

2. This order also directs Bridgeline Gas Marketing L.L.C., Citrus Trading Corporation, ENA Upstream Company, LLC, Enron Canada Corp., Enron Compression Services Company, Enron Energy Services, Inc., Enron MW, L.L.C., and Enron North America Corp. (collectively, Enron Gas Marketers) to show cause to the Commission in a paper hearing why the Commission should not terminate their blanket marketing certificates under Section 284.402 of the Commission's regulations⁴ to make sales for resale at negotiated rates in interstate commerce of categories of natural gas subject to the Commission's Natural Gas Act (NGA) jurisdiction.⁵ This order also institutes a proceeding under Sections 5 and 7 of the NGA, in Docket No. RP03-311-000, where the show cause filings will be considered.

3. This order is necessary to fulfill the Commission's obligation to monitor competitive markets in order to protect wholesale electricity and natural gas customers from unjust and unreasonable rates.

Background

4. On February 13, 2002, the Commission directed a Staff fact-finding investigation into whether any entity manipulated prices in electricity or natural gas markets in the West or otherwise exercised undue influence over wholesale electricity prices in the West, since January 1, 2000.⁶

5. On August 13, 2002, Staff released its Initial Report in Docket No. PA02-2-000.⁷ In that Report, Staff recommended the initiation of various company-specific proceedings⁸ to further investigate possible misconduct, and recommended several generic changes to market-based tariffs to prohibit the deliberate submission of false

⁴18 C.F.R. § 284.402 (2002).

⁵See 15 U.S.C. § § 717 *et seq.* (2000).

⁶Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 98 FERC ¶ 61,165 (2002) (February 13 Order).

⁷The Initial Report is available on the Commission's Web site at www.ferc.gov/electric/bulkpower/pa02-2/Initial-Report-PA02-2-000.pdf.

⁸These proceedings, which are currently pending before the Commission, are Docket Nos. EL02-113-000, EL02-114-000, and EL02-115-000.

information or the deliberate omission of material information and to provide for the imposition of both refunds and penalties for violations.

6. As noted in Staff's Final Report, being publicly released concurrently with this order,⁹ evidence indicates that the Enron Power Marketers appear to have engaged in gaming and misrepresentation, and also failed to disclose significant changes in their market shares to the Commission. In addition, the Staff's Final Report identifies evidence which indicates that certain Enron Gas Marketers apparently engaged in the manipulation of prices in natural gas markets.

Discussion

A. Proposed Market-Based Rate Revocation

7. We find that the Enron Power Marketers, based on the evidence discussed in the Final Report appear to have engaged in gaming, and failed to disclose significant changes in their market shares to the Commission.

8. The Commission's grant of authority to sell power at market-based rates, as opposed to at cost-based rates, depends on a functioning, competitive market for wholesale power unimpaired by market manipulation. Moreover, implicit in Commission orders granting market-based rates is a presumption that a company's behavior will not involve fraud, deception or misrepresentation. Companies failing to adhere to such standards are subject to revocation of their market-based rate authority.¹⁰

⁹ Final Report on Price Manipulation in Western Markets (Docket No. PA02-2-000 (Docket No. PA02-2-000 (March 2003)). The Staff Final Report is available on the Commission's website. We will incorporate the Staff Final Report, and the underlying record in Docket No. PA02-2-000, by reference into the records in these proceedings.

¹⁰Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, 99 FERC ¶ 61,272 at 62,153-54 (2002); accord Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 97 FERC ¶ 61,220 at 61,975-77 (2001); GWF Energy, LLC, et al., 98 FERC ¶ 61,330 at 62,390 (2002); New York Independent System Operator, Inc., 91 FERC ¶ 61,218 at 61,798-800 (2000), order on reh'g, 97 FERC ¶ 61,155 (2001); Washington Water Power Company, 83 FERC ¶ 61,097 at 61,462-64, order in response to show cause presentation, 83 FERC ¶ 61,282 (1998); Kansas City Power & Light Company, 74 FERC ¶ 61,066 at 61,175, order on

(continued...)

In addition, the Enron Power Marketers were directed, when they were granted market-based rate authority, to inform the Commission promptly of changes in status that reflect a departure from the characteristics that the Commission relied upon in granting market-based rate authority.¹¹

9. The information in Staff's Final Report indicates that the Enron Power Marketers appear to have violated FPA Section 205(a) by engaging in gaming. It also indicates that Enron Power Marketers appear to have acted inconsistently with their market-based rate authority, not only by engaging in gaming, but also by failing to inform the Commission in a timely manner of significant changes in their market shares by gaining influence/control over others' facilities. In view of the foregoing, we are therefore requiring the Enron Power Marketers to show cause why the Commission should not revoke their market-based rate authority. The Commission will institute a Section 206 proceeding and direct Enron Power Marketers to show cause to the Commission in a paper hearing in that proceeding.

10. In cases where, as here, the Commission institutes a Section 206 proceeding 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 customers, we will establish the statutorily-directed effective date, in this context the date that we would revoke their market-based rate authorities, at the earliest date allowed,¹² 60 days after publication of the order initiating the Commission's investigation in Docket No. EL03-77-000 in the Federal Register. In addition, Section 206 requires that, if no final decision has been rendered by that date, the Commission must provide its estimate as to when it reasonably expects to make such a decision. Given the times for filing identified in this order, and the nature and complexity of the matters to be resolved, the Commission estimates that it will be able to reach a final decision by July 31, 2003.

¹⁰(...continued)
reh'g, 75 FERC ¶ 61,244 (1996).

¹¹65 FERC at 62,405; 81 FERC at 62,319.

¹²See, e.g., Canal Electric Company, 46 FERC ¶ 61,153, reh'g denied, 47 FERC ¶ 61,275 (1989).

B. Proposed Blanket Marketing Certificate Termination

1. Statutory Origins

11. The Enron Gas Marketers are affiliates of Transwestern Pipeline Company, Citrus Corp., and/or Northern Plains Natural Gas Company.¹³ Section 284.402 of the Commission's regulations grants any person who is not an interstate pipeline a blanket certificate of public convenience and necessity pursuant to Section 7 of the Natural Gas Act to make sales for resale at negotiated rates in interstate commerce of any category of natural gas that is subject to the Commission's NGA jurisdiction.¹⁴ The Commission's NGA sales jurisdiction currently extends to sales for resale of natural gas that are made by pipelines, local distribution companies, and their affiliates.¹⁵ Thus, natural gas marketers who fall into those categories, including the Enron Gas Marketers, require the blanket marketing certificate in order to make sales for resale.

12. The Commission adopted Section 284.402 of its regulations, granting a blanket marketing certificate, in Order No. 547.¹⁶ The purpose of Order No. 547 was to "foster a

¹³On March 19, 2003, Enron Corp. made a Form 8-K filing with the Securities and Exchange Commission, under file number 1-13159, proposing to place ownership of Transwestern Pipeline Company, Citrus Corp., and Northern Plains Natural Gas Company with a newly created company called PipeCo.

¹⁴18 C.F.R. § 284.402 (2002). Affiliates of pipelines are not engaged in first sales, see 15 U.S.C. § 3301(21) (2000), and, so, are subject to the Commission's jurisdiction.

¹⁵The NGA gives the Commission jurisdiction over sales for resale of natural gas in interstate commerce. However, this jurisdiction has been limited by Sections 601(a)(1)(A) and (b)(1)(A) of the Natural Gas Policy Act as amended by the Natural Gas Wellhead Decontrol Act (NGPA), which remove all "first sales" from the Commission's NGA jurisdiction as of January 1, 1993. NGPA Section 2(21) defines first sales to include all sales other than sales by interstate or intrastate pipelines, local distributions companies, and their affiliates. Reporting of Natural Gas Sales to the California Market, 96 FERC ¶ 61,119 at 61,463, order on reh'g, 97 FERC ¶ 61,029 (2001); San Diego Gas and Electric Co., 101 FERC ¶ 61,161 at 61,656 (2002).

¹⁶Regulations Governing Blanket Marketer Sales Certificates, Order No 547,
(continued...)

truly competitive market for natural gas sales for resale in interstate commerce, giving purchasers of natural gas access to multiple sources of natural gas and the opportunity to make gas purchasing decisions in accord with market conditions."¹⁷ Although the order was independent of Order Nos. 636 and 636-A, it was promulgated for the same reasons, including the promotion of an active and viable spot market for natural gas.¹⁸ The Commission permitted affiliated gas marketers to sell gas at negotiated rates based on a finding that the sale of gas as a commodity would be sufficiently competitive to prevent affiliated gas marketers from exercising market power, that is, controlling prices or excluding competition. NGA Sections 4 and 5 require that jurisdictional gas sales be made at rates that are just and reasonable.¹⁹ The Commission also stated in Order No. 547 that it would monitor the operation of the market.²⁰

2. Apparent Manipulation

13. The evidence developed in Staff's investigation indicates that certain Enron Gas Marketers apparently misused their authority under their blanket marketing certificates to make sales to and purchases from gas markets serving California at rates that were unjust and unreasonable from the summer of 2000 through the winter of 2000-2001. This evidence indicates that the Enron Gas Marketers, through their electronic trading platform, EnronOnline (EOL),²¹ apparently manipulated the price of natural gas at the Henry Hub located in Louisiana on at least one occasion to profit from positions taken in the over-the-counter (OTC) financial derivatives markets (OTC markets). Although the price change in the physical markets was only about \$.10/MMBtu, Enron Gas Marketers

¹⁶(...continued)

FERC Stats. & Regs., Regulations Preambles January 1991 - June 1996 ¶ 30,957 (1992), order on reh'g, 62 FERC ¶ 61,239 (1993).

¹⁷Id. at 30,719.

¹⁸Id. at 30,721.

¹⁹Id. at 30,726; see 15 U.S.C. §§ 717c, 717d (2000).

²⁰Id. at 30,727.

²¹The EnronOnline system is administered by Enron Networks, an Enron Corp. subsidiary. EnronOnline is a free, Internet-based, transaction system which allows the Enron Gas Marketers to buy from and sell gas to third parties.

nevertheless profited due to the effect that this small change in the physical price had on its large financial position; Enron Gas Marketers earned approximately \$3.2 million from this apparent manipulation.

14. On July 19, 2001 a number of traders entered relatively large short positions in the financial markets through OTC swaps and Gas Daily financial swaps. These traders continued to increase the short positions throughout the initial phase of the manipulation, which was the period when the EOL market maker (who was, at times, the desk manager) quickly and steadily raised prices on EOL, resulting in the purchase of a very large amount of next-day physical gas. This purchasing caused prices in the financial markets to rise, but by a lesser amount.

15. The financial traders stopped increasing their short positions near the end of the EOL market maker's buying streak, at a point when the EOL market maker stopped raising prices and began to hold prices steady at the high levels. Once the EOL market maker leveled out prices, the OTC swap began to fall. The EOL market maker then began to lower the prices and sold a very large amount of gas at rapidly falling prices. The falling of the physical price then further pushed down the OTC swap price, generating significant profits for the financial traders. These profits greatly exceeded the losses that were generated from the impatient buying and selling of the physical gas.

3. Commission Determination

16. The Commission granted a blanket marketing certificate after a finding that the gas commodity market was sufficiently competitive to prevent certificate holders from manipulating prices. The Commission now has evidence that certain Enron Gas Marketers have apparently participated in practices that manipulate prices so as to charge unjust and unreasonable rates.

17. The Commission has discretion to implement remedies when it finds conduct that has violated its policies or regulations. The agency is at its zenith in fashioning such remedies.²² Its discretion extends to denial of participation in a government program generally extended to business managers for the purpose of maintaining the fairness,

²²E.g., *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967). See also *Connecticut Valley Electric Company, Inc. v. FERC*, 208 F.3d 1037, 1044 (D.C. Cir. 2000); *Louisiana Public Service Commission v. FERC*, 174 F.3d 218, 225 (D.C. Cir. 1999).

equity, and efficiency of the program.²³ Given the Enron Gas Marketers' conduct and their adverse effects on gas prices, the Enron Gas Marketers are directed to show cause why it still serves the public convenience and necessity for the Enron Gas Marketers to have blanket marketing certificates and why the Commission should not terminate their blanket marketing certificates. The Commission will institute a proceeding pursuant to the Commission's authority under NGA Sections 5 and 7,²⁴ and direct the Enron Gas Marketers to show cause to the Commission in a paper hearing in that proceeding

The Commission orders:

(A) The Enron Power Marketers are hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. EL03-77-000, why they should not be found to have violated Section 205(a) of the Federal Power Act and their market-based rate authorizations and why their market-based rate authority should not be revoked.

(B) The effective date in Docket No. EL03-77-000 will be 60 days following publication of this order in the Federal Register.

(C) 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), the Commission hereby institutes an investigation of the Enron Power Marketers' market-based rates, in Docket No. EL03-77-000, as discussed in the body of this order.

(D) The Enron Gas Marketers are hereby directed, within 21 days of the date of this order, to show cause to the Commission in a paper hearing, in Docket No. RP03-311-000, why the Commission should not terminate its blanket marketing certificate under 18 C.F.R. § 284.402 (2002), as discussed in the body of this order.

(E) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the

²³Niagara Mohawk Power Corp. v. FPC, 379 F.2d 153, 159 (D.C. Cir. 1967).

²⁴15 U.S.C. § § 717d, 717f (2000).

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Department of Energy Organization Act and the Natural Gas Act, particularly Sections 5 and 7 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), the Commission hereby institutes an investigation of the Enron Gas Marketers' blanket marketing certificates, in Docket No. RP03-311-000, as discussed in the body of this order.

(F) Any interested person desiring to be heard in these proceedings should file notices of intervention or motions to intervene with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214) within 21 days of the date of this order.

(G) Responses to the show cause submissions filed pursuant to Ordering Paragraphs (A) and (D) above may be submitted within 15 days of the date of filing of the show cause submissions.

(H) The Secretary shall promptly publish a copy of this order in the Federal Register.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.