

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

**Arizona Public Service Company            )            Docket No. EL03-139-000**

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

On October 29, 2003, Commission Trial Staff (“Staff”) filed a Motion To Dismiss Show Cause Proceeding (“Motion”), in resolution of all issues related to Arizona Public Service Company (“APS”) set for hearing in *American Electric Power Service Corp., et al.*, 103 FERC ¶ 61,345 (2003) (“the Gaming Show Cause Order” or “Order”). Pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213, the California Independent System Operator Corporation (“CAISO”) timely submits this answer to the Motion.

**I.       Background**

The Gaming Show Cause Order required APS to show cause why it should not be found to have engaged in False Import or Paper Trading, as those practices are described in the Order. In the Motion, Staff requested that APS be dismissed from the Show Cause proceeding established by the Order, that this docket be terminated, and that APS be relieved from further obligation with respect to this docket.

## II. Discussion

The CAISO does not object to relieving APS of any obligation to respond further concerning the practice of Paper Trading. As noted in the Motion, the CAISO did not include APS on its lists of entities alleged to have participated in Paper Trading. Motion at ¶ 4.2.

Staff requests dismissal of the Order as to False Import because “[n]one of the transactions identified by the California ISO as potential False Import transactions by APS involve a third party,” and because “the only three hours identified as sales by APS above the rate cap in effect do not appear to be the type of transactions the Commission contemplated as False Import, even had a third party been involved.” Motion at ¶ 4.1. The Motion, in this respect, 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 Gaming 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 the CAISO's Department of Market Analysis used to identify potential False Import transactions in the CAISO Report.<sup>1</sup> 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 CAISO Report as possibly having engaged in Ricochet (i.e., False Import) transactions. We therefore urge the Commission, at this time, not to dismiss this specific show cause proceeding with respect to the issue of False Import. Instead, we respectfully request that the Commission decline to rule on the Motion until it renders a decision on the appropriate scope of the investigation

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<sup>1</sup> 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 the CAISO system 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.

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.<sup>2</sup>

Finally, even if the Commission were to dismiss the Gaming Show Cause Order as to APS on both issues, the CAISO does not believe it would be appropriate to close the docket or to relieve APS of its further obligations.

Rather, the docket should remain open until the consolidated proceedings have been concluded, and APS 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 APS, 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.

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<sup>2</sup> The CAISO's screens showed that, between January 1, 2000 and June 20, 2001, APS engaged in transactions totaling 110,183 MW that potentially constituted "False Import," "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.

### III. Conclusion

The CAISO would support dismissal of the Paper Trading issue, but urges the Commission not to dismiss the False Import issue until it has addressed the requests for rehearing and motions for clarification pending on that issue. In any event, even if both issues are dismissed as to APS, the docket should remain open and APS should remain a party until the consolidated proceedings are concluded.

Respectfully submitted,

Charles F. Robinson  
General Counsel  
Gene Waas  
Regulatory Counsel  
The California Independent  
System Operator Corporation  
151 Blue Ravine Road  
Folsom, CA 95630  
Tel: (916) 916-7049

/s/ J. Phillip Jordan  
J. Phillip Jordan  
Bradley R. Miliauskas  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, N.W., Suite 300  
Washington, DC 20007  
Tel: (202) 424-7500

Dated: November 13, 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 13<sup>th</sup> day of November, 2003.

/s/ J. Phillip Jordan  
J. Phillip Jordan

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