

**STAFF'S INITIAL REPORT ON  
PHYSICAL WITHHOLDING BY GENERATORS  
SELLING INTO THE CALIFORNIA MARKET  
AND  
NOTIFICATION TO COMPANIES**

The "Final Report on Price Manipulation in Western Markets," issued in March, 2003, in Docket No. PA02-2-000 (Final Report), suggested there was a significant possibility of physical withholding of electric generation from the California market.<sup>1</sup> Coincident with the issuance of the Final Report, the Commission directed Staff to conduct an investigation into the existence of any such physical withholding of power from California. Accordingly, Staff commenced an investigation to ascertain whether generators located in California had physically withheld energy from the California market to affect market prices during the time period from May 1, 2000, to June 30, 2001.

At the Commission meeting of June 25, 2003, Staff indicated it would notify the entities originally considered in this investigation as to whether they would be subject to further investigation. This report serves as such notification. The entities listed in the Appendix will not be further investigated in the instant matter unless information comes to light that would require further analyses of their actions.<sup>2</sup> The entities who, as part of this investigation, received data requests and requests for admissions and who are not listed in the Appendix attached hereto are subject to further investigation.<sup>3</sup> This should not be interpreted as Commission Staff having found conclusive evidence of physical withholding at this time, but that Staff has not concluded its review of these entities.

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<sup>1</sup>Final Report at VI - 54-55.

<sup>2</sup>As a general principle, an administrative prosecutor has discretion as to whether or whom to sue, and prosecutorial decision is either entirely committed to agency discretion and hence unreviewable under 5 U.S.C.S. § 701 or, at most, subject to limited review under "arbitrary and capricious" standard of 5 U.S.C.S. § 706. *Presinzano v. Hoffman-La Roche, Inc.*, 726 F.2d 105 (3<sup>d</sup> Cir.1984). *See also Heckler v. Chaney*, 470 U.S. 821(1985).

<sup>3</sup>One entity was served with a data request too late to reasonably be able to submit its full response prior to the issuance of this report. Upon receipt of the data response from that entity, Staff will determine whether it is necessary to continue investigating that entity.

## Discussion

In determining the scope of this investigation, Staff reviewed 129 entities that potentially control (or controlled) generation in California and sell (or sold) energy into the California market. Staff then served data requests and requests for admissions ("data requests") on approximately 100 of those entities, consistent with the criteria described below. The data requests were accompanied by a request for an admission or denial, under oath, of whether the entity had engaged in any physical withholding of power during the relevant period. The data requests asked for a description of the actions by each entity to ascertain whether any physical withholding of power had occurred, or if no review was conducted, the reasons why. The data requests also asked for a statement as to preservation of electronic record media which may have been generated with regard to such transactions.

Among the entities reviewed, including those served with data requests, were entities that own or control generating facilities in California that were not in operation during the relevant time period. Other entities reviewed made no sales into the market during this period. Those entities, all of whom are included in the Appendix, will not be subject to further investigation.

Further, Staff concluded that entities with less than 60 MW of total capacity should not be the focus of this investigation. These entities controlled an amount of capacity that was small relative to the size of the California market. According to data available on the California Energy Commission's website, peak monthly demand reached a high in the relevant period of 43,509 MW in August 2000 and a low of 29,567 MW in February 2001. Withholding a portion of 60 MW of capacity from markets of this size would be unlikely to materially affect prices. Therefore, there would be no incentive to do so. These entities are included in the Appendix.

Staff also concluded that entities whose entire available capacity was committed through long-term, firm contracts generally should not be further investigated. If an entity is under contract to make all its capacity available through firm sales to another entity, the selling entity is required to have that capacity available at any time for sale to the buying entity. The selling entity may not use any of that capacity for other purposes or other sales, unless explicitly provided for by the contract. In this instance, the selling entity does not have the ability to offer sales into the market, and as such, can not withhold capacity to drive up prices. Therefore, those entities that Staff determined to fall within this category are included in the Appendix and will not be subject to further investigation, barring additional information or evidence.

Certain other investor-owned utilities and municipal energy providers were net buyers<sup>4</sup> during the relevant period, which would indicate that they neither had the opportunity nor the incentive to withhold capacity from the market. These entities did not have sufficient generation of their own to serve their native load, and frequently relied on the real-time market for power to serve this load. Nevertheless, Staff reviewed the entities in this category, and in most cases made contact with the entities to gain a fuller understanding of their situation and trading practices. Those entities that Staff is satisfied had neither the opportunity nor the incentive to withhold capacity are included in the Appendix.

In addition to those entities listed in the Appendix, Duke Energy North America, LLC, (Duke) will not be subject to further investigation, unless information comes to light that would require additional analysis. Duke is a market participant with substantial generation resources in California; specifically, Duke owns and controls over 3,000 MW of generation capacity in California. The underlying reasons for any outages at facilities operated by Duke during the relevant period have been adequately explained in Duke's response to Staff's data request.

### Conclusion

Staff has determined that there is no credible evidence, at this time, to support further investigation of the entities discussed herein. However, should any such evidence come to light, Staff will pursue investigation of that evidence at that time.

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<sup>4</sup>If the purchases and sales of these entities during the relevant time period are netted out, the entity will have made more purchases than sales during that period.

**COMPANIES NOT UNDER INVESTIGATION  
FOR PHYSICAL WITHHOLDING**

**Entities with less than 60 MW total capacity:**

Aera Energy (Alcantar & Kahl)  
Air Products & Chemicals Inc.  
Alliance Power Inc.  
Bay Environmental Management  
Berry Petroleum Company  
City of Anaheim  
City of Sunnyvale  
Conoco Philips Company  
County Sanitation District of Los Angeles Ct.  
CP Kelco U.S. Inc.  
Delano Energy Company  
East Bay Municipal Utility District  
Energy 2001, Inc.  
Foster Wheeler Martinez, Inc.  
Fresno Cogeneration Partners LP  
Gas Recovery Systems Inc.  
GPU Solar Inc.  
Green Power Partners, LLC  
IMC Chemicals, Inc.  
Jefferson Smurfit Container  
Los Alamos Energy LLC  
Madera Power LLC  
Martinez Refining Company  
Metropolitan Water District of Southern California  
Monterey Regional Waste Management District  
Mt. Poso Cogeneration Company  
Phoenix Wind Power LLC  
Point Arguello Pipeline Company  
Ridgewood Renewable Power  
Ripon Cogeneration Inc.  
Riverside County WMD  
Samoa Pacific Cellulose LLC

San Joaquin Cogen Ltd.  
Sea West Wind Power Inc.  
Sempra Energy  
Soledad Energy Inc. (Yankee Energy Inc.)  
Sunlaw Energy Partners I, LP  
Sunrise Power Company  
Utica Power Authority  
Wheelabrator Technologies, Inc.

**Entities with no facilities or with facilities that were not operational during the relevant period:**

BP Energy Company  
California Portland Cement Company  
CalPeak Power, LLC  
Cannon Power Corp.  
Colton Power LP  
Dinuba Energy Inc.  
El Dorado Irrigation District  
Elk Hills Power LLC  
Energy Transfer - Hanover Ventures  
GWF Energy LLC  
GWF Power System Company Inc.  
GWF Power System LP  
High Desert Power Project LLC  
RAMCO Inc.  
Sempra Energy Trading Corp.  
Wellhead Power Gates  
Whitewater HillWind Partners  
Wildflower Energy LLP

**Entities that had no control over marketing or sales of generation:**

Mountain View Power Company

**Entities with all power committed through long-term contracts during the relevant period:**

Crockett Cogeneration  
Recot, Inc., dba Frito-Lay Inc.  
Midway Sunset Cogeneration Company  
Millennium Energy LLC  
NEO Corporation  
Nuevo Energy Company  
Sierra Pacific Industries  
Tri-Dam Project  
Watson Cogeneration Company

**Entities that made no sales into the California market during the relevant period:**

Applied Energy Inc.  
Cabazon Wind Partners  
CE Generation, LLC  
City of Redding  
City of Riverside  
Edison Mission Energy  
FDX/Houa Station  
FPB Cogeneration Partners, L.P.  
Green Ridge Power LLC  
Imperial Irrigation District  
Kern River Cogeneration Company  
Kings River Conservation District  
Luz Solar Partners, Ltd. IX  
Mojave 16/17/18, LLC  
Nevada Irrigation District  
Oroville-Wyandotte Irrigation District  
Placer County Water Agency  
San Francisco, City & County of  
Shell Oil Company  
Shell Oil Products, U.S.  
Shell Wind Energy  
Silicon Valley Power  
Sycamore Cogeneration  
Termoelectria de Mexicali  
Turlock Irrigation District  
U.S. Bureau of Reclamation

Union Oil Company of California  
Zond Systems, Inc.

**Investor-Owned Utility and Municipal Net Purchasers:**

Sacramento Municipal Utility District  
City of Burbank  
City of Glendale  
PacifiCorp