

(1) Currently provide scheduling services to El Paso Electric, Glendale, CFE (Mexico), Tosco, Washington Water Power, and Enron Energy Services.

(2) Use scheduling as a platform that will dovetail with click trade and that will lead to larger transactions that will make more money (*e.g.*, joint venture with the City of Glendale). [Footnote omitted.]

36. In this regard, the Handbook contains a list of California market conditions with instructions for Enron employees concerning whom to call and what steps the partner should follow in order to take advantage of a particular market situation. For example, if prices in the California market are high, the Enron employee would refer to the handbook section entitled "Who do you call and what action to take?" The Enron employee first decides if the price is high enough to be profitable to the "customer." If it is profitable, the Enron employee would: "generate or import and fake, or increase, load." In this situation, the Enron employee could call, for example, Glendale or Valley Electric and instruct them to increase imports into the California ISO control area; the Handbook lists the transmission paths to be used. Or the Enron employee could call, for example, Redding and instruct it to increase generation in northern California to implement this strategy. The pricing structure for this strategy specifies an even 50/50 split of profits between Enron and its partner. In another example, the Handbook alerts the Enron employee to check to see if there are high ancillary service prices. In that situation, the Enron employee should "call Glendale, Puget and El Paso Electric to try to get ancillary services bids in" and "call customers and have them 'bid in' more."

37. The Handbook also includes a list of steps to take if the prices in California are low. In this situation, the instructions call for the opposite strategy: "artificially reduce load and export." The same counterparties are listed with corresponding delivery points for exporting their resources out of California. A similar pricing structure is also listed. Other Enron documents describe arrangements that go beyond joint coordinated activity and describe total Enron control of decisionmaking authority.⁵¹

38. As its relationship with a customer grew, Enron also collected data from the customer, which it then

used for its own trading and marketing activities. For example, its strategy allowed "Enron to know as much or more about the customer's near term position." Finally, under this strategy, Enron planned to:

Store operational data that the customer's merchant group would not normally be storing. Provide service around analysis and manipulation of data. [Enron North America] would own the data—a potential to lock customers in—if they leave [Enron North America] their data stays here.

39. The Staff Final Report states that the evidence indicates that Enron, on its own, could not have implemented all of its Gaming Practices; it was only with the cooperation of others that these strategies could have been executed. We agree. It appears that Enron used these partnerships and alliances to employ Gaming Practices in violation of the ISO and PX tariffs. At Enron's direction, other entities both inside and outside California made business decisions that capitalized on market conditions in an effort to maximize profits from their assets on a coordinated basis, and changed market outcomes. Market problems and dysfunctions, in short, were considered opportunities.

40. Further, as discussed in an order being issued concurrently with this order, Timothy N. Belden and Jeffrey S. Richter, former Enron executives, signed plea agreements in which they state that they engaged in fraudulent schemes in the California markets in order to obtain increased revenue from wholesale electricity customers and other market participants in California.⁵²

41. In sum, it appears that Enron systematically acted in partnership or otherwise in alliance with others, without the Commission's knowledge, to game the market. The collective behavior of these entities turned defects in market rules and market structures into profit-making opportunities for Enron and its partners.

42. Based on the analysis provided in the Staff Final Report and the evidence described in the Staff Final Report, we find that Enron and the other entities with whom it had partnership, alliance or other arrangements like those described above appear to have jointly engaged in market manipulation schemes that had profound adverse impacts on market outcomes, and that violated the ISO and PX tariffs for which the monetary remedy of disgorgement of unjust profits and other

appropriate, additional non-monetary remedies may be appropriate.

Accordingly, we institute a show cause proceeding with respect to the alleged Partnership Gaming involving Enron, as discussed below.

2. Other Alleged Partnership Gaming

43. The Staff Final Report states that other entities appear to have engaged in promotional activities similar to Enron in an attempt to form strategic alliances. For example, according to the Staff Final Report, Sempra Energy Trading Corporation (Sempra) and PSNM may have competed with Enron in an attempt to perform similar services for El Paso Electric Company. The Staff Final Report further states, and the California Parties argue, that other evidence indicates that various entities appear to have had agreements with other market participants that had similar attributes as the Enron partnership, alliance and other arrangements discussed above (*e.g.*, coordinating activities). These apparent partnerships, alliances or other arrangements are alleged to be between: (1) Sempra and Eugene Water and Electricity Board (EWEB), Coral Power, LLC (Coral), or PSNM; (2) Coral and Glendale; and (3) PSNM and Aquila, Inc. (Aquila), Constellation Power Source, Inc. (Constellation), El Paso Merchant Energy, L.P. (El Paso Merchant), Enron, Idaho Power Company (Idaho Power), Koch Energy Trading, Inc. (Koch), MIECO, Morgan Stanley Capital Group (Morgan Stanley), PECO, PacifiCorp, Powereex, Sempra or TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California) Inc. (TransAlta).⁵³

44. Based on the analysis provided in the Staff Final Report and the evidence described in the Staff Final Report, we find that these entities, through partnership, alliance or other arrangements like those described above appear to have jointly engaged in market manipulation schemes that had profound adverse impacts on market outcomes, and that violated the ISO and PX tariffs for which the monetary remedy of disgorgement of unjust profits and other appropriate, additional non-monetary remedies may be appropriate. Accordingly, we institute a show cause proceeding with respect to the alleged Partnership Gaming, as discussed below.

⁵¹ The Staff Final Report notes that, in an August 22, 2000 West Mid-Market Quarterly Business Review, Enron states that it "touched/managed 3,500 MW/day." Staff Final Report, ch. VI at 41.

⁵² See *Enron*, 103 FERC ¶ 61,343 at P 54 (2003) (citing U.S. v. Timothy N. Belden, (N.D. Cal. Case No. CR02-0313-MJJ); U.S. v. Jeffrey S. Richter, (N.D. Cal. Case No. CR03-0026-MJJ)).

⁵³ See Staff Final Report, ch. VI at 44. See also (Exh. No. CA-1) (100 Days Testimony of California Parties' witness Dr. Fox-Penner), citing Exh. No. CA-187, regarding California Parties' allegations of partnership gaming involving PSNM.