 20th. As Staff will outline later, our review of this substantial volume of filings is not complete, and we will not vote out enforcement orders on these issues until we can combine the issues raised in those pleadings with those being reported today in the Staff Report. The identified companies are listed in the Staff Report. While our review continues, the Commission will be seeking immediate comment from parties on tariff language that the Staff Report identified as being applicable to potential violations.

We will consider today draft show cause orders to revoke market-based rate authority for four power marketers: Enron Power Marketing, Inc., Enron Energy Services, Inc., Reliant Energy Services, Inc. and BP Energy Company. We also consider show cause orders to terminate the gas marketing certificates for eight companies: Bridgeline Gas Marketing, LLC, Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services

Company, Enron Energy Services, Inc., Enron MW, LLC, and Enron North America Corp. We will get an update from Staff who have been diligently reviewing the voluminous record that came in this month from many parties during the "100 Days Discovery" process. We plan to follow up on some new physical withholding issues raised in that process. Separately, we will also post a staff analysis of a recent California PUC report on generator withholding. We will also, later this afternoon, make available to the public through our Internet site the Staff Report and the records of the Staff Investigation and both rounds of the "100 Days Discovery" process. I note that other agencies are also pursuing actions based on this same set of facts.

In summing up this second item, I must thank Don Gelinas, Rich Armstrong and their many collaborators on the Staff investigative team who have dedicated the past year of their professional careers to the investigation, analysis and preparation of this exhaustive report. I also thank Jennifer Shepherd and her team for their intensive review of the filings in the "100 Day Discovery" process this past month. While much of the material was duplicative of staff's findings, there were some new items we received, which we are still reviewing.

The third item on today's docket is the California Refund Case, which is based on Judge Birchman's rendering of Findings issued last November. Based on a complaint filed in August 2000, the Commission, in December 2000, issued an extensive order deeming that the spot markets in the California PX and California ISO were dysfunctional. Based on that order, the Commission, in July 2001, ordered that the clearing prices experienced in those dysfunctional markets be mitigated to the levels that would have been experienced had a truly competitive market continued to operate.

In the July 2001 order the Commission established a formula that would be used to calculate the mitigated market clearing price from the earliest possible refund effective date – October 2, 2000 through June 21, 2001, when a forward-looking mitigation plan became effective. A version of that plan continues in effect today across the entire Western Interconnection. The draft order on Judge Birchman's Findings largely affirms his calls on the host of issues he addressed after the hearing last year, but substitutes Staff's recommended gas price treatment for the spot gas price indices used to run the numbers at the hearing. This issue, raised by the Staff's Interim Report last August, was subject to comment last Fall, and today we conclude that it is appropriate to adjust the gas price proxy used to calculate the mitigated market clearing price, while allowing suppliers to be made whole for their actual gas purchases upon a showing to the Commission of their actual gas costs. This showing may be made by suppliers in the next 45 days and will be subject to on-the-record review before the final refund determinations are

finalized. This action will increase the level of refunds from the level calculated by Judge Birchman in the hearing.

Our Fourth and final series of cases relates to a series of contracts entered into during the 2000-2001 time frame between suppliers and customers in the West. These include the October 2000 complaint by Puget Sound Energy relating to spot markets in the Pacific Northwest which was the subject of an earlier referral to Judge Carmen Cintron; a complaint regarding longer term contracts between Nevada Power, Sierra Pacific, Southern California Water Commission and Snohomish PUD against a number of sellers, also handled by Judge Cintron; and, another complaint regarding longer term contracts between the California Department of Water Resources and a number of sellers, which was handled by Judge Bobbie Jo McCartney. We intend to discuss the interplay of these requests to abrogate contracts with the applicable standard of review for such action and with the Staff Report's finding of a correlation between spot market dysfunction and shorter-term contracts.

In addition to the orders we adopt today, there will be other orders and some follow-on proceedings to fully address these three groups of items. These will be handled in coming weeks. I thank our very hard-working staff for their contribution in analyzing and debating these very important issues over the past several months and thank them in advance for the work that remains.

Bill and Nora, I know that we are looking at these issues, perhaps, a bit differently, but I appreciate the shared sense of seriousness and dedication to just outcomes that we bring to the table. We are committed to timely resolution of all of these issues, based on the record and on the law, since our decisions will undoubtedly undergo judicial review. We are also committed to taking the necessary steps in collaboration with our sister regulators, public officials and the industry to ensure that customers in all parts of our country never experience this sort of failure again.