Enron memos reveal trade tricks
Documents could aid push for electricity refunds

By Carrie Peyton Dahlberg -- Bee Staff Writer
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With California's power crisis spiraling out of control in late 2000, Enron Corp. drove up prices through trading tricks it named "Death Star," "Get Shorty" and more, according to internal memos released Monday by federal regulators.

The astonishingly frank memos are contradicted by a later one, and attorneys for troubled Enron say they have no way of knowing what really happened, because the company has since sold its trading arm.

State regulators say the documents could bolster their cases for electricity refunds, for voiding power contracts and for getting permission from the Federal Energy Regulatory Commission to create tougher market rules and harsher penalties.

"It's quite clear that (Enron) understood that this behavior was at least suspect if not out-and-out unlawful," said Sean Gallagher, an attorney for the state Public Utilities Commission.

The memos outline ways that Enron, which filed for bankruptcy protection last year, took advantage of price gaps between different regions and created fake congestion on power lines in order to pocket extra payments for then appearing to solve the problems.

Step by step, they detail strategies of exploiting loopholes, submitting false information and creating conditions that may have triggered at least one "Stage Two" power emergency.

One technique alone earned $30 million for Enron in 2000, according to an early memo, although the later memo said that figure was "vastly overstated."

Few if any of the strategies were specifically forbidden by the state Independent System Operator, which manages most of California's electric grid and works with federal authorities to establish the trading rules.

The ISO knew tactics like Enron's were driving up prices, but it would have had a tough fight before FERC to prove specific wrongdoing, said Charles Robinson, ISO chief counsel. Instead, it decided to ask FERC's help in tightening market rules, some of which have since been changed.

"These techniques mentioned in this memo weren't the specific causes of the California crisis," said Anjali Sheffrin, ISO director of market analysis. "The big money was made on the fact that people could buy low elsewhere and sell high in the ISO."
But Steve Maviglio, spokesman for Gov. Gray Davis, called the memos prime exhibits in California's case against power generators.

"How many more smoking guns does FERC need before it acts to refund the billions that Californians are owed from overcharges directly linked to the generators' cartel?" he said.

The memos were written by outside lawyers for Enron to brief an in-house attorney in preparation for investigations into why California's power prices were suddenly increasing five- and tenfold.

Two were dated Dec. 6 and 8, 2000, and the later, undated one came sometime after mid-January of 2001.

Enron's current management and board only became aware of them about 10 days ago, said Robert S. Bennett, whose firm is representing the company in various criminal cases.

Issues raised in the memos were so "troubling" that Enron's board met Sunday and agreed to allow FERC to release the memos publicly, even though they could have been protected under attorney-client privilege, he said. FERC is investigating Enron's role in California's electricity crisis.

"We didn't have to produce these. This was a very responsible decision by the current board and management. They are cooperating with the government," Bennett said.

"We do not know to what extent that any of the memos accurately represent the facts," Bennett stressed, adding that Enron could not investigate because its former traders now work for the firm's new owner.

The memos may say more about the ISO than about Enron, said Gary Ackerman, head of the Western Power Trading Forum, an industry group that has criticized trading rules for being too complex.

"Why didn't the ISO go after them if they felt there was something going on here that was wrong?" he said. The answer, he suggested, is that either rules weren't broken or ISO enforcement has been incompetent.

Like other traders, Enron simply probed the system repeatedly to find the best ways to make the most money, Ackerman said.

But no other trader has ever detailed its activities as publicly.

"The thing that was startling was just the explicitness," said PUC attorney Gallagher.

"It's almost a cookbook on how to game the market," said Mike Florio, a consumer attorney who has served on the ISO board since the organization was formed.
In one eight-page document, sprinkled with colorful nicknames like "Fat Boy" and "Ricochet," the attorneys described which methods the ISO was watching for most closely and which ones might elude it.

Of the transmission-clogging ploy called "Death Star," they wrote, "The net effect of these transactions is that Enron gets paid for moving energy to relieve congestion without actually moving any energy or relieving any congestion."

That was one of many assertions flatly disputed by the final memo, which said more had been learned as attorneys repeatedly re-interviewed traders.

That last memo, said Florio, "almost appears to be consciously written to offset the first one."

He and others predicted the memos' effects will be widespread.

They show clearly that Enron was aware of other traders' behavior, sometimes naming them, and that should help bolster allegations of collusion in a current civil suit, said consumer advocate Michael Shames.

In addition, by outlining in great detail how Enron worked around a California-only price cap, the memo could help persuade FERC to keep regional price caps in place beyond September, said ISO attorney Robinson.