

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, and Joseph T. Kelliher.

Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)	Docket No. EL03-138-002
Aquila Merchant Services Inc. (f/k/a Aquila, Inc.)	Docket No. EL03-181-002
Eugene Water & Electric Board	Docket No. EL03-188-002
PPM Energy, Inc. (f/k/a PacifiCorp Power Marketing, Inc.)	Docket No. EL03-197-002

ORDER DENYING REHEARING

(Issued December 23, 2003)

**I. Introduction**

1. In this order, we deny the California Parties' request for rehearing of the Commission's order issued in this proceeding on August 22, 2003,<sup>1</sup> which dismissed PacifiCorp as a show cause respondent with regard to certain alleged partnership gaming activities addressed in the June 25 Order,<sup>2</sup> which initiated the show cause proceeding. This order further clarifies the scope of the show cause proceeding.

---

<sup>1</sup> See Aquila Merchant Services, Inc., et al., 104 FERC ¶ 61,222 (2003) (August 22 Order).

<sup>2</sup> Enron Power Marketing, Inc., et al., 103 FERC ¶ 61,346 (2003) (June 25 Order).

## **II. Background**

2. The June 25 Order found that there was evidence that the entities named therein worked in concert through partnerships, alliances or other arrangements to engage in activities that constitute gaming and/or anomalous market behavior (Gaming Practices) in violation of the California Independent System Operator Corporation (ISO) and the California Power Exchange Corporation (PX) tariffs during the period January 1, 2000 to June 20, 2001. The June 25 Order directed the entities listed in the caption of that order, including PacifiCorp (Docket No. EL03-197-000), to show cause, in a trial-type evidentiary hearing to be held before an administrative law judge, why their behavior during the relevant period did not constitute gaming and/or anomalous market behavior as defined in the ISO and PX tariffs.

3. On July 30, 2003, PacifiCorp and PPM Energy, Inc. (PPM) filed a motion to amend the caption of the June 25 Order to remove "PacifiCorp" and substitute "PPM Energy, Inc." as the respondent. In support of their motion, they noted that the California Parties' testimony and exhibits, which provided a basis for identifying the entities that allegedly engaged in partnership gaming behavior, were corrected in an errata filing to refer to PPM rather than PacifiCorp. Based on the errata to the California Parties' testimony and exhibits, and the belief that PacifiCorp and PPM's motion was unopposed, the August 22 Order granted the motion to change the designation of "PacifiCorp" to "PPM Energy, Inc." as a respondent to the show cause order issued on June 25, 2003.

4. The California Parties filed a timely request for rehearing. They state that, on August 11, 2003, they filed an answer in opposition to dismissal of PacifiCorp as a show cause respondent. (They support naming PPM as an additional show cause respondent, however.) They acknowledge that their errata filing changed "PacifiCorp" to "PPM" as an entity that allegedly purchased so-called parking services from Public Service Company of New Mexico (PSNM). However, their answer asserted that the California Parties had proffered evidence that PacifiCorp was one of the entities that provided parking services to other market participants as part of various False Import (also known as Ricochet) strategies, and they urged that PacifiCorp not be dismissed as a respondent in the show cause proceeding. On rehearing, the California Parties argue that the August 22 Order failed to consider their argument.

## **III. Discussion**

5. The August 22 Order, which was ministerial in nature, erroneously stated that PacifiCorp and PPM's motion was unopposed. That misstatement was an inadvertent error. However, consideration of the California Parties' answer would not have changed the outcome of the August 22 Order, as explained below, and we will deny rehearing of the August 22 Order.

6. The June 25 Order named PacifiCorp as a show cause respondent with respect to alleged participation in partnership gaming with PSNM. Further, the California Parties acknowledge that, with respect to alleged parking arrangements with PSNM, their errata filing changed their testimony and exhibits to refer to PPM instead of PacifiCorp. PacifiCorp and PPM's motion to amend the caption accurately reflected that errata filing, and the August 22 Order properly amended the caption to reflect the correct show cause respondent with respect to the alleged parking arrangement with PSNM. Accordingly, we will deny rehearing of the August 22 Order.

7. With respect to the California Parties' further allegation that PacifiCorp may have had other parking arrangements with other entities besides PSNM, the California Parties have filed a separate motion for clarification and a request for rehearing of the June 25 Order in which they seek to broaden the scope of the show cause proceeding to include those allegations. This argument will be addressed when the Commission addresses the motion for clarification and request for rehearing of the June 25 Order in a separate order in the near future. Thus, this issue is beyond the scope of the August 22 Order.

The Commission orders:

The California Parties' request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.