

24. Our market behavior rules would not supersede or replace parties' rights under Section 206 of the FPA to file a complaint contending that a contract should be revised by the Commission (pursuant to either the "just and reasonable" or "public interest" test as required by the contract). Rather, any party seeking contract reformation or abrogation based on a violation of one or more of the market behavior rules would be required to demonstrate that such a violation had a direct nexus to contract formation and tainted contract formation itself. If a jurisdictional seller enters into a contract without engaging in behavior that violates its tariff with respect to the formation of such contract, we do not intend to entertain contract abrogation complaints predicated on our market behavior rules.

25. Finally, in undertaking our enforcement decisions, we will focus on the best outcome for assuring just and reasonable rates in our jurisdictional markets. In some instances, significant remedial action may be warranted. In other instances, we may use a specific set of facts and circumstances to clarify our requirements for acceptable public utility activities. As such, it is our expectation that through this proposed tariff revision, we will appropriately balance our need to remedy anticompetitive behavior with the legitimate needs of market participants for clear rules. We seek comment on these issues and any other issues of concern relating to Market Behavior Rule # 2.

Market Behavior Rule # 3: Communications

Seller will provide complete, accurate, and factual information, and not submit false or misleading information, or omit material information, in any communications with the Commission, market monitors, regional transmission organizations, independent system operators, or similar entities.

26. In the Western Markets Report, Staff proposes that all market-based rate tariffs include a specific prohibition against the submission of false information or the omission of material information to the Commission or to an entity such as an ISO, an RTO, or an approved market monitor.²⁰

anticompetitive acts. Engaging in manipulation, for example, in order to maximize profits, is not a legitimate business purpose.

²⁰ See Western Markets Report at ES-17. In this regard, EPSA, in its code of ethics and sound trading practices, requires its members to "provide market and transaction information to regulators and market monitors in compliance with all applicable rules and requirements and [to] continue

27. Based on Staff's recommendation, we propose and seek comment on Market Behavior Rule # 3. Specifically, we seek comment on whether this proposed rule would be sufficient in its scope and breadth to cover any and all matters relevant to wholesale markets, including maintenance and outage data, bid data, price and transaction information, and load and resource data. In addition, we seek comment on whether this remedial authority would serve as a useful and appropriate tool in ensuring just and reasonable rates.

Market Behavior Rule #4: Reporting

To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide complete, accurate and factual information to any such publisher. Seller shall notify the Commission of whether it engages in such reporting for all sales. In addition, the seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

28. In the Western Markets Report, Staff proposes that all electric market-based rate tariffs and authorizations be conditioned to expressly require that sellers provide complete, accurate, and honest information to any entity that publishes price indices and to require that data sent to firms publishing price indices be provided by the risk management office of the company, not the trading desk or a trader, and be certified by the chief risk officer.²¹

29. Based on Staff's recommendation, we propose and seek comment on Market Behavior Rule #4. In the Western Markets Report, Staff found that the markets for natural gas and electricity in California are inextricably linked, that there were dysfunctions in these markets that fed off each other, and that the dysfunctions in the natural gas market appear to have stemmed, at least in part, from efforts to manipulate price indices compiled by trade publications—by fabricating trades, inflating the volume of trades, omitting trades, and adjusting the price of trades.²²

to cooperate with regulators and market monitors as reasonably necessary to assist in their understanding of market operations."

²¹ *Id.* Similarly, EPSA, in its code of ethics and sound trading practices, requires its members to "ensure that any information disclosed to the media, including market publications and publishers of surveys and price indices, is accurate and consistent."

²² *Id.* at III-2 (noting that, to date, five major traders—Williams, Dynegy, AEP, CMS, and El Paso Merchant Energy—have admitted that their employees falsified information provided to compilers of natural gas price indices).

30. Staff further found that the predominant motives for reporting false information were to influence reported gas prices, to enhance the value of financial positions or purchase obligations, and to increase reported volumes to attract participants by creating the impression of more liquid markets. In light of these findings, we seek comment on whether Market Behavior Rule #4, as proposed, would remedy the abuses outlined by Staff in the Western Markets Report by ensuring that published price indices represent a fair and accurate measure of actual prices and trading volumes.

31. With regard to standards and requirements for price reporting, on April 24, 2003, we convened a public conference in Docket No. AD03-7-000, together with the Commodity Futures Trading Commission (CFTC), to consider natural gas price formation issues, including the development of alternative index formation models. At that conference and from comments submitted thereafter, we have received valuable input helping us refine the options available. To that end, we have conducted a follow-up conference, also with CFTC participation, for both natural gas and electricity indices.

32. While we are considering requiring jurisdictional entities to report transactions to an entity responsible for index creation, we note that our efforts towards resolution of this issue will be in Docket No. AD03-7-000. Market Behavior Rule #4 states that sellers will be required to adhere to other standards or requirements as the Commission may order. Based upon our review of the record developed in Docket No. AD03-7-000, we may issue such an order to be implemented at the same time as the market-based tariff rules proposed herein.

Market Behavior Rule #5: Record Retention

Seller will retain all data and information necessary for the reconstruction of energy or energy products prices it charges, or the prices it reports for use in published price indices, for a period of three years.

33. In the Western Markets Report, Staff recommends that all electric market-based rate tariffs and authorizations be expressly conditioned to require sellers to retain data and information needed to reconstruct a published price index for a period of three years.²³

²³ See Western Markets Report at ES-14 and III-52. EPSA, in its code of ethics and sound trading practices, requires its members to "maintain documentation on all transactions for an