The Western Energy Crisis, the Enron Bankruptcy, and FERC's Response

The State of California passed legislation in 1996 (California Assembly Bill 1890), and the California Public Utilities Commission issued orders in the same general time frame introducing competition into California's electricity market. Key features of the Bill included establishing the California Independent System Operator (CAISO) to operate the transmission facilities of California investor-owned utilities (IOUs), encouraging IOUs to sell off their generation assets, requiring them to buy all of their power in a newly created 'spot' market run by the California Power Exchange (CalPX), and forbidding IOUs from entering into long term, "bi-lateral" contracts. The legislation also capped retail rates that these utilities could charge customers below the then-current cost of electricity. From April 1998 when the California market commenced until late May of 2000, the plan worked relatively well. But in May, 2000, spot prices began to rise notably.

A number of factors contributed to the Western Energy Crisis of 2000 and 2001. These included: a low rate of generation having been built in California in the preceding years making California dependent on imports of electricity; northwestern drought conditions resulting in lower than expected water runoff for hydropower generation; a rupture and subsequent capacity constraints on a major pipeline supplier of natural gas to California markets (California was heavily dependent on gas-fired generation due to state air standards); strong economic growth and thus increased electricity demand throughout the west; and unusually high temperatures coupled with an increase in unplanned plant outages of older plants that were being run to meet increased demand in California. Further, transmission line constraints within California, both for imports and exports of electricity, exacerbated an already marginal situation during this time period. Finally, some energy companies attempted to manipulate wholesale electric and gas markets.

As prices continued to rise, California utilities had to purchase higher priced power but, because of the state rate freeze, were unable to pass along these price increases to customers, thus becoming financially unsound. In the summer of 2000, the CAISO also called 'stage 3' emergencies as reserves dropped below 1.5 per cent, interruptible power loads were curtailed, and rolling blackouts occurred in northern California. The Department of Energy issued emergency orders to require suppliers to continue to sell into the California market, and Governor Davis signed new legislation in early 2001 authorizing the California Department of Water Resources (CDWR) to buy and sell power. The CDWR subsequently attempted to break those same contracts. Throughout this entire time, the Federal Energy Regulatory Commission was involved due to the dual scheme of regulation under the Federal Power Act, and the following abstract details the major Commission actions during and following the Western energy crisis and Enron's collapse.

In the **summer of 2000**, energy prices in California began to increase significantly. Prices in the markets run by the CAISO and the CalPX reached record levels in June. Prices in other parts of the West generally correlated with California prices. California also saw frequent electric emergencies and, on June 14, rolling black-outs in the San Francisco area.

On **July 26, 2000**, the Commission ordered a staff investigation of factors affecting the competitive pricing or reliability of service in electric bulk power markets in various regions, including the West. The Commission directed staff to report back by November 1, 2000.

On **August 2, 2000**, San Diego Gas & Electric Company (SDG&E) filed a complaint against all utilities selling into the CAISO and the PX markets. SDG&E asked the Commission to impose a $250 price cap, though at the time there was a $500 purchase price cap, lowered to $250 on August 7, 2000.

Responding to this complaint, on **August 23, 2000**, the Commission opened a formal investigation of rates for sales into the CAISO and PX markets, and whether the CAISO and PX tariffs were harming California's competitive wholesale power markets. The Commission set a "refund effective date," i.e., the first day for which refunds would be allowed, as the 60th day after notice of the order was published in the Federal Register. Later, the refund period was expanded back to the 60th day after SDG&E filed its complaint, or October 2, 2000.

In the **summer of 2000**, members of the Commission and staff participated in hearings held by Congress and proceedings held by California authorities. On **September 12, 2000**, the Commission held a public meeting in San Diego to hear from interested persons.

On **November 1, 2000**, FERC Staff issued a report on its bulk power market investigation of California. Based on this report, the Commission, in a **November 1, 2000** order, found that:

> the electric market structure and market rules for wholesale sales of electric energy in California are seriously flawed and that these structures and rules, in conjunction with an imbalance of supply and demand in California, have caused, and continue to have the potential to cause, unjust and unreasonable rates for short-term

> energy (Day-Ahead, Day-of, Ancillary Services and real-time energy sales) under certain conditions. While this record does not support findings of specific exercises of market power, and while we are not able to reach definite conclusions about the actions of individual sellers, there is clear evidence that the California market structure and rules provide the opportunity for sellers to exercise market power when supply is tight and can result in unjust and unreasonable rates under the FPA.

The Commission proposed a number of remedies for these problems, and sought comment on its proposals.

On **November 9, 2000**, the Commission held a public conference on the energy crisis. Participants included the California Public Utilities Commission as well as then Governor Gray Davis.

On **December 8, 2000**, the CAISO proposed, and FERC approved, certain tariff changes on an emergency basis. The CAISO had declared "Stage 2 emergencies" on the previous four days, and no relief was in sight. The changes replaced a $250 purchase price cap that had been in place since August 7 with a $250 "breakpoint." The breakpoint meant that individual sellers could bid and be paid more than $250, but these bids would not set the market clearing price paid to other sellers. Also, penalties were approved for sellers that refused to run when directed by the CAISO during an emergency.

On that same day, the Commission temporarily waived certain rules on the operation of "Qualifying Facilities" under the Public Utility Regulatory Policies Act of 1978. The waiver allowed QFs to produce more power in California.

On **December 15, 2000**, the Commission adopted many of the remedies proposed in its November 1 order. For example, the order found that the state-initiated requirement for California's investor-owned utilities to sell all of their generation into, and buy all of their energy needs from, the PX should be eliminated. The buy/sell requirement led to over-reliance on spot markets and over-exposure to short-term price fluctuations. The Commission ordered the termination of the PX's wholesale rate schedules, as of April 30, 2001. This resulted in 25,000 megawatts of generation, either owned by or contracted to the three California utilities, being returned to the utilities for direct sales to retail customers under State regulation, instead of being sold to, and repurchased from, the PX. The Commission urged buyers to enter into long-term contracts and not rely only on spot markets.

FERC also established a $150 per MWh breakpoint from **January 1, 2001** until **May 1, 2001**. Sellers bidding above this breakpoint were required to file weekly reports with the Commission. Finally, FERC staff was directed to develop a market monitoring and mitigation program, to be in place by **May 1, 2001**.

On **February 14, 2001**, the Commission addressed creditworthiness tariff changes proposed by CAISO. The credit ratings of PG&E and SoCal Ed had declined. They no longer met CAISO's existing creditworthiness standards. CAISO proposed to lower its creditworthiness standards. The order accepted CAISO's amendment for purposes of allowing PG&E and SoCal Edison to continue to schedule their own generating resources to serve their load. However, the utilities could continue buying from third-party suppliers through the CAISO only if they obtained financial backing from creditworthy counterparties. The California Department of Water Resources procured power on behalf of the load for the two utilities.

On **March 9, 2001**, the Commission's staff issued a proposal for monitoring and mitigating prices prospectively in California's wholesale spot power markets. This proposal was based on monitoring and mitigating prices on a before-the-fact basis, instead of through after-the-fact refunds. The proposal identified several solutions to California's energy problem, including increased investment in infrastructure and the need to attract and encourage new investment. Commission staff outlined certain core design principles that a good mitigation plan should include, such as buyers and sellers need to know the rules up front and have confidence that the rules will not be subject to constant change, prices should be mitigated before power is supplied, not after; mitigation should be as non-intrusive and market oriented as possible; mitigation pricing should encourage, not discourage, the critically needed investment in infrastructure. Mitigation based on these principles was to supersede the $150 breakpoint mechanism then in effect. Staff's proposal outlined a real-time auction conducted by the ISO with measures to mitigate the potential exercise of market power through physical or economic withholding. The auction would have rules on coordinating and controlling outages, selling obligations, price mitigation, and real-time mitigation for each generating unit.

Also on **March 9, 2001**, the Commission issued the first refund order directing sellers to provide refunds of excess amounts charged for certain electric energy sales during the month of January 2001. The Commission set the proxy market clearing price for January at $273/MWh which resulted in the total amount of refunds in the ISO and PX markets of approximately $69 million. *See* 94 FERC ¶ 61,245 (2001).

In that same order, the Commission announced that until a prospective mitigation approach was adopted, it would determine a monthly proxy market clearing price by a notice issued by the Director of the Commission's Office of Markets, Tariffs & Rates within 15 days after the end of each month. Sellers with transactions made above the relevant proxy market clearing price would then have 7 days after the issuance of the notice to inform the Commission that they would either 1) refund the amounts in excess of the proxy market clearing price or offset such amounts against amounts due and owed in the ISO markets or 2) supply further cost or other justification for prices charged above the proxy market clearing prices. The Commission issued a proxy market clearing price for each month from February through May 2001.

On **March 14, 2001**, the Commission issued an order seeking to increase energy supplies and reduce energy demand in California and the West. The Commission implemented certain measures immediately. For example, the Commission extended (through December 31, 2001) and broadened regulatory waivers for Qualifying Facilities under PURPA, authorized market-based rates for sales of on-site and back-up generation and sales of demand reductions, expedited the certification of natural gas pipeline projects into California and the West, and urged all licensees to review their FERC-licensed hydroelectric projects in order to assess the potential for increased generating capacity.

On **March 28, 2001**, the Commission ordered a hearing before an administrative law judge on a complaint filed by the California Public Utilities Commission (CPUC) against El Paso Natural Gas Company and its marketing affiliate. The CPUC claimed El Paso had increased natural gas prices in California, and profits for its marketing affiliate, by withholding capacity on its pipeline. After extensive litigation, including a Commission-ordered remand to the ALJ on December 27, 2001, the ALJ found, among other things, that El Paso violated affiliate standards of conduct and had the ability to exercise market power. The parties requested the Commission to defer action on the ALJ's rulings to afford the parties time to file a settlement that would resolve the proceeding. El Paso and the CPUC settled the case in late-2003 for **$1.6 billion**, and FERC approved the settlement (with minor modifications).

On April 6, 2001, Pacific Gas & Electric Company, one of the largest public utilities in the country, filed for Chapter 11 bankruptcy protection.

On **April 26, 2001**, the Commission adopted a prospective mitigation and monitoring plan for California's wholesale spot power markets. The mitigation included a breakpoint based on a formula, instead of a fixed amount. The formula used actual hourly power supply inputs (e.g., fuel costs), and applied whenever California reached a Stage 1 emergency (when power reserves were at or below

7.5 percent of demand). As with prior breakpoints, sellers bidding above the formula-derived price would receive their bids, but these bids would not set the market clearing price.

Also under the plan, if public utilities had signed "participating generator agreements" (PGAs) with the CAISO, they were required to offer, for use by the CAISO, all power they had not sold before real-time. This requirement became known as the "must offer" obligation.

In the same order, the Commission also opened a formal investigation into prices charged by public utilities for spot sales throughout the West, outside California. The Commission proposed mitigation similar to the mitigation it had adopted in California.

On **April 30, 2001**, the Commission approved a settlement with Williams Energy Marketing & Trading Company and AES Southland, Inc., in which Williams agreed to pay refunds in the amount of **$8 million**. The settlement was prompted by a Commission order that the two utilities show why they should not be found to have increased power prices in the California market, and potentially compromised the reliability of the transmission network, by extending outages at certain generating facilities.

On **June 19, 2001**, FERC significantly expanded the mitigation adopted two months earlier. FERC made the "must-offer" and other mitigation applicable throughout the West, not just in California, and it would apply in all hours, not just in Stage 1 emergencies. Also, mitigation would apply to all sellers, not just public utilities. The market clearing price in the CAISO would serve to constrain prices in all other spot market sales in the West and sellers in other spot markets in the West would receive up to the clearing price without further justification. The mitigation ensured that wholesale rates in spot markets in California and the rest of the West would fall within a zone of reasonableness. This order was a turning point in the crisis. Soon afterward, prices subsided. California did not reach a Stage 1 emergency again that year.

FERC also initiated settlement efforts before its Chief Administrative Law Judge. All public utility sellers and buyers in the ISO's markets were directed to participate in the settlement discussions in order to resolve refund issues for past periods and to structure the new arrangements for California's energy future.

On **July 12, 2001**, the Chief ALJ reported that the settlement efforts in the refund case had been unsuccessful. The Chief ALJ recommended an evidentiary hearing to calculate refunds.

On **July 25, 2001**, the Commission ordered the hearing recommended by the Chief ALJ. Refunds would be required for all sales made by public utilities and non-public utilities in the CAISO and PX markets from October 2, 2000 through June 20, 2001. The refunds would be based on a formula similar to the June 19 order's formula for mitigation. The purpose of the hearing was to compile the data needed for the formula. If the refunds required by the formula would cause a seller to recover less than its actual costs for the refund period, the seller would be allowed in the future to document these costs and limit its refund liability commensurately.

On **December 2, 2001**, Enron filed for bankruptcy. Subsequently, allegations were made that Enron, through its affiliates, used its market position to distort electric and natural gas markets in the West. These allegations included the claim that Enron's filing for bankruptcy had caused a substantial decline in spot prices and, thus, demonstrated that Enron had been manipulating prices.

On **February 13, 2002**, FERC ordered a staff investigation into Enron and other sellers. Staff was told to gather information on "whether any entity, including Enron Corporation (through its affiliates or subsidiaries), manipulated short-term prices in the electric energy or natural gas markets in the West, for the period January 1, 2000, forward."

Staff promptly began gathering data from Enron and others, through data requests, interviews, depositions, and visits to Enron facilities. Eventually, FERC collected over 2.2 terabytes of information, which it made available to the public, with the exception of the small amount of data that contained social security numbers and personal information not related to the investigation.

On **April 11, 2002**, FERC ordered a hearing on complaints filed by Nevada Power Company, Sierra Pacific Power Company, Public Utility District (PUD) No. 1 of Snohomish County, Washington, and others. These complaints asked FERC to reduce the prices in, or otherwise modify, contracts the complainants had signed during the energy crisis. Later, the Commission ordered hearings on similar complaints by the CPUC, PacifiCorp and others. These cases became known as the "long-term contract cases," since they involved long-term sales instead of the spot sales at issue in the California refund case. Many of the sellers settled, reducing the prices they charged in California and the West. Litigation with the other sellers continued.

On **May 6, 2002**, counsel for Enron turned over to Commission staff the internal Enron memoranda. Chairman Wood promptly released these memoranda on FERC's website. The memos provided a detailed description of strategies engaged in by Enron traders, including "Ricochet," "Get Shorty," "Death Star," and “Fat-Boy.” Also during May, Enron informed FERC’s investigatory staff of a large amount of electronic back-up tapes and audiotapes located in Portland, Oregon. Enron asserted, however, that it was cost-prohibitive to restore the data and tapes and process them into a usable format. The huge volume of material, and Staff’s need to analyze first the actual transactional data, led Staff to focus on certain dates and traders. Throughout this investigation, Staff worked with, and shared data with, other federal agencies conducting investigations, including the DOJ, SEC and CFTC.

In **August 2002**, the investigatory staff again specifically requested the Enron audiotapes. Enron did not produce the tapes and informed staff that it was discussing with DOJ the possibility of producing the tapes to DOJ.

On **August 13, 2002**, FERC staff issued an Initial Report on its investigation of market manipulation. Staff found that Enron’s trading strategies used false information in an attempt to manipulate prices. Staff recommended that all market-based rate tariffs be modified to include language specifically prohibiting misleading or false information. Staff also found that the published natural gas prices at the California border – then planned for use in calculating refunds in California spot markets - could not be independently verified and may have been manipulated.

Based on other information in staff’s report, FERC ordered investigations into whether any FERC rules were violated by Enron’s dealings with El Paso Electric Company, Portland General Electric Company and Avista Corporation. Subsequently, El Paso, Portland General and Avista each settled with Trial Staff, agreeing to pay **$15 million**, **$8.5 million** and **$75,000**, respectively. FERC approved all three settlements. Enron refused to settle. This litigation continues as Enron Power Marketing, Inc. and Enron Energy Services Inc., in Docket No. EL03-154.

In **October 2002**, during litigation of the Enron-El Paso Electric case, Trial Staff sought access to the Enron tapes. Enron responded that it would cost **$186 million** to retrieve the audio and data tapes and process them into a usable format. Trial Staff later learned that DOJ had seized the Enron recordings and other trading records. Trial Staff then was informally notified by DOJ that FERC was prohibited from accessing any of the seized materials because they belonged to DOJ in connection with criminal investigations of Enron.

In **December 2002**, in the same case, Trial Staff filed testimony contending that Enron had violated Sections 205 and 206 of the Federal Power Act, including its authority to charge market-based rates, because Enron had gained contractual control of certain El Paso assets without notifying FERC.

Also in **December 2002**, the State of California, with the assistance of a FERC ALJ, reached a settlement with the Williams Company to restructure certain energy contracts. The settlement resulted in an estimated **$1.4 billion** in savings.

That same month, a FERC ALJ issued his ruling in the California refund case. Based on his findings, and recognizing that the numbers were not final, the ALJ recommended that sellers pay an estimated **$1.8 billion** in refunds. However, he also found that the California ISO and PX owed suppliers cash payments of **$3 billion**.

In **January 2003**, the Commission approved a settlement with Reliant Energy and its affiliates, obligating Reliant to pay **$13.8 million**. The settlement resolved allegations that Reliant improperly withheld its power supply from the PX on June 21 and 22, 2000.

On **March 26, 2003**, the Commission reviewed the ALJ's ruling in the California refund case, adopting many of his findings. However, the Commission calculated gas costs differently in its refund formula. Instead of published gas price indices, FERC opted to use gas prices from producing areas plus an allowance for transportation costs. A generator could recover gas costs above this level only if it documented the costs. This change increased significantly the amount of refunds to be paid under the refund formula.

Also on March 26, the Commission released the Staff's Final Report on its investigation of market manipulation. The Report found evidence of significant market manipulation in Western energy markets during 2000 and 2001. According to the Final Report, increases in spot gas prices contributed to the price increases in the electricity markets. Dysfunctions in the natural gas market appeared to stem, in part, from efforts to manipulate price indices compiled by trade publications, including reporting of false data and wash trading.

In addition, the Final Report argued that many trading strategies used by Enron and others companies violated anti-gaming provisions in the CAISO and PX tariffs. Staff recommended that FERC start formal proceedings to require those companies to disgorge their profits. This recommendation and others were implemented in a set of FERC orders discussed below.

On **June 25, 2003**, based on the Final Report, FERC directed its Staff to investigate whether certain sellers violated restrictions in the CAISO and PX Tariffs against "anomalous bidding behavior." Staff was directed to examine all bids in these markets above $250 MWh.

Also based on the Final Report, the Commission directed Enron's gas and power marketer affiliates to justify retention of their authorization to sell gas and power at wholesale. FERC issued a similar order concerning Reliant Energy Services, Inc., and BP Energy Company, based on their alleged manipulation of electricity prices at Palo Verde, an Arizona trading hub.

Ultimately, FERC revoked the rate authorizations of the Enron-affiliated marketers, and this case is now on appeal in court. Reliant settled this case (and allegations of anomalous bidding) for a payment of at least **$25 million**, an amount that can increase to **$50 million** based on the revenue Reliant earns from selling certain capacity. FERC later approved a contract for the sale of this capacity that Reliant indicated would allow it to pay all of the additional **$25 million**. BP Energy settled its case for **$3 million**.

On **June 25, 2003** , FERC issued two orders on particular trading strategies criticized in Staff's Final Report on market manipulation. Together, the orders involved over 60 power trading companies alleged to have engaged in market manipulation in Western energy markets during 2000-01. The first order focused on companies alleged to have acted unilaterally (the Gaming Case); the other focused on companies alleged to have acted in partnerships (the Partnership Case). FERC said that any company found to have engaged in practices disallowed by the CAISO and PX tariffs, from January 1, 2000, to June 20, 2001, could be ordered to disgorge its profits from those trades.

Most of these allegations were resolved by settlements or motions to dismiss. Several of the companies settled for substantial amounts. For example, Coral Power settled for **over $7.7 million**; Dynegy settled for **over $3 million**; Mirant (Southern Company Services) settled for **over $3.5 million**; Powerex settled for **$1.3 million**; and Sempra Energy Trading Corp. settled for **over $7.2 million**. Enron has not settled and continues to litigate this case.

On **June 25, 2003**, FERC issued rulings in the long-term contract cases. FERC concluded that the evidentiary record did not support modification of the contracts. FERC said U.S. Supreme Court precedent required the complainants to meet a heavy burden to justify changing these contracts, and that they had not met this burden. For example, the complainants had not shown that the contracts placed them in financial distress.

On the same date, the Commission proposed new restrictions and reporting requirements on all blanket certificates for wholesale sales of natural gas and market-based rate authorizations for sales of wholesale power. The proposals included prohibitions on market manipulation (including wash trading) and the submission of false information. As a remedy for any prohibited behavior, FERC proposed disgorgement of unjust profits and non-monetary remedies such as revocation of the seller's rate authorization.

On **July 23, 2003**, FERC approved a settlement under which Enron agreed to reduce the prices it charged Southern California Edison Company for power from a number of Enron-owned Qualifying Facilities. The case began in late-2002, when FERC opened an investigation into whether Enron had misrepresented its ownership of the facilities. The settlement provided an immediate benefit to California ratepayers of approximately **$11 million**, and future rate reductions worth **$41 to $47 million** on a net present value basis. Also on July 23, 2003 the Commission approved a settlement of El Paso Electric's involvement in Enron in activities that affected prices and markets in the West. The settlement (Docket No. EL02-113) required El Paso Electric to refund **$15.5 million** and suspended the company's market-based rate authority for two years.

On the same day, FERC took action to help restore confidence in the published price indices for natural gas and electricity trades. FERC issued a policy statement identifying certain standards that price index publishers and data providers should meet. For example, price index publishers should verify their price data by matching buys and sells and contacting data providers about any discrepancies. Data providers should assign trade data reporting duties to a department that is independent of, and not responsible for, trading. FERC said it would give industry participants "safe harbor" protection for good faith reporting of trading data, i.e., inadvertent errors.

On **November 17, 2003**, FERC finalized the anti-manipulation rules it had proposed in June. The rules were generally similar to the proposals, containing prohibitions on market manipulation and the submission of false information. A seller found to have engaged in prohibited behavior would be subject to disgorgement of unjust profits and non-monetary remedies such as revocation of the seller's market-based rate authority or blanket certificate authority.

On **November 26, 2003**, in the Partnership Case, PUD No. 1 of Snohomish County, Washington, sought a subpoena from the ALJ for access to certain Enron audiotapes. The ALJ issued the subpoena. The DOJ, out of concern over its pending criminal investigation, asked Trial Staff to seek, on its behalf, to quash the subpoena, and Trial Staff did so. The ALJ quashed the subpoena, but ordered Trial Staff to work with Snohomish and DOJ on the resolving the dispute. On February 12, 2003, Snohomish informed the ALJ that it had obtained access to the audiotapes.

On **December 19, 2003**, FERC approved a settlement between its enforcement staff and Duke Energy requiring Duke Energy to pay **$2.5 million**. The settlement resolved allegations that Duke Energy had engaged in anomalous bidding and improperly withheld its power supply during the energy crisis.

On **July 2, 2004**, FERC approved a settlement with Williams Power Company that benefited ratepayers by approximately **$140 million**. The issues resolved by the settlement included Williams' alleged liability in the California refund case and the Gaming Case.

On **July 22, 2004**, FERC issued its ruling in the Enron-El Paso Electric case. (El Paso was no longer a respondent, since it had settled.) FERC found that Enron violated its market-based rate tariffs by not reporting to FERC its control of certain generation assets owned by El Paso. FERC ordered Enron to pay **$32.5 million** in refunds. Issues concerning Enron then were consolidated with the Partnership Case, for a "comprehensive review of all evidence relevant to Enron conduct that violated or may have violated Commission tariffs or orders and the appropriate remedy for such violations." FERC said that Enron could be required to disgorge profits for all of its wholesale power sales in the Western Interconnect for the period January 16, 1997 to June 25, 2003, and directed further proceedings before the ALJ.

On the same day, FERC ordered a hearing on a complaint filed by Nevada Power Company and Sierra Pacific Power Company (the Nevada Companies) against Enron, to determine whether Enron reasonably exercised its discretion in terminating contracts with the Nevada Companies and whether Enron is entitled to a termination payment. In **December 2004**, the Nevada Companies sought suspension of the hearing, due to an injunction issued against them by the bankruptcy court. FERC's Chief ALJ agreed to suspend the hearing. The Nevada Companies have not sought further action in the case.

On **September 9, 2004**, the Court of Appeals for the Ninth Circuit ruled in *Lockyer v. FERC*, 383 F.3d 1006 (2004), that the FPA allows market-based rates for public utilities lacking market power and that the Commission has authority under the FPA to order retroactive remedies for sellers that failed to comply with the Commission's reporting requirements. The Ninth Circuit interpreted the FPA to provide the Commission with broader authority than the Commission believed the Act provided. Parties have sought rehearing of the court's opinion, but the court has not acted; the Commission is still awaiting the issuance of the court's mandate returning the record to the Commission.

On **October 25, 2004**, FERC approved a settlement with Dynegy, Inc., that benefited ratepayers by approximately **$281 million**. The issues resolved by the settlement included Dynegy's alleged liability in the California refund case.

In **November 2004**, FERC took further action to restore confidence in published price indices. FERC identified ten price index publishers in compliance with the standards announced in FERC's July 2003 policy statement. FERC also adopted criteria for the use of price indices in jurisdictional tariffs.

On **December 7, 2004**, FERC approved a settlement with Duke Energy and Trading that benefited ratepayers by approximately **$207.5 million**. The issues resolved by the settlement included Duke's alleged liability in the California refund case.

On **December 10, 2004**, FERC sought comment on aspects of the opportunity allowed each seller in the California refund case to demonstrate that its costs during the energy crisis justify a reduction in its refund liability. The issues include whether the relevant sales are those made in the CAISO and PX or all sales throughout the West. Another issue is whether all of the cost-based filings should be processed before refunds must be paid by any sellers.

The general status of the California refund case is that the CAISO is completing its calculations of refund liabilities. Many of the issues in the case are pending on appeal (including refund authority of governmental entities who sold into FERC-jurisdictional markets).

On **January 31, 2005**, Trial staff filed testimony in the consolidated Gaming and Partnership Case on: (1) Enron's violations of its market based rate authority; (2) Enron's use of various prohibited gaming strategies and partnerships; and (3) the total profits earned by Enron (**$1.6-1.8 billion**) during the period January 16, 1997 to June 25, 2003. Trial Staff recommended that Enron be required to disgorge these profits in their entirety.

On **March 1, 2005**, Trial Staff filed testimony in the consolidated Gaming and Partnership Case on its review of over 3,000 hours of Enron trader conversations. Staff found many examples of Enron's participation in prohibited gaming strategies, thus corroborating evidence gleaned from transactional records.

On **March 11, 2005**, FERC addressed contract termination payments sought by Enron from various customers. FERC clarified that Enron's profits under the terminated contracts (executed between January 16, 1997, and June 25, 2003) are within the scope of the Gaming Case and the Partnership Case. FERC directed the ALJ to consider these matters, subject to any applicable bankruptcy proceedings.

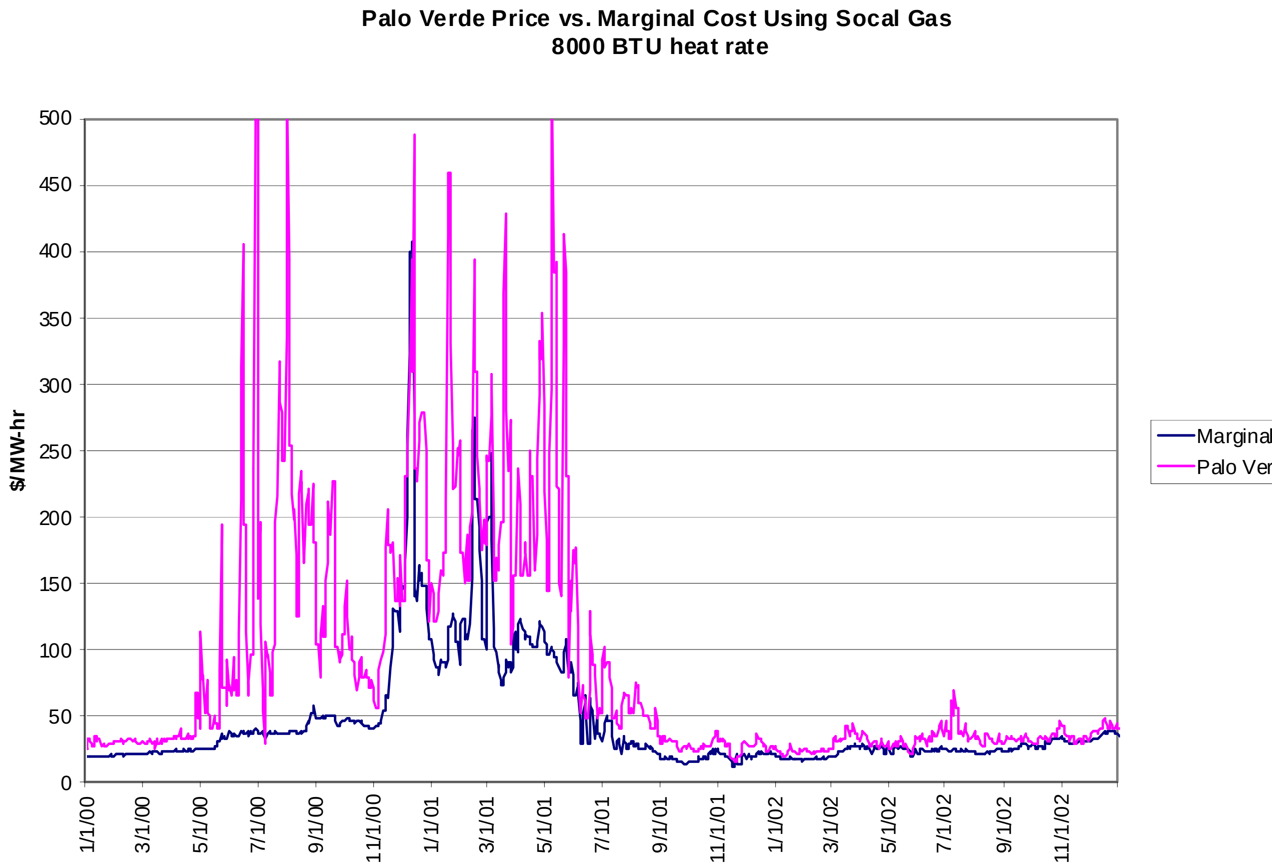
Also on **March 11**, FERC ruled on a complaint filed against Enron by the

City of Santa Clara, California. This dispute involved a termination payment sought by Enron. FERC denied part of the complaint and deferred action on the rest, pending resolution of the Gaming and Partnership cases.

On **April 13, 2005**, FERC approved a multi-party settlement involving Mirant Corp. and others resolving all issues involving Mirant arising from the energy crisis. If approved by the bankruptcy court the settlement will transfer approximately **$458 million** to the State of California and others.

In conclusion, the Commission is making every effort to ensure that the crisis does not recur and that, in perspective, the crisis remains only an aberration from the competitive markets that have benefited customers both before and since the crisis. As the charts below show, prices for wholesale power in Western markets have been stable since July 2001, at levels consistent with pre-crisis prices.

CRISIS PRICES:



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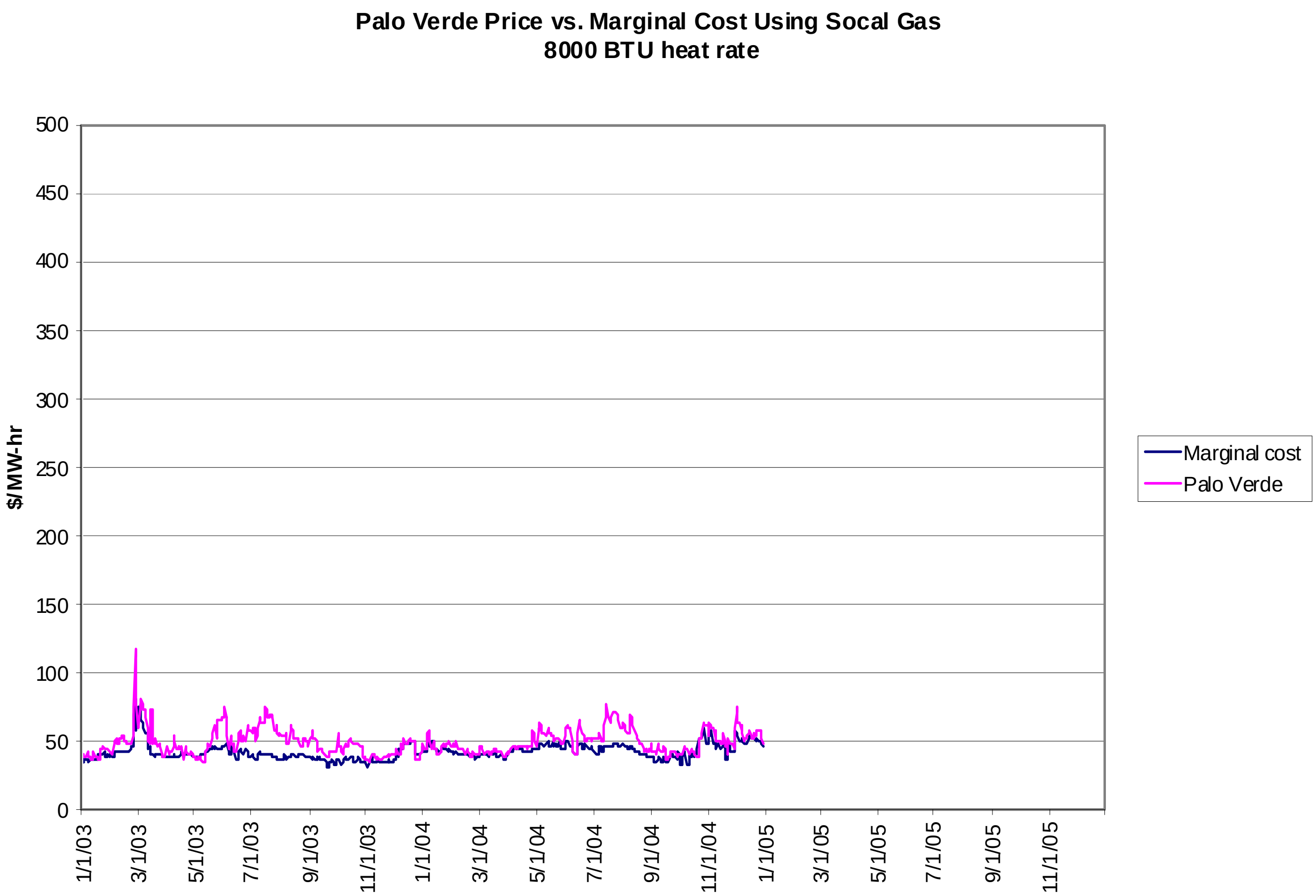

PRE_CRISIS PRICES: