

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

Los Angeles Department of)
Water and Power

Docket No. EL03-157-000

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

On August 27, 2003, Commission Trial Staff (“Staff”) filed a Motion To Dismiss Show Cause Proceeding (“Motion”), in resolution of all issues related to the City of Los Angeles Department of Water and Power (“LADWP”) 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, 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 LADWP to show cause why it should not be found to have engaged in False Import, Circular Scheduling, Load-Shift, and Paper Trading, as those practices were described in the Order. In the

Motion, Staff requested that LADWP be dismissed from the Show Cause proceeding established by the Order, that this docket be terminated, and that LADWP be relieved from further obligation with respect to this docket.

II. Discussion

The CAISO opposes the Motion.

(a) False Import

With respect to False Import, the Motion 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 an 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 Order only those False Imports that occurred between May 1, 2000 and October 2, 2000. See Motion at ¶ 4.2. 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 CAISO

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 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 into the practice of False Import in response to the pending requests for rehearing and/or motions for clarification of the Order.

Staff applied its interpretation of the Order to the CAISO data submitted to Identified Entities and filed with the Commission in mid-July 2003, and determined that LADWP may have exported power from the CAISO system that

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

it had purchased in the forward markets, and then sold allegedly imported power in real time at prices above the cap, during the time frame considered by Staff to be applicable, in only three hours: hours 14, 16 and 17 on September 19, 2000. Staff then reviewed LADWP data and concluded that LADWP had not involved third parties in those export-import transactions. Based on that review of CAISO and LADWP data, and applying its view of the Order, Staff concluded there was no basis to continue the proceeding against LADWP on the issue of False Import. Motion at ¶ 4.3.

In comparison, under the CAISO's view of what should be considered as potential False Import, the CAISO data shows 1,975 MWs of False Import for the period January 1 through October 1, 2000, and 7,882 MWs of False Import for the period October 2, 2000 through June 21, 2001. 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. The CAISO respectfully submits that the Commission should clarify that the CAISO's understanding of what constitutes False Import is correct, and should decline to dismiss LADWP on this issue.

(b) Circular Scheduling

Staff recounted the Commission's description of this practice as one in which a market participant scheduled a counterflow in order to receive a congestion relief payment. Since Staff could not find any indication, in either the

Gaming and/or Anomalous Market Behavior," Docket Nos. EL03-137, *et al.* (filed July 11, 2003) at 5-13.

CAISO's data submitted in mid-July or in the studies submitted by Dr. Fox-Penner, that LADWP had received congestion relief payments from the CAISO during the relevant time period, Staff concluded there is no basis to continue the proceeding against LADWP on this issue. See Motion at ¶¶ 4.4.

The CAISO objects to dismissal of this aspect of the Gaming Show Cause Order, given the central role that LADWP's transmission rights played in various Circular Scheduling schemes employed by Enron. As noted in previous CAISO reports, such schemes would go undetected by the CAISO, and can only be detected and assessed based on additional information from LADWP and other entities.² The Affidavit of Mark S. Ward, Exhibit No. DWP-1, indicates that LADWP did not share in any profits that may have been realized by other sellers that may have utilized circular schedules to collect congestion revenues, and indicates that LADWP was not required to investigate how a purchaser of transmission from LADWP planned to utilize that transmission. DWP-1 at ¶¶ 18. However, based on that Affidavit, it does not appear that LADWP has shown that it did not profit in other ways from use of its transmission for Circular Scheduling (e.g., through buy-sell arrangements rather than direct profit-sharing agreements), or the degree to which it may have been aware that its transmission may have been utilized for Circular Scheduling by other entities.

² Since entities that schedule energy under existing contract rights ("ETCs") do not pay congestion revenues, it may be profitable for one entity (e.g., Enron) to create circular schedules by scheduling energy in the congested direction under the ETCs of another entity (e.g., LADWP), and then schedule this same energy back in the counterflow direction as a non-ETC schedule. Since such Circular Scheduling could well involve exports and imports under different Scheduling Coordinators, these may go undetected in the CAISO's analysis.

(c) Load Shift

The CAISO does not object to dismissal of the Order with respect to this practice and relieving LADWP of any further obligation to respond on the issue. The Motion notes that the CAISO's report does not indicate "that LADWP scheduled load within the ISO control area or collected any congestion revenues from counterflow schedules on the ISO's transmission system during the [relevant] period." Motion at ¶ 4.5. For the reason noted in the previous subpart, *i.e.*, that LADWP did not act as its own Scheduling Coordinator, it does not dispose of the issue to say simply that LADWP scheduled no load or collected no revenues from the CAISO. However, as the Motion also notes, *see id.*, the only Load Shift mentioned in the CAISO Report was the practice by Enron, which the CAISO understands did not represent LADWP as Scheduling Coordinator. Moreover, the Affidavit of Mr. Ward, Exhibit No. DWP-1, states, at ¶ 24, that LADWP did not *serve* load within the CAISO's Control Area, and that statement comports with the CAISO's understanding as well. Therefore, the CAISO does not believe LADWP could have engaged in the Load Shift strategy.

(d) Paper Trading

The CAISO does not object to dismissal with respect to this practice and relieving LADWP of any further obligation to respond on the issue. The Motion indicates that it is based on Staff's review of information submitted by LADWP; in Staff's view, the information shows LADWP always had sufficient capacity to provide the Ancillary Services it was awarded based on its bids in the Day-Ahead market. Motion at ¶ 4.7 (citing Exhibits DWP-29 through DWP-32). The CAISO

would not support dismissal based on Staff's review of this material. In the CAISO's view, whether LADWP in fact had sufficient capacity is an issue to be addressed in a hearing; the material LADWP submitted to Staff would need to be tested through discovery and cross-examination, instead of being accepted at face value. However, as the Affidavit of Mr. Ward, Exhibit DWP-1, notes, at ¶ 29, the CAISO Report of June 2003, and the underlying data, indicate that LADWP suffered a net loss on Ancillary Service buy-backs of \$28,540 for the period January 1, 2000 through June 21, 2001. See CAISO Report, Tables 7 and 8. Since LADWP had no net revenues from buy-backs, it seems an unnecessary expenditure of time and resources to investigate further to determine if these buy-backs constituted Paper Trading under the Order.

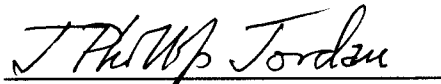
(e) Effect of dismissal

Even if the Commission were to dismiss the Order as to LADWP on all issues, the CAISO does not believe it would be appropriate to close the docket or to relieve LADWP of all further obligations. Rather, the docket should remain open until the consolidated proceedings have been concluded, and LADWP 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 LADWP, 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

For the reasons stated, the CAISO supports dismissal of the issues of Load Shift and Paper Trading, but opposes dismissal of the issues of False Import and Circular Scheduling. In any event, even if all issues are dismissed as to LADWP, the docket should remain open and LADWP should remain a party until the consolidated proceedings are concluded.

Respectfully submitted,



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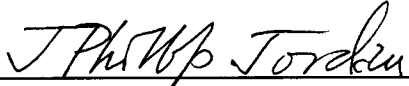
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Dated: September 30, 2003

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
J. Phillip Jordan