

rate authority, not only by engaging in gaming, but also by failing to inform the Commission in a timely manner of significant changes in their market shares by gaining influence/control over others' facilities. In view of the foregoing, we are therefore requiring the Enron Power Marketers to show cause why the Commission should not revoke their market-based rate authority. The Commission will institute a Section 206 proceeding and direct Enron Power Marketers to show cause to the Commission in a paper hearing in that proceeding.

10. In cases where, as here, the Commission institutes a Section 206 proceeding on its own motion, Section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the **Federal Register**, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to customers, we will establish the statutorily-directed effective date, in this context the date that we would revoke their market-based rate authorities, at the earliest date allowed,¹² 60 days after publication of the order initiating the Commission's investigation in Docket No. EL03-77-000 in the **Federal Register**. In addition, Section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by July 31, 2003.

B. Proposed Blanket Marketing Certificate Termination

1. Statutory Origins

11. The Enron Gas Marketers are affiliates of Transwestern Pipeline Company, Citrus Corp., and/or Northern Plains Natural Gas Company.¹³ Section 284.402 of the Commission's regulations grants any person who is not an interstate pipeline a blanket certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to make sales for resale at negotiated

rates in interstate commerce of any category of natural gas that is subject to the Commission's NGA jurisdiction.¹⁴ The Commission's NGA sales jurisdiction currently extends to sales for resale of natural gas that are made by pipelines, local distribution companies, and their affiliates.¹⁵ Thus, natural gas marketers who fall into those categories, including the Enron Gas Marketers, require the blanket marketing certificate in order to make sales for resale.

12. The Commission adopted Section 284.402 of its regulations, granting a blanket marketing certificate, in Order No. 547.¹⁶ The purpose of Order No. 547 was to "foster a truly competitive market for natural gas sales for resale in interstate commerce, giving purchasers of natural gas access to multiple sources of natural gas and the opportunity to make gas purchasing decisions in accord with market conditions."¹⁷ Although the order was independent of Order Nos. 636 and 636-A, it was promulgated for the same reasons, including the promotion of an active and viable spot market for natural gas.¹⁸ The Commission permitted affiliated gas marketers to sell gas at negotiated rates based on a finding that the sale of gas as a commodity would be sufficiently competitive to prevent affiliated gas marketers from exercising market power, that is, controlling prices or excluding competition. NGA Sections 4 and 5 require that jurisdictional gas sales be made at rates that are just and reasonable.¹⁹ The Commission also stated in Order No. 547 that it would monitor the operation of the market.²⁰

¹⁴ 18 CFR 284.402 (2002). Affiliates of pipelines are not engaged in first sales, *see* 15 U.S.C. 3301(21) (2000), and, so, are subject to the Commission's jurisdiction.

¹⁵ The NGA gives the Commission jurisdiction over sales for resale of natural gas in interstate commerce. However, this jurisdiction has been limited by Sections 601(a)(1)(A) and (b)(1)(A) of the Natural Gas Policy Act as amended by the Natural Gas Wellhead Decontrol Act (NGPA), which remove all "first sales" from the Commission's NGA jurisdiction as of January 1, 1993. NGPA Section 2(21) defines first sales to include all sales other than sales by interstate or intrastate pipelines, local distribution companies, and their affiliates. Reporting of Natural Gas Sales to the California Market, 96 FERC ¶ 61,119 at 61,463, *order on reh'g*, 97 FERC ¶ 61,029 (2001); San Diego Gas and Electric Co., 101 FERC ¶ 61,161 at 61,656 (2002).

¹⁶ Regulations Governing Blanket Marketer Sales Certificates, Order No 547, FERC Stats. & Regs., Regulations Preambles January 1991-June 1996 ¶ 30,957 (1992), *order on reh'g*, 62 FERC ¶ 61,239 (1993).

¹⁷ *Id.* at 30,719.

¹⁸ *Id.* at 30,721.

¹⁹ *Id.* at 30,726; *see* 15 U.S.C. 717c, 717d (2000).

²⁰ *Id.* at 30,727.

2. Apparent Manipulation

13. The evidence developed in Staff's investigation indicates that certain Enron Gas Marketers apparently misused their authority under their blanket marketing certificates to make sales to and purchases from gas markets serving California at rates that were unjust and unreasonable from the summer of 2000 through the winter of 2000-2001. This evidence indicates that the Enron Gas Marketers, through their electronic trading platform, EnronOnline (EOL),²¹ apparently manipulated the price of natural gas at the Henry Hub located in Louisiana on at least one occasion to profit from positions taken in the over-the-counter (OTC) financial derivatives markets (OTC markets). Although the price change in the physical markets was only about \$.10/MMBtu, Enron Gas Marketers nevertheless profited due to the effect that this small change in the physical price had on its large financial position; Enron Gas Marketers earned approximately \$3.2 million from this apparent manipulation.

14. On July 19, 2001 a number of traders entered relatively large short positions in the financial markets through OTC swaps and Gas Daily financial swaps. These traders continued to increase the short positions throughout the initial phase of the manipulation, which was the period when the EOL market maker (who was, at times, the desk manager) quickly and steadily raised prices on EOL, resulting in the purchase of a very large amount of next-day physical gas. This purchasing caused prices in the financial markets to rise, but by a lesser amount.

15. The financial traders stopped increasing their short positions near the end of the EOL market maker's buying streak, at a point when the EOL market maker stopped raising prices and began to hold prices steady at the high levels. Once the EOL market maker leveled out prices, the OTC swap began to fall. The EOL market maker then began to lower the prices and sold a very large amount of gas at rapidly falling prices. The falling of the physical price then further pushed down the OTC swap price, generating significant profits for the financial traders. These profits greatly exceeded the losses that were generated from the impatient buying and selling of the physical gas.

²¹ The EnronOnline system is administered by Enron Networks, an Enron Corp. subsidiary. EnronOnline is a free, Internet-based, transaction system which allows the Enron Gas Marketers to buy from and sell gas to third parties.

¹² *See, e.g.*, Canal Electric Company, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

¹³ On March 19, 2003, Enron Corp. made a Form 8-K filing with the Securities and Exchange Commission, under file number 1-13159, proposing to place ownership of Transwestern Pipeline Company, Citrus Corp., and Northern Plains Natural Gas Company with a newly created company called PipeCo.