

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

**City of Pasadena, California**

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**Docket No. EL03-148-000**

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

On August 29, 2003, Commission Trial Staff (“Staff”) filed a Motion To Dismiss Show Cause Proceeding (“Motion”), in resolution of all issues related to the City of Pasadena, California (“Pasadena”) set for hearing in *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 (2003) (“the Gaming Show Cause Order” or “Order”), specifically in *City of Pasadena, California*, Docket No. EL03-148-000. 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 Pasadena to show cause why it should not be found to have engaged in Paper Trading, as that practice was described in the Order. In the Motion, Staff requested that Pasadena be dismissed from the Show Cause proceeding established by the Order, that

Docket No. EL03-148-000 be terminated, and that Pasadena be relieved from further obligations with respect to that docket.

## **II. Discussion**

The CAISO opposes Staff's request that the Commission relieve Pasadena of further obligation with respect to the practice of Paper Trading. As the Motion indicates, the California Parties' submission of March 3, 2003 in the "100-Day Discovery" Proceeding contained allegations that Pasadena engaged in this practice, and the CAISO's Market Notice of July 3, 2003 indicated that payments to Pasadena for Ancillary Services had been rescinded because the generating capacity that was to provide the Ancillary Services had not been available. Motion at P. 2.2. Staff's reasons for suggesting dismissal of Pasadena, despite the Commission's apparent reliance on these very materials in issuing the Show Cause Order, *see id.*, were (i) "Staff's independent analysis of the relevant data supports Pasadena's claim that the incidents associated with its inclusion in the ISO's Market Notice were largely due to the operating constraints of Pasadena's generating plants"; and (ii) "Dr. Fox-Penner's testimony against Pasadena does not support an allegation that the later engaged in Paper Trading." Motion at P. 3.2. The CAISO submits that Staff has, in effect, requested not a dismissal of the Show Cause Order as to Pasadena, but instead a finding of fact, on the merits, in favor of Pasadena. Staff is saying, simply enough, that *it* has satisfied itself that the data supports the conclusion that Pasadena did not engage in Paper Trading. However, Pasadena has been

subjected to no discovery nor cross-examination. In these circumstances, it would be inappropriate for the Commission to dismiss Pasadena from the proceeding. To do so would be to make a finding on the merits without having really investigated those merits through the procedure that the Commission initiated in the Gaming Show Cause Order.

In opposing dismissal of Pasadena on the issue of Paper Trading, the CAISO does not mean to cast any aspersions on Staff's good faith or its competence. To the contrary, the CAISO has complete faith in both. In many circumstances, the Commission rightly relies upon Staff investigations to make decisions whether to initiate proceedings or even take enforcement action. But in this situation, the Commission initiated a trial-type proceeding before a Presiding Judge, and Staff's suggestion of dismissal would amount to a short-circuiting of that procedure. In the Gaming Show Cause Order, the Commission invited Identified Entities to *settle* with Staff rather than go through the full proceeding. Order at P. 73. It did not, however, suggest that the entire process of responding to the Order, followed by discovery and cross-examination, could be cut off so long as an Identified Entity could convince Staff that the Identified Entity was "clean," -- during a very short period when Staff was dealing with many dozens of Identified Entities and without the use of any compulsory process.


Finally, even if the Commission were to dismiss the Show Cause Order as to Pasadena on the issue of Paper Trading, the CAISO does not believe it would be appropriate to close the docket or to relieve Pasadena of all further obligations. Rather, the docket should remain open until the entire Show Cause

proceeding has been concluded, and Pasadena 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 Pasadena, and there is no reason for other parties to have to go through the cumbersome process of obtaining discovery from a non-party, in order to obtain discovery, if necessary, from Pasadena.

### III. Conclusion

For the reasons stated, the CAISO objects to relieving Pasadena of further obligations with respect to the practice of Paper Trading. In any event, even if Pasadena were to be relieved from further obligations with respect to this practice, the docket should remain open and Pasadena should be subject to discovery as a party.

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 30<sup>th</sup> day of September, 2003.



Michael Kunselman