

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

TransAlta Energy Marketing (U.S.) Inc.) **Docket No. EL03-202-000**
and TransAlta Energy Marketing)
(California) Inc.)

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTION TO DISMISS PARTNERSHIP 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 TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California) Inc. (jointly "TransAlta") set for hearing in *Enron Power Marketing, Inc. and Enron Energy Services, Inc., et al.*, 103 FERC ¶ 61,346 (2003) ("the Partnership Order" or "Order"). 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 Partnership Order required TransAlta to show cause why it should not be found to have engaged in one or more gaming practices, in violation of the tariff of either the CAISO or the California Power Exchange ("PX"), or both, through partnerships, alliances or other arrangements with another entity or

entities. In the Motion, Staff requested that TransAlta be dismissed from the proceeding established by the Order, that this docket be terminated, and that TransAlta be relieved from further obligation with respect to this docket. Motion at ¶ 4.1.

II. Discussion

The Motion notes that the Order as to TransAlta was based on a parking arrangement with Public Service Company of New Mexico (“PSNM”) identified in both the Final Staff Report in Docket No. PA02-2-000 and testimony of Dr. Fox-Penner on behalf of California Parties in the 100-day discovery proceeding. Motion at ¶ 2.2. After meetings with TransAlta, and review of information submitted by TransAlta, Staff concluded “that TransAlta’s parking arrangement with PSNM was not intended or used to facilitate a Circular Scheduling strategy.” *Id.* at ¶ 3.2 (page 5). Staff therefore moved for dismissal, while noting that the proceeding should be reopened if other evidence of gaming by TransAlta should be presented. *Id.*

The CAISO believes it would be inappropriate to dismiss TransAlta based on Staff’s review of materials furnished by TransAlta, without subjecting TransAlta to compulsory discovery and its witnesses to cross-examination. Staff has, in effect, determined the merits of the Partnership Order with respect to TransAlta based on some level of informal communication during a period when Staff was dealing with numerous entities about possible settlement. Without impugning Staff in any way, the CAISO respectfully suggests that this is simply not the process the Commission had in mind when it established hearing

procedures before a Presiding Administrative Law Judge. It would be one thing if TransAlta had offered to *settle* the proceeding based on some percentage or even all of its *verified* profits from the parking arrangement, but it is quite another for Staff to recommend outright *dismissal* based on TransAlta's representations.

The CAISO submits that there would be no undue prejudice to TransAlta from keeping this proceeding alive to enable intervenors to conduct discovery of TransAlta and, if it is in order, cross-examination of the witnesses TransAlta puts forward to explain the parking arrangement in the form of a response to the Partnership Order. Presumably, TransAlta already has identified its witness (Mr. Lonnie Enns, who submitted an affidavit in support of the Motion), and it would require little effort for that witness to recast his statements in the form of testimony. Thereafter, the discovery and cross-examination process could lead to the same end-point Staff would now reach without formal process; but it might not. Without following the process, one will never know.

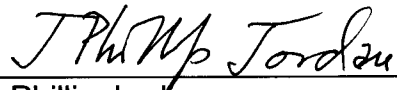
Even if the Commission does relieve TransAlta of the obligation to submit its response to the Partnership Order (and to undergo discovery and cross-examination), the CAISO does not believe it would be appropriate to close the docket or to relieve TransAlta of all further obligations. Rather, the docket should remain open until the consolidated proceedings have been concluded, and TransAlta 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 TransAlta, 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

The CAISO objects to relieving TransAlta from further obligation to respond to the Partnership Order. Even if TransAlta is relieved from the obligation to respond, the docket should remain open and TransAlta should remain 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 30th day of September, 2003.



J. Phillip Jordan