

underscheduling load in one zone in California and overscheduling load in another, thereby increasing congestion in the direction of the overscheduled zone. Congestion "relief" occurred when the market participant later adjusted the two schedules to reflect actual expected loads. This adjustment created a counterflow toward the underscheduled zone, earning the market participant a congestion relief payment from the ISO. The market participant had to own Firm Transmission Rights (FTRs) in the direction of the overscheduled zone to cover its exposure to ISO congestion charges, but any of the FTRs that it did not use may have earned artificially high FTR payments from the ISO.

46. Each of the four Congestion-Related practices violated the MMIP because the market participants submitted false schedules to the ISO. In the cases of Cutting Non-firm, Circular Scheduling, and Scheduling Counterflows on Out-of-Service Lines, the market participants fraudulently received congestion relief payments for energy that was never provided and did not relieve congestion. Similarly, market participants who engaged in the Load Shift practice received congestion payments for their FTRs as a result of the very congestion that they created. As a result of these false representations, the market participants that engaged in these Congestion-Related practices unfairly took advantage of the ISO rules regarding payment for congestion relief.

47. Based on the ISO Report and studies by Dr. Fox-Penner, the following parties may have engaged in one or more of these four Congestion-Related Practices in violation of MMIP and unjustly received congestion payments: (1) American Electric Power Service Corp.; (2) Aquila, Inc.; (3) Duke Energy Trading and Marketing Company; *etc.*, as set forth in Attachment B to this Order.

#### *c. Ancillary Services-Related Practices.*

48. There are three different practices that market participants engaged in that involved selling ancillary services, also sometimes collectively referred to as "Get Shorty." Two of these we consider to be Gaming Practices and violations of the MMIP and are discussed here. The third, we determine to be a form of legitimate arbitrage and is discussed below, in the section addressing the California Practices.

49. The first Ancillary Services-Related practice we refer to as Paper Trading. This practice involved selling ancillary services in the day-ahead market even though the market participant did not have the required

resources available to provide the ancillary services. The market participant then bought back these ancillary services in the hour-ahead market at a lower price.

50. The second Ancillary Services-Related practice we refer to as Double Selling. This practice involved selling ancillary services in the day-ahead market from resources that were initially available, but later selling those same resources as energy in the hour-ahead or real-time markets.

51. Market participants that engaged in Paper Trading and/or Double Selling violated the MMIP since they unfairly took advantage<sup>57</sup> of the market rules by using false representations and/or receiving payments for services that they did not provide. With respect to Paper Trading, the ISO's tariff requires that any bid for the provision of ancillary services specify the generating unit, system unit, load or system resource which will be used to provide the ancillary service. Additionally, a scheduling coordinator must identify the specific operating characteristics of that resource which would qualify it to provide ancillary services.<sup>58</sup> However, market participants engaged in Paper Trading falsely represented that the resources were available to provide ancillary services when they were not actually available. Similarly, with respect to Double Selling, the market participant misled the ISO by selling capacity that it had already committed to reserve as ancillary services, thus making that capacity no longer available in real time if the ISO were to call upon that resource to provide ancillary services. In addition to violating the MMIP, those market participants that engaged in Double Selling also violated Section 2.5.22.11 of ISO tariff.<sup>59</sup>

52. Although the ISO Report includes a list of market participants that may have engaged in Paper Trading, the ISO does not have the information necessary to determine the extent to which the capacity for ancillary services sold in the day-ahead market and then sold back in the hour-ahead was not actually available or could not have been provided. However, in a market notice, dated July 3, 2002, the ISO listed market participants that received payments for ancillary services that were called upon

but for which they could not deliver the services.<sup>60</sup> Based on the identification of market participants in the July 3, 2002 market notice as well as the ISO Report, the Commission believes that the following parties may have engaged in Paper Trading in violation of the MMIP and Section 2.5.22.11 of the ISO tariff and unjustly received payments for ancillary services: (1) Arizona Public Service Co.; (2) Automated Power Exchange, Inc.; (3) Bonneville Power Administration; *etc.*, set forth on Attachment C to this Order.

53. Based on the studies by Dr. Fox-Penner, the Commission believes that the following parties may have engaged in Double Selling in violation of MMIP and unjustly received payments for ancillary services: (1) Duke Energy Trading and Marketing Corp.; (2) Dynegy Power Marketing Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC, and Cabrillo Power II LLC; (3) Mirant Americas Energy Marketing, LP, Mirant California, LLC, Mirant Delta, LLC, and Mirant Potrero, LLC; and (4) Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc.; as set forth on Attachment D to this Order.

#### *d. Selling Non-Firm Energy as Firm*

54. The practice of Selling Non-Firm Energy as Firm involved Enron<sup>61</sup> buying non-firm energy from outside California and then selling it to the ISO as firm energy. Enron was able to derive an unjust profit from this practice because it avoided the cost of purchasing the operating reserves that are required for firm energy.

55. The practice of Selling Non-Firm Energy as Firm was a flagrant false representation by Enron to the ISO. Thus, it was a violation of the MMIP.

#### *2. Gaming Practices for Which Disgorgement of Unjust Profits Is Not Sought*

##### *a. Underscheduling Load.*

56. This practice was an effort by the load-serving entities, primarily the three California utilities (PG&E, SoCal Edison, and SDG&E), to reduce the overall price paid for generation. For months they understated their load consistently in

<sup>57</sup> See MMIP 2.1.3.

<sup>58</sup> ISO Tariff § 2.5.6.1 (applicable to generation within California); and ISO Tariff §§ 2.5.7.4.2 and 2.5.7.4.3 (applicable to resources outside of California).

<sup>59</sup> Section 2.5.22.11 of the ISO Tariff (Failure To Conform To Dispatch Instructions) requires that resources that have been committed to provide ancillary services for a given period must be available and capable of providing the services for the full duration of the period.

<sup>60</sup> California ISO, Ancillary Services Payments Rescinded Due to Generator Unavailability, Market Notice (July 3, 2002). For the convenience of parties, the ISO's July 3, 2002 market notice is attached as Attachment G to this order.

<sup>61</sup> In the 100 Days Evidence, Seattle alleges that Avista, El Paso, Portland General, PowerEx, and Transalta engaged in all of the Gaming Practices. However, we have seen no evidence that any market participant engaged in Selling Non-Firm Energy as Firm other than Enron.