

Commission-approved market monitors, Commission-approved regional transmission organizations, or Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercised due diligence to prevent such occurrences.

4. *Reporting:* To the extent Seller engages in reporting of transactions to publishers of electricity or natural gas price indices, Seller shall provide accurate and factual information, and not knowingly submit false or misleading information or omit material information to any such publisher, by reporting its transactions in a manner consistent with the procedures set forth in the Policy Statement issued by the Commission in Docket No. PL03-3 and any clarifications thereto. Seller shall notify the Commission within 15 days of the effective date of this tariff provision of whether it engages in such reporting of its transactions and update the Commission within 15 days of any subsequent change to its transaction reporting status. In addition, Seller shall adhere to such other standards and requirements for price reporting as the Commission may order.

5. *Record Retention:* Seller shall retain, for a period of three years, all data and information upon which it billed the prices it charged for the electric energy or electric energy products it sold pursuant to this tariff or the prices it reported for use in price indices.

6. *Related Tariffs:* Seller shall not violate or collude with another party in actions that violate Seller's market-based rate code of conduct or Order No. 889 standards of conduct, as they may be revised from time to time.

Any violation of these Market Behavior Rules will constitute a tariff violation. Seller will be subject to disgorgement of unjust profits associated with the tariff violation, from the date on which the tariff violation occurred. Seller may also be subject to suspension or revocation of its authority to sell at market-based rates or other appropriate non-monetary remedies.

Appendix B—Remedies and Complaint Procedures

Complaints alleging any violation of the Commission's Market Behavior Rules will be subject to the following remedies and procedures, in addition to all other remedies and procedures, as may be applicable, pursuant to the Commission's Rules of Practice and Procedure.

(1) Any complaint seeking relief for a violation of the Commission's Market Behavior Rules shall be made no later than 90 days after the end of the calendar quarter in which the violation is alleged to have occurred.

(2) If a complainant can show that it did not know and should not have known of the behavior which forms the basis for its complaint, within the period prescribed by these procedures, then the 90-day period will be deemed to run from the time when the complainant knew or should have known of the behavior.

(3) Commission action on a complaint not meeting the filing deadlines, as prescribed in these procedures, will be prospective only.

(4) The applicability of the Commission's disgorgement remedy in any complaint proceeding alleging a violation of the Commission's Market Behavior Rules will be limited by requiring that any such violation be shown to have occurred on a transaction-specific basis.

(5) The Commission will act within 90 days from the date it knew of an alleged violation of its Market Behavior Rules or knew of the potentially manipulative character of an action or transaction. Commission action, in this context, means a Commission order or the initiation of a preliminary investigation by Commission Staff pursuant to 18 CFR Section 1b. If the Commission does not act within this time period, the seller will not be exposed to potential liability regarding the subject action or transaction. Knowledge on the part of the Commission must take the form of a call to our Hotline alleging inappropriate behavior, communication with our enforcement Staff.

Appendix C—Entities Filing Comments and/or Reply Comments

AES Eastern Energy, L.P.
Allegheny Energy Supply Company, LLC
Amerada Hess Corporation
American National Power, Inc., PPL Energy Plus, LLC and Semptra Energy*
American Public Power Association and Transmission Access Study Group*
Bonneville Power Administration
BP Energy Company
California Electricity Oversight Board
California Independent System Operator Corporation
Public Utilities Commission of the State of California
Canadian Electricity Association
Central Maine Power Company, New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation**
Central Vermont Public Service Corporation,
El Paso Electric Company, Southern Indiana Gas & Electric Company & WPS Resources Corporation
City of Seattle, Washington
Colorado Office of Consumer Counsel, *et al.*
Connecticut Department of Public Utility Control
Cinergy Services, Inc.
Duke Energy Corporation
Dynergy Power Marketing, Inc., *et al.*
East Texas Cooperatives
Eastern Energy, L.P.
Edison Electric Institute
Edison Mission Energy
ELCON, *et al.*
Electric Power Supply Association, Independent Energy Producers of California, Independent Power Producers of New York, Inc. and the Western Power Trading Forum*
El Paso Electric Company
Entergy Services, Inc.
Exelon Corporation
Federal Trade Commission
FPL Energy, LLC
FirstEnergy Service Company
Intercontinental Exchange, Inc.
Intergen North America, L.P.
Louisiana Public Service Commission
Merrill Lynch Capital Services, Inc. (Morgan Stanley Capital Group, Inc.)

MidAmerican Energy Company
Mirant Americas Energy Marketing, L.P. and TransAlta Energy Marketing (U.S.), Inc.*
Modesto Irrigation District
Montana Consumer Counsel
Montana Public Service Commission
National Association of State Utility Consumer Advocates
National Energy Marketers Association
National Rural Electric Cooperative Association
New England Conference of Public Utility Commissioners
New York Independent System Operator
New York State Public Service Commission
NiSource Inc.
Northeast Utilities Service Company
Ontario Power Generation Inc.
PacificCorp
Pacific Gas and Electric Company
Pinnacle West Companies
PJM Industrial Customer Coalition
PLATTS
Powerex Corp.
PPL Montana, LLC and PPL EnergyPlus, LLC**
Reliant Energy Power Generation, Inc. and Reliant Energy Services, Inc.
Sacramento Utility District
Southern California Edison Company
Southern Company Services, Inc.
Steel Producers
TECO Energy, Inc.
TransCanada Companies
Transmission Dependent Utility Systems
Tucson Electric Power Company
Williams Energy Marketing & Trading Company

*Entities Filing Both Comments and Reply Comments.

**Entities Filing Reply Comments Only.

Massey, Commissioner, *concurring in part:* The tariff conditions that the Commission approves today send a clear message to market-based rate sellers: don't lie, don't manipulate market conditions, don't violate market rules and don't collude with others. For sellers who choose to behave otherwise, the Commission now has the tools to sanction such bad behavior and we give notice of what some of those sanctions could be. This action should help to restore the faith in energy markets that has been lost in the last few years.

There is one aspect of today's order, however, that I would have written differently. I would not limit the monetary penalty for tariff violations to disgorgement of unjust profits. Market manipulation can raise the market prices paid by all market participants and collected by all sellers. In such a case, the appropriate remedy may be that the manipulating seller makes the market whole. I would prefer to not take this or any monetary remedy off of the table, but instead to allow the Commission the flexibility to tailor the remedy to the circumstances of each case.

This one concern with today's order should not be interpreted, however, as diminishing in any way my enthusiastic support for this otherwise excellent order. I commend my colleagues for taking this important and much needed step.