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August 3, 2001

50-275/323

Via Facsimile

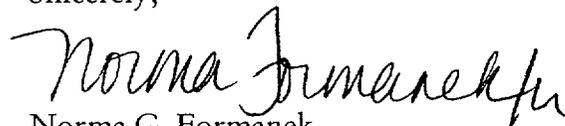
The Parties on the Court's Special Service List as of July 16, 2001

Re: PG&E Bankruptcy

Ladies and Gentlemen:

Attached please find the Order Denying the California ISO's Motion to Modify Order Directing Production of Documents.

Sincerely,


Norma G. Formanek

NGF:ll

Attachment

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U.S. BANKRUPTCY COURT
NORTHERN DIST. OF CA.
SAN FRANCISCO, CA.

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re) Bankruptcy Case
PACIFIC GAS & ELECTRIC COMPANY,) No. 01-30923DM
Debtor.) Chapter 11

ORDER DENYING MOTION BY INDEPENDENT SYSTEM
OPERATOR CORPORATION TO MODIFY ORDER
DIRECTING PRODUCTION OF DOCUMENTS

On July 31, and August 1, 2001, the court held telephonic conferences with counsel for California Independent System Operator Corporation ("ISO"), Pacific Gas and Electric Company ("Debtor") and several Market Participants. The subject of the conferences was the present refusal of ISO to comply with this court's Order Directing Production Of Documents To ISO/PX Market Participants Pursuant To Federal Bankruptcy Rule 2004 And Protective Order Respecting Confidentiality Of Documents ("Order") entered July 11, 2001, and ISO's Motion To Modify Order Directing Production Of Documents To ISO/PX Market Participants Pursuant To Federal Bankruptcy Rule 2004 And Protective Order Respecting Confidentiality Of Documents ("Motion") originally set by ISO for hearing on August 30, 2001. In the course of the conferences the

1 court agreed to hear the Motion on an expedited basis, on August
2 6, at 11:00 a.m., with Market Participants to file their
3 oppositions no later than 4:30 P.M. on August 3. Counsel for ISO
4 also assured the court that if the Motion were denied, ISO would
5 comply with the Order.

6 Since the conferences the court has had an opportunity to
7 read the Motion, along with the supporting Memorandum Of Points
8 And Authorities and the Declaration of Eric Hildebrandt. Despite
9 the representations of counsel for ISO, there is nothing in the
10 Motion supporting her statements at the conferences to the effect
11 that ISO agreed to the entry of the Order through a mistake or a
12 miscommunication between ISO and its outside counsel. Nor is
13 there any mention of any attorney-client privilege, a theory not
14 advanced in the Motion, but apparently promulgated by counsel for
15 ISO to counsel for Debtor and various Market Participants in
16 correspondence exchanged among them prior to the conference.
17 Further, there is no factual showing to support any extraordinary
18 circumstances that would justifying granting relief.¹

19 Most importantly, the court believes that ISO has been less
20 than forthright with the court concerning its plea for relief from
21

22 ¹ The Motion is premised on Fed. R. Civ. P. 60(b), made
23 applicable in bankruptcy by Fed. R. Bankr. P. 9024. Counsel's
24 only cited authority other than the rule itself is Kirwan v.
25 Vanderwerf (In re Kirwan), 164 F. 3d 1175, 1177-1178 (11th Cir.
26 1999) (affirming reconsideration of claim under liberal standards
27 of 11 U.S.C. § 502(j) and Rule 3008, Fed. R. Bankr. P., after
28 default for failure to appear at hearing on objection to claim)
and Straw v. Brown, 866 F. 2d 1167, 1172 (9th Cir. 1989)
(plaintiff must demonstrate "extraordinary circumstances" and
"hardship that cries out for the unusual remedy" of relief under
Rule 60(b)(6)). This is less than persuasive authority for the
extraordinary circumstances ISO will have the court find present
on this record.

1 the Order. In ISO's Memorandum Of Points And Authorities its
2 counsel writes "[Tariff § 20.3.4(b)] permits production of [the
3 allegedly sensitive market data called for in Item J of the Order]
4 in response to 'administrative or judicial proceedings,' but only
5 after notice to Market Participants and entry of appropriate
6 protective orders." (ISO Memorandum Of Points And Authorities p.
7 6, ll. 4-6.) Neither ISO nor Mr. Hildebrandt saw fit to provide
8 the court with § 20.3.4(b) of the ISO Tariff, and therefore the
9 court obtained that portion of the Tariff from the ISO website.
10 Nowhere in the referenced section is there any mention of any kind
11 of an appropriate protective order. In fact, the cited
12 subparagraph of the Tariff states:

13 "If the ISO is required by applicable laws or regulations, or
14 in the course of administrative or judicial proceedings, to
15 disclose information that is otherwise required to be
16 obtained in confidence pursuant to this Section 20.3, the ISO
17 may disclose such information; provided, however, that as
18 soon as ISO learns of the disclosure requirement and prior to
19 making such disclosure, the ISO shall notify any affected
20 Market Participant of the requirement and the terms thereof.
21 The Market Participant may, at its sole discretion and own
22 cost, direct any challenge to or defense against the
23 disclosure requirements and the ISO shall cooperate with such
24 affected Market Participant to the maximum extent practicable
25 to minimize the disclosure of the information consistent with
26 applicable law. The ISO shall cooperate with the affected
27 Market Participant to obtain proprietary or confidential
28 treatment of confidential information by the person to whom
such information is disclosed prior to any such disclosure."
(Emphasis added.)

22 Before the entry of the Order, numerous Market Participants
23 not only were given notice of the request by Debtor to obtain the
24 information, but they were given the opportunity to "minimize the
25 disclosure of information." They participated in negotiations
26 that led to the entry of the Order, and not a single Market
27 Participant has since challenged the Order. Instead of
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1 cooperating with those Market Participants, ISO has now become
2 their adversary, notwithstanding the clear directive in its own
3 Tariff quoted above.

4 In view of the foregoing, the court is convinced that not
5 only is ISO's Motion without merit, but that to require a single
6 Market Participant to expend a single dollar in professional fees
7 opposing the Motion would be a complete waste of time and money.
8 Sadly the time that has elapsed since the telephonic conferences
9 and the concerns expressed by counsel for the Market Participants,
10 convince the court that thousands of dollars have probably been
11 spent unnecessarily.

12 In order to avoid any continued expenditure of time or money,
13 the court orders as follows:

- 14 1. The hearing on the Motion is dropped from the court's
15 calendar;
- 16 2. The Motion is denied in its entirety;
- 17 3. ISO is expected to comply with the Order immediately; and
18 4. No later than noon on August 3, 2001, counsel for ISO is
19 to see that a copy of this order is forwarded by facsimile,
20 personal delivery or e-mail to every party who received notice of
21 the original Motion, and thereafter notice of the rescheduled
22 motion, other than those Market Participants whose counsel are
23 being served with this Order directly by the court this date.²

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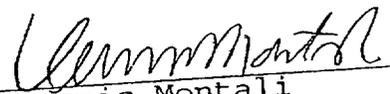
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27 ² The court requests that any Market Participant's counsel
28 who know of other counsel preparing to defend the Motion advise
such counsel of this order as soon as possible.

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This denial of the Motion is without prejudice to any party to seek such further relief as may be appropriate under the circumstances.

Dated: August 2, 2001

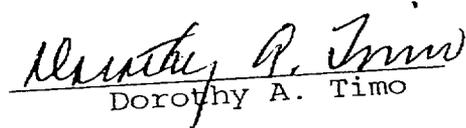


Dennis Montali
United States Bankruptcy Judge

1 I, the undersigned, a regularly appointed and qualified
2 clerk in the office of the Bankruptcy Judge of the United States
3 Bankruptcy Court for the Northern District of California, at San
4 Francisco, hereby certify:

5 That I, in the performance of my duties as such clerk,
6 served a copy of the foregoing document by placing said copy(ies)
7 in a postage paid envelope addressed to the person(s) hereinafter
8 listed, by depositing said envelope in the U.S. Mail, or by
9 placing said copy(ies) into an inter-office delivery receptacle
10 located in the Clerk's Office, or by facsimile to the facsimile
11 numbers listed below, at San Francisco, California, on the date
12 shown below.

13 Dated: August 2, 2001


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1 **PROOF OF SERVICE**

2 I, LouAnne, declare:

3 I am a citizen of the United States and employed in San Francisco County, California. I
4 am over the age of eighteen years and not a party to the within-entitled action. My business
5 address is Russ Building, 30th Floor, 235 Montgomery Street, San Francisco, California 94104.

6 On August 3, 2001, I served a copy of the ORDER DENYING MOTION BY
7 INDEPENDENT SYSTEM OPERATOR CORPORATION TO MODIFY ORDER DIRECTING
8 PRODUCTION OF DOCUMENTS on those parties shown on the Court's Special Service List as
9 of July 16, 2001 via Facsimile by noon Pacific Time .

10 I further declare that I caused said Order to be served on those parties for whom we were
11 unable to determine facsimile information via U.S. Mail. I am readily familiar with the firm's
12 practice of collection and processing correspondence for mailing. Under that practice it would be
13 deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the
14 ordinary course of business. I am aware that on motion of the party served, service is presumed
15 invalid if postal cancellation date or postage meter date is more than one day after date of deposit
16 for mailing in affidavit.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed on August 3, 2001, at San Francisco, California.

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21 _____
22 LouAnne Laflamme
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8/3/01

SERVICE BY MAIL

(1)

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8/3/01

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