

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Portland General Electric Company) Docket No. EL02-114-000
Enron Power Marketing, Inc.)

**COMMISSION STAFF'S
STATEMENT OF ASSERTED VIOLATIONS**

**To: The Honorable Jeffie J. Massey
 Presiding Administrative Law Judge**

In accordance with the procedural schedule adopted by the Presiding Judge in the captioned proceeding, the Commission Staff (Staff) respectfully submits the following Statement of Asserted Violations (Statement) by Portland General Electric Company (PGE) and Enron Power Marketing, Inc. (EPMI).

I. Statement of Asserted Violations by PGE

A. PGE's involvement in specific Enron strategies.

- 1. PGE and EPMI jointly developed an arrangement which allowed EPMI to implement a scheme to create false congestion and to receive payment for relieving the same false congestion on California transmission lines. Under this arrangement, PGE Energy Traders and Transmission Schedulers submitted schedules implementing transactions on the AC Intertie between the California-Oregon Border (COB) and John Day, involving a buy-resell transaction between PGE and EPMI, and using Avista Utilities (Washington Water Power or WWP) as a sleeve. PGE's participation in developing this arrangement with EPMI violated sections 2, 3, and 5 of the Code of Conduct set forth in PGE's Market**

Based Rate Tariff, Volume 11. These Code of Conduct provisions require PGE operating personnel to function independently from EPMI, and prohibit PGE from giving to EPMI any undue preference with respect to transmission services or other regulated service.

2. PGE Energy Traders and Transmission Schedulers submitted schedules implementing transactions on the AC Intertie between COB and John Day between April 6 and June 6, 2000, involving a buy-resell transaction between PGE and EPMI, and using Washington Water Power as a sleeve, although there would be no physical power flow on the path. These schedules were initiated by EPMI and enabled Enron to implement market-manipulation trading strategies.
 - a. PGE's participation in these transactions violated the California Independent System Operator Corporation (CAISO) Tariff, which provides that the CAISO Market Surveillance Unit (MSU) shall monitor the activities of Market Participants and certain other entities; that the MSU shall monitor such activities that affect the operation of the ISO Markets and that provide indications of certain phenomena [including the items listed below]; and that, where appropriate, the MSU will take such further action as it considers necessary under Section 2.3 of the Market Monitoring and Information Protocol (MMIP) of the CAISO Tariff. These activities include:
 - (1) Anomalous market behavior (MMIP 2.1.1), including
 - (a) Unusual trades or transactions (MMIP 2.1.1.3) ;
 - (b) Unusual activity or circumstances relating to imports from or exports to other markets or exchanges (MMIP 2.1.1.5); and
 - (2) Gaming (MMIP 2.1.3), defined as "taking unfair advantage of the rules and procedures set forth in the PX or ISO Tariffs, Protocols or Activity Rules, or of transmission constraints in periods in which exist substantial Congestion, to the detriment of the efficiency of, and of consumers in, the ISO Markets. Gaming may also include taking undue advantage of other conditions that may affect the availability of transmission and generation capacity, such as loop

flow, facility outages, level of hydropower output or seasonal limits on energy imports from out-of-state, or actions or behaviors that may otherwise render the system and the ISO Markets vulnerable to price manipulation to the detriment of their efficiency."

- b. PGE's participation in the transactions described in Item A.2 constituted unjust and unreasonable practices under sections 205 and 206 of the Federal Power Act (FPA) which may have adversely affected markets in California. Therefore, PGE undermined the Commission's intent to ensure just and reasonable rates and practices and its intent to mitigate any potential for affiliate abuse in authorizing PGE's market based rate tariff.
 - c. PGE's participation in the transactions described in Item A.2 also violated Enron's "Conduct of Business Affairs, Procedures for Use of Communication Services and Equipment," (which also applied to affiliates of Enron, including PGE), and which states that communication services and equipment may not be used for any illegal/ criminal activity or any activity that violates any Company policy.
3. In implementing the transactions described in Item A.2, EPMI arranged, and PGE used, unnecessary marketing sleeves. EPMI and PGE used the sleeves to complicate and confuse the transaction accounting, to shield EPMI's trading strategies from scrutiny by the Bonneville Power Administration (BPA) and the CAISO, and to obfuscate transactions between affiliates.
 - a. The improper use of sleeves constituted unjust and unreasonable practices under sections 205 and 206 of the FPA which may have adversely affected markets in California. Therefore, PGE undermined the Commission's intent to ensure just and reasonable rates and practices and its intent to mitigate any potential for affiliate abuse in authorizing PGE's market based rate tariff.
 - b. The use of sleeves to provide the appearance that the transactions were between EPMI and Washington Water

Power undermined the intent of PGE's Code of Conduct to regulate activity between affiliates.

- c. The improper use of sleeves also violated CAISO Tariff Sections MMIP 2.1.1, MMIP 2.1.1.3, MMIP 2.1.1.5, and MMIP 2.1.3, described above.
4. In scheduling the transactions described in Item A.2, PGE violated Section 5(g) of its General Transmission Agreement (Integration of Resources or IR Agreement) with BPA, which prohibits PGE from using transmission rights obtained under the agreement to provide transmission service for another entity. The use of PGE's IR transmission capacity on behalf of EPMI constitutes an undue preference for PGE's affiliate in violation of the Commission's standards of conduct, sections 37.4 (b)(5)(i) and 37.4 (b)(5)(iv) of the Commission's regulations, and section 5 of PGE's Code of Conduct.
 5. Telephone transcripts reflect that many of the PGE market traders and transmission schedulers voiced concerns about the trades described in Item A.2. Market traders described the trades as "goofy" and "screwy," while transmission schedulers used terms such as "bogus" and "bizarre." The transcripts reveal that the market traders and transmission schedulers appeared confused and uncertain whether they should enter into the transactions. Despite these concerns, traders and schedulers implemented these transactions and failed to report their concerns regarding these transactions to PGE ethics officials, either directly or through the "hotline," or to PGE legal staff.
 - a. By scheduling transactions that they considered questionable in order to implement EPMI's scheme, the PGE transmission schedulers failed to function independently from the PGE market traders and from EPMI, in violation of section 37.4(a) of the Commission's regulations.
 - b. The traders' failures to report their concerns demonstrate that PGE failed to adequately communicate rules for dealing with affiliates, as required by the PGE Code of Conduct.

- c. These failures to report the traders' concerns violated the Enron Conduct of Business Affairs, January 1998 (applicable to PGE and Enron staff), which states that Enron was adopting "this Policy Statement to avoid even the appearance of improper conduct on the part of anyone employed by or associated with the Company."
 - d. These failures to report also violated PGE's own Energy Trading Policy and Procedures (P&P), which governs its Energy Trading.
 6. Although there were supervisors on the floor who were within hearing distance of the telephone conversations, and regular meetings occurred between the traders and their supervisors, it appears that supervisors failed to relay these concerns to the PGE ethics or legal staff, and no investigation took place. Failure by PGE management to monitor its employees fostered an environment in which violations could occur and violated the PGE Code of Conduct requirement that PGE adequately train its employees with respect to the PGE Code of Conduct requirements.
 7. The PGE and EPMI traders raised concerns regarding whether transactions with affiliates were permissible at all. These concerns indicate that training in affiliate transactions was not sufficient and the traders were not sure what was appropriate. These violated the PGE Code of Conduct requirement that PGE adequately train its employees with respect to its Code of Conduct requirements.
 8. PGE was on notice that EPMI was interested in market manipulation strategies with PGE, and that EPMI was aggressive in its intention to pursue such strategies, at least since August 1999. However, despite such notice, PGE management, legal and ethics staff did not ensure that all proposed EPMI deals would be referred to PGE ethics or legal staff for review. Furthermore, PGE legal and ethics staff failed to inquire as to why there were no questions or concerns raised with ethics or legal staff after August 1999. These failures to provide adequate procedures to ensure review of proposed deals with EPMI violated the PGE Code of Conduct requirement to ensure compliance with its provisions.
- B. PGE affiliate transaction posting violations.

1. Out of a total of 1,979 sales and purchases between EPMI and PGE during the period of 1999 through 2001, only 689, or a mere third of these transactions, were properly posted by PGE on its web page, as required by PGE's Market Based Rate Tariff. On 1,290 occasions, PGE either failed to post accurately, or failed to document that it posted at all, its sales and purchase transactions with EPMI. The posting errors and omissions were as follows:

a.	Unable to confirm posting and acceptance status:	160
b.	Failure to post offer only:	5
c.	Offer posting inaccuracies:	42
d.	The accepted deal differed from offered product:	1,074
e.	Multiple errors:	4
f.	Failure to post acceptance only	5
2. These posting errors and omissions violated section 4.2 of PGE's Market Based Rate Tariff.
3. The number and the percentage of affiliate transactions that were not posted properly over a long period of time indicate that PGE did not have in place an adequate system for ensuring that the public would be informed of affiliate transactions, and that it failed to adopt checks and balances to verify that such violations would not occur.

II. Statement of Asserted Violations by EPMI

- A. Enron misrepresented the nature and amount of power Enron intended to sell into the California market, as well as the load it intended to serve.
 1. EPMI's misrepresentations violated CAISO Tariff Sections MMIP 2.1, MMIP 2.1.1, MMIP 2.1.1.3, MMIP 2.1.1.5, and MMIP 2.1.3, as described above.
 2. EPMI's misrepresentations constituted unjust and unreasonable practices under sections 205 and 206 of the FPA which may have adversely affected markets in California. Therefore, EPMI undermined the Commission's intent to ensure just and reasonable rates and practices and its intent to mitigate any potential for affiliate abuse in authorizing EPMI's market based rate tariff.

3. EPMI's misrepresentations also violated Enron's own "Conduct of Business Affairs, Procedures for Use of Communication Services and Equipment," which states that communication services and equipment may not be used for any illegal/criminal activity or any activity that violates any Company policy.
- B. EPMI developed a scheme under which it created false congestion and received payment for relieving the same false congestion on California transmission lines. It implemented this scheme by arranging with its affiliate, PGE, to schedule power to flow to PGE, through Washington Water Power, and by scheduling redeliveries back to the Los Angeles Department of Water and Power (LADWP). The redeliveries scheduled to LADWP were outside the supervision and knowledge of the California ISO since EPMI utilized transmission capacity which was outside the CAISO control area and not under the operational control of the CAISO.
1. EPMI's false congestion scheme violated CAISO Tariff Sections MMIP 2.1, MMIP 2.1.1, MMIP 2.1.1.3, MMIP 2.1.1.5, and MMIP 2.1.3, as described above.
 2. EPMI's false congestion scheme constituted unjust and unreasonable practices under sections 205 and 206 of the FPA which may have adversely affected markets in California. Therefore, EPMI undermined the Commission's intent to ensure just and reasonable rates and practices in authorizing EPMI's market based rate tariff.
 3. EPMI's scheme also violated Enron's own "Conduct of Business Affairs, Procedures for Use of Communication Services and Equipment," which states that communication services and equipment may not be used for any illegal/criminal activity or any activity that violates any Company policy.
 4. EPMI's arrangement with PGE to implement its false congestion scheme violated sections 2, 3, and 5 of the Code of Conduct set forth in EPMI's Market Based Rate Tariff, Rate Schedule FERC No. 1, Revision No. 1. These provisions require EPMI operating personnel to function independently from PGE and prohibit PGE from giving to EPMI any undue preference with respect to transmission services or other regulated service.

- C. EPMI set up sleeves using Washington Water Power in order to shield its false congestion scheme from scrutiny by the CAISO and BPA.
1. EPMI's sleeve transaction violated CAISO Tariff Sections MMIP 2.1, MMIP 2.1.1, MMIP 2.1.1.3, MMIP 2.1.1.5, and MMIP 2.1.3, as described above.
 2. EPMI's sleeve transactions constituted unjust and unreasonable practices under sections 205 and 206 of the FPA which may have adversely affected markets in California. Therefore, EPMI undermined the Commission's intent to ensure just and reasonable rates and practices and its intent to mitigate any potential for affiliate abuse in authorizing EPMI's market based rate tariff.
 3. EPMI's sleeve transactions also violated Enron's own "Conduct of Business Affairs, Procedures for Use of Communication Services and Equipment," which states that communication services and equipment may not be used for any illegal/criminal activity or any activity that violates any Company policy.

III. Conclusion

Staff requests that the Presiding Judge accept this Statement as described herein. Furthermore, in accordance with the procedural schedule adopted by the Presiding Judge in this proceeding, Staff reserves its right to amend this Statement as necessary until December 10, 2002.

Respectfully submitted,

Hollis J. Alpert
Marcia C. Hooks
Commission Staff Counsel
888 First Street, N.E.
Washington, DC 20426

Washington, DC
November 14, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the email service list and the restricted service list established in this proceeding.

Dated at Washington, DC, this 14th day of November, 2002.

Hollis J. Alpert
Commission Staff Counsel
888 First Street, N.E.
Washington, DC 20426
(202) 502-8783