

UNITED STATES OF AMERICA 100 FERC ¶ 61,186
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

Portland General Electric Company
Enron Power Marketing, Inc.

Docket No. EL02-114-000

ORDER INITIATING INVESTIGATION, AND ESTABLISHING HEARING
PROCEDURES AND REFUND EFFECTIVE DATE

(Issued August 13, 2002)

1. In this order we are initiating an investigation into instances of possible misconduct by two Enron Corporation affiliates: Enron Power Marketing, Inc. (EPMI) and Portland General Electric Company (Portland) (collectively, Enron) to determine whether the misconduct occurred and, if so, to determine remedies, including possibly refunds and/or revocation of Portland's and/or Enron's market-based rate authority.
2. As discussed below, we will set the possible misconduct for hearing and establish a refund effective date under section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e (1994), to provide for refunds should the hearing indicate that they are warranted.

Background

3. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated short-term prices in electric energy or natural gas markets in the West or otherwise exercised undue influence over wholesale prices in the West for the period January 1, 2000 forward.¹
4. On May 8, 2002, in accord with the Commission's directive, Commission Staff issued a data request concerning various trading strategies of sellers of wholesale

¹Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC 61,165 (2002) (February 13 Order).

electricity and/or ancillary services in the United States portion of the Western System Coordinating Council during 2000-2001. Among the sellers to whom the data request was sent are public utilities who were granted market-based rate authority by this Commission based on a finding that they lacked market power and there was no evidence of affiliate abuse or reciprocal dealing.

5. On June 4, 2002, the Commission issued an order² finding that Portland and others had failed to cooperate with the Commission investigation and ordered those companies to show cause why their authority to charge market-based rates should not be revoked as a result of their failure to comply with the Commission-ordered investigation.

Discussion

6. In a Commission Staff initial report, being publicly released concurrently with this order,³ Commission Staff states that it has obtained preliminary evidence of possible violations by Portland and Enron (specifically, EPMI) of their codes of conduct and the Commission's standards of conduct. Codes of conduct govern, among other things, a power marketer's relationship with its traditional public utility affiliates, including limitations on its ability to sell power at market-based rates to its affiliate with captive customers and the pricing of sales of non-power goods and services between the affiliates. In addition, any sharing of information between Portland and Enron must be simultaneously disclosed to the public. The Commission reviews and accepts codes of conduct and market-based rate tariffs as part of the power marketer's application for market-based rate authority.

7. Standards of conduct are contained in the Commission's regulations⁴ and generally require that the employees of a transmission provider engaged in transmission system operations function independently of those employees engaged in the wholesale

²Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 (2002) (Show Cause Order).

³Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Initial Report on Company-Specific Separate Proceedings and Generic Reevaluations; Published Natural Gas Price Data; and Enron Trading Strategies, Docket No. PA02-2-000, August , 2002. This report is available on the Commission's website at: <http://www.ferc.gov/electric/bulkpower/pa02-2/pa02-2.htm>

⁴18 C.F.R. § 37.4 (2002).

merchant function (and also of employees engaged in the wholesale merchant function of any of the transmission provider's affiliates). For example, the standards of conduct require that employees of Portland's transmission function act independently of employees of Portland's merchant function and of employees of EPMI's merchant function.

8. Preliminary evidence, taken from transcripts of recorded telephone conversations, indicates that Portland and Enron knowingly engaged in transactions that may constitute violations of the standards of conduct and/or the companies' codes of conduct and/or market-based rate tariffs.

9. For example, in the transcripts, an Enron employee explains to a Portland employee that they cannot buy and sell energy directly, but must use a non-affiliated utility as a middle man. There is also evidence that Portland employees believed that the requests they were receiving from their affiliates were improper. For example, when two Portland transmission function employees are discussing an Enron request for such a three-party arrangement, one reports that a third employee thinks the arrangement is not legal. In another instance, a Portland transmission function describes the three-party arrangement as "a scam." In addition, Portland has failed to properly post data related to sales to Enron for a significant amount of transactions.

10. This information supports further investigation. We will accordingly initiate a separate proceeding to investigate possible violations by Portland and Enron (specifically, EPMI) of their codes of conduct or market-based rate tariffs and the Commission's standards of conduct, and the imposition of any appropriate remedies.

11. Staff's initial on-site investigation in Portland, Oregon, identified questionable transactions with affiliates. Subsequently, in April 2002, Portland contacted the Commission's enforcement staff and conducted informal discussions about this matter. Issues concerning these affiliate transactions are included in the proceeding we are now initiating.

12. As noted above, in the Show Cause Order, the Commission found that Portland had failed to cooperate with the investigation initiated in the February 13 Order and ordered Portland to show cause why its market-based rate authority should not be revoked. In response to the Show Cause Order, Portland provided information that was largely limited to the previously identified transactions involving Enron. Accordingly, as part of the hearing ordered herein, we will set for hearing the issue of whether Portland has in fact provided all relevant information in the investigation and what the appropriate

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remedies for any failure should be, including whether Portland's market-based rate authority should be revoked.

13. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than 60 days after publication of notice of the Commission's investigation in the Federal Register, and no later than five months subsequent to expiration of the 60-day period. In order to give maximum protection to consumers, we will establish the refund effective date at the earliest date allowed,⁵ 60 days after publication of notice of initiation of the Commission's investigation in Docket No. EL02-114-000 in the Federal Register.

14. Section 206(b) also requires that if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, whichever is earlier, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. To implement that requirement, we will direct the presiding judge to provide a report to the Commission 15 days in advance of the refund effective date or the conclusion of the 180-day period, whichever is earlier, in the event the presiding judge has not by the earlier of those two dates certified to the Commission: (1) a settlement which, if accepted, would dispose of the proceeding; or (2) an initial decision. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of certification of a settlement or an initial 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, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. EL02- -000, concerning the matters discussed in the body of this order.

⁵See, e.g., Canal Electric Company, 46 FERC ¶ 61,153, reh'g denied, 47 FERC ¶ 61,275 (1989).

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(B) The Secretary shall promptly publish a notice of the Commission's initiation of the proceeding in Docket No. EL02-114-000 in the Federal Register.

(C) The refund effective date in Docket No. EL02-114-000 will be 60 days following publication in the Federal Register of the notice discussed in Ordering Paragraph (B) above.

(D) A presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Judge designates the presiding judge, at a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 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) The presiding judge shall advise the Commission, no later than 15 days prior to the refund effective date, in the event that the presiding judge has not by that date certified to the Commission a settlement which, if accepted, would dispose of the proceeding or issued an initial decision, as to the status of the proceeding and the best estimate of when the proceeding will be disposed of by the presiding judge.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Deputy Secretary.