

December 17, 2003

Magalie Roman Salas, Secretary  
Federal Energy Regulatory  
Commission  
888 First Street, N.E.  
Washington, D.C. 20426

Re: Investigation of Terms and Conditions of  
Public Utility Market-Based Rate  
Authorizations  
Docket No. EL01-118-000

Dear Secretary Salas:

Enclosed please find for e-filing, the Request for Rehearing on behalf of the National Association of State Utility Consumer Advocates, in the above-referenced proceeding. Copies of this document have been served upon all parties designated on the Commission's official service list, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure.

Very truly yours,

*/s/ Denise C. Goulet*

Denise C. Goulet  
Senior Assistant Consumer Advocate

Enclosure

cc: All parties of record

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Investigation of Terms and Conditions : Docket No. EL01-118-000  
of Public utility Market-Based : and EL01-118-001  
Rate Authorizations :

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NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES'  
REQUEST FOR REHEARING

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Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, the National Association of State Utility Consumer Advocates ("NASUCA") respectfully seeks rehearing of the Commission's Final Order in the above captioned docket. NASUCA applauds the Commission in the issuance of this final order as an important step toward ensuring the competitiveness of electricity markets and the accuracy, liquidity and transparency of price indices. However, NASUCA has determined that several concerns remain unaddressed by the Commission's Final Order, and consequently NASUCA seeks rehearing of six issues: a) the intent requirement in the market manipulation rule; b) the failure to include trades of *de minimis* value as well as trades of no value in the definition of wash trade; c) the extension of safe harbor protection to the refund remedy; d) the failure to adopt monetary remedies in addition to disgorgement; e) the failure to ensure that the Market Behavior Rules will apply to bilateral contract transactions as well as energy market transactions; and f) the failure to specifically prohibit non-collusive strategic bidding, mismanagement and economic withholding as forms of market manipulation. We will address each in greater detail below.

## Specification of Error

The Commission should reconsider the following errors in the Final Order adopted in this proceeding:

- a) The Commission's decision to include an intent element in the prohibition against market manipulation impermissibly shifts the burden of proof to complainants or the Commission, imposes on the Commission too heavy a burden of going forward in a situation where complainants or the Commission may not have access to all the necessary data, and thus does not comport with reasoned decision-making;
- b) The Commission's decision to exclude *de minimis* value wash trades from the definition of wash trades is unsupported, arbitrary and capricious and fails the test for reasoned decision-making since *de minimis* value wash trades could be used to circumvent the rule and manipulate market prices just as easily as wash trades of no value;
- c) The Commission's decision to extend safe harbor protection against refund remedies as well as against the penalty provisions of the Policy Statement in Docket No. PL03-3-000, *Price Discovery in Natural Gas and Electric Markets*, 104 FERC ¶ 61,121 (2003) (hereinafter "Price Indices Policy Statement"), fails the test for reasoned decision-making as there is no justification for requiring consumers to bear the burden of inadvertent mistakes made by market participants; and
- d) The Commission's decision to limit monetary remedies to disgorgement fails the test for reasoned decision-making as disgorgement will not deter market participants from engaging in manipulative, abusive or anti-competitive behavior.
- e) The Commission erred in failing to ensure that the Market Behavior Rules apply to bilateral contract transactions as well as energy market transactions as manipulation and anti-competitive behavior can occur in both sets of transactions and bilateral transactions constitute a greater percentage of total transactions throughout the nation;
- f) The Commission erred in not specifically prohibiting non-collusive, strategic bidding, mismanagement and economic withholding as forms of market manipulation since such actions are prime examples of market manipulation.

### Summary of Argument

The Commission should reconsider its decision to require an intent standard in the prohibition against market manipulation. The language adopted will require consumers, complainants and the Commission itself to prove that the entity being investigated for market manipulation was engaged in an illegitimate business action, *i.e.*, that there was no legitimate business purpose for the action, as well as to prove that the entity intended to manipulate the market. This is a heavy burden to place on those without access to the information necessary to make a *prima facie* case on intent. NASUCA is concerned that few complaints will be investigated in an evidentiary hearing if the burden of proving a *prima facie* case on intent is shifted to complainants or the Commission. Thus, the protection afforded by the Final Order will be minimal at best, defeating the objectives sought in the Final Order. If the Commission rejects reconsideration on this issue, the Commission should at a minimum clarify that the burden of proving lack of intent to manipulate is on the entity with access to the data and information, *i.e.* the entity being investigated.

The Commission should also reconsider the definition of wash trade and modify that definition to include trades of *de minimis* value as well as trades at no value. Traders could easily circumvent the definition adopted in the Final Order at little cost to themselves by structuring a wash trade so that exchange occurs at minimal value. Such a transaction would constitute manipulation and leave consumers unprotected. There is no rational justification for excluding such trades from the definition and exposing consumers to potential manipulation thereby.

The Commission should further reconsider its decision to extend safe harbor protection from remedies under this rule as well as from penalties under the Price Indices Policy Statement. While

NASUCA does not propose to penalize market participants for inadvertent errors in reporting prices to price indices, there is no rational justification for shifting responsibility for those errors to consumers who have no control over the price reporting process while letting those with control over the process, *i.e.* the corporate entities reporting the trades, to escape any responsibility for the errors. Shifting such a heavy burden to consumers will substantially weaken the protection to be afforded by the new regulations, and does not comport with the Commission's responsibility under the Federal Power Act, 16 U.S.C. § 824 *et seq.* to protect consumers from manipulation at the hands of those with market power.

The Commission should reconsider its decision to reject monetary penalties other than disgorgement. Disgorgement alone will not deter those intending to manipulate markets as there is no consequence for "going for gold" if all the bad actor has to do when manipulation is detected is to disgorge the ill-gotten gains. As the U.S. District Court for the Southern District of New York recognized in a recent Securities and Exchange Commission ("SEC") appeal, additional monetary remedies or penalties are necessary to actually deter manipulative, abusive or anti-competitive behavior. *SEC v. Ballesteros*, 253 F.Supp.2d 720, 731 (S.D.N.Y. 2003). NASUCA urges the Commission to include a "make the market whole" remedy, as well as a monetary penalty. At a minimum, the Commission should clarify that it will use its monetary penalty authority in Section 316 of the Federal Power Act, 16 U.S.C. § 825o, in cases of severe or substantial abuses. Failure to use all tools available to the Commission to deter and stop these abuses does not comport with reasoned decision-making.

The Commission's failure to apply the Market Behavior Rules to bilateral transactions as well as energy market transactions does not comport with reasoned decision-making. While the

Commission only discusses this issue in the context of Market Behavior Rule #1, it is unclear how the remaining Market Behavior Rules will be applied in the context of bilateral transactions. Since bilateral transactions comprise the vast majority of energy transactions under Commission jurisdiction, the Commission should clarify that the rules will apply to bilateral transactions, otherwise the rules will be ineffective in providing remedies for consumers in the vast majority of cases. Additionally, the Commission should reconsider its decision not to apply Market Behavior Rule #1 to bilateral transactions as bilateral transactions may be governed by some of the market rules at issue therein.

Finally, the Commission's failure to specifically prohibit non-collusive strategic bidding, mismanagement and economic withholding as forms of market manipulation under Market Behavior Rule # 2 does not comport with reasoned decision-making. All three practices are forms of manipulative, abusive or anti-competitive behavior. The Commission has not addressed the concerns NASUCA raised relating to bidding and mismanagement behavior, and has set forth no rationale for eliminating the proposed rule that would have prohibited economic withholding. Market Behavior Rule #1 does not apply to situations of economic withholding. While Market Behavior Rule #2(e) would have specifically prohibited such behavior, the Commission has eliminated that provision in the Final Order. Consequently, the Commission should reconsider its decisions relating to these concerns.

## Argument

### **A. The Commission Erred In Requiring That Intent To Manipulate Be Part Of The Criteria For Determining Whether Prohibited Market Manipulation Has Occurred.**

The Commission initially proposed that the market manipulation rule would prohibit “[a]ctions or transactions without a legitimate business purpose which manipulate or attempt to manipulate market prices, market conditions or market rules for electric energy, or result in prices for electric energy and/or electric energy products which do not reflect the legitimate forces of supply and demand . . . .” 103 FERC ¶ 61,349 at ¶19. NASUCA submitted comments urging the Commission to eliminate the “without a legitimate business purpose” language due to the difficulty in proving intent and the legal delays that are sure to follow in litigating differing interpretations of “legitimate business purpose.” Nevertheless, the Commission in the Final Order revised this language as follows: “[a]ctions or transactions that are without a legitimate business purpose and that are intended to or foreseeably could manipulate market prices, market conditions or market rules for electric energy or electricity products . . . .” 105 FERC ¶ 61,218 ¶ 35. The Commission’s revision thus appears to impose a dual intent standard: first to determine whether the business purpose is legitimate and second to determine whether the action is intended to manipulate markets. NASUCA urges the Commission to reconsider its approach on this matter.

The Commission’s definition of “legitimate business purpose” in the proposed rule is an action which does not manipulate the market. 103 FERC at Footnote 19. In the Final Order, the Commission determined that any action which manipulates the market would be inherently without a legitimate business purpose and would be prohibited. 105 FERC at ¶ 38. The Commission further stated that retention of the language in the rule provided sellers “the opportunity to show that their actions were not designed to distort prices or otherwise manipulate the market.” *Id.* at ¶ 37.

The Commission's discussion of this issue responds to arguments raised by sellers and consumers that the language was vague or useless. The Commission also stated at Paragraph 41 that it is retaining the language to assure sellers that "transactions with economic substance, in which a seller offers or provides service to a willing buyer and where value is exchanged for value" are not prohibited by our rule." *Id.* NASUCA remains concerned that this language fails to add clarity for either sellers or consumers. Consequently, the Commission must stand firm by its statement that "an action or transaction which is anti-competitive (even though it may be undertaken to maximize seller's profits), could not have a legitimate attributed to it under our rule." 105 FERC ¶ 38.

However, the Commission's decision in the Final Order to add the intent requirement to this Market Behavior Rule has upset the balance of seller and consumer interests and fails the test for reasoned decision-making. The Commission should reconsider its decision in the Final Order to adopt an additional intent requirement by adding the language that the action(s) complained of must be "intended to, or foreseeably could" manipulate markets. Consumers and other market participants will only see the results of market manipulation in the form of high prices or lack of access to supply. These entities are unlikely to have access to the data necessary to "prove" that the seller "intended" to manipulate the markets. Often, such data or information is gained only after the opportunity for significant discovery. Consequently, making intent an element of the prohibited behavior could impose on complainants and the Commission the undue burden of having to make a prima facie case on intent when these entities will have no access to the data or information necessary to prove such claims.

The Commission states at Paragraph 36 of the Final Order that they are trying to strike a “balance” between protecting “market participants”, and presumably consumers, from market abuses while providing sellers sufficient clarity as to the type of transactions that are prohibited and maintaining flexibility to address future types of abusive transactions that could occur in the future. However, adding the intent requirement does not achieve the goal of clarifying the rules for sellers. Instead, it imposes a substantial burden on consumers, complainants and the Commission, thus erecting a significant barrier to bringing such complaints.

Consumers, market participants and the Commission are not likely to have access to the data or information needed to prove “intent” to manipulate without the opportunity for extensive discovery. Discovery only occurs in the context of a litigated case. If the requirement to show intent is imposed at the complaint filing stage, it would be nearly impossible for consumers, market participants, claimants or the Commission itself to make such a showing, particularly if prices demanded in spot markets and bilateral contracts are not contemporaneously available to the public. The burden of proof regarding intent should remain with the entity that has the best access to the information needed to assess such claims, *i.e.* the sellers. Imposing such barriers to bringing complaints on consumers and other market participants does not comport with reasoned decision-making, especially where there is little benefit gained in clarity of the rules. The Commission should delete this language, or at a minimum should clarify that intent to manipulate is not an element of a prima facie case and that the burden to show that the actions were not intended to manipulate the market remain on the sellers.

**B. The Commission Erred In Excluding Trades Of De Minimis Value From The Definition of Wash Trades.**

In the proposed rule, the Commission prohibited wash trades because of the manipulative nature of such transactions. 103 FERC at ¶ 19. The proposed rule defined a wash trade as one with no economic risk or no net change in beneficial ownership. *Id.* NASUCA urged the Commission to redefine wash trade to also include transactions which involve “little or” no economic risk, and “little or” no change in beneficial ownership. NASUCA reasoned that trades with small economic risk or small changes in beneficial ownership could nonetheless result in significant manipulation because the gains through such *de minimis* changes could easily outweigh the minimal economic cost. Thus, such trades, like the trades for no value, allow the parties to significantly inflate market prices. In the Final Order, the Commission did not adopt this recommendation, yet did not discuss why it was rejecting this recommendation. 105 FERC at ¶ 52. The Commission should reconsider its definition of wash trade to include transactions of *de minimis* value.

The Commission in discussing the “legitimate business purpose” language focused on “value being exchanged for value” as a transaction consistent with just and reasonable rates. 105 FERC at ¶ 37. Value is usually defined as something of substance, *i.e.* more than a *de minimis* amount. Consequently, a wash trade for a nickle could hardly be said to constitute value. The *de minimis* payment will likely exist solely for the purpose of circumventing the “no value” definition, while at the same time providing substantial gain to those engaging in such transactions and significantly raising prices. The transaction is no less abusive just because a minimal amount is paid as opposed to having no net payment reflected in the transaction. The Commission should reconsider its definition and adopt the language recommended by NASUCA

**C. The Commission Erred In Extending The Safe Harbor Provisions of The Price Indices Policy Statement To The Remedies Adopted In This Rule.**

The Commission's proposed rule did not seek inquiry on the issue of whether it should extend the safe harbor provisions contemplated in the proposed Policy Statement relating to the Price Indices docket to the remedies to be adopted in this rulemaking docket. However, NASUCA urged the Commission not to allow market participants to escape liability for their inadvertent errors at the expense of consumers by extending the safe harbor provisions here. While it may make sense not to penalize such market participants for such inadvertent errors, NASUCA argued that those participants should bear the burden of their mistakes, and not consumers who had no control over such transactions. The Commission's Final Order nonetheless adopted a safe harbor provision in this docket as well as in the Price Indices Policy Statement docket. 105 FERC at ¶ 118. In fact, the Commission "clarified" that it did not intend to order disgorgement of unjust profits or other remedies for "inadvertent errors." 105 FERC at ¶ 130. However, the Commission nowhere discusses the merits of NASUCA's arguments against such a measure. The Commission erred in failing to address NASUCA's concerns on these matters.

The Commission's failure to protect consumers from the inadvertent mistakes of market participants does not comport with the Commission's obligations under the Federal Power Act, 16 U.S.C. § 824 *et seq.* to ensure that consumers pay only just and reasonable rates for electricity supply. In Paragraph 130 the Commission itself notes that the profits gained from inadvertent errors are indeed "unjust". Failure to require that these unjust profits be returned to consumers does not fulfill the Commission's obligation under the Federal Power Act to protect consumers from the resulting unjust and unreasonable rates.

As the Commission has often noted, published electricity price indices are used by marketers and retail suppliers to establish prices in contracts and by state regulators in performance based ratemaking proceedings. The harm that will befall customers due to inflated electric price indices is the same whether the inflation was due to mistakes or intentional manipulation. Consumers deserve no less protection from such mistakes than they do from outright, intentional abuses. Sections 205 and 206 of the Federal Power Act, 16 U.S.C. §§ 824d and 824e, charges the Commission with protecting consumers from unjust and unreasonable prices, not from unjust and unreasonable prices that stem from intentional as opposed to unintentional actions.

Those in control of the trades, *i.e.* the market participants, should be responsible for mistakes, not those at the mercy of the market participants. There is no justification for requiring consumers to bear the burden of increased prices that stem from market participant mistakes. Only by holding these market participants accountable for the actions of their employees will the Commission ensure that such mistakes are few and far between. Absolving market participants of any responsibility for those mistakes by allowing excessive prices to flow through permanently to consumers is unjust and unreasonable. The Commission sets forth no justification for such an outcome. While NASUCA does not propose penalizing such participants for their mistakes by opposing the safe harbor provisions in the Price Indices Policy Statement, there is no rationale for extending the safe harbor provisions to the remedies imposed under this Final Order. NASUCA urges the Commission to reconsider this issue and not provide safe harbor provisions in cases brought under this Final Order.

**D. The Commission Erred In Not Adopting Make The Market Whole Or Other Monetary Remedies In Addition To Disgorgement And Non-Monetary Remedies.**

The only monetary remedy for market abuses adopted by the Commission in the Final Order was the disgorgement remedy. 105 FERC at P. 146, 151. NASUCA applauds the Commission's adoption of the disgorgement remedy as an important step forward in protecting consumers from the types of market abuses prevalent in the California markets in 2001. The Commission recognizes in Paragraph 142 of the Final Order that several parties, including NASUCA commented that disgorgement in itself is not a deterrent to bad behavior as such a remedy for detected manipulation merely places the seller in the same position it would have been in had it not engaged in the bad behavior at the outset. Thus, NASUCA recommended that the Commission adopt a make the market whole remedy or adopt other monetary penalties in addition to the disgorgement remedy in this Final Order. The Commission at Paragraph 151 specifically rejects the make the market whole remedy, but nowhere discusses the merits of such a remedy or the reasons why it has rejected a make the market whole remedy. The Commission states only that the other non-monetary remedies it has adopted, along with disgorgement, will provide a "sufficient inducement" for compliance. 105 FERC at P. 151. The Commission also fails to address NASUCA's proposed penalty remedy.

NASUCA presented several options for making the market whole. The first would hold all entities benefitting from a violation of the regulations accountable to consumers, regardless of whether that entity itself engaged in such behavior or merely relied upon prices set by those engaging in such behavior. A second option would be to require only those actually engaging in the abusive, manipulative or anti-competitive behavior to disgorge their ill-gotten gains. A third option would be the equitable remedy of restitution, *i.e.* holding the entity engaging in the illegal behavior

accountable for making the market whole. NASUCA recommended the latter option, arguing that such a policy would protect all consumers, would allow transaction certainty for innocent market participants who just relied on prices and provided a substantial deterrent to engaging in the prohibited behaviors. The Commission could use a class action Section 206 complaint proceeding much as it did in the California investigations to determine which entities engaged in the prohibited behaviors and are thus to be held accountable. The Commission apparently rejected this proposal, but nowhere discusses the reasons for such rejection. The implication in Paragraph 151 is that disgorgement, along with the possibility of revocation of market based rate authority, would be sufficient to deter inappropriate behavior. While this rationale would address NASUCA's concern that disgorgement alone would not deter bad behavior, it completely fails to address NASUCA's concern that consumers served by third parties not engaged in the bad behavior may nonetheless be significantly adversely affected by the bad behavior, but would not have a remedy for the unjust and unreasonable rates they paid. There is no justification for protecting only a portion of the consumers adversely affected by the abusive, manipulative or anti-competitive behavior. The failure to address NASUCA's concerns constitutes error and the Commission should reconsider NASUCA's proposal.

In addition to proposing a make the market whole remedy, NASUCA urged the Commission to adopt other monetary remedies such as the penalty powers set forth in Section 316 of the Federal power Act, 16 U.S.C. § 825o. Section 316 allows the Commission to seek penalties against jurisdictional entities that violate its orders or rules. The Final Order should be clarified to ensure applicability of Section 316 remedies to cases of market manipulation. The Commission notes at Footnote 87 of the Final Order that it may not have the authority to impose civil penalties. Whether the penalties to be imposed under Section 316 are civil penalties or some other type of penalty

because the Commission must seek such a penalty remedy in Court, the threat of such action would clearly serve as a strong deterrent to the manipulative, abusive and anti-competitive behavior sought to be terminated by this rule. The Commission never discussed why it rejected use of this authority to ensure compliance with this critical Final Order. Failure to address this issue constitutes error and the Commission should reconsider this issue and put all market participants on notice that it intends to use all penalty authority in its discretion to ensure compliance.

**E. The Commission Erred In Failing To Ensure That The Market Behavior Rules Apply To Bilateral Contract Transactions As Well As Energy Market Transactions.**

In addressing Market Behavior Rule #1 in the Final Order, the Commission specifically notes that Market Behavior Rule #1 will not apply to bilateral contract transactions. 105 FERC at P. 20. The Commission does not, however, clarify whether the remaining Market Behavior Rules will apply to such bilateral transactions. Additionally, the Commission fails to explain why bilateral transactions should not comply with any applicable power market rules. While Market Behavior Rule # 1 seems aimed at ensuring that sellers abide by the rules of the applicable power markets, sellers participate in those markets both by bidding generation into the spot markets and by engaging in bilateral transactions. Violation of the power market rules could affect both types of transactions. The Commission should reconsider its decision that Market Behavior Rule # 1 will not apply to bilateral transactions..

NASUCA is also concerned that absent clarification that the Market Behavior Rules apply to bilateral contract transactions as well as energy market transactions, protracted litigation will ensue as to the applicability of the remaining rules, especially Market Behavior Rule #2, the rule prohibiting manipulative, anti-competitive and abusive market behavior. Only a portion of the

country is served by formal spot energy markets, *e.g.*, those regions served by Independent System Operators (“ISOs”) or Regional Transmission Organizations (“RTOs”): California, New York, New England and the PJM region. In other regions, all transactions are accommodated via bilateral contracts. Even within the ISO and RTO markets, most transactions are bilateral transactions. Therefore, unless the Commission clarifies that these Market Behavior Rules apply to bilateral contract transactions as well as energy market transactions, only a small fraction of the market will be covered by the rules, an intent not envisioned by the Commission. There is no rational justification for exempting such a large portion of energy transactions from the application of the rules adopted in the Final Order.

**F. The Commission Erred In Not Specifically Prohibiting Non-Collusive Strategic Bidding, Mismanagement And Economic Withholding As Forms Of Market Manipulation.**

In addressing Market Behavior Rule # 2(d), the Commission determined that it would prohibit acts of collusion intended to manipulate the market. 105 FERC at P. 85. NASUCA had commented that some collusive acts may not stem from overt collusion, but from strategic bidding aimed nonetheless at market manipulation. The Commission nowhere addressed this argument and appears to reject NASUCA’s concerns. The Commission’s failure to address NASUCA’s concern on this issue constitutes error. The Commission should reconsider this portion of the Final Order and ensure that non-overt acts of collusion, including strategic bidding, are prohibited. Additionally, “unintentional” acts that are nonetheless within the control of the seller should likewise fall under the umbrella of the rule. In addressing the false reporting and artificial congestion prohibitions in Market Behavior Rules 2(b) and 2(c), the Commission applied a due diligence standard to determine whether certain actions were truly inadvertent mistakes or actions within the control of the seller.

The Commission expressed its intent to hold sellers liable for actions within their control. The Commission fails to explain why it has not adopted a similar rule here. The Commission should expand the protection afforded here by adopting NASUCA's recommendation that actions that stem from improper management will likewise be prohibited. The Commission's failure to address these concerns in the Final Order constitutes legal error and should be rectified.

The Commission decision to eliminate proposed Market Behavior Rule #2(e) relating to withholding of capacity likewise constitutes legal error. The Commission's decision to eliminate the proposed rule is based on a belief that the proposed rule is redundant of Market Behavior Rule #1. Yet Market Behavior Rule #1 may not apply to economic withholding as well as physical withholding. Consequently, Market Behavior Rule # 2(e) is a necessary prohibition in order to ensure that economic withholding is clearly considered a prohibited transaction. Indeed, many forms of withholding are economic rather than physical, but result in manipulation just the same.<sup>1</sup> There is no rational justification for eliminating a large portion of withholding incidents from the operation of the rules. The Commission should reconsider its decision to eliminate Market Behavior Rule # 2(e) by either retaining the rule, or clarifying that economic withholding falls within one of the other rules prohibiting manipulative, abusive or anti-competitive behavior.

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<sup>1</sup> For example, demanding very high prices for part of the output of baseload plants essentially results in withholding of that capacity from the spot market. Such action may cause the system operator to call on more expensive peaker units, resulting in the pricing all of the output of that baseload plant as higher-priced peaker capacity even though demand could have been satisfied by the baseload unit's capacity had that capacity not been economically withheld from the market.

### **Conclusion and Prayer for Relief**

The Commission's decisions in the Final Order in this docket related to a) incorporation of an intent requirement in the prohibition on manipulation; b) failure to include *de minimis* wash trades in the definition of wash trades; c) extension of safe harbor protection against the remedies provided for in this Final Order; d) failure to implement additional monetary penalties as remedies; e) failure to ensure that the Market Behavior Rules apply to bilateral contract transactions as well as energy market transactions; and f) failure to specifically prohibit non-collusive strategic bidding, mismanagement and economic withholding as forms of market manipulation do not comport with reasoned decision-making. In each case, the Commission either failed to address the concerns raised by NASUCA in its comments in this docket, or failed to properly balance seller and consumer interests.

WHEREFORE, the National Association of State Utility Consumer Advocates respectfully requests that the Commission reconsider its rulings on these issues and modify or clarify the Final Order as requested herein.

Respectfully submitted,

*Filed electronically*

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Denise C. Goulet  
Senior Assistant Consumer Advocate

Counsel for:  
Irwin A. Popowsky  
Consumer Advocate

Office of Consumer Advocate  
555 Walnut Street 5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048

Dated: December 17, 2003  
Doc # 77299.wpd

CERTIFICATE OF SERVICE

Re: Investigation of Terms and Conditions of  
Public Utility Market-Based Rate Authorizations  
Docket No. EL01-118-000

I hereby certify that I have this date served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Harrisburg, PA this 17th day of December, 2003.

Respectfully submitted,

*-Filed Electronically-*

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Denise C. Goulet  
Senior Assistant Consumer Advocate

Office of Attorney General  
Office of Consumer Advocate  
555 Walnut Street, 5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
(717) 783-5048