

schedules submitted to the PX in an effort to reduce the amount of generation purchased in the day-ahead market, thereby lowering the price. The remainder of the utilities' generation needs would be purchased in the ISO's capped real-time market.

57. Under the then-existing market rules, the utilities were required to satisfy their need for energy with purchases from the PX and were to bid in their generation in the PX day-ahead market in an amount equal to their load.⁶² However, during 2000, in an effort to minimize their energy costs, the three California public utilities began to routinely underschedule their load in the PX day-ahead market. Due to the large size of the three California public utilities, changes in their purchasing strategies had a significant impact on market outcomes, including the market-clearing prices in the PX day-ahead market. By moving a significant amount of their load out of the PX day-ahead market, less supply bids were needed to clear the market which, in turn, resulted in lower market clearing prices in the PX day-ahead market. As a direct result of the underscheduling by the three public utilities in the day-ahead market, however, the ISO had to meet a larger percentage of the load in real time, causing serious operational and reliability problems.

58. Because Underscheduling Load required the utilities to submit false schedules with regard to their loads to the PX, this conduct was certainly troublesome and is not condoned by the Commission.⁶³ Moreover, it violated the MMIP by unfairly taking advantage of the rules and caused a demonstrable detriment to the efficiency of the market.⁶⁴ Although we disapprove of the practice of Underscheduling Load and we have the authority to order disgorgement of unjust profits, there are no profits to disgorge since this was a price-reducing purchasing strategy.

b. Overscheduling Load.

59. The practice of Overscheduling Load involved a market participant with more generation than load falsely

overstating to the ISO its scheduled load to correspond with the amount of generation in its schedule. This practice, also sometimes referred to as "Inc-ing" or "Fat Boy," permitted the market participant to be dispatched by the ISO during real time to its full capacity and receive the real-time market clearing price even though it did not have scheduled load equal to its generation capacity when it bid into the day-ahead market. Thus, Overscheduling Load ensured that generation would not go unsold in the real-time market.

60. Overscheduling Load required the market participant to submit a false load schedule to the ISO since the ISO required that only balanced schedules of load and generation could be bid into the day-ahead market. Although the submission of such false schedules is a violation of the MMIP, there were countervailing circumstances that existed in the California market at the time that caused the market participants to engage in Overscheduling Load. The ISO rules required that all market participants submit schedules containing balanced levels of generation and load. However, as noted above, in an effort to minimize their procurement costs in the California market due to the interplay between the PX and ISO rules, the utilities routinely underscheduled their load. The market participants who engaged in Overscheduling Load did so as a direct response to the utilities' practice of Underscheduling Load.⁶⁵ Overscheduling Load actually helped reduce reliability problems in the real-time market. In fact, Overscheduling Load was often actively encouraged by the ISO because it reduced the need for real-time energy due to the utilities' underscheduling.⁶⁶ Finally, participants

⁶⁵ The phenomenon of market participants engaging in Overscheduling Load in response to the utilities' practice of Underscheduling Load was widely known and accepted. See Report on California Energy Markets Issues and Performance: May-June, 2000, Special Report, by Department of Market Analysis, California ISO, dated August 10, 2000, pages 2-3, 25-37, available at <<http://www.caiso.com/docs/09003a6080/07/40/09003a6080074029.pdf>>.

⁶⁶ Some of the generators in the 100 Days Evidence indicated that the ISO had encouraged the practice of Overscheduling Load to obtain needed supply. For example, Reliant stated that the ISO assisted it by creating an artificial load point, i.e., helped it provide additional generation to the market. See Reliant's Reply to the March 3, 2003 Submission of California Parties, Vol. I, Exhibit REL-27 at 33-34 (Docket No. EL00-95-089, et al., March 23, 2003). In addition, in explaining that Overscheduling Load did not cause or exacerbate the high price in May 2000, an ISO report states that the generation that was overscheduled was not hidden from the ISO but was directly factored into the ISO's decision about how much generation would be required to meet real time demand. E. Hildebrandt, ISO's Department of Market Analysis, Did Any of Enron's Trading and Scheduling

who engaged in Overscheduling Load did not set the market clearing price because, as uninstructed energy, they were price takers who were paid the ex-post price for imbalance energy which was set by the bid of the marginal unit dispatched.⁶⁷ Therefore, we are not seeking disgorgement of unjust profits from those market participants who engaged in Overscheduling Load.

3. California Practices

61. As noted, the Commission has determined that some of the conduct discussed in the Staff Final Report and the 100 Days Evidence did not violate the MMIP or any other tariff violation. These California Practices were widely recognized and accepted as appropriate and legitimate practices, as discussed below. They did not involve any false representations or take unfair advantage of ISO rules. Accordingly, we are not seeking to recover the profits earned by market participants as the result of engaging in such conduct.

a. Export of California Power

62. This practice involved a purchase of power in the California day-ahead market at or below the price cap and then a resale of the power outside the state at a higher (uncapped) price. Unlike the False Import practice discussed above, energy is actually exported out of California.

63. This practice did not violate the tariffs or rules of the PX or ISO.⁶⁸ Market participants were engaging in arbitrage between the California market, which had price caps in effect, and markets outside of California that did not have price caps and where they could receive a higher price.⁶⁹ This type of export practice has never been prohibited and, to the extent it does not involve collusion with other market participants,⁷⁰ represents legitimate economically rational attempts by the

Practices Contribute to Outages in California? at 12-13 (November 15, 2002), available at <http://www.caiso.com/docs/2002/11/26/2002112610411219558.pdf>.

⁶⁷ See ISO Tariff section 2.5.23.

⁶⁸ We note, however, that the ISO does have the authority to alter scheduled deliveries of energy and ancillary services into or out of the ISO controlled grid to avert a system emergency. See ISO Tariff § 5.6.1.

⁶⁹ In fact, this is precisely what arbitrage is—i.e., the purchase of a commodity, such as electricity, in one market (day-ahead), for immediate resale in another market (real-time) in order to profit from the unequal prices. As more parties engage in arbitrage, prices between the markets converge and the opportunity for profits should disappear.

⁷⁰ There has been no evidence discovered to suggest that there was any collusion between market participants to export their energy outside of California in order to create scarcity within California.

⁶² The Commission halted this practice created under California legislation (see AB 1890 (September 23, 1996)) and began allowing the utilities to procure resources under long-term contracts in December 2000. See *supra* note 3.

⁶³ The Commission previously noted in several orders that the widespread underscheduling of load was taking place in the California markets, and directed changes to the market rules and allowed penalties, in an attempt to address the problem. See December 19, 2001 Order, 97 FERC at 62,226-27; December 15, 2000 Order, 93 FERC at 62,002-03; November 1, 2000 Order, 93 FERC at 61,361-62; and August 23, 2000 Order, 92 FERC at 61,608.

⁶⁴ MMIP 2.1.3.