

UNITED STATES OF AMERICA
Before the
COMMODITY FUTURES TRADING COMMISSION

In the Matter of:)	CFTC Docket No.: 01-23
)	
ANTHONY J. DiPLACIDO,)	
ROBERT S. KRISTUFEK, and)	<u>COMPLAINT</u>
WILLIAM H. TAYLOR)	
)	
Respondents.)	Hon. _____
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The Commodity Futures Trading Commission (“Commission”) has received information from its staff which tends to show, and the Commission’s Division of Enforcement (“Division”) alleges that:

I.

SUMMARY

1. Between April and August 1998, respondents Anthony J. DiPlacido (“DiPlacido”), Robert S. Kristufek (“Kristufek”), and William H. Taylor (“Taylor”) (collectively, the “Respondents”) engaged in a scheme to manipulate the settlement price of the Palo Verde (“PV”) and/or California Oregon Border (“COB”) (collectively, “Western U.S.”) electricity futures contracts, in violation of Sections 6(c), 6(d) and 9(a)(2) of the Commodity Exchange Act (“the Act”), 7 U.S.C. §§ 9, 15, 13b and 13(a)(2) (1994), as amended by the Commodity Futures Modernization Act of 2000, Appendix E, Pub. L. 106-554, 114 Stat. 2763 (2000).

2. Between April and August 1998 (the “Relevant Time Period”), these Western U.S. electricity futures contracts were traded on the floor of the New York Mercantile Exchange (“NYMEX”).

3. Prior to September 1998, Avista entered into over-the-counter (“OTC”) derivative contracts, whose value at expiration was based on the daily settlement price of the NYMEX PV or COB electricity futures contracts on the last day of options trading (the “Options Expiration Day”), which was also the penultimate day of futures trading.

4. Respondents accomplished their manipulative scheme by means of a variety of acts and practices that were intended to and did manipulate the settlement price of the NYMEX PV electricity futures contract on Options Expiration Days in April, May, July, and August 1998 and the NYMEX COB electricity futures contract on Options Expiration Day in July 1998.

5. As a result of the manipulative scheme, Respondents created artificial settlement prices of the NYMEX PV electricity futures contracts on the April, May, July, and August 1998 Options Expiration Days and of the NYMEX COB electricity futures contract on the July 1998 Options Expiration Day.

6. Respondents were able to create artificial settlement prices in NYMEX PV and/or COB electricity futures contracts through a variety of ways, including, but not limited to: (a) selling May and June 1998 NYMEX PV electricity futures contracts at prices less than the prevailing price during the April and May 1998 Options Expiration Days; (b) purchasing August and September 1998 NYMEX PV electricity futures contracts at prices higher than the prevailing price during the July and August 1998 Options Expiration Days; (c) purchasing August 1998 NYMEX COB electricity futures contracts at prices higher than the prevailing price during the July 1998 Options Expiration Day; (d) entering into a noncompetitive trade; and/or (e) placing large orders for NYMEX Western U.S. electricity futures contracts on the Options Expiration Days in April, May, July, and August 1998 without legitimate, economic reasons or considerations.

II.

RESPONDENTS

7. **Anthony J. DiPlacido** is a natural person who resides at 2557 Glenn Drive, Bellmore, New York 11710.

8. DiPlacido has been a Commission-registered floor broker and a NYMEX Member since 1980.

9. DiPlacido owns and is president of Energex, Ltd., a NYMEX-registered floor brokerage association.

10. DiPlacido's NYMEX trading badge is "JADE."

11. **Robert S. Kristufek** is a natural person who resides at 540 North Lake Shore Drive, Chicago, Illinois.

12. In 1998, Kristufek was an energy trader in Avista's Houston, Texas office.

13. As part of his duties and responsibilities at Avista, Kristufek placed orders for trades for NYMEX Western U.S. electricity futures contracts.

14. As part of his duties and responsibilities at Avista, Kristufek advised and counseled on, and aided the design, coordination, and implementation of Avista's electricity trading strategy, including trading NYMEX Western U.S. electricity futures contracts.

15. Kristufek was a Commission-registered floor broker and a NYMEX Member from October 1995 through May 7, 1997.

16. During his time as a floor broker, Kristufek executed orders in the Crude Oil Options and Heating Oil Options pits.

17. **William H. Taylor** is a natural person who resides at 2318 Glen Haven Boulevard, Houston, Texas.

18. During 1998, Taylor was a Vice President of Avista.

19. Taylor worked in Avista's Houston, Texas office.

20. As part of his duties and responsibilities during January through July 1998, Taylor acted as Avista's risk manager.

21. As part of his duties and responsibilities at Avista, Taylor oversaw, advised and counseled on, and aided the design, coordination, and implementation of Avista's electricity trading strategy, including trading NYMEX Western U.S. electricity futures contracts.

22. As part of his duties and responsibilities at Avista, Taylor placed orders for trades for NYMEX Western U.S. electricity futures contracts.

23. As part of his duties and responsibilities after July 1998 at Avista, Taylor supervised Avista's Spokane office, in conjunction with another Avista Vice President.

III.

FACTS

A. The Western U.S. Electricity Futures Contracts on the NYMEX

24. The Western U.S. electricity futures contracts began trading on the NYMEX on March 29, 1996.

25. In 1998, the PV electricity futures contract was based on delivery of a monthly block of on-peak electricity at the Palo Verde switchyard in Arizona.

26. In 1998, the COB electricity futures contract was based on delivery of a monthly block of on-peak electricity at the California/Oregon border.

27. In comparison to other NYMEX energy futures contracts, such as natural gas or crude oil, the market for Western U.S. electricity futures contracts in 1998 was small and relatively illiquid.

28. Under NYMEX rules in 1998, the last trading day of the Western U.S. electricity futures contracts was the fourth business day prior to the first calendar day of the delivery month.

29. Under NYMEX rules in 1998, NYMEX options contracts on the Western U.S. electricity futures contracts expired on the business day immediately preceding the last futures trading day.

30. On the Options Expiration Days in April, May, June, July, and August 1998, the close of NYMEX PV electricity futures trading began at 3:23 p.m. Eastern time and ended at 3:25 p.m. Eastern time.

31. On the Options Expiration Days in April, May, July, and August 1998, the close of NYMEX COB electricity futures trading began at 3:28 p.m. Eastern time and ended at 3:30 p.m. Eastern time.

32. On the Options Expiration Days in April, May, July and August, 1998, pursuant to NYMEX Rule 6.52C, the daily settlement price of the Western U.S. electricity futures contracts was calculated by determining the weighted average of the prices of all trades executed during the last two minutes of the trading day (the “Close”).

B. Avista’s OTC Derivative Contracts

33. Avista, through Taylor, Kristufek, and other Avista personnel, entered into OTC derivative contracts whose value at expiration was based on the settlement price of the Western U.S. electricity futures contracts on Options Expiration Day.

34. These contracts reflected the beliefs of Taylor, Kristufek, and other Avista personnel, that PV and COB prices would decline throughout Spring 1998 and would increase during Summer 1998.

35. Avista entered into OTC derivative contracts whose value was based on the settlement price on the Options Expiration Day for the May 1998 PV electricity futures contracts (“Avista’s May 1998 PV OTC Contracts”).

36. Avista entered into OTC derivative contracts whose value was based on the settlement price on the Options Expiration Day for the June 1998 PV electricity futures contracts (“Avista’s June 1998 PV OTC Contracts”).

37. Avista entered into OTC derivative contracts whose value was based on the settlement price on the Options Expiration Day for the August 1998 PV electricity futures contracts (“Avista’s August 1998 PV OTC Contracts”).

38. Avista entered into OTC derivative contracts whose value was based on the settlement price on the Options Expiration Day for the August 1998 COB electricity futures contracts (“Avista’s August 1998 COB OTC Contracts”).

39. Avista entered into OTC derivative contracts whose value was based on the settlement price on the Options Expiration Day for the September 1998 PV electricity futures contracts (“Avista’s September 1998 PV OTC Contracts”).

C. The Manipulative Scheme on April 24, 1998

40. The Options Expiration Day for the May 1998 Western U.S. electricity futures contracts was Friday, April 24, 1998, and the last trading day for the May 1998 Western U.S. electricity futures contracts was Monday, April 27, 1998.

41. Avista’s May 1998 PV OTC Contracts increased in value with a lower settlement price of the May 1998 NYMEX PV electricity futures contract.

42. Kristufek, Taylor and DiPlacido participated in and/or devised a scheme to manipulate the settlement price of the May 1998 NYMEX PV electricity futures contract on Options Expiration Day.

43. The manipulative scheme involved, in part, selling May 1998 NYMEX PV electricity futures contracts at prices less than the prevailing price during the April 1998 Options Expiration Day in a manner designed to lower the price.

44. To accomplish the manipulative scheme, Taylor enlisted DiPlacido’s assistance.

45. Taylor gave instructions to DiPlacido to effectuate the manipulative scheme, and directed DiPlacido, either directly or through DiPlacido’s phone clerk, to sell May 1998 NYMEX PV electricity futures contracts at the lowest possible price.

46. On April 24, 1998, Taylor and Kristufek placed orders for trades in a manner designed to effectuate the manipulative scheme to lower the settlement price of the May 1998 NYMEX PV electricity futures contract.

47. On April 24, 1998, DiPlacido traded in a manner designed to effectuate the manipulative scheme to lower the settlement price of the May 1998 NYMEX PV electricity futures contract.

48. Kristufek, Taylor and DiPlacido succeeded in causing an artificial settlement price of the May 1998 NYMEX PV electricity futures contract on April 24, 1998.

D. The Manipulative Scheme on May 22, 1998

49. The Options Expiration Day for the June 1998 Western U.S. electricity futures contracts was Friday, May 22, 1998, and the last trading day for the June 1998 Western U.S. electricity futures contracts was Tuesday, May 26, 1998 (because Memorial Day was observed on Monday, May 25, 1998).

50. Avista's June 1998 PV OTC Contracts increased in value with a lower settlement price in the June 1998 NYMEX PV electricity futures contract.

51. Kristufek, Taylor and DiPlacido participated in and/or devised a scheme to manipulate the settlement price of the June 1998 NYMEX PV electricity futures contract on Options Expiration Day.

52. The manipulative scheme involved, in part, selling June 1998 NYMEX PV electricity futures contracts at prices less than the prevailing price during the May 1998 Options Expiration Day.

53. To accomplish the manipulative scheme, Kristufek enlisted DiPlacido's assistance.

54. Kristufek gave instructions to DiPlacido to effectuate the manipulative scheme and directed DiPlacido to sell June 1998 NYMEX PV electricity futures contracts at the lowest possible price.

55. On May 22, 1998, Kristufek placed orders for trades in a manner designed to effectuate the manipulative scheme to lower the settlement price of the June 1998 NYMEX PV electricity futures contract.

56. On May 22, 1998, Taylor placed orders for trades in a manner designed to effectuate the manipulative scheme to lower the settlement price of the June 1998 NYMEX PV electricity futures contract.

57. On May 22, 1998, DiPlacido traded in a manner designed to effectuate the manipulative scheme to lower the settlement price of the June 1998 NYMEX PV electricity futures contract.

58. Kristufek, Taylor and DiPlacido succeeded in causing an artificial settlement price of the June 1998 NYMEX PV electricity futures contract on May 22, 1998.

E. The Manipulative Scheme on July 27, 1998

59. The Options Expiration Day for the August 1998 Western U.S. electricity futures contracts was Monday, July 27, 1998, and the last trading day for the August 1998 Western U.S. electricity futures contracts was Tuesday, July 28, 1998.

60. Avista's August 1998 PV OTC Contracts increased in value with a higher settlement price in the August 1998 NYMEX PV electricity futures contract.

61. Avista's August 1998 COB OTC Contracts increased in value with a higher settlement price in the August 1998 NYMEX COB electricity futures contract.

62. Kristufek, Taylor, and DiPlacido participated in and/or devised a scheme to manipulate the settlement price of the August 1998 NYMEX PV electricity futures contract on Options Expiration Day.

63. Kristufek, Taylor and DiPlacido participated in and/or devised a scheme to manipulate the settlement price of the August 1998 NYMEX COB electricity futures contract on Options Expiration Day.

64. The manipulative scheme involved, in part, purchasing August 1998 NYMEX PV electricity futures contracts at prices higher than the prevailing price during the July 1998 Options Expiration Day.

65. The manipulative scheme involved, in part, purchasing August 1998 NYMEX COB electricity futures contracts at prices higher than the prevailing price during the July 1998 Options Expiration Day.

66. To accomplish the manipulative scheme, Kristufek enlisted DiPlacido's assistance.

67. Kristufek gave instructions to DiPlacido to effectuate the manipulative scheme, and directed DiPlacido to purchase August 1998 NYMEX PV electricity futures contracts for prices that were higher than the prevailing price.

68. Kristufek gave instructions to DiPlacido to effectuate the manipulative scheme, and directed DiPlacido to purchase August 1998 NYMEX COB electricity futures contracts for prices that were higher than the prevailing price.

69. DiPlacido, aware of Avista's intentions, suggested a course of action utilizing multiple brokers to best effectuate Avista's manipulative scheme.

70. On July 27, 1998, Kristufek placed orders for trades in a manner designed to effectuate the manipulative scheme to raise the settlement price of the August 1998 NYMEX PV electricity futures contract.

71. On July 27, 1998, Kristufek placed orders for trades in a manner designed to effectuate the manipulative scheme to raise the settlement price of the August 1998 NYMEX COB electricity futures contract.

72. On July 27, 1998, DiPlacido traded in a manner designed to effectuate the manipulative scheme to raise the settlement price of the August 1998 NYMEX PV electricity futures contract.

73. On July 27, 1998, DiPlacido traded in a manner designed to effectuate the manipulative scheme to raise the settlement price of the August 1998 NYMEX COB electricity futures contract.

74. On July 27, 1998, as part of the manipulative scheme, DiPlacido, with Kristufek's approval, entered into a noncompetitive trade after the Closes in NYMEX PV and COB electricity futures contracts to further raise the settlement prices of the August 1998 NYMEX PV and/or COB electricity futures contracts.

75. DiPlacido changed his trading card to reflect the price and quantity of the noncompetitive trade and submitted the trade to NYMEX officials to be included in the calculation of the settlement prices of the August 1998 NYMEX PV and/or COB electricity futures contracts.

76. Kristufek, Taylor and DiPlacido succeeded in causing artificial settlement prices of the August 1998 NYMEX PV and COB electricity futures contracts on July 27, 1998.

F. The Manipulative Scheme on August 25, 1998

77. The Options Expiration Day for the September 1998 Western U.S. electricity futures contracts was Tuesday, August 25, 1998, and the last trading day for the September 1998 Western U.S. electricity futures contracts was Wednesday, August 26, 1998.

78. Avista's September 1998 PV OTC Contracts increased in value with a higher settlement price in the September 1998 NYMEX PV electricity futures contract.

79. Kristufek and DiPlacido participated in and/or devised a scheme to manipulate the settlement price of the September 1998 NYMEX PV electricity futures contract on Options Expiration Day.

80. The manipulative scheme involved, in part, purchasing September 1998 NYMEX PV electricity futures contracts at prices higher than the prevailing price during the August 1998 Options Expiration Day.

81. To accomplish the manipulative scheme, Kristufek enlisted DiPlacido's assistance.

82. Kristufek gave instructions to DiPlacido to effectuate the manipulative scheme, and directed DiPlacido to purchase September 1998 NYMEX PV electricity futures contracts at prices that were higher than the prevailing price.

83. On August 25, 1998, Kristufek placed orders for trades in a manner designed to effectuate the manipulative scheme to raise the settlement price of the September 1998 NYMEX PV electricity futures contract.

84. On August 25, 1998, DiPlacido traded in a manner designed to effectuate the manipulative scheme to raise the settlement price of the September 1998 NYMEX PV electricity futures contract.

85. Kristufek and DiPlacido succeeded in causing an artificial settlement price of the September 1998 NYMEX PV electricity futures contract on August 25, 1998.

G. Failure to Keep Required Books and Records Open for Inspection

86. On August 4, 2000, representatives of the Commission issued a subpoena to DiPlacido for certain books and records the Act requires DiPlacido to maintain, including all records relating to his trading of NYMEX PV and COB electricity futures contracts for Avista during 1998.

87. Representatives of the Commission renewed their request for access to these books and records on several occasions after DiPlacido failed to produce them as required by the August 4, 2000 subpoena, including most recently at DiPlacido's investigative testimony in April, 2001.

88. To date, DiPlacido has failed to provide representatives of the Commission with access to all of the books and records required to be maintained by the Act.

IV.

VIOLATIONS OF THE COMMODITY EXCHANGE ACT AND THE REGULATIONS PROMULGATED THEREUNDER

COUNT I

89. Paragraphs 1 through 88 are realleged and incorporated herein by reference.

90. Sections 6(c) and 6(d) of the Act make it illegal for any person to manipulate or attempt to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

91. Section 9(a)(2) of the Act makes it illegal for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

92. Kristufek, Taylor, and DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act, in that they manipulated and/or attempted to manipulate the settlement price of the May 1998 PV electricity futures contract.

93. DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act pursuant to Section 13(a) of the Act in that he knowingly aided and abetted Kristufek and/or Taylor in the

manipulation and/or attempted manipulation of the settlement price of the May 1998 PV electricity futures contract.

94. Each and every act or transaction engaged in by Kristufek, Taylor and/or DiPlacido in furtherance of the manipulative scheme, as described above, is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act.

COUNT II

95. Paragraphs 1 through 94 are realleged and incorporated herein by reference.

96. Sections 6(c) and 6(d) of the Act make it illegal for any person to manipulate or attempt to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

97. Section 9(a)(2) of the Act makes it illegal for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

98. Kristufek, Taylor, and DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act, in that they manipulated and/or attempted to manipulate the settlement price of the June 1998 PV electricity futures contract.

99. DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act pursuant to Section 13(a) of the Act in that he knowingly aided and abetted Kristufek and/or Taylor in the manipulation and/or attempted manipulation of the settlement price of the June 1998 PV electricity futures contract.

100. Each and every act or transaction engaged in by Kristufek, Taylor and/or DiPlacido in furtherance of the manipulative scheme, as described above, is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act.

COUNT III

101. Paragraphs 1 through 100 are realleged and incorporated herein by reference.

102. Sections 6(c) and 6(d) of the Act make it illegal for any person to manipulate or attempt to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

103. Section 9(a)(2) of the Act makes it illegal for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

104. Kristufek, Taylor, and DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act, in that they manipulated and/or attempted to manipulate the settlement price of the August 1998 PV electricity futures contract.

105. DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act pursuant to Section 13(a) of the Act in that he knowingly aided and abetted Kristufek in the manipulation and/or attempted manipulation of the settlement price of the August 1998 PV electricity futures contract.

106. Each and every act or transaction engaged in by Kristufek, Taylor and/or DiPlacido in furtherance of the manipulative scheme, as described above, is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act.

COUNT IV

107. Paragraphs 1 through 106 are realleged and incorporated herein by reference.

108. Sections 6(c) and 6(d) of the Act make it illegal for any person to manipulate or attempt to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

109. Section 9(a)(2) of the Act makes it illegal for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

110. Kristufek, Taylor, and DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act, in that they manipulated and/or attempted to manipulate the settlement price of the August 1998 COB electricity futures contract.

111. DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act pursuant to Section 13(a) of the Act in that he knowingly aided and abetted Kristufek in the manipulation and/or attempted manipulation of the settlement price of the August 1998 COB electricity futures contract.

112. Each and every act or transaction engaged in by Kristufek, Taylor and/or DiPlacido in furtherance of the manipulative scheme, as described above, is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act.

COUNT V

113. Paragraphs 1 through 112 are realleged and incorporated herein by reference.

114. Sections 6(c) and 6(d) of the Act make it illegal for any person to manipulate or attempt to manipulate the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

115. Section 9(a)(2) of the Act makes it illegal for any person to manipulate or attempt to manipulate the price of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity, including any contract market.

116. Kristufek and DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act, in that they manipulated and/or attempted to manipulate the settlement price of the September 1998 PV electricity futures contract.

117. DiPlacido violated Sections 6(c), 6(d), and 9(a)(2) of the Act pursuant to Section 13(a) of the Act in that he knowingly aided and abetted Kristufek in the manipulation and/or attempted manipulation of the settlement price of the September 1998 PV electricity futures contract.

118. Each and every act or transaction engaged in by Kristufek and DiPlacido in furtherance of the manipulative scheme, as described above, is alleged herein as a separate and distinct violation of Sections 6(c), 6(d) and 9(a)(2) of the Act.

COUNT VI

119. Paragraphs 1 through 118 are realleged and incorporated herein by reference.

120. Section 4c(a)(A) of the Act makes it illegal to offer to enter into, enter into, or confirm the execution of any transaction involving any commodity if such transaction is an accommodation trade or fictitious sale.

121. DiPlacido and Kristufek violated Section 4c(a)(A) of the Act by offering to enter into, entering into or confirming the execution of an accommodation trade or fictitious sale for August 1998 PV and/or COB electricity futures.

122. Each and every act or transaction engaged in by DiPlacido and/or Kristufek in offering to enter into, entering into, or confirming the execution of any transaction involving any commodity where such transaction was an accommodation trade or fictitious sale, as described above, is alleged herein as a separate and distinct violation of Section 4(c)(A) of the Act.

COUNT VII

123. Paragraphs 1 through 123 are realleged and incorporated herein by reference.

124. Section 4c(a)(B) of the Act makes it illegal to offer to enter into, enter into, or confirm the execution of any transaction if such transaction is used to cause any price to be reported, registered, or recorded which is not a true and bona fide price.

125. DiPlacido and Kristufek violated Section 4c(a)(B) of the Act by offering to enter into, entering into or confirming the execution of a transaction that was reported, registered, or recorded at prices that were not true and bona fide for August 1998 PV and/or COB electricity futures.

126. Each and every act or transaction engaged in by DiPlacido and/or Kristufek in offering to enter into, entering into, or confirming the execution of any transaction where such transaction was used to cause any price to be reported, registered, or recorded which is not a true and bona fide price, as described above, is alleged herein as a separate and distinct violation of Section 4c(a)(B) of the Act.

COUNT VIII

127. Paragraphs 1 through 126 are realleged and incorporated herein by reference.

128. Section 1.38(a) of the Commission's Regulations, 17 C.F.R. 1.38(a), requires all purchases and sales on or subject to the rules of a contract market to be "executed openly and competitively."

129. DiPlacido and Kristufek violated Section 1.38(a) of the Commission's Regulations by executing and approving a trade for August 1998 PV and/or COB electricity futures that was not "executed openly and competitively" during regular trading hours.

130. Each and every act or transaction engaged in by DiPlacido and/or Kristufek in executing and/or approving a trade that was not "executed openly and competitively" during regular trading hours, as described above, is alleged herein as a separate and distinct violation of Section 1.38(a) of the Commission's Regulations, 17 C.F.R. 1.38(a).

COUNT IX

131. Paragraphs 1 through 130 are realleged and incorporated herein by reference.

132. Section 4g of the Act requires every registered floor broker to make such reports as required by the Commission and to keep such records open to inspection by any representative of the Commission.

133. Section 1.35(d) of the Commission Regulations requires that members of contract markets prepare trading cards or similar records documenting their trades. Section 1.35(d) of the Commission Regulations also requires, among other things, that for each transaction executed by

the member, the trading card or other record state: (a) the member's name or identification; (b) the identity of the clearing member, and (c) the date, hour and minute of the transaction.

134. DiPlacido violated Section 4g of the Act and Commission Regulation 1.35(d) by falsely recording and reporting as a bona fide trade, a noncompetitive trade that he entered into after the Closes of the NYMEX August 1998 PV and COB electricity futures contracts.

135. Each and every instance in which DiPlacido falsely recorded and/or reported a noncompetitive trade as a bona fide trade, as described above, is alleged herein as a separate and distinct violation of Section 1.35 (d) of the Commission's Regulations, and Section 4g of the Act.

COUNT X

136. Paragraphs 1 through 135 are realleged and incorporated herein by reference.

137. Section 4g of the Act requires every registered floor broker to make such reports as required by the Commission and to keep such books and records open to inspection by any representative of the Commission.

138. Commission Regulation 1.31(a) also requires, in part, that all books and records required to be kept by the Act be open to inspection by any representative of the Commission and provided to such representative upon the representative's request.

139. DiPlacido violated Section 4g of the Act and Commission Regulation 1.31(a) by failing to provide Commission representatives access to books and records subpoenaed by the representatives, including records relating to his trading of NYMEX PV and COB electricity futures contracts for Avista during 1998.

140. Each and every instance in which DiPlacido failed to provide Commission representatives access to books and records subpoenaed by the representatives, as described above, is alleged herein as a separate and distinct violation of Section 1.31(a) of the Commission's Regulations, and Section 4g of the Act.

V.

By reason of the foregoing allegations by the Division, the Commission deems it necessary and appropriate, pursuant to its responsibilities under the Act, to institute administrative proceedings to determine whether the allegations set forth in Parts I-IV are true and, if so, whether orders should be entered in accordance with Sections 6(c) and 6(d) of the Act, 7 U.S.C. §§ 9, 15 and 13b (1994).

Section 6(c) of the Act allows the Commission to (1) prohibit a respondent from trading on or subject to the rules of any registered entity and require all registered entities to refuse such person all trading privileges thereon for such period as may be specified in the Commission's Order, (2) assess against a respondent a civil monetary penalty of not more than the higher of \$110,000 or triple the monetary gain to the respondent for each violation, and (3) require restitution to customers of damages proximately caused by the violations of the respondent.

Section 6(d) of the Act allows the Commission to enter an Order directing that a respondent cease and desist from violating the provisions of the Act and Regulations found to have been violated.

VI.

WHEREAS, IT IS HEREBY ORDERED that a public hearing for the purpose of taking evidence and hearing argument on the allegations set forth in Parts I-IV above be held before an Administrative Law Judge, in accordance with the Rules of Practice under the Act, 17 C.F.R. §§ 10.1 et seq. (2001), at a time and place to be fixed as provided by Section 10.61 of the Rules, and that all posthearing procedures shall be conducted pursuant to Sections 10.81 through 10.107 of the Rules of Practice, 17 C.F.R. §§ 10.81 through 10.107 (2001).

IT IS FURTHER ORDERED that each Respondent shall file an Answer to the allegations against said Respondent in the Complaint within twenty (20) days after service, pursuant to Section 10.23 of the Rules of Practice, 17 C.F.R. § 10.23, and pursuant to Section 10.12(a) of the rules of Practice, 17 C.F.R. § 10.12(a), shall serve two copies of such Answer and

of any document filed in this proceeding upon Charles J. Sgro, Regional Counsel, Division of Enforcement, Eastern Regional Office, Commodity Futures Trading Commission, One World Trade Center, Suite 3747, New York, New York, 10048 or upon such other counsel as designated by the Division. If any Respondent fails to file the required Answer or fails to appear at a hearing after being duly served, such Respondent shall be deemed in default, and the proceeding may be determined against such Respondent upon consideration of the Complaint, the allegations of which shall be deemed to be true.

IT IS FURTHER ORDERED that this Complaint and Notice of Hearing shall be served on each Respondent personally or by registered or certified mail forthwith pursuant to Section 10.22 of the Commission's Rules, 17 C.F.R. § 10.22 (2001).

In the absence of an appropriate waiver, no officer or employee of the Commission engaged in the performance of the investigative or prosecutorial functions in this or any factually related proceeding will be permitted to participate or advise in the decision upon this matter except as witness or counsel in proceedings held pursuant to notice.

By the Commission.

Catherine D. Dixon
Assistant Secretary to the Commission
Commodity Futures Trading Commission

Date: August 21, 2001