ORIGINAL

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

STATE OF CALIFORNIA, *ex. rel.* BILL LOCKYER, Complainant, v. BRITISH COLUMBIA POWER EXCHANGE CORP., CORAL POWER, LLC, DYNEGY POWER MARKETING, INC., ENRON POWER MARKETING, INC., MIRANT AMERICAS ENERGY MARKETING, LP, RELIANT ENERGY SERVICES, INC., WILLIAMS ENERGY MARKETING & TRADING CO., ALL OTHER PUBLIC UTILITY SELLERS OF ENERGY AND ANCILLARY SERVICES TO THE CALIFORNIA ENERGY RESOURCES SCHEDULING DIVISION OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, AND ALL OTHER PUBLIC UTILITY SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA POWER EXCHANGE AND CALIFORNIA INDEPENDENT SYSTEM OPERATOR, Defendants.	Docket No. EL02-___-000

COMPLAINT OF THE STATE OF CALIFORNIA, *ex rel.* BILL LOCKYER

COMPLAINT

Pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC"), 18 C.F.R. §385.206 (2001), The State of California, *ex rel.* Bill Lockyer, Attorney General of the State of California (hereinafter "Attorney General"), hereby submits this Complaint. In summary, the Attorney General alleges that generators and marketers selling power into markets operated by the California Independent System Operator ("ISO") and California Power Exchange ("PX") have failed to file their rates as required by Section 205(c) of the Federal Power Act (16 U.S.C. §824d(c)) and numerous Commission orders requiring them to file transaction-specific information about their sales and purchases at market-based rates. California wholesalers have also failed to properly file the rates they charged for spot market sales of energy to the California Energy Resources Scheduling Division of the California Department of Water Resources' ("CERS"), which spent an estimated $10 billion buying energy in the first ten months of last year alone in order to maintain system reliability in California.

Because all rates must be filed under the FPA, each and every non-filed rate charged by the Defendants to this Complaint is unlawful. In addition, because the right to charge market-based rates is expressly conditioned on the filing of quarterly reports containing transaction-specific information about all sales and purchases, each of the Defendants to this Complaint has violated, and continues to be in violation of, its grant of market-based rate authority. In order to remedy these serious and persistent violations of law, the Attorney General seeks an order of the Commission requiring California wholesalers to comply, on a prospective basis, with the Section 205 rate filing requirements. Furthermore, to the extent that any non-filed rates are found to exceed just and reasonable levels, the Attorney General

seeks refunds on behalf of California purchasers.

As demonstrated more fully below, the market-based rate schedules filed by the Defendants state only that rates will be established "by agreement" between buyers and sellers. These pro forma tariffs are the only "rates" on file with FERC prior to the time rates are set in the market, yet they provide no notice to the public whatsoever of the rates to be charged in the market, and do not permit FERC to determine in advance whether the rates to be charged in the market are just and reasonable, contrary to the requirements of Section 205(c). Nor do the market-based rate schedules on file for California wholesalers prescribe a rate "formula" or "rate rule" that satisfies the statutory obligation to ensure that all rates are on file.

Furthermore, the quarterly transaction reports filed by the Defendants do not cure the statutory failure to file all rates for jurisdictional service prior to the time service commences. Such reports, which are filed up to four months after the completion of a market-based transaction, do not provide the requisite notice and predictability under Section 205, and do not permit FERC to review the rates for reasonableness before they go into effect. After-the-fact filing of rates effectively shifts the burden of proof as to the reasonableness of rates to purchasers,[1] who must bring a complaint under Section 206 in order to seek any relief from the Commission in the event that rates charged in the market exceed just and reasonable levels. Shifting the burden in this manner violates the cardinal purpose of the filing requirement, which is to *prevent* public utilities from charging excessive rates by providing an opportunity for FERC to act before rates go into effect. Compounding the harm, FERC's

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1. The Commission has long held that "[it] is [the utility's] burden to prove that all aspects of its [proposal] are just and reasonable." *Northern States Power Co.*, 64 FERC ¶61,324, at 63,377 (1993).

ability to order meaningful relief (i.e., retroactive refunds) in complaint proceedings under Section 206 is extremely limited.

Even if quarterly, after-the-fact reporting were found to comply with Section 205(c), California wholesalers have consistently ignored the requirement that rates for all sales of energy at market-based rates be reported. On numerous occasions, FERC has held that transaction-specific information must be reported in order to meet the Section 205 rate-filing requirements for market-based rates, and has repeatedly rejected requests from market participants to report the information on an aggregate basis (e.g., by reporting minimum and maximum prices, instead of transaction-specific prices). Nonetheless, the quarterly transaction reports filed by California wholesalers consist entirely of aggregated data on sales at market-based rates, making it impossible to determine the terms of any single transaction, and defeating any claim that the rates have been filed as required by law.

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II. DESCRIPTION OF COMPLAINANT

Bill Lockyer, the Attorney General of the State of California, is the head of the California Department of Justice, Cal. Gov't Code §12510, and the chief law enforcement officer of the State. Cal. Const., art. V, §13. He brings this Complaint on behalf of the State of California in order to ensure that companies participating in California electricity markets comply with all applicable laws and regulations, and to secure the rights of California purchasers, who are still contending with the fallout from the California energy crisis.

III. CALIFORNIA WHOLESALERS HAVE FAILED TO FILE THEIR RATES IN THE MANNER CONTEMPLATED BY SECTION 205; CONSEQUENTLY, THE RATES CHARGED FOR POWER SOLD TO THE ISO, PX, AND CERS ARE UNLAWFUL AND SUBJECT TO REFUND.

A. The Market-Based Rate Schedules Filed by California Wholesalers Do Not Provide Sufficient Notice of the Rates to Be Charged, and Do Not Permit FERC To Determine in Advance Whether the Rates to Be Charged Are Just and Reasonable, Contrary to the Requirements of Section 205.

Under the FPA, all rates must be filed with FERC and published for public review prior to the time service commences. 16 U.S.C. § 824d(c).[2] In addition, all proposed rate changes must be filed with FERC and published for public review. 16 U.S.C. § 824d(d). The filing of rates is the "essential characteristic of a rate regulated industry." *MCI Telecomm's Corp. v. AT&T Co.*, 512 U.S. 218, 231 (1994); *see also, Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 132 (1990) (the requirement that rates be filed is "utterly central" to the administration of the Interstate Commerce Act.). Without filed rates, it would

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2. FERC regulations mirror the FPA's rate-filing requirement, providing in pertinent part that all public utilities must file and post for public inspection "full and complete rate schedules ... *clearly and specifically setting forth all rates and charges for any transmission or sale of electric energy* ..."18 C.F.R. §35.1(a)(2000), emphasis added.

be impossible for FERC to carry out its statutory duty to ensure that all rates charged for jurisdictional services are just and reasonable. *MCI, supra*, at 229-30; *Maislin, supra*, at 132-33 ("The ICC cannot review in advance the reasonableness of unfiled rates.") Similarly, statutory provisions allowing consumers and competitors to challenge wholesale power rates as unreasonable or discriminatory would be rendered useless if rates were not publicly filed. *MCI, supra,* at 230-231; *Maislin, supra*, at 132-33. As FERC has recognized, the failure to file a rate in a timely manner "undermines the right of a utility's customers to protection from excessive rates." *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139 (1993), 1993 WL 285371 (F.E.R.C.), at *18 n. 10.

The filing of rates is not only necessary for FERC to fulfill its obligations under the FPA, it also has profound impacts on the rights and obligations of market participants. These impacts derive from the FPA itself (*see, e.g.*, 16 U.S.C. §824e(b) (providing that FERC may, in most circumstances, only order prospective relief in complaints challenging the legality of existing rates on file with FERC)) and the court-made filed rate doctrine, which may preclude claims for damages against a public utility, even where the rate on file was based on fraudulent information or was the product of an illegal conspiracy. *See, e.g., County of Stanislaus v. Pacific Gas & Elec. Co.*, 114 F.2d 858 (9th Cir. 1997). For these reasons, the existence of a properly filed rate under 16 U.S.C. § 824d cannot be assumed lightly.

Courts have repeatedly held that in order for rates on file to become effective, they must provide sufficient notice to the public of the rate to be charged. *Electrical Dist. No. 1, et al. v. FERC*, 774 F.2d 490, 492 (D.C. Cir. 1985) ("Providing the necessary predictability is the whole purpose of the well-established 'filed rate doctrine' ..."); *Public Serv. Co. of New Mexico v. FERC*, 832 F.2d 1201. 1222-25 (10th Cir. 1987); *Columbia Gas Trans. Corp. v.*

FERC, 831 F.2d 1135, 1140-41 (D.C. Cir. 1987); *see also, e.g., Maislin, supra,* 497 U.S. at 126 (rate-filing requirements in the Interstate Commerce Act are designed to "render rates definite and certain ...").

In addition, rates on file must provide enough specificity for FERC to be able to determine whether they are just and reasonable. *Electrical Dist. No. 1, supra*, 774 F.2d at 495 ("[T]he Commission cannot fix a rate ... without ever seeing it."). Tariffs may, in some limited circumstances, state a rate "formula" or a "rate rule," rather than specific, enumerated rates, so long as the formula is fixed and produces predictable results, as required by Section 205. *Transwestern Pipeline Co. v. FERC*, 897 F.2d 560, 578 (D.C. Cir. 1990); *Ocean State Power II*, 69 FERC ¶61,146 at 61,552 (1994). The rates on file for power sold to the PX, ISO, and CERS, however, do not meet these fundamental requirements of the FPA.

Sellers with market-based rate authority typically file a pro forma rate schedule stating the following: "Rates: All sales shall be made at rates established by agreement between [seller] and the purchaser. . . . Other Terms and Conditions: All other terms and conditions shall be established by agreement between [seller] and the purchaser." *See, e.g., Application of El Segundo Power, L.L.C. For Market-Based Rates*, Docket No. 98-1127, filed on December 17, 1997, at Exh. A [Proposed Rate Schedule No. 1];[3] *Request of Southern Energy Potrero, L.L.C. for Market-Based Rates*, Docket No. ER99-1833, filed on February 17, 1999, at Exh. A [Proposed Rate Schedule No. 1];[4] *Petition of Duke Energy Moss Landing LLC For Order Accepting Initial Rate Schedule for Filing*, Docket No. ER98-

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3. FERC approved the proposed tariff in 82 FERC ¶61,126 (Feb. 12, 1998).

4. FERC approved the proposed tariff by Letter Order on March 31, 1999.

2681-000, filed on April 24, 1998, at Exh. A [Proposed Rate Schedule No. 1].[5] This is the only "rate" on file with FERC prior to the time rates are determined by buyers and sellers in the marketplace. Based on such a vague prescription, the public has no way of knowing in advance what the rate charged by a particular seller will be, and FERC does not have an opportunity to review the rates charged before they go into effect. Rather, when FERC grants "market-based rate authority" to a wholesaler, it finds in advance that *any rate* negotiated pursuant to the wholesaler's tariff is "just and reasonable." *United Illuminating Co.*, 63 FERC ¶61,212 (1993), 1993 WL 242148 (F.E.R.C.), at *8. This cannot be reconciled with the Section 205 filing requirement, which is designed to ensure that FERC has an opportunity in every instance to judge the reasonableness of rates subject to its jurisdiction before they go into effect. *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 (1981)(filing of rates ensures that "regulated companies charge only those rates of which the agency has been made cognizant."); *see also*, *MCI, supra,* 512 U.S. at 229-30 (analogous rate-filing provisions in the Communications Act of 1934 were "Congress's chosen means of preventing unreasonableness and discrimination in charges ...").[6]

Courts have held that, in some circumstances, public utilities may file a rate formula or rate rule, rather than specific, enumerated rates. *Transwestern, supra,* 897 F.2d at 578. In such cases, the utility's rates may change repeatedly without making new Section 205 filings, provided that the rates charged are consistent with the formula. *San Diego Gas & Elec. Co.,* 46 FERC ¶61,363 at 62,129-30 (1989). A market-based rate schedule, however, is not a formula rate. FERC's acceptance of formula rates is premised on the rate design's "fixed,

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5. FERC approved the proposed tariff in 83 FERC ¶61,317 (June 25, 1998).

6. *See, infra*, n. 9.

predictable nature." *Ocean State Power II, supra*, at 61,552. In order for a formula rate to provide the requisite notice under Section 205, the public must be able to calculate the rate by "substituting specific numbers for the variables in the equation." *Natural Gas Pipeline Co. of America*, 54 FERC ¶61,304 (1991), 1991 WL 265302 (F.E.R.C.), at * ____; *see also, e.g.*, *Nor Am Gas Transmission Co.*, 77 FERC ¶61,101 (1996), 1996 WL 558438 (F.E.R.C.) at * ___ (under Section 4 of the Natural Gas Act, notice requirement dictates that utility file either the actual rate to be charged or a formula "stated with such clarity that a third party can easily calculate the rate charged ..."). With respect to the market-based rates charged by California wholesalers, there is no formula at all, much less specific values which can be processed through a formula to derive the applicable rate.[7] Market-based rates fluctuate widely and rapidly (every hour or less in the ISO and PX) according to supply and demand and any other consideration taken into account by buyers and sellers in the course of business. Such a system is antithetical to the concept of a rate "formula." *Texaco, Inc. v. FPC*, 474 F.2d 416, 421 n. 18 (rates determined solely by market forces are the "antithesis of regulation."). In sum, the pro forma market-based rate schedules filed by the Defendants create no

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7. Several of the defendants to this Complaint have vigorously opposed the notion that market-based rates are even similar to formula rates in some respects, much less that they are formula rates. *See*, *Answer of Reliant Energy Power Generation, Inc. to the Emergency Motion of the CAISO*, Docket Nos. ER98-27-000 *et al.*, filed June 22, 2001, pp. 22-23 ("The ISO can call a chicken a goat, but that does not change the nature of the chicken."); *Answer of Mirant Americas Energy Marketing, LP et al. to the Emergency Motion of the CAISO*, Docket Nos. ER97-4166-000 *et al.*, filed June 22, 2001, pp. 5, 34-35 ("[T]here is no Commission-approved just and reasonable formula for the market-based rate ... For market-based rates ... the rate produced by the market is what is considered to be just and reasonable, as evidenced by the requirement that rates be reported after the fact in quarterly transaction reports ..."); *Answer of Dynegy Power Marketing, Inc. et al. to the Emergency Motion of the CAISO*, Docket Nos. ER99-4160-000 *et al.*, filed June 22, 2001, p. 7 ("Dynegy's market-based rate authority is not, in any event, a formula rate. The filed rate provides no formula dictating calculations based on particular cost components.")

transparency and no opportunity whatsoever for regulatory review and, therefore, do not meet the Section 205 rate-filing requirements.

B. The Quarterly Transaction Reports Filed by California Wholesalers Do Not Comply With The FPA's Rate Filing Requirements.

As discussed above, the mere statement that rates will be established "by agreement" between buyer and seller does not provide the notice and predictability required by Section 205, and does not permit FERC to fulfill its FPA mandate to determine whether the seller's rates are just and reasonable. In recognition of these deficiencies, FERC has ordered all wholesalers with market-based rate authority to file reports listing their short-term (i.e., less than a year) purchases and sales during the previous quarter. *See generally, Southern Co. Services, Inc. et al.*, 87 FERC ¶61,214 (1995). These reports, which are filed up to four months after the completion of a market-based transaction, do not comply with the Section 205 filing requirements.[8]

FERC established the quarterly reporting requirement in *Citizens Power & Light Corp.*, 48 FERC ¶61,210 (1989), 1989 WL 262566 (F.E.R.C.), *__. In that case, FERC approved the company's request for a single, market-based rate schedule, rather than

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8. FERC, citing *Power Co. of America, L.P. v. FERC*, 245 F.3d 839, 846 (D.C. Cir. 2001), recently concluded that quarterly reports "satisfy the section 205(c) filing requirements for market-based rates," and that the market-based rates for power sold through the ISO and PX were therefore on file with and approved by the Commission. *San Diego Gas & Elec. Co.*, 61 FERC ¶61,120 at 61,506 (2001). FERC's reliance on that case is misplaced. Far from endorsing FERC's rate filing procedures, the court specifically declined to consider whether those procedures comply with the FPA, stating "PCA has not even questioned the Commission's judgment in this regard so neither will we." *Power Co. of America,* 245 F.3d at 846.

Whether FERC's filing requirements for market-based rates comply with Section 205 is a question of first impression. Courts have held that market-based rates may be deemed just and reasonable under certain circumstances, but have expressly left open the question of whether such rates comply with Section 205. *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 879 (D.C. Cir. 1993).

requiring that each contract be separately filed prior to the time service commenced. *Id.* at *__. As an express condition of the grant of market-based rate authority, FERC required Citizens to report all of its short-term purchases and sales of generation and transmission during the previous quarter. *Id.* Since the *Citizens Power & Light* case, FERC has repeatedly held that quarterly reporting is essential to ensure that the seller's rates "will be on file as required by Section 205(c) of the FPA, 16 U.S.C. §824d(c), to evaluate the reasonableness of the charges, and to provide for ongoing monitoring of the [seller's] ability to exercise market power." *Enron Power Marketing, Inc.*, 65 FERC ¶61,305 (1993), 1993 WL 499443 (F.E.R.C.), at *5; *accord, Southern Company Services, Inc.*, 87 FERC ¶61,214 (1995), 1995 WL 211950 (F.E.R.C.), at *6; *Morgan Stanley Capital Group, Inc.*, 72 FERC ¶61,082 (1995), 1995 WL 442871 (F.E.R.C.), at *6 n. 15; *Reporting Requirements and Fees Applicable to Power Marketers,* 80 FERC ¶61,373, 1997 WL 595406 (F.E.R.C.), at *2. FERC has further held that the filing of quarterly transaction reports satisfies the filed rate doctrine. *San Diego Gas & Elec. Co.*, 96 FERC ¶61,120, at 61,506 (2001). After-the-fact reporting, however, fails to provide sufficient notice to the public of the rate to be charged, as required by Section 205.[9] Moreover, it does not permit the Commission to carry out its statutory obligation to review all jurisdictional rates for reasonableness before they go into

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9. FERC held recently that the public notice requirement under Section 205 is met so long as the public can ascertain the "type of rate" being charged. *San Diego Gas & Elec. Co.*, 96 FERC ¶61,120, at 61, 506 n. 31. This misses the mark. Knowing that rates are market-based tells the public virtually nothing about the rate to be charged. If knowing the type of rate is all that is required, public utilities could file rate schedules stating only that their rates are "cost based," without providing any supporting detail about what their costs are, or how their costs are to be calculated.

effect.[10]

While FERC has authority to accept late-filed rates by waiving the prior notice requirement in some cases, it may not do so unless it has an opportunity to first review the rate to ensure granting the waiver would be in the public interest. *City of Piqua, Ohio v. FERC*, 610 F.2d 950, 953 (D.C. Cir. 1979)(holding that once notice has been filed, FERC can "investigate and review the rate change to ensure that it serves the public interest. The effective date of the rate change is left to the discretion of the Commission."); *City of Girard, Kansas v. FERC*, 790 F.2d 919 (D.C. Cir. 1986)(holding that FERC's jurisdiction over rates "encompasses review of each rate charged to each customer."); *North American Energy Conservation, Inc.*, 95 FERC ¶61,068 (2001), Slip Op., p. 6 (before accepting a late-filed rate, the Commission must first review the rate to ensure it is just and reasonable.). In contrast, the spot market transactions at issue here were completed long before the quarterly reports were ever filed, giving FERC no opportunity to act before the rates went into effect.[11]

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10. FERC held recently that once it has approved a seller's market-based rate schedule, any subsequent rate filings are for "informational purposes" only, and FERC is not required to determine whether the rates under those filings are just and reasonable since it has "already authorized the seller to make sales at market-based rates." *PacifiCorp Power Marketing, Inc.*, 98 FERC ¶61,108, 2002 WL 180893 (F.E.R.C.), at *2; *see also*, *GWF Energy LLC*, 97 FERC ¶61,297 (2001). The notion that quarterly transaction reports are made for "informational purposes" only directly contradicts the purpose of the Section 205 rate-filing requirement and FERC's own stated rationale for ordering sellers to file those reports, which is to ensure that FERC has an opportunity to "evaluate the reasonableness of the charges." *Enron Power Marketing, Inc.*, 65 FERC ¶61,305, 1993 WL 499443 (F.E.R.C.), at *5.

11. In any event, as demonstrated more fully in Section V, *infra*, the quarterly transaction reports filed by the Defendants do not include any transaction-specific information about their spot market sales. Thus, even if FERC did have authority to waive the prior notice requirement for spot market sales of energy, the Defendants never filed the information FERC would have needed to perform the public interest analysis required by the FPA.

At bottom, after-the-fact reporting of rates virtually eliminates any meaningful review of rates under Section 205, and makes complaints filed by consumers under Section 206 (16 U.S.C. §824e) the only means of challenging the legality of rates being charged in the marketplace. For two key reasons, this falls far short of the "complete, permanent, and effective bond of protection from excessive rates and charges" Congress intended when it adopted the FPA. *Atlantic Refining Co. v. Public Serv. Co. of New York*, 360 U.S. 378, 388 (1959). First, in Section 206 cases, FERC's power to order refunds is sharply limited; generally, FERC may only order full refunds if it acts before the rate becomes effective. Second, in a complaint proceeding, the burden of proof as to the reasonableness of the rate falls on the complainant,[12] as opposed to the utility when it seeks advance approval under Section 205. This is true even where FERC issues a show cause order, because the ultimate burden of proof as to the reasonableness of the rate in such cases falls on FERC. As the concurring Commissioner in *Citizens Power & Light* forcefully argued, allowing power marketers to file their rates months after the fact turns the FPA "on its head." 48 FERC ¶61,210 (1993), 1993 WL 262566 (F.E.R.C.), at *___.

To be clear, the Attorney General does not contend that market-based pricing per se violates the FPA. For example, FERC may institute a system where rates are determined by negotiation between buyers and sellers, so long as rates do not exceed a cap lawfully established by FERC. The cap be may be based on costs of production or any other measure that ensures rates are just and reasonable, so long as FERC has the opportunity to thoroughly

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12. "Those who challenge the Commission's order carry the burden of proof as to its unjustness or unreasonableness, and that burden is heavy. ...The Commission should be affirmed even if it produces no evidence of justness or reasonableness." *Public Serv. Co. of New Mexico, supra*, 832 F.2d at 1205-06, internal citations omitted.

review the cap before it goes into effect. A properly vetted cap provides sufficient notice to purchasers of the rates to be charged, with adequate assurance that rates charged at or below the cap are just and reasonable.[13] In contrast, the current regime affords no opportunity for reasonableness review before rates go into effect, and is therefore fatally flawed.

In sum, the filing of rates months after-the-fact precludes any opportunity for prior regulatory review and effectively shifts the burden of proof as to the reasonableness of rates to purchasers in complaint cases. Such a scheme cannot be reconciled with the overriding purpose of the FPA, which is to protect consumers by: 1) preventing sellers from charging excessive rates in the first place; and 2) providing consumers with an effective forum for challenging excessive rates and meaningful remedies in the event of regulatory failure, or where circumstances have changed such that existing rates can no longer be deemed just and reasonable.

IV. UNFILED RATES ARE UNLAWFUL AND UNENFORCEABLE, AND FERC HAS NO AUTHORITY UNDER THE FPA TO WAIVE OR "MODIFY" OUT OF EXISTENCE THE REQUIREMENT THAT ALL RATES BE FILED.

As discussed above, the Supreme Court has held that "rate filings are ... the essential characteristic of a rate-regulated industry." *MCI*, *supra,* 512 U.S. at 231.

> The tariff filing requirement is ... the heart of the common-carrier section of the Communications Act. ... This Court has repeatedly stressed that rate filing was Congress's chosen means of preventing unreasonableness and discrimination in charges: '[T]here is not only a relation, but an indissoluble unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibition against preferences and discrimination.'

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13. In essence, although the appropriate level of the cap is subject to dispute, such a price mitigation mechanism reflects the system currently in place throughout the Western Systems Coordinating Counsel and scheduled to terminate on September 30, 2002. *See, San Diego Gas & Elec. Co., et al.*, 95 FERC ¶61,148 (2001), *on reh'g*, 95 FERC ¶61,418 (2001), *on clarification and further reh'g*, 97 FERC ¶61,275 (2001).

Id. at 229-30, internal citations omitted; *Maislin, supra*, 497 U.S. at 132 (the requirement that rates be filed is "utterly central" to the administration of the Interstate Commerce Act.). Without filed rates, it would be impossible for an agency to ensure that all rates subject to its jurisdiction are just and reasonable. *MCI, supra*, at 229-30; *Maislin, supra*, 497 U.S. at 132-33 ("The ICC cannot review in advance the reasonableness of unfiled rates.") Similarly, statutory provisions allowing consumers and competitors to challenge rates as unreasonable or discriminatory would be rendered useless if rates were not publicly filed. *MCI, supra,* at 230-231; *Maislin, supra*, at 132-33.

In *Maislin* and *MCI*, the administrative agency attempted to waive (*Maislin*) or "modify" out of existence (*MCI*) the filing requirement in situations where the market was judged to be sufficiently competitive, or a particular utility was judged to lack market power. The Supreme Court held that while such initiatives may have served other policy goals, they "greatly undervalue[d] the importance of the filing requirement," and amounted to a "fundamental revision of the statute, changing it from a scheme of rate regulation ... to a scheme of rate regulation only where effective competition does not exist." *MCI, supra*, 231-232. Where Congress has chosen a scheme of rate regulation that depends on the filing and publication of rates, a "desire to increase competition" does not justify the promulgation of rules that "alter the well-established statutory filed rate requirements." *MCI, supra*, at 234.

FERC's treatment of market-based transactions affords the Defendants no protection, even if Defendants were in compliance with FERC's quarterly rate reporting requirements. *See*, Section V *infra*. FERC, like the ICC and the FCC, has exceeded the bounds set by its controlling statute in an effort to promote competition in the electricity industry. Only Congress, and not FERC, can change the statute in the manner FERC has attempted to do

through the abdication of its filing, publishing, and review function for any and all wholesale electricity rates. Quarterly, after-the-fact filing of rates sweeps away the underpinnings of the FPA by making it impossible for the agency to review in advance the reasonableness of the rates charged for wholesale electricity.

V. THE QUARTERLY TRANSACTION REPORTS FILED BY THE DEFENDANTS DO NOT CONTAIN TRANSACTION-SPECIFIC DATA, NEGATING ANY CONTENTION THAT THEIR RATES ARE ON FILE.

Even if quarterly, after-the-fact reporting of rates is found to comply with Section 205(c) -- and it should not be so found for the reasons discussed above -- the fact remains that the Defendants have consistently violated the reporting requirements established by FERC. Instead of reporting transaction-specific information about their spot market sales of energy as required, the Defendants have routinely reported highly aggregated data, typically listing the total number of megawatts sold, along with the minimum and maximum prices charged, for the entire quarter. As a result, the Defendants' quarterly transaction reports are utterly useless for their intended purpose, which is to enable FERC to evaluate the reasonableness of the charges.

A. The Failure to File Transaction Specific Information Constitutes a Violation of Section 205(c) and An Express Condition of the Grant of Market-Based Rate Authority.

FERC has repeatedly held that sellers with market-based rate authority must report their short-term sales and purchases (i.e., less than a year) on a transaction-specific basis in order to ensure that their rates will be on file, to evaluate the reasonableness of the charges, and to monitor the seller's ability to exercise market power. *Enron Power Marketing, Inc.*, 65 FERC ¶61,305 (1993), 1993 WL 499443 (F.E.R.C.), at *5. This requirement is mandated by the FPA. 16 U.S.C. §824d(c)(providing that all rates for "any ... sale" of wholesale power

must be filed and posted for public inspection); *see also*, 18 C.F.R. §35.1(a)(providing that all rates charged must be "clearly and specifically" set forth in rate schedules on file with the Commission). Moreover, it is an express condition of the grant of market-based rate authority made to all generators and marketers with market-based rate authority. *See, e.g.*, *Citizens Power & Light, supra*, 1989 WL 262566 at *___; *see also, e.g.*, *Rockingham Power, LLC et al.*, 86 FERC ¶61,337 (1999); *Cabrillo Power I, LLC, et al.*, 86 FERC ¶61,180 (1999); *Duke Energy Moss Landing, LLC et al.*, 83 FERC ¶61,317 (1998); *Ormond Beach Power Generation, LLC,* 83 FERC ¶61,306 (1998); *Long Beach Generation, LLC*, 82 FERC ¶61,295 (1998); *AES Huntington Beach, LLC*, 83 FERC ¶61,100 (1998); *Ocean Vista Power Generation, LLC et al.*, 82 FERC ¶61,114 (1998); *El Segundo Power, LLC*, 82 FERC ¶61,126 (1998).

For each transaction, sellers must report: 1) the buyer's or seller's name; 2) a brief description of the service; 3) the delivery point(s) for each service; 4) the price of each service; 5) the quantities to be served or purchased; 6) the duration of the transaction; 7) any other attributes of the product being bought or sold which contribute to its market value. *Intercoast Power Marketing Co.*, 68 FERC ¶61,248, at 62,134 (1994). Despite numerous requests by market participants to ease the requirement, FERC has refused to deviate from it. *See, e.g., National Elec. Assoc's. Ltd. P'ship*, 50 FERC ¶61,378 (1990), 1990 FERC LEXIS 516 at *8 (rejecting request to report transactions on a confidential basis); *Enron Power Marketing, Inc.*, 65 FERC ¶61,305 (1993), 1993 WL 499443 (F.E.RC.) at *5 (rejecting request to report transactions on an aggregate basis, without identifying the terms of specific transactions or counter-parties); *Enron Power Marketing, Inc.*, 66 FERC ¶61,244 (1994), 1994 WL 58057 (F.E.R.C.) at *5 (rejecting request to report only the maximum price charged

to each customer). Consistent with those decisions, current guidelines published by FERC on its web site are emphatic that "Transaction reports MUST include the ... descriptions of **EACH TRANSACTION** ... Provide price per transaction do not give price ranges ... Do not aggregate transactions by seller or purchaser. Report information for each seller or purchaser on a transaction by transaction basis." *See*, http:www.ferc.gov/electric/pwrmkt/pmhow.htm# Quarterly Transaction Reports, emphasis in original. Although this is currently the *only* means of satisfying the filed rate doctrine afforded to them, the Defendants have flouted FERC's directives.

B. In Violation of Section 205(c) and Their Grants of Market-Based Rate Authority, Defendants Have Failed to File Transaction-Specific Information About Their Spot Market Sales to CERS.

From January 18 through October 31, 2001, CERS spent an estimated $10 billion buying power in the spot market in order to cover the "net short" position of the major investor-owned utilities, and to serve as a creditworthy purchaser of imbalance energy required by the ISO to safely and reliably operate the California grid. Although the Defendants (on a combined basis) entered into thousands of short-term transactions with CERS, none of them reported those sales on a transaction-specific basis, making it impossible for FERC to determine the rate for any particular sale of energy. By failing to report transaction-specific detail on their short-term sales to CERS,[14] Defendants have effectively evaded FERC regulation.

For example, according to records kept by CERS, from January 18 through October 31, 2001, Coral Power LLC ("Coral") entered into 285 separate transactions with CERS with

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14. This Complaint challenges short-term sales of energy to CERS only, and does not encompass transactions entered into pursuant to long-term contracts.

a duration of twenty-four hours or less, with a total dollar value of $86.9 million. None of those transactions was separately reported by Coral. In its quarterly transaction reports, Coral divided its transactions into three categories: firm, non-firm, and firm with liquidated damages. For each category, Coral reported only the total number of megawatts sold during the three-month reporting period, along with the minimum and maximum prices charged. It did not segregate any single transaction by date, time, duration, delivery point, quantity, or price.

Reliant Energy Services, Inc. ("Reliant") made 181 separate sales of electricity to CERS with a duration of twenty four hours or less during the January - October time frame. Those transactions had a combined market value of $38.4 million. Like Coral, Reliant did not separately report any of those sales. In its quarterly filings, Reliant divided its sales to CERS into the following categories: firm for delivery at "NOCAL," firm for delivery at "SOCAL", and non-firm for delivery at "SOCAL." The reports list only the total number of megawatts in each category, along with the minimum and maximum prices charged. It is impossible to determine the date, time, duration, quantity, or price for any single transaction.

Dynegy Power Marketing, Inc. ("Dynegy") reported its sales to CERS in a similar manner. The first quarter 2001 report filed by Dynegy includes just two entries, the first listing firm sales of 92,010 MWh for delivery at NP15 and SP15 at prices ranging from $0 to $400, and the second listing firm sales of 760,496 MWh for delivery at NP15, SP 15, and Palo Verde with prices ranging from $86 to $405. The second and third quarter reports vary slightly in format, but not substance. It is impossible to determine the terms of any particular sale by Dynegy to CERS by price, date, time, quantity or duration.

BP Energy Co. ("BP") made 237 separate sales lasting twenty four hours or less to

CERS, with a combined market value of $50.2 million. In its quarterly reports, BP reported only the total number of megawatts delivered over the three-month period at NP-15, Palo Verde, and SP-15, along with the minimum and maximum prices charged for those megawatts. It is impossible to determine whether any particular sale was for firm or non-firm energy, much less the date, time, duration, price, or quantity of any of the sales.

The total lack of meaningful detail in the preceding examples is the rule, not the exception. The Attorney General reviewed the quarterly transaction reports filed by eleven jurisdictional sellers that reported sales to CERS in the first three quarters of 2001.[15] None provided the transaction-specific data required by Section 205(c) and FERC's orders granting them market-based rate authority.[16]

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15. *See*, App. A-B. Exh. A is a spread sheet compiled by CERS listing all of the entities, jurisdictional and non-jurisdictional, that sold power on a short-term basis to CERS from January 18, 2001 to October 31, 2001. The spread sheet shows the number of transactions CERS entered into with each seller, broken down into four categories: transactions lasting 24 hours or less; transactions greater than 24 hours and up to one week; transactions greater than one week and up to one month; transactions greater than one month. In addition, the spread sheet shows the total number of MWs sold to CERS, and the total dollar value of the transactions, in each category. App. A includes data on some transactions entered into pursuant to long-term contracts entered into by CERS. As noted above, this Complaint does not encompass those transactions. App. B is a key that matches the seller IDs listed on App. A to the full name of the seller.

16. The Attorney General examined the quarterly transaction reports filed in Quarters One, Two, and Three of 2001 by the following jurisdictional sellers to CERS: BP Energy Co., British Columbia Power Exchange Corp., Calpine Energy Services, LP, Coral Power, LLC, Duke Energy Trading & Marketing, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mieco, Inc., Mirant Americas Energy Marketing, LP, PG&E Energy-Trading, LP, Williams Energy Marketing & Trading Co. None reported transaction-specific information as required.

C. In Violation of Section 205(c) and Their Grants of Market-Based Rate Authority, Defendants Have Failed to File Transaction-Specific Information About Their Sales of Energy Into the ISO and PX.

From April 1, 1998 through January 2000, when it declared bankruptcy and terminated all trading, the PX established new market clearing prices and quantities every hour. Similarly, from start-up through September 2000, the ISO established new market clearing prices and quantities every hour. Since September 2000, the ISO has established new market clearing prices and quantities every 10 minutes. Each hourly and ten-minute sale into those markets constitutes a separate transaction that must be reported under Section 205 and FERC's orders dictating the manner in which rates must be filed. Yet, the hourly and ten-minute prices collected by the Defendants in those markets -- i.e., the transaction-specific information that must be filed as a matter of law -- appear nowhere in their quarterly reports.

For example, the report filed by Duke Energy Trading & Marketing Co. ("DETM") for third quarter 2000 (ending September 30, 2000) lists sales to the PX on an aggregate basis depending on the delivery point of the electricity. Thus, DETM's third quarter report states that it sold a total of 1,711,871 MWh of electricity to the PX for delivery at "NP-15." DETM's report lists only the minium and maximum prices charged for these sales. DETM's sales to the ISO are similarly aggregated by delivery point, with only minimum and maximum prices reported. It is impossible to determine the date, duration, quantity, or price for any single transaction.

The third quarter 2000 reports filed by Williams Energy Marketing & Trading Company ("WEMT"), Enron Power Marketing, Inc. ("EPMI"), and British Columbia Power Exchange Corp. ("PowerEx") provide even less information about sales to the ISO and PX. Whereas Duke aggregated its sales by delivery point, WEMT, EPMI, and PowerEx reported

only the total amount of electricity they sold to the ISO and PX during the quarter, along with the minimum and maximum prices they charged, and a list of various delivery points..

This is typical of the level of detail provided by California wholesalers in general. The Attorney General reviewed the quarterly transaction reports filed by twenty-six entities, each of which has sold power through the ISO and/or PX at various times since the markets opened. None reported transaction-specific information.[17]

D. FERC Itself Has Acknowledged Defendants' Violations of The Quarterly Reporting Requirements.

The fact that Defendants have violated their rate reporting obligations, and by doing so have managed to evade any meaningful rate regulation by FERC, is indisputable. In addressing allegations of abuse of market power and anticompetitive bidding behavior in California, FERC itself noted that one Defendant's failure to comply with the quarterly reporting requirement "exacerbat[ed] the problem."[18] Indeed, FERC has acknowledged that the industry as a whole has a poor track record of compliance with the quarterly reporting

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17. The Attorney General reviewed reports filed in the second and third quarters of 2000 by the following entities: AES Placerita, Inc., Arizona Public Service Co., British Columbia Power Exchange Corp., Cabrillo Power I, LLC, Cabrillo Power II, LLC, Citizens Lehman Power Sales, LLC, Coral Power, LLC, Dynegy Power Marketing, Inc., El Segundo Power, LLC, Enron Power Marketing, Inc., Duke Energy Trading & Marketing, LLC, Duke Energy Morro Bay, LLC, Duke Energy Moss Landing, LLC, Duke Energy South Bay, LLC, El Paso Merchant Energy LP, Hafslund Energy Trading, LLC, Koch Energy Trading, Inc., Long Beach Generation, LLC, Mieco, Inc., Mirant Americas Energy Marketing, LP, Mirant Delta, LLC, Mirant Potrero LLC, Peco Energy Services, Inc., PG&E Energy-Trading Power, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Co. None reported transaction-specific information as required.

18. *San Diego Gas & Elec. Co.*, 95 FERC ¶61,418, at 62,562 (June 19, 2001)("Emblematic of these practices is the now well-publicized bid of $3,800/Mwh by Duke Energy. This bid resulted in total revenues for Duke Energy of $11 million. Exacerbating the problem was the fact that, while this transaction was identified in the March 9 Order as exceeding the proxy price, Duke Energy failed to even report this transaction in its quarterly report."

requirements, stating that the failure of sellers with market-based rate authority to report their rates completely and consistently has made it "very difficult for the Commission to carry out its duties under the FPA." *Revised Public Utility Filing Requirements*, 96 FERC ¶61,135 (2001), 2001 WL 33403042 (F.E.R.C.), at *20. Recently, FERC's Office of Markets, Tariffs and Rates, which is assisting an investigation into whether wholesale power prices throughout the west were manipulated or affected by market power abuses, stated that it has reviewed the quarterly reports filed by jurisdictional sellers participating in western power markets and "determined that the information contained in the reports is not useful." *Notice to All Jurisdictional Sellers and All Non-Jurisdictional Sellers in the West*, Docket No. PA02-2-000, March 5, 2002. In order to obtain the information needed for the investigation, FERC was forced to order all jurisdictional sellers to file transaction-specific information on their short-term sales of energy in calendar years 2000 and 2001. *Id.* The information will not be filed until April 2, 2002 at the earliest, delaying FERC's investigation. If Defendants had complied with their *pre-existing* obligations to report those transactions in their quarterly reports, there would likely be no need for further action by FERC, or further delay.

In sum, even a cursory a review of the quarterly transaction reports filed by the Defendants shows that they have violated Section 205(c) and their grants of market-based rate authority by failing to report transaction-specific data on their sales of energy, and that they continue to be in violation of those requirements.[19]

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19. It makes no difference that the FERC has accepted quarterly transaction reports that contain only aggregate data. The fact remains that the actual rates for power sold to the ISO, PX, and CERS were never filed. In any event, because transaction-specific information must be on file in order to comply with the FPA, as FERC has found on numerous occasions, FERC's acceptance of these reports was in violation of the statute, FERC regulations, and FERC's own orders.

VI. REQUESTED RELIEF

As demonstrated above, Defendants have failed to file the rates they charged for short-term power sold to the ISO, PX, and CERS in the manner contemplated by either Section 205 or FERC's quarterly reporting requirements, which are themselves legally suspect. As a result, Defendants have violated, and continue to be in violation of, Section 205 of the FPA and an express requirement of their grants of market-based rate authority. By failing to file their rates, Defendants have not only evaded any meaningful rate regulation by the Commission, they have also set back the Commission's current efforts in Docket No. PA02-2-000 to investigate the causes of market failure throughout the West in 2000-2001.

In order to remedy these violations of law, the Attorney General respectfully urges FERC to: 1) require the Defendants to comply, on a prospective basis, with the Section 205 rate-filing requirements; 2) to the extent the information is not already being provided in Docket No. PA02-2-000, require the Defendants to provide transaction-specific information to FERC on all of their short-term sales to the ISO, PX, and CERS for the calendar years 2000-2001; 3) to the extent that any rates for short-term power sold to the ISO, PX, or CERS are found to exceed just and reasonable levels, require the Defendants to refund the difference between the rate charged and a just and reasonable rate, plus interest; 4) issue a declaration specifying that the rates for short-term power sold to the ISO, PX, and CERS are not subject to the filed rate doctrine;[20] and 5) institute proceedings to determine whether any

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20. As FERC has held on numerous occasions, transaction-specific information must be reported in order for rates to be on file as required by Section 205. Because Defendants did not do so, their rates are not subject to the filed rate doctrine. *Florida Municipal Power Agency v. Florida Power & Light Co.*, 64 F.3d 614, 616 (11th Cir. 1995)(holding that where there is no rate on file with FERC, the filed rate doctrine does not apply); *Security Services, Inc. v. K Mart Corp.*, 511 U.S. 431 (1994)(holding that rates that are filed but void under agency regulations are not subject to the filed rate doctrine).

other further relief is necessary or appropriate, up to and including the revocation of Defendants' market based rate authority.

With respect to refunds, the Attorney General emphasizes that market-based rates are a privilege not a right. Each of the Defendants was granted the right to charge market-based rates on the condition that they report their specific sales of energy in quarterly reports so that FERC could fulfill its duties under the FPA. Defendants have violated the bargain, not just on occasion, but repeatedly. In light of the unprecedented economic upheaval caused by the California energy crisis, equity demands that, at the least, Defendants be forced to disgorge any revenues they collected on short-term sales to the ISO, PX, and CERS at rates found to exceed just and reasonable levels. Any other outcome would amount to an endorsement of future violations of the FPA's rate-filing requirements and FERC's orders.

The Attorney General notes that FERC has already imposed a refund obligation on Defendants for sales into the ISO and PX between October 2, 2000 and June 21, 2001. *See, San Diego Gas & Elec. Co.*, 96 FERC ¶61,120 (July 25, 2001). While FERC concluded that rates charged prior to October 2, 2000, the "refund effective date" established in Docket Nos. EL00-95-000 *et al.*, were also unjust and unreasonable, it concluded that it had no authority to order refunds of those transactions because the rates were contained in quarterly transaction reports, and were therefore on file with FERC. *Id.* 61,506. The instant Complaint demonstrates that Defendants did not report their rates, and that Defendants were operating in violation of an express requirement of their grant of market-based authority at the time the transactions occurred. Therefore, there is no legal impediment to imposing a refund obligation on transactions that occurred prior to October 2, 2000. The amount charged for power sold into the ISO and PX in excess of just and reasonable levels prior to

October 2, 2000 has been estimated at $1.8 to $2.8 billion.

Defendants' spot market sales to CERS are also subject to retroactive refund. If FERC uses a proxy for just and reasonable prices similar to the approach adopted for sales into the ISO and PX during 2001, the Attorney General expects Defendants' refund obligations to total several billion dollars for their spot market sales to CERS.

VII. REQUIREMENTS OF RULE 206

A. 18 C.F.R. §385.206(b)(1)-(2). Summary of the Conduct Alleged to Violate Applicable Statutory Standards and/or Regulatory Requirements.

As demonstrated above, California wholesalers have failed to file the rates for power sold to the ISO, PX, and CERS in the manner required by Section 205(c) of the FPA. After-the-fact, quarterly reporting of market-based rates does not comply with Section 205(c) of the FPA; because all rates must be filed under the FPA, each and every rate charged by California wholesalers is unlawful and subject to refund. Moreover, even if after-the-fact, quarterly reporting were found to comply with Section 205, California wholesalers have uniformly violated those requirements by failing to file transaction-specific information on their sales and purchases at market-based rates.

B. 18 C.F.R. §385.206(b)(3)-(5): Financial, Operational, Practical, and Other Impacts on the Plaintiff of the Challenged Actions.

The actions challenged in this Complaint were a contributing factor to both the cause and the consequences of the California energy crisis, the most serious economic and public policy emergency to visit the state in memory. The filing of rates long after they went into effect made it impossible for FERC to prevent the crisis. Moreover, FERC's reliance on legally flawed rate filing requirements caused it to erroneously conclude that: 1) Section 206 (16 U.S.C. §824e(b)) precludes the Commission from ordering retroactive refunds for unjust

and reasonable rates for power sold into the ISO and PX markets prior to October 2, 2000, the "refund effective date" established in Docket Nos. EL00-95-000 *et al.*; and 2) the filed rate doctrine applies, precluding FERC from retroactively adjusting the rates charged by California wholesalers. *See, San Diego Gas & Elec. Co. et al.*, 96 FERC ¶61,120 (2001).

So long as market-based rates are not subject to scrutiny before they go into effect, purchasers' only means of redress when rates exceed just and reasonable levels will be to file a complaint pursuant to Section 206 of the FPA, an avenue that recent events have shown to be woefully inadequate. While a Section 206 complaint may afford adequate relief in other contexts, the extreme volatility exhibited by the PX and ISO spot markets made it possible for wholesalers to extract astronomical amounts of money from the market in a very short amount of time. In such circumstances, the conclusion that *prospective* relief is the only relief available -- a conclusion which is based solely on the erroneous assumption that these rates are on file -- cannot be what Congress intended when it enacted the FPA as a means of protecting consumers from market power abuses.

C. 18 C.F.R. §385.206(6): Whether the Issues Presented Are Pending in Another Commission Proceeding.

Currently, in Docket No. RM01-8-000, the Commission is considering new rules that would change the format in which generators and marketers with market-based rate authority file their rates. *See*, 96 FERC ¶61,135 (2001). The rule changes it is considering are generic and prospective in effect, whereas this Complaint challenges the legality of past conduct by specific entities. Thus, the legal and factual issues presented by this Complaint will not be adequately resolved in that proceeding.

In addition, FERC has issued a series of orders in Docket Nos. EL95-000 *et al.* related to the California energy crisis, including ordering refunds for unjust and unreasonable

rates charged for power sold into the ISO and PX spot markets between October 2, 2000 and June 21, 2001. *See, e.g.*, 96 FERC ¶61,120 (2001). That proceeding does not involve the same legal and factual allegations raised here, i.e., that California wholesalers have failed to file their rates as required by Section 205(c) and various FERC orders, thus rendering their rates unlawful and subject to refund. Thus, the legal and factual issues raised in this Complaint will not be adequately resolved in that proceeding.

D. 18 C.F.R. §385.206: Supporting Documents.

Exh. A to this Complaint is a spread sheet compiled by CERS listing all of the entities, jurisdictional and non-jurisdictional, that sold power on a short-term basis to CERS from January 17, 2001 to October 31, 2001. The spread sheet shows the number of transactions CERS entered into with each seller, broken down into four categories: transactions lasting 24 hours or less; transactions greater than 24 hours and up to one week; transactions greater than one week and up to one month; transactions greater than one month. In addition, the spread sheet shows the total number of MWs sold to CERS, and the total dollar value of the transactions, in each category. App. B to this Complaint is a key that matches the seller IDs listed on the spread sheet to the full name of the seller.

The Attorney General reviewed quarterly transaction reports filed by a number of entities. *See* notes 16-17 *supra*. Rather than attach copies those reports to the Complaint, the Attorney General respectfully requests that FERC take official notice of those documents.

E. 18 C.F.R. §385.206(b)(9): Use of the Commission's Complaint Resolution Procedures.

Given the large number of entities named as Defendants to this Complaint and the far-reaching ramifications of the legal and factual issues raised herein, the Attorney General did

not contact the Commission's Enforcement Hotline or other informal dispute resolution procedures prior to filing this Complaint. Nor does the Attorney General believe that alternative dispute resolution (ADR) procedures could be used successfully in this case.

F. 18 C.F.R. §385.206(b)(10): Form of Notice for Publication in the Federal Register.

Appendix C to this Complaint is a form of notice of this Complaint suitable for publication in the Federal Register. The Attorney General has also provided a copy of the notice on a separate 3.5-inch diskette in ASCII format.

G. 18 C.F.R. §385.206(b)(11): Request for Fast Track Processing.

The Attorney General is not requesting Fast Track Processing. Nonetheless, this Complaint can and should be processed on an expedited schedule. The issues raised by this Complaint are extremely important, not only for California purchasers seeking refunds for unjust and unreasonable rates, but also for the Commission's regulation of competitive power markets in the future. Moreover, the issues presented are primarily legal and can be resolved without hearings on an expedited schedule.

H. 18 C.F.R. §385.206(c): Service of the Complaint.

The Attorney General respectfully requests that the Commission place the instant complaint on public notice as quickly as possible. The Attorney General has served the instant complaint by electronic mail on all parties to Docket Nos. EL00-95-000 *et al.*, the ongoing proceeding into the reasonableness of rates charged for power sold into the ISO and PX. The Attorney General is also posting the Complaint on the California Department of Justice web-site (www.caag.state.ca.us) in anticipation that its availability there will be cited in the Commission's notice of filing. The Attorney General requests that, if the foregoing is not deemed to constitute substantial compliance with the requirements of 18 C.F.R.

§385.206(c), such requirements be waived.

VIII. CONCLUSION

WHEREFORE, for the foregoing reasons, Complainant the State of California, *ex rel.* Bill Lockyer, Attorney General, respectfully requests that the Commission grant the relief requested herein.

Dated: March 19, 2002

Respectfully submitted,

By: Paul S

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APPENDIX A

CERS Purchases 1/17/01 - 10/31/01

Counterparty	Contract Type	Total Volume	Total Amount	Number of Deals
AEPS	Transactions of twenty four hours or less	23,539	$ 8,023,750.00	27
AES	Transactions greater than twenty four hours and up to one week	160	$ 13,600.00	1
AES	Transactions of twenty four hours or less	3,224	$ 176,007.00	28
AESC	Transactions greater than one month	2,256,475	$ 227,154,900.00	20
AESC	Transactions greater than one week and up to one month	1,210,800	$ 209,351,015.00	49
AESC	Transactions greater than twenty four hours and up to one week	269,812	$ 32,326,515.00	132
AESC	Transactions of twenty four hours or less	1,116,147	$ 121,037,636.00	608
ANHM	Transactions greater than one week and up to one month	5,152	$ 607,733.00	1
ANHM	Transactions greater than twenty four hours and up to one week	3,654	$ 222,004.00	4
ANHM	Transactions of twenty four hours or less	86,046	$ 9,873,072.00	189
APX1	Transactions of twenty four hours or less	300	$ -	1
AVST	Transactions of twenty four hours or less	20,131	$ 1,856,438.00	23
AVWP	Transactions of twenty four hours or less	4,207	$ 1,392,850.00	14
BPA	Transactions greater than one month	100,782	$ 5,487,255.00	1
BPA	Transactions greater than one week and up to one month	1,728	$ 95,040.00	6
BPA	Transactions greater than twenty four hours and up to one week	3,072	$ 168,960.00	6
BPA	Transactions of twenty four hours or less	765,734	$ 173,628,044.00	170
BPEC	Transactions greater than one month	252,848	$ 65,301,360.00	9
BPEC	Transactions greater than one week and up to one month	178,480	$ 41,571,968.00	12
BPEC	Transactions greater than twenty four hours and up to one week	160,171	$ 36,662,432.00	67
BPEC	Transactions of twenty four hours or less	203,591	$ 50,187,642.00	237
BURB	Transactions of twenty four hours or less	343,151	$ 104,170,425.00	200
CDWR	Transactions greater than twenty four hours and up to one week	4,560	$ 130,304.00	3
CDWR	Transactions of twenty four hours or less	795,742	$ 130,306,011.00	538
CEEA	Transactions greater than one week and up to one month	107,370	$ 18,917,400.00	5
CEEA	Transactions greater than twenty four hours and up to one week	2,040	$ 87,720.00	1
CEEA	Transactions of twenty four hours or less	149,496	$ 21,663,302.00	206
CFE1	Transactions greater than twenty four hours and up to one week	1,600	$ 368,000.00	1
CFE1	Transactions of twenty four hours or less	49,152	$ 9,422,710.00	5
CLTN	Transactions greater than one month	326	$ 8,150.00	1
CORP	Transactions greater than one month	502,400	$ 118,569,600.00	2
CORP	Transactions greater than twenty four hours and up to one week	1,600	$ 584,000.00	2
CORP	Transactions of twenty four hours or less	249,984	$ 86,896,163.00	285
CPS	Transactions greater than one month	938,400	$ 124,808,600.00	13
CPS	Transactions greater than one week and up to one month	306,400	$ 32,852,200.00	9
CPS	Transactions greater than twenty four hours and up to one week	9,600	$ 464,800.00	9
CPS	Transactions of twenty four hours or less	470,629	$ 26,001,418.00	488
CPSC	Transactions greater than one month	1,737,100	$ 298,049,350.00	7
CPSC	Transactions greater than one week and up to one month	272,170	$ 11,738,075.00	8

Counterparty	Contract Type	Total Volume	Total Amount	Number of Deals
CPSC	Transactions greater than twenty four hours and up to one week	82,016	$ 9,252,960.00	48
CPSC	Transactions of twenty four hours or less	656,482	$ 69,242,360.00	372
CRGL	Transactions of twenty four hours or less	800	$ 220,000.00	3
CRSP	Transactions of twenty four hours or less	420	$ 58,800.00	1
DETM	Transactions greater than one month	1,923,100	$ 192,941,344.00	90
DETM	Transactions greater than one week and up to one month	131,400	$ 29,087,000.00	11
DETM	Transactions greater than twenty four hours and up to one week	66,750	$ 10,634,100.00	31
DETM	Transactions of twenty four hours or less	229,875	$ 41,571,410.00	284
EBMU	Transactions greater than twenty four hours and up to one week	4,000	$ 538,336.00	15
EBMU	Transactions of twenty four hours or less	8,665	$ 1,220,459.00	61
ECI	Transactions greater than one month	4,203,278	$ 599,437,276.00	57
ECI	Transactions greater than one week and up to one month	65,200	$ 15,355,800.00	5
ECI	Transactions greater than twenty four hours and up to one week	317,155	$ 56,049,300.00	104
ECI	Transactions of twenty four hours or less	435,634	$ 94,620,546.00	429
EPME	Transactions greater than one month	820,960	$ 161,896,560.00	10
EPME	Transactions greater than one week and up to one month	149,600	$ 32,540,256.00	9
EPME	Transactions greater than twenty four hours and up to one week	22,320	$ 3,351,360.00	22
EPME	Transactions of twenty four hours or less	186,387	$ 53,161,357.00	319
EPMI	Transactions greater than one month	436,000	$ 40,287,200.00	12
EPMI	Transactions greater than one week and up to one month	99,600	$ 27,846,000.00	2
EPMI	Transactions greater than twenty four hours and up to one week	30,000	$ 6,229,600.00	8
EPMI	Transactions of twenty four hours or less	16,380	$ 3,193,249.00	29
EWEB	Transactions of twenty four hours or less	274,616	$ 98,927,431.00	219
EXGEN	Transactions of twenty four hours or less	601	$ 37,863.00	1
FCP1	Transactions greater than one month	85	$ 2,125.00	1
FCP1	Transactions of twenty four hours or less	1,232	$ 303,648.00	12
GCPD	Transactions of twenty four hours or less	168,217	$ 53,380,188.00	131
GW&P	Transactions greater than one week and up to one month	69,750	$ 14,126,900.00	5
GW&P	Transactions greater than twenty four hours and up to one week	5,600	$ 1,285,600.00	2
GW&P	Transactions of twenty four hours or less	39,770	$ 9,712,061.00	21
GWF	Transactions greater than one week and up to one month	1,598	$ 44,744.00	1
IVRR	Transactions greater than one month	54,736	$ 5,473,600.00	1
IVRR	Transactions of twenty four hours or less	299	$ 27,900.00	4
LDWP	Transactions greater than one week and up to one month	318,008	$ 68,518,806.00	36
LDWP	Transactions greater than twenty four hours and up to one week	90,812	$ 15,528,249.00	12
LDWP	Transactions of twenty four hours or less	1,212,620	$ 327,310,349.00	422
MAEM	Transactions greater than one month	2,180,800	$ 243,756,200.00	36
MAEM	Transactions greater than one week and up to one month	5,767,750	$ 1,217,543,775.00	57
MAEM	Transactions greater than twenty four hours and up to one week	1,309,531	$ 266,976,015.00	120
MAEM	Transactions of twenty four hours or less	2,731,217	$ 578,672,206.00	887

Counterparty	Contract Type	Total Volume	Total Amount	Number of Deals
MECO	Transactions greater than one month	223,500	$ 9,498,750.00	2
MECO	Transactions greater than one week and up to one month	953,000	$ 110,463,525.00	24
MECO	Transactions greater than twenty four hours and up to one week	110,400	$ 15,027,800.00	25
MECO	Transactions of twenty four hours or less	165,687	$ 25,374,150.00	73
MID	Transactions of twenty four hours or less	2,114	$ 149,784.00	18
MLCS	Transactions greater than one month	61,600	$ 3,418,800.00	1
MLCS	Transactions greater than one week and up to one month	90,400	$ 18,991,200.00	3
MLCS	Transactions greater than twenty four hours and up to one week	41,200	$ 10,312,400.00	24
MLCS	Transactions of twenty four hours or less	258,831	$ 57,788,112.00	170
MSCG	Transactions greater than one month	294,000	$ 28,077,000.00	2
MSCG	Transactions greater than one week and up to one month	16,800	$ 1,604,400.00	1
MSCG	Transactions greater than twenty four hours and up to one week	79,600	$ 3,319,400.00	47
MSCG	Transactions of twenty four hours or less	63,352	$ 2,454,738.00	95
MSR	Transactions of twenty four hours or less	65	$ 16,575.00	2
MWD	Transactions of twenty four hours or less	36	$ 5,400.00	1
NCPA	Transactions greater than one week and up to one month	44,690	$ 3,255,220.00	5
NCPA	Transactions greater than twenty four hours and up to one week	22,405	$ 2,320,961.00	11
NCPA	Transactions of twenty four hours or less	146,994	$ 16,880,672.00	287
NEVP	Transactions of twenty four hours or less	139,645	$ 25,353,410.00	74
NRG	Transactions greater than one month	30,400	$ 7,326,400.00	1
NRG	Transactions greater than one week and up to one month	54,000	$ 4,946,400.00	3
NRG	Transactions of twenty four hours or less	2,250	$ 168,490.00	6
PAC	Transactions greater than one week and up to one month	12,000	$ 4,200,000.00	1
PAC	Transactions of twenty four hours or less	2,608	$ 694,540.00	10
PGAE	Transactions of twenty four hours or less	1,889	$ 571,365.00	5
PGE	Transactions of twenty four hours or less	475	$ 318,071.00	1
PGET	Transactions greater than one month	137,491	$ 11,485,420.00	8
PGET	Transactions greater than one week and up to one month	64,800	$ 12,860,400.00	3
PGET	Transactions greater than twenty four hours and up to one week	9,588	$ 1,413,940.00	29
PGET	Transactions of twenty four hours or less	48,098	$ 9,316,404.00	139
PNM	Transactions greater than one week and up to one month	9,800	$ 637,000.00	1
PNM	Transactions greater than twenty four hours and up to one week	19,305	$ 2,444,910.00	8
PNM	Transactions of twenty four hours or less	748,401	$ 130,056,560.00	560
PPM	Transactions greater than one month	339,927	$ 23,794,890.00	2
PPM	Transactions greater than twenty four hours and up to one week	19,200	$ 1,210,364.00	5
PPM	Transactions of twenty four hours or less	32,935	$ 1,594,271.00	94
PSC	Transactions of twenty four hours or less	50	$ 25,000.00	1
PSE	Transactions of twenty four hours or less	100	$ 40,000.00	1
PWMT	Transactions greater than one month	258,540	$ 47,703,939.00	2
PWMT	Transactions greater than one week and up to one month	61,600	$ 5,390,000.00	3

Counterparty	Contract Type	Total Volume	Total Amount	Number of Deals
PWMT	Transactions greater than twenty four hours and up to one week	3,975	$ 718,950.00	5
PWMT	Transactions of twenty four hours or less	326,495	$ 52,127,879.00	225
PWX	Transactions greater than one week and up to one month	141,232	$ 14,517,597.00	5
PWX	Transactions greater than twenty four hours and up to one week	502,681	$ 129,620,025.00	55
PWX	Transactions of twenty four hours or less	2,364,835	$ 931,075,496.00	753
PXC	Transactions of twenty four hours or less	55,520	$ 10,288,837.00	12
RE	Transactions greater than one month	203,793	$ 50,698,770.00	28
RE	Transactions greater than one week and up to one month	66,600	$ 3,497,100.00	5
RE	Transactions greater than twenty four hours and up to one week	167,000	$ 24,943,800.00	30
RE	Transactions of twenty four hours or less	292,429	$ 38,426,715.00	181
REDD	Transactions of twenty four hours or less	960	$ 74,240.00	3
RVSD	Transactions greater than twenty four hours and up to one week	1,355	$ 67,899.00	4
RVSD	Transactions of twenty four hours or less	16,042	$ 1,144,736.00	78
SCL	Transactions of twenty four hours or less	12,145	$ 2,997,025.00	27
SDGE	Transactions greater than one week and up to one month	10,400	$ 2,912,000.00	1
SDGE	Transactions greater than twenty four hours and up to one week	23,600	$ 3,419,100.00	23
SDGE	Transactions of twenty four hours or less	44,277	$ 7,485,630.00	91
SEL	Transactions greater than twenty four hours and up to one week	768	$ 38,664.00	2
SEL	Transactions of twenty four hours or less	19,540	$ 3,286,019.00	131
SER	Transactions greater than one month	408,000	$ 77,112,000.00	2
SES	Transactions greater than one week and up to one month	2,760	$ 481,920.00	4
SES	Transactions of twenty four hours or less	713	$ 134,476.00	6
SETC	Transactions greater than one month	15,200	$ 1,307,200.00	1
SETC	Transactions greater than one week and up to one month	44,200	$ 11,294,300.00	7
SETC	Transactions greater than twenty four hours and up to one week	41,880	$ 8,889,800.00	26
SETC	Transactions of twenty four hours or less	1,149,463	$ 417,528,916.00	764
SMUD	Transactions greater than one month	268,536	$ 62,519,000.00	8
SMUD	Transactions greater than one week and up to one month	22,800	$ 2,964,000.00	1
SMUD	Transactions greater than twenty four hours and up to one week	84,122	$ 27,338,656.00	24
SMUD	Transactions of twenty four hours or less	323,892	$ 64,938,950.00	368
SNCL	Transactions of twenty four hours or less	550	$ 116,450.00	2
SNO1	Transactions of twenty four hours or less	13,133	$ 1,303,358.00	44
SOLE	Transactions greater than one month	8,644	$ 691,520.00	1
SOLE	Transactions of twenty four hours or less	696	$ 24,000.00	14
SPIN	Transactions greater than one week and up to one month	72,912	$ 4,813,680.00	2
SPIN	Transactions greater than twenty four hours and up to one week	2,872	$ 482,800.00	2
SPIN	Transactions of twenty four hours or less	7,518	$ 1,184,148.00	21
SPP	Transactions of twenty four hours or less	6,569	$ 2,457,873.00	14
SRP	Transactions greater than twenty four hours and up to one week	26,350	$ 2,202,484.00	13
SRP	Transactions of twenty four hours or less	465,574	$ 33,478,674.00	313

Counterparty	Contract Type	Total Volume	Total Amount	Number of Deals
SUN1	Transactions greater than one month	317,275	$ 12,770,147.00	1
SUN1	Transactions of twenty four hours or less	13,585	$ 383,675.00	4
TCPC	Transactions of twenty four hours or less	150,087	$ 44,374,945.00	192
TEMU	Transactions greater than twenty four hours and up to one week	22,672	$ 1,411,360.00	20
TEMU	Transactions of twenty four hours or less	926,779	$ 226,397,881.00	512
TEP	Transactions of twenty four hours or less	119,904	$ 16,201,966.00	176
TID	Transactions greater than twenty four hours and up to one week	4,024	$ 329,813.00	5
TID	Transactions of twenty four hours or less	51,231	$ 8,065,936.00	145
TPWR	Transactions of twenty four hours or less	27,142	$ 6,916,119.00	86
UDMC	Transactions greater than twenty four hours and up to one week	6,000	$ 939,600.00	10
UDMC	Transactions of twenty four hours or less	9,201	$ 1,831,522.00	33
VERN	Transactions greater than twenty four hours and up to one week	2,704	$ 407,613.00	6
VERN	Transactions of twenty four hours or less	37,637	$ 5,201,759.00	152
WALC	Transactions of twenty four hours or less	3,470	$ 725,900.00	10
WAMP	Transactions of twenty four hours or less	552	$ 116,080.00	4
WAPA	Transactions of twenty four hours or less	22,327	$ 6,747,344.00	39
WEMT	Transactions greater than one month	998,849	$ 100,448,947.00	10
WEMT	Transactions greater than one week and up to one month	810,835	$ 107,957,770.00	33
WEMT	Transactions greater than twenty four hours and up to one week	441,450	$ 60,130,680.00	211
WEMT	Transactions of twenty four hours or less	2,047,540	$ 511,974,352.00	1,068
Grand Total		**54,522,107**	**$ 10,032,988,139.00**	**15,039**

Note:
1) Deal count is based on the number of unique deal identification numbers for each category.
2) Dollar amounts may vary slightly from files due to differences in rounding.

APPENDIX B

Company_Id	Company_Name
AEI1	Avista Energy
AEPS	American Electric Power Services
AES	NEW ENERGY, INC.
AETS	Allegheny Energy Trading Services
AMX	Amerex
ANHM	City of Anaheim
APB	APB
APS1	Arizona Public Service
APX	Automated Power Exchange
APX1	Automated Power Exchange, Inc.
APX3	Automated Power Exchange
APX4	Automated Power Exchange
APX5	Automated Power Exchange
AQPC	Aquila Power Corporation
AVST	Avista Energy Inc.
AZCO	Arizona Electric Power Corporation
AZUA	City of Azusa
BAN1	City of Banning
BLMBG	Bloomberg
BPA1	Bonneville Power Administration
BPEC	BP Energy Company
BURB	City of Burbank
CAL1	Cargill-Alliant, LLC
CALP	Calpine
CAPP	California Polar Power Brokers, L.L.C.
CARG	Cargill
CDWR	California Department of Water Resources
CEEA	Commonwealth Energy Corp
CERS	California Energy Resource Scheduler
CFE1	Commission de Federale Electricidad
CMWD	CALIFORNIA DEPARTMENT OF WATER RESOURCES
COLT	Alliance Colton
CORP	Coral Power, L.L.C.
COTB	Calif. Oregon Transmission Project (Bankrupt)
CPS1	Citizens Power Sales
CPSC	Constellation Power Source
CRLP	Coral Power, L.L.C
CRSM	Colorado River Storage Project Montrose
CRSP	Colorado River Storage Project - Phoenix
DELANO	DELANO
DETM	Duke Energy Trading & Marketing, L.L.C.
DINUBA	Dinumba Biomass
EBMU	East Bay Municipal Utility District
ECH1	Dynegy Power Marketing Inc.
EES1	Enron Energy Services
ELPM	EL PASO MERCHANT ENERGY BIOMASS
EMMT	Edison Mission Marketing & Trading Inc.
EPME	El Paso Merchant Energy
EPMI	Enron Power Marketing, Inc.
EPPS	El Paso Power Services Company

ESRC	Edison Source
EWEB	Eugene Water & Electric Board
EXC1	EXELON
FCP1	FRESNO COGEN
GCPD	Grant County PUD
GLEN	City of Glendale
GWF	GWF POWER
HFET	Hafslund Energy Trading, L.L.C.
IEPI	Illinova Energy Partners, Inc.
IPC1	Idaho Power Company
ISO	California ISO
IVRR	Imperial Valley Resource Recovery
KET3	Koch
LDWP	Los Angeles Department of Water & Power
LGE1	Louisville Gas & Electric Energy Marketing, Inc.
MADERA	Madera Biomass
MAEM	Mirant
MEGA	Merchant Energy Group of the Americas (MEGA)
MERL	Merrill Lynch Capital Services
MID1	Modesto Irrigation District
MIEC	Mieco, Inc.
MSCG	Morgan Stanley Capital Group
MSR	MSR Public Power Agency
MWD	METROPOLITAN WATER DISTRICT
Natsource	Natsource
NCPA	Northern California Power Agency
NEI1	New Energy Inc.
NES1	Reliant Energy Service
NRG	NRG Power Marketing Inc.
NVPM	Nevada Power Company
PAC1	PacifiCorp
PASA	City of Pasadena
PCG1	Pacific Gas and Electric
PCGB	Pacific Gas & Electric (Bankrupt)
PCPM	PacifiCorp Power Marketing, Inc.
PECO	PECO ENERGY
PETP	PG & E Energy Trading
PGAB	Pacific Gas & Electric (Bankrupt)
PGAE	Pacific Gas & Electric Co. (General)
PGE1	Portland General Electric
PGES	PG & E Energy Services
PGET	PG&E Energy Trading - Power, L.P.
PNMM	Public Service of New Mexico
PORT	Portland General Electric Company
PPLM	PP&L Montana, L.L.C.
PREBOND	PREBOND
PRM1	Power Resource Managers, L.L.C.
PSCO	Public Service Co. Of Colorado (New Century Energies)
PSE1	Puget Sound Energy
PWEPW	Pinnacle West
PWRX	Powerex
PWX	PowerEx

PXC1	California Power Exchanges
PXC3	Power Exchange
PXC5	Power Exchange
RDNG	City of Redding
RVSD	City of Riverside
SCE1	Southern California Edison
SCEM	Southern Company Energy Marketing
SCL1	City of Seattle, City Light Department
SDG3	San Diego Gas & Electric
SDGE	San Diego Gas and Electric
SEL1	Strategic Energy, Ltd.
SER	Sempra Energy Resources
SES	Sempra Energy Solutions
SETC	Sempra Energy Trading (formerly AIG Trading)
SMUD	Sacramento Municipal Utility District
SNCL	Silicon Valley Power (City of Santa Clara)
SNO1	Snohomish
SOLE	SOLEDAD ENERGY LLC
SPC	Sierra Power Corp
SPIN	Sierra Pacific Industries
SPPC	Sierra Pacific Power Company
SRP1	Salt River Project
SUN1	Sunrise Power Company
TCPTC	Trans Canada Power Company
TEMC	Trans Alta Energy Marketing Company
TEMU	TransAlta Energy Marketing U.S.
TEP	Tucson Electric Power
TID	Turlock Irrigation District
TPWR	Tacoma Power
UDMC	UC Medical Center
VERN	City of Vernon
VSYN	Viasyn
WALC	West Area Lower Colorado
WAMP	Western Area Power Administration - Seirra Nevada Region
WAPA	Western Area Power Administrator
WESC	Williams Energy Marketing and Trading
WHEELABRAT	WHEELABRATOR
WRDG	City of Redding
WWPC	Washington Water Power Company

APPENDIX C

APPENDIX C

UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

STATE OF CALIFORNIA, *ex. rel.* BILL LOCKYER, Complainant, v. BRITISH COLUMBIA POWER EXCHANGE CORP., CORAL POWER, LLC, DYNEGY POWER MARKETING, INC., ENRON POWER MARKETING, INC., MIRANT AMERICAS ENERGY MARKETING, LP, RELIANT ENERGY SERVICES, INC., WILLIAMS ENERGY MARKETING & TRADING CO., ALL OTHER PUBLIC UTILITY SELLERS OF ENERGY AND ANCILLARY SERVICES TO THE CALIFORNIA ENERGY RESOURCES SCHEDULING DIVISION OF THE CALIFORNIA DEPARTMENT OF WATER RESOURCES, AND ALL OTHER PUBLIC UTILITY SELLERS OF ENERGY AND ANCILLARY SERVICES INTO MARKETS OPERATED BY THE CALIFORNIA POWER EXCHANGE AND CALIFORNIA INDEPENDENT SYSTEM OPERATOR, Defendants.	Docket No. EL02-___-000

NOTICE OF COMPLAINT

(March ___, 2002)

Take notice that on March 20, 2002, The State Of California, *ex rel.* Bill Lockyer, Attorney General of the State of California ("Attorney General"), submitted a Complaint alleging that sellers of energy and ancillary services to the California Power Exchange ("PX"), the California Independent System Operator ("ISO"), and the California Energy Resources Scheduling Division of the California Department of Resources ("CERS") have violated Section 205(c) of the Federal Power Act (16 U.S.C. Section 824d(c)) and an express condition of their grants of market-based rate authority by failing to file their rates in the manner required by law. The Complaint alleges that Defendants' pro forma market-based rate schedules fail to provide FERC an adequate opportunity to determine in advance whether their rates are just and reasonable, and fail to provide the public with adequate notice of the rates to be charged. The Complaint further alleges that the Defendants' quarterly transaction reports, filed by up to four months after the completion of a market-based transaction, do not cure the statutory failure to file all rates prior to the time service commences. The Complaint further alleges that, even if quarterly, after-the-fact reporting of rates were found to comply with Section 205, sellers have failed to report transaction-specific information on their sales to the ISO, PX, and CERS, as required by FERC, negating any claim that their rates are on file. The Complaint seeks an order requiring sellers to: comply with the Section 205 rate filing requirement on a prospective basis; provide transaction-specific information to FERC on all sales to the ISO, PX, and CERS in calendar years 2000-2001; and, to the extent any rates charged are found to exceed just and reasonable levels, refund the difference between the rates charged and a just and reasonable rate, plus interest.

Copies of the Complaint were served via e-mail on all parties to Docket Nos. EL00-95-000 *et al.* A copy of the Complaint is available on the web site of the California Department of Justice (www.caag.state.ca.us).

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April __, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not service to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and area available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance). Answers to the complaint shall also be due on or before April ___, 2002.

Magalie Roman Salas
Secretary