

ITEM NO.

**PUBLIC UTILITY COMMISSION OF OREGON  
STAFF REPORT  
PUBLIC MEETING DATE: June 12, 2003**

**REGULAR** \_\_\_\_\_ **CONSENT** \_\_\_\_\_ **EFFECTIVE DATE** \_\_\_\_\_

**DATE:** June 10, 2003

**TO:** John Savage

**FROM:** Lee Sparling and Maury Galbraith

**SUBJECT:** Trading Activity Report

**STAFF RECOMMENDATION:**

We recommend that the Commission affirm that it will hold customers harmless for any penalties imposed by FERC or any other authority related to trading activity during the western electricity crisis of 2000-01.

We also propose that the Commission delay any decision on opening its own proceedings on trading activity by PGE, PacifiCorp, and Idaho Power until FERC completes its investigations. While we believe there is enough evidence to warrant opening formal investigations of PGE and Idaho Power, we believe it would be more efficient to make that decision and proceed with any investigation when the full record from the FERC cases is available. We will report back to the Commission with a recommendation on how to proceed for each company within 60 days after FERC finishes its work, and we will provide a status report on FERC's progress as needed at the end of 2003.

**DISCUSSION:**

Attached to this memo is Staff's final report on trading activities by PGE, PacifiCorp and Idaho Power during the western electricity crisis of 2000-01. The report addresses whether the utilities violated any Oregon statutes or Commission rules or orders. It describes the so-called Enron trading strategies and explains why they are alleged to be illegal or improper; summarizes other investigations into trading practices during the 2000-01 crisis; reviews the evidence from these cases about the involvement of PGE, PacifiCorp, and Idaho Power in suspect trading activities; examines whether any of the three utilities violated any of the laws, rules, or orders administered or issued by the Commission; and presents recommendations for Commission action.

On April 29, 2003, we issued the report as a draft for comment. PGE and Wah Chang (a PacifiCorp customer) responded by the May 21, 2003 deadline. Their comments are attached.

PGE raises a number of legal issues, which Paul Graham addresses in an attached memo. PGE questions the basis for the statement in the draft report that the remedy for utility mismanagement is a rate reduction "to compensate customers because they paid for good management but did not get it." Mr. Graham explains that the Commission can initiate a rate case to consider the amount of management expense included in a utility's revenue requirement. Parties could present evidence of utility mismanagement and argue that allowed expenses going forward should be reduced to reflect a lower quality of management. The company could counter with evidence of good management. Furthermore, all of the company's costs would be subject to review in the rate case, and the Commission would have to set rates that are reasonable overall. Mr. Graham also agrees with PGE that an investigation into allegations of misconduct or mismanagement and a rate case to consider appropriate remedies would be full contested case proceedings under ORS 756.515.

PGE disagrees that it acted improperly in its power supply operations and notes the report's conclusion that the 17 day transactions and the posting errors probably had little effect on the wholesale market or on the company's retail customers. The company concludes that an investigation and rate case to address mismanagement claims would not produce a tangible benefit for its customers.

Wah Chang recommends that the Commission delay its inquiry into PacifiCorp's trading activities until FERC either decides not to issue the show cause order requested by its staff for PacifiCorp or issues a final order after a show cause hearing. Wah Chang reasons that this approach will conserve the Commission's resources and give it the benefit of FERC's evidentiary record and findings. Wah Chang also recommends that the Commission include ricochet transactions and wash trades in its investigation of PacifiCorp.

When we issued the draft report six weeks ago, we expected that FERC would act quickly on the show cause orders requested by its staff on March 29, 2003. FERC staff wants 38 utilities and marketers (including PGE, PacifiCorp, and Idaho Power) identified by the California ISO as participating in Enron trading strategies to be directed to show why they should not be found in violation of ISO and PX tariffs and required to give back the related profits. FERC, however, has not acted on the request yet.

FERC has taken two notable actions since we prepared the draft report. First, it extended the schedule in PGE's case (EL02-114-000) by more than four months to allow review of Enron data tapes just released by the U.S. Department of Justice. Hearings will now begin on October 21, 2003, and the administrative law judge for the proceeding will release an initial decision on December 19, 2003.

Second, FERC issued an order on May 16, 2003, approving a stipulation and consent agreement that its staff signed with Idaho Power and the company's parent (IDACORP) and affiliate (IDACORP Energy). The agreement settles issues regarding improper access to Idaho Power's transmission system, the company's failure to file contracts signed with or assigned to its affiliate, and its violation of standards and codes of conduct. The transactions involved appear to be unrelated to the Enron strategies, but the company's admission that it violated certain FERC requirements indicates that it may have engaged in misconduct or mismanaged its trading activities. However, we do not have enough information at this time to determine the effect of these violations on Idaho Power's retail customers or to know why the violations occurred.

In the draft report, we recommended that the Commission open an investigation to determine whether PGE mismanaged its trading activities, based on evidence about the 17 day transactions and the posting errors. We also proposed to obtain more information about trading by PacifiCorp and Idaho Power in 2000-01 and report back to the Commission in 90 days with a recommendation on how to proceed.

We now recommend that the Commission delay any decision on opening formal investigations until FERC completes its work. Since the process for a misconduct or mismanagement case (which involves a formal investigation and possibly a general rate case) would be complicated and time-consuming, we believe it would be more efficient to wait until FERC completes its Fact-Finding Investigation, and, in PGE's case, the EL02-114-000 proceeding. As Wah Chang notes, the Commission would then have the benefit of the evidence and conclusions in the FERC cases. Furthermore, a Commission investigation could then proceed without the need to make mid-course corrections to account for continuing developments at FERC. We propose to report back to the Commission within 60 days after FERC completes its investigations for each company with a recommendation on how to proceed. We will also provide a status report on the FERC proceedings at the end of 2003 for PGE and, as needed, for PacifiCorp and Idaho Power.

This change in recommendation does not mean that we have changed our assessment of PGE's 17 day transactions and posting errors. We still believe that there is a prima facie case that PGE mismanaged its trading with Enron. Furthermore, it now appears there may be a case for misconduct or mismanagement by Idaho Power. However, it is

simply more efficient to wait for the results of FERC's investigations. Delay does not mean that interested parties will not have a chance to argue that the utilities violated Oregon laws, rules, or orders. Parties will have that opportunity when the Commission does decide whether to open an investigation for a utility and in the investigation itself, if authorized.

If the Commission agrees to put off its decision on formal investigations until the FERC cases are concluded, it does not need to take any action now. We recommend, however, that the Commission state that it will hold customers harmless for any penalties imposed by FERC or others. For example, fines would not be charged to customers, and, if a utility loses its market-based rate authority, test period power cost would be modeled as if the company retained such authority.

**PROPOSED COMMISSION MOTION:**

Affirm that customers will be held harmless for penalties imposed by FERC or any other authority related to trading activity during the western electricity crisis of 2000-01.