

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

45. As described above, we find that the Partnership Entities identified above, through their partnerships, alliances or other arrangements, may have engaged in Gaming Practices as identified in the Gaming Practices Show Cause Order, that violated the ISO's and PX's filed tariffs.

46. 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.⁵⁴ They shall submit their show cause responses within 30 days of the date of this order.

47. We also require the Partnership Entities to (1) inventory all revenues from their partnerships, alliances or other arrangements discussed above and (2) file these revenue figures as well as file all related correspondence, e-mail, memoranda, tapes, phone logs, transaction data, billing statements and agreements as part of their show cause responses. This requirement applies to both sides of an agreement regardless of whether the entity is supplying or receiving service. If a Partnership Entity does not provide this information and it is later discovered that such agreements exist, that may be grounds for other possible remedies.

48. 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 as a result of their conduct,⁵⁵ 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 consider 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.⁵⁶

49. Given the commonality of issues of law and fact presented herein, we consolidate Docket Nos. 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 and EL03-203-000, for purposes of hearing and decision.

The Commission Orders:

(A) The Partnership Entities are hereby directed to submit show cause responses within 30 days of the date of this order, as discussed in the body of this order.

(B) 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. EL03-180-000, 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 and EL03-203-000: (1) Where the Partnership Entities shall show cause why they should not be found to have jointly engaged in 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.

(C) 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.

(D) 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 (A) 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 Commission's Rules of Practice and Procedure.

(E) Docket Nos. 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 and EL03-203-000 are hereby consolidated for purposes of hearing and decision.

(F) The Secretary is hereby directed to publish a copy of this order in the **Federal Register**.

By the Commission. Commissioner Massey dissented in part with a separate statement attached

Magalie R. Salas,
Secretary.

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

	Docket No.
Enron Power Marketing, Inc. and Enron Energy Services Inc	EL03-180-000
Aquila, Inc	EL03-181-000
City of Glendale, California	EL03-182-000
City of Redding, California	EL03-183-000

⁵⁴ We incorporate the Staff Final Report and the underlying record in Docket No. PA02-2-000 by reference into the record in this proceeding.

⁵⁵ We will permit the parties to introduce relevant evidence from the 100 Days Evidence proceeding. See *San Diego Gas & Electric Co.*, 101 FERC ¶ 61,186 (2002) (allowing California parties 100 days, concluding February 28, 2003, to conduct discovery into market manipulation by various

sellers during the western power crisis of 2000 and 2001).

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 Partnership Entities to show cause why they should not be found to have employed 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 Partnership 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 requesting and being granted intervenor status.

⁵⁶ See *supra* P 1.