

the Commission associated with litigating whether market participants whose revenues were less than \$10,000 for particular Gaming Practices engaged in those practices may exceed any unjust profits on the revenues that resulted from such transactions. Accordingly, we are exercising our prosecutorial discretion and not proceeding against certain Identified Entities for particular Gaming Practices.

G. Show Cause Order and Institution of Trial-Type Evidentiary Proceeding

70. As described above, and as the Staff Final Report concludes, the Gaming Practices identified above violate the ISO's and PX's filed tariffs, and the Identified Entities appear to have engaged in such practices, as identified above.

71. Accordingly, we require these entities to show cause, in a trial-type evidentiary proceeding to be held before an ALJ, why they should not be found to have engaged in Gaming Practices in violation of the ISO's and PX's tariffs.⁷⁵ In addition, we direct the ALJ to hear evidence and render findings and conclusions, quantifying the full extent to which the entities named herein may have been unjustly enriched by their engaging in Gaming Practices.⁷⁶ We require that any and all such unjust profits for the period January 1, 2000 to June 20, 2001 be disgorged in their entirety. We also direct the ALJ to consider any additional, appropriate non-monetary remedies, as may be appropriate, e.g., revocation of an Identified Entity's market-based rate authority and revisions to an Identified Entity's code of conduct.⁷⁷

72. The ISO shall, within 21 days of the date of this order, provide the Identified Entities all of the specific transaction data for each of the Gaming Practices discussed in the ISO Report, including an explanation of the screen(s) that it used to identify the transactions in question. The ISO shall

contemporaneously file that transaction data, including the explanation of its screen(s), with the Commission. Unless the Identified Entity files an offer of settlement as discussed below, within 45 days thereafter, the Identified Entities shall file their show cause responses.

73. We recognize that, in some instances, the burdens and costs to both the parties and the Commission associated with litigating whether certain market participants engaged in particular Gaming Practices and violated the MMIP may exceed the revenues and unjust profits that resulted from such transactions. There are also many disputed issues of fact which, in litigation, would tend to prolong uncertainty for the Identified Entities and the marketplace as a whole. Therefore, we encourage the Identified Entities to resolve these proceedings by settlement with the Commission's Trial Staff. In this regard, should participants not settle on a mechanism to distribute monies, the ALJ should request comment and render a finding on a mechanism that will fairly distribute any monies to those customers harmed by the Gaming Practices.

74. Finally, given the commonality of issues of law and fact presented herein, Docket Nos. EL03-137-000, EL03-138-000, EL03-139-000, EL03-140-000, EL03-141-000, EL03-142-000, EL03-143-000, EL03-144-000, EL03-145-000, EL03-146-000, EL03-147-000, EL03-148-000, EL03-149-000, EL03-150-000, EL03-151-000, EL03-152-000, EL03-153-000, EL03-154-000, EL03-155-000, EL03-156-000, EL03-157-000, EL03-158-000, EL03-159-000, EL03-160-000, EL03-161-000, EL03-162-000, EL03-163-000, EL03-164-000, EL03-165-000, EL03-166-000, EL03-167-000, EL03-168-000, EL03-169-000, EL03-170-000, EL03-171-000, EL03-172-000, EL03-173-000, EL03-174-000, EL03-175-000, EL03-176-000, EL03-177-000, EL03-178-000 and EL03-179-000 will be consolidated for purposes of hearing and decision.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held in Docket Nos. EL03-137-000, EL03-138-000, EL03-139-000, EL03-140-000, EL03-141-000, EL03-142-000, EL03-143-

000, EL03-144-000, EL03-145-000, EL03-146-000, EL03-147-000, EL03-148-000, EL03-149-000, EL03-150-000, EL03-151-000, EL03-152-000, EL03-153-000, EL03-154-000, EL03-155-000, EL03-156-000, EL03-157-000, EL03-158-000, EL03-159-000, EL03-160-000, EL03-161-000, EL03-162-000, EL03-163-000, EL03-164-000, EL03-165-000, EL03-166-000, EL03-167-000, EL03-168-000, EL03-169-000, EL03-170-000, EL03-171-000, EL03-172-000, EL03-173-000, EL03-174-000, EL03-175-000, EL03-176-000, EL03-177-000, EL03-178-000 and EL03-179-000: (1) where the Identified Entities shall show cause why they should not be found to have employed the above-described Gaming Practices in violation of the ISO's and PX's tariffs; and (2) where the appropriate remedies may be identified and quantified, as discussed in the body of this order.

(B) Any interested person desiring to be heard in these proceedings should file a notice of intervention or motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR § 385.214), within 21 days of the date of this order.

(C) The ISO is hereby directed to provide the Identified Entities with all of the specific transaction data for each of the Gaming Practices discussed in the ISO Report, including an explanation of the screen that it used to identify the transactions in question, within 21 days of the date of this order, as discussed in the body of this order. The ISO shall contemporaneously file such transaction data with the Commission.

(D) Within 45 days of the ISO's submittal made pursuant to Ordering Paragraph (C) above, the Identified Entities shall submit show cause responses, as discussed in the body of this order.

(E) An administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding to be held within approximately fifteen (15) days of the filing of the show cause submissions ordered in Ordering Paragraph (D) above, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss), as provided in the

⁷⁵ We will incorporate the Staff Final Report and the underlying record in Docket No. PA02-2-000 by reference into the record in this proceeding.

⁷⁶ We will permit the parties to introduce relevant evidence from the 100 Days Evidence proceeding. See *supra* P 9.

As discussed in the Staff Final Report and in the body of this order, there is evidence of gaming and/or anomalous market behavior sufficient to require the Identified Entities to show cause why they should not be found to have engaged in Gaming Practices in violation of the ISO's and PX's tariffs. As a result, the burden of going forward will be placed on the Identified Entities. However, the ultimate burden is upon the Commission. To that end, the Commission is aware that many parties in California and elsewhere in the West have sought a forum in which to address the issues raised in this proceeding. Those parties may participate in this proceeding upon attaining intervenor status.

⁷⁷ See *supra* P 2.