

Gaming Practices such that it would not be just for the Commission to seek the disgorgement of unjust profits.

36. We have determined that certain of the market participants' practices did not violate the MMIP, and we are not pursuing market participants for having engaged in such activities (hereafter collectively referred to as the California Practices). Rather, we find that the California Practices did not violate the ISO tariff or any rule, and were recognized and widely accepted as appropriate arbitrage activity.

1. Gaming Practices

a. False Import

37. This practice, which is also known as "Ricochet" or "Megawatt Laundering," took advantage of the price differentials that existed between the day-ahead or day-of markets and out-of-market sales in the real-time market. A market participant made arrangements to export power purchased in the California day-ahead or day-of markets to an entity outside the state and to repurchase the power from the out-of-state entity, for which the out-of-state entity received a fee. The "imported" power was then sold in the California real-time market at a price above the cap.

38. The essence of the False Import practice was to "park" day-ahead or day-of California energy with a company outside of California, buy it back for a small fee and then sell it to the ISO as "imported" out-of-market power. When power was parked under this practice, no power actually left the state of California. The reason for creating this fictional import was to take advantage of the fact that the ISO was making out-of-market purchases that were not subject to the price cap during real time whenever there was insufficient supply bid into its market.⁵² The ISO buyers responsible for obtaining the energy needed in the real-time market were willing to pay a price above the cap for energy imported from outside of California and accepted offers from sellers engaging in the False Import practice.

39. Those market participants who engaged in the False Import practice violated the MMIP by unfairly taking

advantage⁵³ of the rules permitting energy to be purchased at prices above the cap in out-of-market purchases during real time and the ISO's practice of permitting such uncapped purchases for imported power. More precisely, the market participants engaging in False Import deceived the ISO by falsely representing that their available power had been imported in order to receive a price above the cap. In fact, however, the generation was California generation, and no power had left the state in the fictional export-import parking transaction.

40. Based on the ISO Report and studies by Dr. Fox-Penner,⁵⁴ the following parties may have engaged in the False Import Practice in violation of the MMIP and unjustly received prices in excess of the cap for energy that was falsely represented as being imported energy: (1) Aquila, Inc.; (2) Arizona Public Service Company; (3) Bonneville Power Administration; etc., as set forth in Attachment A to this Order.⁵⁵

b. Congestion-Related Practices.

41. According to the ISO rules, market participants received congestion relief payments for relieving flows in the direction of congestion or increasing counterflows in the opposite direction. There were four practices that market participants engaged in that involved false scheduling of load or counterflow energy that appeared to relieve congestion in real time so that they could receive congestion payments.⁵⁶

⁵³ See MMIP 2.1.3.

⁵⁴ As discussed below in section E, because the ISO Report and Dr. Fox-Penner's studies were broadly inclusive, we recognize that some of the transactions identified in those reports may have been legitimate transactions and not Gaming Practices.

⁵⁵ The monetary remedy of disgorgement of unjust profits for this particular Gaming Practice would be imposed only until such time as the mitigated market clearing price was put in place for transactions, i.e., on June 21, 2001. Furthermore, during the period covered by the refund period (October 2, 2000–June 21, 2001), see *supra* note 3, all spot market sales through the PX in the day ahead market are mitigated as are all transactions with the ISO in the real time market. Therefore, both the energy price for the export and the import are mitigated during this period. Accordingly, disgorgement for this strategy will apply to only transactions between May 2000 and the start of the refund period on October 2, 2000.

⁵⁶ As noted above, *supra* notes 1 and 3, June 20, 2001 has been selected as the end date of the relevant period in this proceeding. While the mitigation plan, which became effective on that date, was primarily intended to control the real-time energy market, it also had a disciplining effect on congestion costs and eliminated the opportunity to profit from Gaming Practices. The ISO Market Analysis Report for June 2001 shows that the average price of real-time electricity in June decreased 62 percent to \$104/MWh from the May 2001 average of \$275/MWh and total congestion costs for June 2001 were \$0.5 million, down from

42. The first such Congestion-Related practice is referred to as Cutting Non-firm, also sometimes known as Non-firm Export. This practice involved the scheduling of non-firm power by a market participant that did not intend to deliver or cannot deliver the power. Upon receipt of the congestion payment for cutting the schedule, the market participant then canceled the non-firm power after the hour-ahead market closed but kept the congestion payment. No power was transmitted and no congestion was relieved, but the market participant was paid for congestion relief. In some instances, the market participant may have submitted a schedule for non-firm power that it, in fact, had not acquired.

43. The second Congestion-Related practice is Circular Scheduling, also sometimes referred to as "Death Star." The Circular Scheduling practice involved the market participant scheduling a counterflow in order to receive a congestion relief payment. In conjunction with the counterflow, the market participant scheduled a series of transactions that included both energy imports and exports into and out of the ISO control area and a transaction outside the ISO control area in the opposite direction of the counterflow back to the original place of origin. With the same amount of power scheduled back to the point of origin, however, power did not actually flow and congestion was not relieved. Circular Scheduling was profitable as long as the congestion relief payments were greater than the cost of scheduled transmission.

44. The third Congestion-Related practice was Scheduling Counterflows on Out-of-Service Lines, also sometimes referred to as "Wheel Out." This practice involved a market participant submitting a schedule across an intertie line at the ISO border that was known to be out of service and had been derated to zero capacity, thus creating artificial congestion. The market participant would then schedule a counterflow export, a "wheel out," and be paid for congestion relief in the day-ahead or hour-ahead market. However, because the line was completely constrained, the initial schedule was certain to be cut by the ISO in real time and the market participant would receive a congestion payment for energy it did not actually supply.

45. The fourth Congestion-Related practice, known as "Load Shift," involved a market participant

\$7 million in May 2001. A. Sheffrin, Market Analysis Report for June 2001, (July 20, 2001), available at <<http://www.caiso.com/docs/2001/07/20/200107201733319105.pdf>>.

⁵² "Out-of-market purchases" refers to all generation purchased by the ISO that was not bid into the market or was bid at a price above the effective price cap. Out-of-market purchases were especially frequent prior to the implementation of the "must offer" requirement effective on May 29, 2001, which mandates that all generators with participating generator agreements with the ISO provide available generation to the ISO unless the ISO grants a waiver. See San Diego Gas & Electric Co., 95 FERC ¶ 61,115 (implementing the must offer requirement), *clarified*, 95 FERC ¶ 61,275 (2001).