

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION—Continued

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(Issued June 25, 2003)

MASSEY, Commissioner, *dissenting in part*:

Today the Commissioner takes another step toward addressing the market manipulation that contributed to the extraordinary Western power crisis. I support this show cause order, and applaud the Commission for dealing with these issues. I write separately to express my disagreement with two aspects of the order.

First, I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the single market clearing price paid by all market participants and collected by all sellers. The Federal Power Act requires that all rates and charges be just and reasonable. Where the market has been manipulated so as to affect the market clearing price, that price is not just and reasonable and is therefore unlawful. Simply requiring that bad actors disgorge their individual profits does not make the market whole because all sellers received the unlawful price caused by the manipulation. The narrow remedy of profit disgorgement is not an adequate remedy for the adverse effect of the bad behavior on the market price, and may not be an adequate deterrent to future behavior. The appropriate remedy may be that the manipulating seller makes the market

whole.<sup>1</sup> Unfortunately, today's order appears to take this remedy off of the table. I would prefer to wait to see the extent of harm that specific behaviors caused before addressing the remedy issue.

Second, I would not apply the show cause order to non-public utilities that are otherwise not jurisdictional. Today's order uses the same rationale for doing so as was used to extend a refund obligation to non-public utilities in our July 25, 2001 Order.<sup>2</sup> I disagreed with the rationale at that time, and I still do not believe the Commission has this authority.

For these reasons, I dissent in part from today's order.

William L. Massey,  
Commissioner.

[FR Doc. 03-16821 Filed 7-2-03; 8:45 am]

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<sup>1</sup> The Commission has accepted the make the market whole remedy as part of a settlement for withholding generation from the California PX market. See 102 FERC ¶ 61,108 (2003).

<sup>2</sup> San Diego Gas & Electric Company *et al.*, 96 FERC ¶ 61,120 (2001).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03-134-000 and EL03-135-000]

Richard Blumenthal, Attorney General of the State of Connecticut, and The Connecticut Department of Public Utility Control v. NRG Power Marketing, Inc., Connecticut Light and Power Company; Notice of Initiation of Proceedings and Refund Effective Dates

June 27, 2003.

Take notice that on June 25, 2003, the Commission issued an order in the above-indicated docket nos. initiating proceedings in Docket Nos. EL03-134-000 and EL03-135-000 under section 206 of the Federal Power Act.

The refund effective date in Docket Nos. EL03-134-000 and EL03-135-000

will be 60 days after publication of this notice in the **Federal Register**.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 03-16823 Filed 7-2-03; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. RP00-469-005, RP01-22-007 and RP03-177-002]

#### East Tennessee Natural Gas Company; Notice of Compliance Filing

June 26, 2003.

Take notice that on June 23, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the revised tariff sheets listed on Appendices A and B of the filing.

East Tennessee states that the purpose of this filing is to comply with the Commission's May 23, 2003 "Order on Rehearing and Compliance Filings" issued in East Tennessee's Order No. 637 proceeding in the captioned dockets.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: July 7, 2003.

**Magalie R. Salas,**  
Secretary.

[FR Doc. 03-16750 Filed 7-2-03; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EL03-180-000, et al.]

#### Enron Power Marketing, Inc. and Enron Energy Services, Inc., et al.; Order To Show Cause Concerning Gaming and/or Anomalous Market Behavior Through the Use of Partnerships, Alliances or Other Arrangements and Directing Submission of Information

June 25, 2003.

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

In the matter of: EL03-180-000, EL03-181-000, EL03-182-000, EL03-183-000, EL03-184-000, EL03-185-000, EL03-186-000, EL03-187-000, EL03-188-000, EL03-189-000, EL03-190-000, EL03-191-000, EL03-192-000, EL03-193-000, EL03-194-000, EL03-195-000, EL03-196-000, EL03-197-000, EL03-198-000, EL03-199-000, EL03-200-000, EL03-201-000, EL03-202-000, EL03-203-000 (Consolidated): Enron Power Marketing, Inc. and Enron Energy Services, Inc., Aquila, Inc., City of Glendale, California, City of Redding, California, Colorado River Commission, Constellation Power Source, Inc., Coral Power, LLC, El Paso Merchant Energy, L.P., Eugene Water and Electricity Board, Idaho Power Company, Koch Energy Trading, Inc., Las Vegas Cogeneration, L.P., MIECO, Modesto Irrigation District, Montana Power Company, Morgan Stanley Capital Group, Northern California Power Agency, PacifiCorp, PECO, Powerex Corporation (f/k/a British Columbia Power Exchange Corporation), Public Service Company of New Mexico, Sempra Energy Trading Corporation, TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy marketing (California), Inc., Valley Electric Association, Inc.

#### I. Introduction

1. This order finds that, based on a report by Commission Staff (Staff Final Report), and evidence and comments submitted by market participants, there is evidence that Enron Power Marketing, Inc. and Enron Energy Services Inc. (Enron) and a number of entities identified below (collectively, Partnership Entities) worked in concert through partnerships, alliances or other arrangements (jointly, Partnerships) to engage in activities that constitute gaming and/or anomalous market

behavior (Gaming Practices) in violation of the California Independent System Operator Corporation's (ISO) and California Power Exchange's (PX) tariffs during the period January 1, 2000 to June 20, 2001.<sup>1</sup> This order also finds that there is evidence that a number of Partnership Entities, identified below, appear to have had similar Partnerships, which could be attempts to engage in similar activities as the Enron partnerships.<sup>2</sup>

2. Consequently, this order directs those Partnership Entities, in a trial-type evidentiary hearing to be held before an administrative law judge (ALJ), to show cause why their behavior during January 1, 2000 to June 20, 2001 does not constitute gaming and/or anomalous market behavior as defined in the ISO and PX tariffs.<sup>3</sup> In addition, we also direct the ALJ to hear evidence and render findings and conclusions quantifying the full extent to which the Partnership Entities may have been unjustly enriched as a result of their conduct, and the ALJ may recommend the monetary remedy of disgorgement of unjust profits and any other additional, appropriate non-monetary remedies. For example, the ALJ may identify non-monetary remedies such as revocation of a Partnership Entity's market-based rate authority and revisions to a Partnership Entity's code of conduct if the ALJ finds such remedies appropriate.

<sup>1</sup> June 20, 2001 has been selected as the end date of the relevant period in this proceeding, when a prospective mitigation and market monitoring plan took effect; see San Diego Gas & Electric Co., et al., 95 FERC ¶ 61,115 (April 26 2001 Order), *order on reh'g*, 95 FERC ¶ 61,418 (2001) (June 19 Order) (in the April 26, 2001 Order, the Commission issued a prospective mitigation and market monitoring plan for wholesale sales through the organized real-time markets operated by the ISO; the Commission acted on requests for rehearing and clarification of the April 26 Order on June 19, 2001, modifying and expanding the mitigation plan, effective June 20, 2001). While the mitigation plan was primarily intended to control the real-time energy market, it also had a disciplining effect on congestion costs and eliminated the opportunity to profit from Gaming Practices. The ISO Market Analysis Report for June 2001 shows that the average price of real-time electricity in June decreased 62 percent to \$104/MWh from the May average of \$275/MWh and total congestion costs for June 2001 were \$0.5 million, down from \$7 million in May.

<sup>2</sup> The Staff Final Report listed a number of entities that may have had a partnership, alliance or other arrangement with Enron. Not all of these entities are addressed in this order. Commission Staff is conducting further analysis to determine if any further action is appropriate for these other entities.

<sup>3</sup> This order also directs the Partnership Entities to (1) inventory all revenues from their partnerships, alliances or other arrangements discussed below and (2) file, as part of their show cause responses, these revenue figures as well as file all related correspondence, e-mail, memoranda, tapes, phone logs, transaction data, billing statements and agreements.