

strategies or anomalous market behavior (as does the MMIP), and therefore, those provisions do not provide a basis for finding gaming and/or anomalous market behavior. That order also finds that conduct involving arbitrage, underscheduling and confidentiality of certain data either (a) constituted Gaming Practices, but did not warrant remedies, or (b) did not constitute Gaming Practices. Further, that order states that the Commission is currently investigating alleged violations related to physical withholding.

C. Overview of PX and ISO Operations

28. As explained in more detail in the Staff Final Report and the Gaming Practices Show Cause Order, the ISO operates much of the transmission grid in California and is responsible for real-time operations, such as continually balancing generation and load and managing congestion on the transmission system it controls. The PX was created primarily to operate two markets in which energy was traded on an hourly basis. These were the day-ahead and day-of markets. These markets established a single clearing price for each hour across the entire ISO control area, provided there were no transmission constraints. Where transmission congestion existed, a separate clearing price was established for each transmission constrained area or zone in California. Each zonal clearing price was based on adjustment bids submitted by sellers and buyers. The adjustment bids represented the value to an entity of increasing or decreasing (*i.e.*, adjusting) its use of the system. In essence, this is a redispatch of the system to deal with congestion.⁴⁶

29. The ISO operates a variety of markets in order to procure the resources necessary to reliably operate the transmission system, including a day-ahead market and an hour-ahead market for relieving transmission congestion and an energy market to continuously balance the system's energy needs in real time. The latter, real-time market is the final energy market to clear chronologically, after all other markets in the region clear. Bilateral spot markets at trading hubs outside California generally operated in the time period between the close of the PX market and the ISO real-time market.⁴⁷

D. Alleged Partnership Gaming Involving Enron

30. In this section, we discuss evidence indicating that Enron worked in concert with other entities, both inside and outside California, to implement Gaming Practices in ways that manipulated market outcomes. We also discuss evidence that other entities may have had similar agreements with other market participants.

1. Alleged Partnership Gaming ⁴⁸

31. Enron created a marketing program based on the use of other entities' assets, thus avoiding large capital expenditures and the risk of owning its own resources, to carry out its various Gaming Practices. Enron focused not only on partnerships and alliances with investor-owned utilities, but also on smaller utilities, such as public utility districts, municipalities, and qualifying facilities.⁴⁹ Enron, using these Partnerships with others, gained market share, acquired commercially sensitive data, acquired decisionmaking authority, and promoted reciprocal dealings and equity sharing of profits, among other things, as explained below. Enron formed these Partnerships without filing the agreements with the Commission or notifying the Commission as required under its market-based rate authorizations.⁵⁰

32. A company's business strategy is devised by top management. In Enron's case, the business model is described in broad-brush terms in Enron documents as "Skilling's 'Enron Network' story."

⁴⁸ The Staff Final Report (ch. VI at 37–44) discusses evidence of various practices engaged in by Enron in concert with other market participants. This evidence demonstrates how Enron and the other named market participants appear to have used their partnerships, alliances or other arrangements to engage in various gaming practices. The show cause proceeding ordered herein will address whether Enron and the other named market participants used their partnerships, alliances or other arrangements to engage in the Gaming Practices for which the Commission seeks appropriate remedies in the Gaming Practices Show Cause Order, but here involving such conduct by market participants acting in concert with other market participants.

⁴⁹ The other market participants allegedly involved in Partnership Gaming with Enron are: City of Glendale, California (Glendale); City of Redding, California (Redding); Colorado River Commission; Las Vegas Cogeneration, L.P. (Las Vegas Cogeneration); Modesto Irrigation District (Modesto); Montana Power Company (now d/b/a NorthWestern Energy, LLC) (Montana Power); Northern California Power Agency (NCPA); Powerex Corporation (f/k/a British Columbia Power Exchange Corporation) (Powerex); Public Service Company of New Mexico (PSNM); and Valley Electric Association, Inc. (Valley Electric).

⁵⁰ See Enron Power Marketing, Inc., *et al.*, 103 FERC ¶ 61,343 (2003) (*Enron*); see also 16 U.S.C. § 824d (2000); Enron Power Marketing, Inc., 65 FERC ¶ 61,305 at 62,405 (1993); Enron Energy Services, Inc., 81 FERC ¶ 61,267 at 62,319 (1997).

Its promotional literature entitled "Why customers choose Enron," was intended to convince others that using Enron, with its market knowledge of complicated markets such as in California, was a good business decision; using Enron would save these entities labor and systems costs, and importantly, using Enron would be profitable.

33. Under this business model, the nature of Enron's interaction with its business partners developed over time. For example, Enron would first offer "consulting" services that allowed entities to outsource certain tasks rather than manage these tasks themselves. Enron gradually developed these relationships by expanding its services in an attempt to effectively control the assets of others. Enron's compensation for these "services" usually started with a fee structure (*e.g.*, a charge/MWh for scheduling energy with the PX). However, as the original relationship grew into a more comprehensive partnership, alliance or other arrangement, the compensation typically changed to an equity basis (share of profits) when the marketing of wholesale power was involved. An Enron Services Handbook explains that, in most instances, profits from marketing energy were split on a 50/50 basis while profits from capacity sales for ancillary services were split 25/75, with 25 percent going to Enron and 75 percent to its partner.

34. The Staff Final Report cites a presentation at an Energy West Power Business Review Meeting that characterizes this business strategy bluntly, under a section entitled "Gaining Control of Assets." The presentation states:

Currently pursuing two strategies. The first is gaining control of a variety of small resources or capabilities around the west. For example, the combination of El Paso Electric, Las Vegas Cogen, Valley Electric, and Glendale joint venture provide us with a useful mix of loads and resources in the southwest. These transactions require relatively little capital, but will require automated IT links to customers and more people in the logistics group. [Citation omitted.]

35. Essentially, Enron developed initial business relationships with entities, which over time evolved into partnerships, alliances and other arrangements in which Enron could gain control of decisionmaking in a way that maximized profits for itself and its business partners. The Staff Final Report cites the summary of the Energy West Power Business Review Meeting, which states:

⁴⁶ For a more detailed description of the day-ahead auction process, see the Staff Final Report, ch. VI at 5.

⁴⁷ *Id.* at 5–6.