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Attorneys for CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PACIFIC GAS AND ELECTRIC
COMPANY, a California corporation,

Debtor

Tax Identification Number 94-0742640

Case No. 01-30923-DM
Chapter 11
Date: August 30, 2001
Time: 10:00 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, CA
Judge: Hon. Dennis Montali

DECLARATION OF ERIC HILDEBRANDT ON BEHALF OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR CORPORATION

A001 Add: Kids Ggc Mail Center

1 1. My name is Eric Hildebrandt. My address is 151 Blue Ravine Road, Folsom,
2 California 95630. I am employed by the California Independent System Operator Corporation
3 (“the ISO”) as Manager of Market Monitoring in the Department of Market Analysis. My
4 responsibilities at the ISO include analysis of general market performance, as well as potential
5 anti-competitive behavior, including the bidding and scheduling practices of individual market
6 participants. I have performed numerous investigations and studies focusing on the exercise of
7 market power in California’s wholesale energy markets and the uncompetitive nature of these
8 markets since May 2000. I am submitting this declaration in support of the motion of the ISO for
9 modification of an Order which I understand has been issued by this Court and which would
10 permit competitors in the ISO’s markets fairly broad access to the competitive bid data of other
11 market participants. I have personal knowledge of the matters stated in this declaration.

12 2. I have specialized in economic analysis and market research relating to energy
13 issues for over twelve years, with emphasis on performing economic and market research,
14 planning and evaluation studies for the electric utility industry. I began my career in energy
15 research as a Research Associate at the Center for Energy and Environment at the University of
16 Pennsylvania in 1988. From 1990 until 1996 I worked as an economic consultant to the electric
17 utility industry with the consulting firms of Xenergy Inc. and RCG/Hagler Bailly in Philadelphia,
18 Pennsylvania. I then worked for over three years at the Sacramento Municipal Utility District as
19 Supervisor of Monitoring and Evaluation. Since September 1998, I have worked as Manager of
20 Market Monitoring with the California ISO.

21 3. I hold a B.S. degree in Political Economy from the Colorado College (1982) and a
22 Ph.D. in Energy Management and Policy from the University of Pennsylvania (granted in 1990
23 and 1994, respectively).

24 4. In this affidavit, I address the following four issues.

25 (a) What data are being requested in these proceedings that may be subject to
26 confidentiality under the ISO’s Tariff, as well as from the perspective of preventing bidding anti-
27 competitive practices and the exercise of market power in the future.

28 (b) What are the specific provisions in ISO’s Tariff governing confidentiality

1 of ISO market information.

2 (c) The ISO's policies and practices for production of confidential market
3 information in response to subpoenas.

4 (d) Whether anti-competitive market outcomes may result from dissemination
5 of confidential market information to suppliers and other entities participating in these
6 proceedings.

7 5. Confidential Data Being Requested

8 Category J covers:

9 J. All bid data, including but not limited to, Day-Ahead and Hour-
10 Ahead ancillary services bids, supplemental energy bids, out of
11 market calls and adjustment bids in markets controlled or operated
12 by the ISO or the PX, from May 1, 2000 through the date of
13 production.

12 6. ISO Tariff Provisions

13 The information covered by Category J, which I will refer to as "Bid Data" is deemed
14 "confidential" pursuant to ISO's Electric Tariff § 20.3.2, which provides in relevant part:

15 20.3.2 Confidential Information

16 The following information provided to the ISO by Scheduling
17 Coordinators shall be treated by the ISO as confidential:

- 18 (a) individual bids for Supplemental Energy;
19 (b) individual Adjustment Bids for Congestion
20 Management ...;
21 (c) individual bids for Ancillary Services ...;

22 True copies of excerpts from the ISO Tariff referred to in this Declaration are attached as Exhibit
23 A.

24 7. The ISO Tariff also provides that one Market Participant's Bid Data may not be
25 shown to another Market Participant:

26 20.3.3 Other Parties

27 No Market Participant shall have the right hereunder to receive
28 from the ISO or to review any documents, data or other information
of another Market Participant to the extent such documents, data or
information is to be treated as in accordance with Section 20.3.2;
provided, however, a Market Participant may receive and review

1 any composite documents, data, and other information that may be
2 developed based upon such confidential documents, data, or
3 information, if the composite document does not disclose such
4 confidential data or information relating to an individual Market
Participant and provided, however, that the ISO may disclose
information as provided for in its bylaws.

5 Individual Bid Data cannot be published by the ISO until six (6) months after the date of the
6 applicable trade, and even then, publication must not reveal the specific resource to be identified:

7 20.3.4 Disclosure

8 Notwithstanding anything in this Section 20.3 to the contrary,

- 9 (a) The ISO: (i) shall publish individual bids for Supplemental
10 Energy, individual bids for Ancillary Services, and
11 individual Adjustment Bids, provided that such data are
12 published no sooner than six (6) months after the Trading
Day with respect to which the bid or Adjustment Bid was
13 submitted and in a manner that does not reveal the specific
resource of the name of the Scheduling Coordinator
14 submitting the bid or Adjustment Bid, but that allows the
bidding behavior of individual, unidentified resources and
15 Scheduling Coordinators to be tracked over time; and (ii)
may publish data sets analyzed in any public report issued
16 by the ISO or by the Market Surveillance Committee,
provided that such data sets shall be published no sooner
17 than six (6) months after the latest Trading Day to which
data in the data set apply, and in a manner that does not
18 reveal any specific resource or the name of any Scheduling
Coordinator submitting bids or Adjustment Bids included in
such data sets.

19 8. Treatment of Confidential Data Previously Released

20 To date, confidential market data have been provided under Section 20.3.4 of the ISO's
21 Tariff only to state and federal enforcement agencies and only after it has been the subject of a
22 subpoena or other formal process. Moreover, confidential data has only been provided to these
23 agencies pursuant to protective order and other agreements that protect against the dissemination
24 of these data to Market Participants.

25 9. Confidential Data Already Available to Market Participants

26 Market participants already involved in these proceedings have access to a variety of data
27 that may be used to assess their legitimate interests in this case. Most importantly, each market
28 participant already has (or could compile) a record of its own bidding, scheduling and sales

1 information for each market in which it has participated. Additional market information on the
2 bidding of other market participants is made available by the ISO and PX. However, this bidding
3 information is made available on a time-lagged basis, with the identities of market participants
4 disguised through the use of codes pursuant to Tariff § 20.3.4(a), described above. Other
5 information, such as complete schedules and identity of each market participant or resource is
6 intentionally not released by the ISO due to the potential anti-competitive uses of these data by
7 market participants. Finally, it should be noted that there is a wide range of publicly available
8 data on total prices and quantities transacting in different markets that market participants may
9 use to assess overall market share and other potentially relevant issues from the perspective of
10 individual market participants.

11 10. Potential Anti-Competitive Impacts of Releasing Confidential Data to Suppliers

12 Under current market conditions in California's wholesale energy markets, disseminating
13 confidential bidding data to suppliers who should competing against each of other creates an
14 increased risk of anti-competitive outcomes in a number of ways.

15 First, it should be noted that electricity markets are particularly susceptible to
16 manipulation and the exercise of market power for a number of reasons. Demand for electricity is
17 highly predictable and highly inelastic (i.e. consumers have limited means of "saying no" to high
18 prices and reducing demand). Available supply, meanwhile, is also highly predictable, due to the
19 wealth of publicly available data on the rated capacity of units, hydro flows and conditions, and
20 imports into California. The combination of these factors makes the wholesale market extremely
21 susceptible to the exercise of market power, as evidenced by outcomes in California's wholesale
22 energy markets since summer of 2000.

23 Dissemination of detailed hourly supply and demand data to different suppliers facilitates
24 the exercise market power on a system-wide by individual suppliers under tight supply and
25 demand conditions, when even a single individual suppliers can have a significant impact on price
26 through their bidding behavior (e.g. by bidding significantly above costs high and/or withholding
27 some capacity from the market). The data in question in this case would facilitate the exercise of
28 market power by providing each individual seller with a clear, detailed picture of the impact they

1 may be able to have on market prices under specific supply and load conditions.

2 Second, dissemination of these data to all suppliers at the same time creates an increased
3 risk of oligopolistic scheduling and bidding behavior by multiple suppliers in California's
4 wholesale market. In markets with a limited number of major suppliers and highly predictable
5 supply/demand conditions, non-competitive oligopolistic bidding patterns can develop and persist
6 as each different suppliers adjusts and refines their bidding strategies over time in response to
7 observed market prices and trends. The daily and hourly cycles of the wholesale electricity
8 markets provide opportunity for the major suppliers to incrementally "experiment" with different
9 bidding strategies aimed at maximizing profits by increasing market prices, even at the expense of
10 somewhat lower sales or market share. In a market with a limited number of major suppliers, this
11 iterative process of strategic bidding can result in an escalation of prices and continuation of non-
12 competitive equilibriums that develop due to the combined strategic bidding behavior of major
13 suppliers. Dissemination of detailed data on each supplier's historical bidding strategies would
14 further facilitate this form of "implicit collusion" in the future.

15 Third, the data at question may also be used by suppliers within the ISO system in order to
16 exercise locational market power, or market power that stems from the need for specific
17 individual plants to be in operation under specific supply and demand conditions in order to
18 ensure local area reliability. The owner of virtually any generating unit may be able to exercise
19 locational market power under numerous combinations of load and supply conditions due to
20 constraints in the transmission system and concentration of ownership of generating units within
21 "load pockets" with limited transmission to the main electrical grid. Dissemination of detailed
22 data on hourly supply bids – including a record of units dispatched "out-of-sequence" or "out-
23 of-market" by the ISO to meet locational system generation requirements – provides a wealth of
24 data that can be used to facilitate the exercise of locational market power in the future.

25 In addition, it should be noted that suppliers possess extensive analytical resources that
26 can and are used to analyze bidding and scheduling patterns in detail, with the explicit objective
27 of maximizing profits through the exercise of market power and other gaming opportunities. The
28 detailed data at issue in this case – when combined with the wealth of data on supply and demand

1 conditions that is already made available – would provide a rich new source of information that
 2 may be utilized by suppliers to develop and refine anti-competitive scheduling and bidding
 3 practices.

4 Finally, it should be noted that if confidential bid data are made available to existing
 5 suppliers who are participating in these proceedings, this may put potential new market
 6 participants at a competitive disadvantage, thereby creating a barrier to entry into California's
 7 energy marketplace.

8 11. The potential anti-competitive uses of the data in question are greatly reduced is
 9 the data are only released to PG&E, subject to the constraints of the existing protective order.
 10 PG&E is a net buyer of energy and ancillary services (i.e. while PG&E still owns substantial
 11 generating resources, purchases needed to meet PG&E load exceed this supply). As a net buyer,
 12 PG&E does not have an incentive to exercise market power to increase overall prices in
 13 California's wholesale market; its incentive is just the opposite. To the extent that PG&E, after
 14 review of this data, determines it is relevant in this bankruptcy proceeding (if at all), PG&E could
 15 be required to explain the use it intends to make of the data, at which point this Court could
 16 consider whether additional access by Market Participants is necessary and on what terms.

17 I declare under penalty of perjury of the laws of the United States and the State of
 18 California that the foregoing is true and correct, and that this affidavit was executed this ___ day
 19 of July, 2001 at Folsom, California.

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 21 Eric Hildebrandt

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2.5 Ancillary Services.

2.5.1 Scope.

The ISO shall be responsible for ensuring that there are sufficient Ancillary Services available to maintain the reliability of the ISO Controlled Grid consistent with WSCC and NERC criteria. The ISO's Ancillary Services requirements may be self provided by Scheduling Coordinators. Those Ancillary Services which the ISO requires to be available but which are not being self provided will be competitively procured by the ISO from Scheduling Coordinators in the Day-Ahead Market, Hour-Ahead Market and in real time or by longer term contracts. The ISO will manage both ISO procured and self provided Ancillary Services as part of the real time dispatch. The ISO will calculate payments for Ancillary Services to Scheduling Coordinators and charge the cost to Scheduling Coordinators.

For purposes of this ISO Tariff, Ancillary Services are: (i) Regulation, (ii) Spinning Reserve, (iii) Non-Spinning Reserve, (iv) Replacement Reserve, (v) Voltage Support, and (vi) Black Start capability. Bids for Non-Spinning Reserve and Replacement Reserve may be submitted by the Demand-side as well as by owners of Generation. Identification of specific services in this ISO Tariff shall not preclude development of additional interconnected operation services over time. The ISO and Market Participants will seek to develop additional categories of these unbundled services over time as the operation of the ISO Controlled Grid matures.

2.5.2 Ancillary Services Standards.

All Ancillary Services shall meet the ISO's Ancillary Services standards.

2.5.2.1 Determination of Ancillary Service Standards. The ISO shall set the required standard for each Ancillary Service necessary to maintain the reliable operation of the ISO

which are being self provided the Energy Bid shall be used to determine the position of the Generating Unit, Load, System Unit or System Resource in the merit order for real time Dispatch.

2.5.22.4 Supplemental Energy Bids. In addition to the Generating Units, Loads and System Resources which have been scheduled to provide Ancillary Services in the Day-Ahead and Hour-Ahead markets, the ISO may Dispatch Generating Units, Loads or System Resources for which Scheduling Coordinators have submitted Supplemental Energy bids.

2.5.22.4.1 Timing of Supplemental Energy Bids.

Supplemental Energy bids must be submitted to the ISO no later than forty-five (45) minutes prior to the operating hour. Bids may also be submitted at any time after the Day-Ahead Market closes. These Supplemental Energy bids cannot be withdrawn after forty-five (45) minutes prior to the Settlement Period, except that a bid from a System Resource may specify that any portion of the bid that is not called prior to the beginning of the Settlement Period shall not be called after the beginning of the Settlement Period. The ISO may dispatch the associated resource at any time during the Settlement Period.

2.5.22.4.2 Form of Supplemental Energy Bid Information.

Supplemental Energy bids must include the following:

- (a) Bidder name and identification;
- (b) Resource name, identification, and location;
- (c) the positive or negative bid price of incremental and decremental changes in Energy (up to eleven ordered pairs of quantity/price representing up to ten steps);

2.5.30.3 Information Transfer from ISO to Scheduling Coordinator. Unless otherwise agreed between a Scheduling Coordinator and the ISO, the ISO shall furnish scheduling information to Scheduling Coordinators by electronic transfer as described in Sections 6.1 and 6.2. If electronic data transfer is not available, the information may be furnished by facsimile. If it is not possible to communicate with the Scheduling Coordinator using the primary means of communication, an alternate means of communication shall be selected by the ISO.

2.6 Incorporation of the ISO Market Monitoring & Information Protocol

The ISO shall monitor the markets that it administers in order to identify and, where appropriate, institute corrective action to respond to the exercise of market power or other abuses of such markets in accordance with the ISO Market Monitoring & Information Protocol set forth in Appendix L, ISO Protocols.

operating requirements for normal and emergency operating conditions specified in Section 2.3 and the requirements for the dispatch and testing of Ancillary Services specified in Section 2.5.

5.1.2 Operate Pursuant to Relevant Operating Protocols.

Participating Generators shall operate, or cause their Generating Units and associated facilities to be operated, in accordance with the relevant operating protocols established by the ISO or, prior to the establishment of such protocols, the operating protocols established by the TO or UDC owning the facilities that interconnect with the Generating Unit of the Participating Generator.

5.1.3 Actions for Maintaining Reliability of ISO Controlled Grid.

The ISO plans to obtain the control over Generating Units that it needs to control the ISO Controlled Grid and maintain reliability by purchasing Ancillary Services from the market auction for these services. When the ISO responds to events or circumstances, it shall first use the generation control it is able to obtain from the Ancillary Services bids it has received to respond to the operating event and maintain reliability. Only when the ISO has used the Ancillary Services that are available to it under such Ancillary Services bids which prove to be effective in responding to the problem and the ISO is still in need of additional control over Generating Units, shall the ISO assume supervisory control over other Generating Units. It is expected that at this point, the operational circumstances will be so severe that a real-time system problem or emergency condition could be in existence or imminent.

Each Participating Generator shall take, at the direction of the ISO, such actions affecting such Generator as the ISO determines to be necessary to maintain the reliability

of the ISO Controlled Grid. Such actions shall include (but are not limited to):

- (a) compliance with the ISO's Dispatch instructions including instructions to deliver Ancillary Services in real time pursuant to the Final Day-Ahead Schedules and Final Hour-Ahead Schedules;
- (b) compliance with the system operation requirements set out in Section 2.3 of this ISO Tariff;
- (c) notification to the ISO of the persons to whom an instruction of the ISO should be directed on a 24-hour basis, including their telephone and facsimile numbers; and
- (d) the provision of communications, telemetry and direct control requirements, including the establishment of a direct communication link from the control room of the Generator to the ISO in a manner that ensures that the ISO will have the ability, consistent with this ISO Tariff and the ISO Protocols, to direct the operations of the Generator as necessary to maintain the reliability of the ISO Controlled Grid, except that a Participating Generator will be exempt from ISO requirements imposed in accordance with this subsection (d) with regard to any Generating Unit with a rated capacity of less than 10 MW, unless that Generating Unit is certified by the ISO to participate in the ISO's Ancillary Services and/or Imbalance Energy markets.

5.1.4 Generators Connected to UDC Systems.

With regard to any Generating Unit directly connected to a UDC system, a Participating Generator shall comply with applicable UDC tariffs, interconnection requirements and generation agreements. With regard to a Participating Generator's Generating Units directly connected to a UDC system, the ISO and the UDC will coordinate to develop procedures to avoid conflicting ISO and UDC operational directives.

20.3.2 Confidential Information

The following information provided to the ISO by Scheduling Coordinators shall be treated by the ISO as confidential:

- (a) individual bids for Supplemental Energy;
- (b) individual Adjustment Bids for Congestion Management which are not designated by the Scheduling Coordinator as available;
- (c) individual bids for Ancillary Services;
- (d) transactions between Scheduling Coordinators;
- (e) individual Generator Outage programs unless a Generator makes a change to its Generator Outage program which causes Congestion in the short-term (i.e. one month or less), in which case, the ISO may publish the identity of that Generator.

20.3.3 Other Parties

No Market Participant shall have the right hereunder to receive from the ISO or to review any documents, data or other information of another Market Participant to the extent such documents, data or information is to be treated as in accordance with Section 20.3.2; provided, however, a Market Participant may receive and review any composite documents, data, and other information that may be developed based upon such confidential documents, data, or information, if the composite document does not disclose such confidential data or information relating to an individual Market Participant and provided, however, that the ISO may disclose information as provided for in its bylaws.

Issued by: Roger Smith, Senior Regulatory Counsel
Issued on: October 13, 2000

Effective: October 13, 2000

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