



- Staff committed to reporting back to the Commission within 60 days after FERC completed its Fact-Finding Investigation and related show cause proceedings and, if needed, to provide a status report at the end of 2003.

The purpose of this staff report is to update the Commission on FERC's Fact-Finding Investigation and to provide recommendations on opening formal investigations of possible mismanagement and/or misconduct by PGE, PacifiCorp, and Idaho Power during the western electricity crisis of 2000-01.

We addressed the requirements of misconduct and mismanagement cases in our final Trading Activity Report.<sup>1</sup> A misconduct case requires a finding that the company violated a law, tariff, or other legal requirement and that those illegal trading activities continue to harm customers on a going forward basis. We indicated that the Commission would not substitute its judgment of whether a violation occurred for that of the FERC. The Commission could make such a finding if the FERC adopted a settlement and did not make a determination on the legality of the company's actions. A mismanagement case requires a showing that the company was negligent in managing its trading activity. The threshold question is whether customers could have been harmed by the company's actions, not whether they actually were harmed. Utility customers are paying rates that include compensation for good management. If the utility mismanaged its trading activity, then a rate reduction to reflect a lower quality of management and lower compensation for it going forward could be justified. The process for either type of case involves a formal investigation and possibly a general rate case. Given these complicated and time-consuming processes, Staff believed that efficiency dictated waiting until FERC completed its work before deciding whether to proceed with formal investigations at the Public Utility Commission of Oregon.

### FERC's Show Cause Investigations

On March 26, 2003, FERC investigative staff issued its Final Report on Price Manipulation in Western Markets (Western Markets Report) in the Fact-Finding Investigation. On June 25, 2003, based largely on its investigative staff's Western Markets Report, the FERC issued three Show Cause Orders.<sup>2</sup>

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<sup>1</sup> "Trading Activities by Portland General Electric, PacifiCorp, and Idaho Power Company during the Western Electricity Crisis of 2000-01: Did They Violate Any Oregon Statutes, Rules, or Orders?" Oregon Public Utility Commission Staff. June 12, 2003. See pages 29-31.

<sup>2</sup> "Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices." Docket No. PA02-2-000. March 26, 2003.

- The Gaming Practices Order identified PGE, PacifiCorp, Idaho Power, and 40 others as entities required to show why they should not be found to have employed one or more 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>3</sup>
- The Partnership Gaming Order identified Idaho Power and 23 others as entities required to show why they should not be found to have worked in concert through partnerships, alliances or other arrangement to engage in activities that constitute gaming and/or anomalous market behavior in violation of the ISO and PX tariffs.<sup>4</sup>
- The Economic Withholding Order directed the FERC's Office of Market Oversight and Investigation (OMOI) to identify and investigate all parties who bid in the ISO and PX markets above \$250 per megawatt during the period May 1, 2000 to October 2, 2000.<sup>5</sup> Parties identified under this screen are required to demonstrate to OMOI why their bidding behavior did not constitute anomalous market behavior.

In all of the above-mentioned investigations, the monetary remedy being considered is disgorgement of unjust profits. Any ordered monetary remedy would be in addition to any ordered refunds in the California Refund Proceeding.

## PGE

On March 8, 2004, the FERC approved a settlement agreement resolving all charges against PGE that were set for hearing in the Gaming Practices Order.<sup>6</sup> The charges leveled against PGE included 15,285 megawatt hours of potential False Imports (a.k.a. Ricochet) and 127 megawatt hours of potential Cutting Non-firm transactions (a.k.a. Non-firm Export). The Ricochet strategy involved buying power in the California day-ahead market, selling it to a counterparty outside the state, repurchasing the same

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<sup>3</sup> FERC cite 103 FERC ¶ 61,345. The Idaho Power case was docketed as EL03-156-000, the PacifiCorp case was docketed as EL03-163-000, and the PGE case was docketed as EL03-165-000.

<sup>4</sup> FERC cite 103 FERC ¶ 61,346. The Idaho Power case was docketed as EL03-189-000. PacifiCorp was incorrectly identified as an entity in The Partnership Gaming Order. FERC correctly identified PPM Energy, Inc. in an August 22, 2003 order (FERC cite 104 FERC ¶ 61,222).

<sup>5</sup> FERC cite 103 FERC ¶ 61,347. This case was docketed as IN03-10-000. Unlike the Gaming investigations and Partnership Gaming investigations, which are being treated as adjudicatory proceedings, the Economic Withholding investigation is being treated as a prosecutorial proceeding (FERC cite 105 FERC ¶ 61,063). As a result, the Economic Withholding investigation is currently non-public in nature and there are no identified parties in the proceeding.

<sup>6</sup> FERC cite 106 FERC ¶ 61,236.

amount of power from the out-of-state entity, and selling the out-of-state power in the California real-time market at a price above the existing price-cap. Non-firm Export was a strategy to collect a congestion relief payment from the ISO without actually relieving any transmission congestion. The strategy was to schedule a counterflow out of the ISO's control area on a congested path, collect a congestion relief payment, and then withdraw the schedule in real time.

FERC trial staff found that none of the potential False Imports involved sales into California markets at prices above the existing price caps. As a result, these transactions did not fit the definition of False Imports established in the Gaming Practices Order. FERC trial staff calculated that PGE received \$12,730 of revenue from the Cutting Non-firm transactions. PGE offered to pay this amount for purposes of settlement. This negotiated settlement should not be construed as an admission, or evidence, of wrongdoing by PGE. Based on the small amounts of power and dollars involved, and the resolution of the FERC proceeding, we do not recommend that the Commission pursue these matters in a misconduct or mismanagement case against PGE.

On October 8, 2003, in Order 03-599, the Commission joined a settlement agreement that resolved charges against PGE related to posting errors and 17 days of alleged Death Star transactions. On December 18, 2003, FERC approved the settlement agreement.<sup>7</sup> By joining the settlement, the Commission agreed not to pursue these matters in a misconduct or mismanagement case against PGE.

## PACIFICORP

On March 8, 2004, the FERC approved a settlement agreement resolving all charges against PacifiCorp that were set for hearing the Gaming Practices Order.<sup>8</sup> The practices that PacifiCorp was alleged to have engaged in include: False Import, Cutting Non-firm, Circular Scheduling (a.k.a. Death Star), and Wheel Out. Death Star and Wheel Out were strategies that falsely relieved transmission congestion. Death Star involved scheduling a northbound counterflow on congested transmission paths in the ISO control area to collect a congestion relief payment, while simultaneously scheduling a southbound flow on paths outside the control of the ISO. With the same amount of power scheduled to flow north and then south back to the point of origin, power did not actually flow and no congestion was relieved. Wheel Out involved scheduling an export on an out-of-service transmission line knowing that if the export proved to be

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<sup>7</sup> FERC cite 105 FERC ¶ 61,302.

<sup>8</sup> FERC cite 106 FERC ¶ 61,235.

counterflow the ISO would pay a congestion relief payment even though it would also cancel the schedule in real time.

Data submitted in the case identified approximately 1,100 hours of potential False Imports. FERC trial staff found that none of these transactions occurred during the May 1 through October 1, 2000 time period, nor did any exceed the then-applicable price cap. In short, none of these transactions fit the FERC's definition of False Import. Trial staff identified one hour of Cutting Non-firm and PacifiCorp allegedly received \$12.08 in revenue. This amount did not meet the \$10,000 threshold established by FERC for disgorgement of unjust profits. PacifiCorp allegedly engaged in seven Circular Scheduling transactions with Enron. Trial staff was unable to substantiate the revenues earned by PacifiCorp from these transactions. Finally, there were six hours of alleged Wheel Out with revenues earned by PacifiCorp of \$67,745. PacifiCorp agreed to pay this amount for a full and final resolution of the case. This negotiated settlement should not be construed as an admission, or evidence, of wrongdoing by PacifiCorp.

Staff of the Public Utility Commission of Oregon has completed its own informal investigation of the bundled buy-sell transactions described in PacifiCorp's May 22, 2002 response to the FERC's initial data request in Docket PA02-2-000. PacifiCorp identified three types of bundled buy-sell transactions that occurred at the California-Oregon Border (COB) market hub. The COB hub is comprised of the Malin and Captain Jack substations. An "Intermediary Transaction" was a bundled buy-sell with the same counterparty where the purchase and sale both occurred at the same substation; for example, a 25 MW purchase from a counterparty at Malin bundled with a 25 MW sale to the same counterparty at Malin. A "Transmission Transaction" was defined as a bundled buy-sell with the same counterparty where the purchase and sale occurred at the different substations; for example, a 25 MW purchase from a counterparty at Malin bundled with a 25 MW sale to the same counterparty at Captain Jack. PacifiCorp identified 569 Intermediary Transactions and 198 Transmission Transactions during the relevant time period.<sup>9</sup> These deals involved a total of 40,376 megawatt hours, less than one percent of the company's purchases or sales for 2000. In addition, PacifiCorp identified two "City of Redding Transactions." In these transactions PacifiCorp bundled a buy from Enron at the Malin substation with a sale to the City of Redding at the Captain Jack substation. All of these bundled transactions deserved close scrutiny because Enron and the other counterparties may have used them to facilitate False Import or Circular Scheduling.

In its May 22, 2002 response to FERC, PacifiCorp indicated that Enron or the other counterparties could have used the Intermediary Transactions to facilitate the Ricochet strategy. PacifiCorp emphasized, however, that it was not the entity initiating these

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<sup>9</sup> PacifiCorp's Responses to Staff Data Requests 1-13 dated November 12, 2003.

transactions, that it acted solely as an intermediary, and that the transactions initially appeared to be Transmission Transactions.<sup>10</sup> In November of 2000, based on a growing concern that bundled buy-sell transactions at COB might be perceived by the public to have elements of megawatt laundering, PacifiCorp instructed its traders to discontinue the bundling of purchase and sale transactions at COB.<sup>11</sup>

Due to the small number of bundled buy-sell transactions, PacifiCorp's intermediate position in the transactions, the company's voluntary termination of bundled buy-sells at COB, the lack of any affiliate transactions, and the approved settlement of PacifiCorp's Gaming Practices case at the FERC, we do not recommend that the Commission pursue these matters in a misconduct or mismanagement case against PacifiCorp.

#### IDAHO POWER

On January 22, 2004, the FERC dismissed all charges against Idaho Power that were set for hearing in the Partnership Gaming Order.<sup>12</sup> FERC agreed with its trial staff's conclusion that the parking/lending contracts between Idaho Power and Public Service Company of New Mexico were not for energy deliveries to California; but instead were intended to deliver less-expensive Southwest power to the Pacific Northwest by wheeling it through the ISO.

On March 4, 2004, the FERC approved a settlement agreement resolving all charges against Idaho Power that were set for hearing in the Gaming Practices Order.<sup>13</sup> The practices that Idaho Power was alleged to have engaged in include: False Import, Paper Trading (a.k.a. Get Shorty), and Circular Scheduling. The Get Shorty strategy involved selling ancillary services in the day-ahead market and covering the obligation with a purchase in the real-time market.

FERC trial staff found that none of the potential False Import transactions involved sales into California markets at prices above the existing price caps. They also found that the potential Paper Trading transactions resulted from transmission/congestion conditions. Therefore, trial staff found no basis for pursuing False Import or Paper Trading charges against Idaho Power. In exchange for full and final resolution of the case, Idaho Power agreed to refund the \$83,373 in gross revenues associated with the Circular Scheduling allegation. This negotiated settlement should not be construed as an admission, or evidence, of wrongdoing by Idaho Power. Based on the FERC resolution of Idaho

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<sup>10</sup> Affidavit of Stanley K. Watters on Behalf of PacifiCorp, pages 21-22.

<sup>11</sup> PacifiCorp's Responses to Staff Data Requests 10 and 13 dated November 12, 2003.

<sup>12</sup> FERC cite 106 FERC ¶ 61,022.

<sup>13</sup> FERC cite 106 FERC ¶ 61,208.

Power's Gaming Practices proceeding, and the FERC dismissal of the company's Partnership Gaming proceeding, we do not recommend that the Commission pursue these matters in a misconduct or mismanagement case against Idaho Power.<sup>14</sup>

On May 4, 2004, the FERC allowed rehearing of eight Gaming Practices settlements, including the PGE, PacifiCorp, and Idaho Power settlements, to allow for additional time to consider the issues raised in the rehearing requests. If the FERC decides in a future order that rehearing is warranted, then the Commission could decide to revisit these matters.

Finally, in the Economic Withholding investigation, the OMOI has not publicly identified PGE, PacifiCorp, or Idaho Power as entities under investigation for bidding that constituted anomalous market behavior during May 1, 2000 through October 2, 2000. We recommend that the Commission affirm that if any of the utilities becomes an identified party, then it will hold customers harmless for any penalties, monetary or non-monetary, imposed by FERC.

### Other Investigations

In an August 31, 2004 order, the FERC referred recently released audio tape recordings and transcripts of Enron trader phone conversations, and other materials, to the presiding judges in Enron's Gaming and Partnership Gaming proceedings.<sup>15</sup> The FERC concluded that the tapes shed light on whether there were potential violations of tariffs or orders, not on the impact of Enron's behavior on wholesale energy prices. Staff has listened to the majority of the publicly available audio files, and agrees with the FERC assessment of the function and importance of this evidence.

The Oregon Department of Justice's (DOJ) civil investigation of PGE's actions during the 2000-2001 energy crisis is ongoing. DOJ is pursuing court action related to its request that PGE show cause for failure to respond to its civil investigatory demands.

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<sup>14</sup> On May 16, 2003, the FERC approved a settlement agreement resolving all allegations against Idaho Power stemming from a preliminary, non-public investigation conducted by the OMOI into Idaho Power's use of native load priority and failure to file power sale agreements between Idaho Power and IDACORP Energy with the FERC (FERC cite 103 FERC ¶ 61,182). On March 15, 2004, the Idaho Public Utilities Commission (IPUC) approved a settlement agreement resolving many of the same issues (IPUC Order No. 29446). Neither the FERC or the IPUC identified any link between the Idaho Power and IDACORP Energy transactions and the abusive market practices under investigation in the Gaming Practices and Partnership Gaming cases. Staff has reached a similar agreement with Idaho Power on these matters. A stipulation will be filed with the Commission in the near future.

<sup>15</sup> FERC cite 108 FERC ¶ 61,214.

DOJ has also filed a \$336 million claim in Enron's bankruptcy proceeding related to improper trading activities.

We recommend that the Commission not open formal investigations of possible mismanagement and/or misconduct by PGE, PacifiCorp, and Idaho Power during the western electricity crisis of 2000-01. If these on-going investigations produce new allegations of misconduct by PGE, PacifiCorp, or Idaho Power, then in the future the Commission could decide to pursue its own misconduct or mismanagement investigations.

**PROPOSED COMMISSION MOTION:**

Affirm that customers will be held harmless for penalties imposed by FERC or any other authority related to trading activity during the western electricity crisis of 2000-01.