

50-275/323

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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

DECLARATION OF NORMA G. FORMANEK
IN SUPPORT OF OPPOSITION OF
CALIFORNIA ISO TO CERTAIN
APPLICATIONS FOR DISCLOSURE

Date: August 30, 2001
Time: 10:00 a.m.
Place: 235 Pine Street, 22nd Floor
San Francisco, CA
Judge: Hon. Dennis Montali

I, Norma Formanek, declare:

1. I am a partner with Farella Braun & Martel LLP, counsel of record for the
California Independent System Operator Corporation (the "ISO") in the referenced action. My
business address is 235 Montgomery Street, San Francisco, CA 94114. I have personal
knowledge of the matters stated herein and if called upon I could competently testify thereto.

0001 Add: Kids Ogc Mail Center

1 2. Attached as Exhibit A is an excerpt (pages 103 – 110) of the Transcript of
2 Proceedings in this matter held on June 28, 2001.

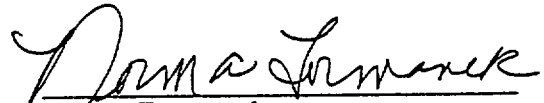
3 3. Exhibit B to my declaration is a true and correct copy of Order Conditionally
4 Accepting Proposed Tariff Revisions, California Independent System Operator Corporation, 90
5 F.E.R.C. 61, 316 (2000).

6 4. Attached as Exhibit C is a true and correct copy of the Declaration of Eric
7 Hildebrandt filed in this action on July 30, 2001. Excerpts from the California ISO Tariff are
8 attached as an exhibit to Dr. Hildebrandt's declaration.

9 5. Exhibit D to this Declaration is a true copy of the Joint Motion of the Marketer
10 Group to Confine the California Independent System Operator's Data Distribution, filed on or
11 about August 20, 2001, in San Diego Gas & Electric v. Sellers of Energy, etc., FERC Dkt.
12 Nos.EL00-95-045, EL00-098-042.

13 6. Attached hereto as Exhibit E is a copy of a News Release, downloaded from the
14 World Wide Web on August 19, 2001, from <http://duke-energy.com/decorp/content/newscenter/>.
15 The article is entitled "Duke Energy Moves Forward With Four Major Solutions To California's
16 Power Supply Shortfall And High Retail Process." The second page of the article identifies
17 Nancy DeSchane as vice president of DENA's western trading operations.

18 I declare under penalty of perjury that the foregoing is true and correct, and that this
19 Declaration was executed this 24th day of August, 2001 at San Francisco, California.

20
21 
22 Norma Formanek
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COPY

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

--o0o--

In Re:) Case No. 01-30923-DM
PACIFIC GAS AND ELECTRIC)
COMPANY,) San Francisco, California
Debtor.) Thursday, June 28, 2001
1:37 P.M.
Chapter 11

Motion for entry of order
requiring production of
documents by the California
Independent System Operator
Corp. and California Power
Exchange.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

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1 minutes, but don't hang up, and then I'll give you my ruling on
2 the fundamental motion, and then if I am persuaded that we
3 should have some sort of protective order, then we'll turn the
4 discussion to the specific language. So Mr. Ribner, maybe at
5 that point I'll see your order, but I'm not there yet.

6 Okay. Ten minute break. Thank you.

7 (Recess)

8 THE COURT: Please be seated. Everybody back?

9 Okay. Well, I've thought about the arguments in
10 support of denying this motion. I'm not going to do that. I'm
11 going to grant the motion with the limitations that we're going
12 to talk about.

13 I appreciate the arguments of Mr. Sigal and Mr. Bates
14 on the point, but I'm not going to dismantle a procedure that
15 is designed to facilitate certain aspects of a bankruptcy case
16 administration, and for generation of information
17 notwithstanding the pendency of other matters that may have
18 some overlap. I'm convinced that PG&E's got a -- has made an
19 adequate showing of the entitlement to take, and to obtain the
20 information, and so I'm going to grant its motion and overrule
21 the objections.

22 But we have to talk about the contours of the order,
23 and some of the matters that we've talked about are of some
24 great concern to me. So I'm going to try it this way. I'm
25 going to do this cautiously in my own mind, even if it creates

1 some problems.

2 So I'm thinking out loud, and I'm not really drafting
3 ruling here as much as giving all of you the benefit of my
4 decision, and then we're going to figure out collectively how
5 to memorialize it.

6 I'm going to limit the information that is generated
7 on these 2004 examinations at the outset to the professionals
8 for the debtor as well as for the market participants, which is
9 not to say that I won't extend it, and I have in mind a
10 procedure that I'll try to describe.

11 But in terms of timing, I have in mind a procedure
12 that will take ISO first, because they seem to be in a better
13 position, just internally to start responding, and then Cal PX
14 second, and I have in mind something like approximately two to
15 three weeks Cal ISO and approximately two weeks after that, Cal
16 PX to produce the information.

17 The reason why I'm hesitating in this ruling, is I
18 have in mind a procedure that will require a notice to go out
19 to all the participants of what the ruling is, and then a
20 deadline by which the participants who want the information
21 indicate that they want the information, and indicate their
22 intention and willingness to be bound by the protective order
23 and then a date by which the information will be made available
24 by first Cal ISO, then Cal PX.

25 It seems to me that it will be an unnecessary burden

1 on those entities to be piecemealing the information out, and
2 so something along the lines of participants have until June
3 blank, or I guess realistically it would be July blank to
4 indicate their desire to be provided the information on -- in
5 an unredacted form, but under ground rules that the recipient
6 of the information will be outside professionals of that market
7 participant, and that then the information would be made
8 available on a date of July blank by the respective two
9 producers of the information.

10 I have in mind also a procedure that will have PG&E
11 and any of the participants to indicate in a filing and a
12 document that they would serve a well articulated reason why
13 the information should be extended to persons beyond the
14 professionals, stated simply, in-house people. And in PG&E's
15 case, PG&E Corp. as well.

16 I'm on the fence about whether it really is an
17 invasion of anyone's personal privacy to disclose that person's
18 name. I frankly don't think that is so, and unless there is a
19 compelling reason why the actual person's name should be
20 concealed from the public record, my thinking would be that by
21 a date, PG&E would say, I want to share -- or PG&E's
22 professionals would say, we want this information to be made
23 available to the following people, here's who they are, here's
24 what they do, here's why they need it, and the same with
25 respect to the three people at the PG&E Corporation level.

1 If within those 40 people there is someone who has a
2 compelling reason why his or her name should not be disclosed,
3 I'm willing to respect the need to try to have that privacy,
4 but I want a separate reason why that person can't be
5 identified specifically, and I might even -- and I would
6 request that that person be identified under seal to me, not
7 that I would know the person, but I just think that frankly, it
8 doesn't seem like a -- something in this environment that needs
9 to be kept confidential. But there may be a reason that I'm
10 not aware of.

11 And the same must be true with the market
12 participants. If the market -- use Mr. Bates' client, Reliant
13 as an example. If Reliant says, and through speaking through
14 its professional we want to share, would the professionals want
15 to give this information to Ms. So and So, and Mr. So and So of
16 Reliant, then that person's identity disclosed, and the reasons
17 why that is necessary.

18 It's not quite as compelling, of course, in a
19 discreet number of people for one market participant. But I do
20 think that I have in mind that everybody will have an
21 opportunity to know where this information will be exchanged,
22 and we'll have a procedure for responses, and I'll have a
23 further hearing on the subject.

24 The -- because the procedure that I've described
25 would have the information going to the professionals for the

1 market participants that request it, I don't need to make into
2 whether the PX committee must play some sort of an in-between
3 role. So in my example, if Reliant says I want the information
4 to go to my lawyers, then it will go to the -- Reliant's
5 lawyers, and it will stay there until some other order of the
6 Court authorizes the information to be extended outward, is
7 beyond, into the clients.

8 So the question about redacting is moot. There's
9 nothing to be redacted. The protections of all parties'
10 interests will be in the protective order.

11 The question of the use and the discussions I had
12 with Mr. Sigal particularly, and then with Ms. Brand, I've
13 thought about it again. I cannot legislate by court order what
14 a professional thinks about when he or she is doing the job for
15 the client, nor can I have a professional fear, a contempt
16 citation for framing a question, or adopting a strategy.
17 That's not fair to the professional, and it's not fair to the
18 client that that professional represents.

19 In looking at the language that was proposed in the
20 order that Mr. Courson submitted, I think it's a little bit
21 difficult, don't take this as a criticism, Mr. Courson, but the
22 language speaks in the negative, and it says, the information
23 shall be used exclusively in the bankruptcy case, et cetera,
24 and shall not otherwise be used or disclosed. So we have used,
25 and used or disclosed. And my thinking is that we should

1 approach it this way.

2 The information that is gleaned from the discovered
3 material can be used in the mind of the professional in any way
4 he or she sees fit in the administrative proceeding or
5 otherwise. The actual document whether -- or the electronic
6 document may not be disclosed, or used as an exhibit, or used
7 in any other fashion unless first there is either a consent by
8 the respondent, or permission from this Court.

9 And then, if and when it is appropriate to send the
10 -- involve the second court, so be it. So that the piece of
11 paper in my example to Mr. Sigal, the smoking gun, this piece
12 of paper cannot be used in that other proceeding. But the
13 information that is on that piece of paper, I am not going to
14 attempt to legislate what a professional does.

15 And so if the lawyer for PG&E is cross-examining a
16 representative of one of the providers and says, isn't it a
17 fact that on such and such a day you bid such and such for
18 power, and we all know that that information was obtained by a
19 document that was produced in the discovery.

20 In my mind, that is not going to subject that
21 professional to a contempt citation, and he or she may use that
22 information, but may not, without consent, or a prior order, at
23 least of this Court, may not offer that piece of paper into
24 evidence, or otherwise disclose it.

25 I don't -- it's not a perfect way to do it, but I'm

1 trying to be sensitive to the burdens that I don't want to put
2 on people who are out there trying to represent their clients'
3 interests.

4 The inset that Ms. Mar suggests for the order is best
5 worded, best to go in both orders. There's no harm there. It
6 really just protects all the market participants from the fear
7 that they are going to suddenly -- they somehow will be
8 precluded from taking discovery against PG&E at some time in
9 the future, or against some other market participant if, for
10 example, we have an adversary proceeding, or a claims objection
11 that somehow involves a counterclaim or a cross-claim and so we
12 have two participants in the litigation.

13 It really just states the obvious, but there's no
14 harm in stating the obvious, that this protective order that
15 will be issued doesn't preclude some other appropriate
16 discovery directed at either PG&E, or one of the market
17 participants.

18 I have -- I promised that I would look at the order
19 that Mr. Ribner has prepared. I'm wondering if it maybe is
20 premature in view of my thinking about how to proceed. It may
21 well be.

22 Because I am not presently authorizing the
23 information to go to anyone other than the outside
24 professionals, I don't have to get into a question of this
25 ethical wall, because I've decided about the difference between

1 using the information and disclosing the data, that really
2 changes part of paragraph E. And -- well, I'll leave it at
3 that at this point. Mr. Ribner?

4 MR. RIBNER: Your Honor, Seth Ribner. In light of
5 Your Honor's ruling, I think it is premature to submit the
6 proposed language because I think that based on what Your Honor
7 has said that the parameters have changed.

8 THE COURT: Well, okay. I think -- thank you. Let's
9 leave it at that.

10 What I'd like to propose then, Mr. Kaplan, and Mr.
11 Courson, is a procedure that gets an order out fairly quickly,
12 because I do want this process to start. I don't think it
13 shouldn't start, particularly in the case of Cal PX. They've
14 got their hands full, and if they're getting subpoenaed right
15 and left, we might as well get in the queue and get the
16 Bankruptcy Court subpoena in the pipeline.

17 And so I don't think that there's any reason to slow
18 down the exchange of information, or the movement of
19 information from those two entities, and the professionals.

20 The only thing I want to do is make sure that we have
21 a device that puts a deadline on the request for the
22 information by the professionals for the different
23 participants, and a date by which the information will be
24 produced, and that we also dovetail that with a sequence for
25 any participant, and PG&E requesting permission to go the next

1 step, and involve inside people.

2 And so I'm sort of at your mercy to figure out a way
3 to make it work. Mr. Bates, did you want to comment on that,
4 or on something else?

5 MR. BATES: I did, Your Honor. I wanted to ask a
6 question that goes to judicial intent, not to make the drafting
7 more difficult, but to make sure I understand it.

8 A lawyer, again, say, isn't it true that on X date
9 you bid Y price based on what is produced. I understand that.

10 THE COURT: Right.

11 MR. BATES: But I would still take it to violate the
12 intent of your order if the questioner said, isn't it true that
13 on December 12th, you wrote the following memo, and then read
14 it into the record.

15 THE COURT: Well, Mr. Bates, that's like the lawyer
16 who fails to get the exhibits exchanged, but then tries to read
17 the exhibits in anyway, and sometimes the opponent is sound
18 asleep and lets it happen, and sometimes the opponent's awake
19 and says hold it. The answer is yes.

20 MR. BATES: Okay.

21 THE COURT: I'm not suggesting that the data be put
22 in a different way. Now, why don't you make it harder and say
23 the lawyer memorizes it.

24 (Laughter)

25 THE COURT: Because Mr. Sigal, isn't it a fact that

EXHIBIT B

90 F.E.R.C. 61316 printed in FULL format.

California Independent System Operator Corporation

Docket No. ER00-1239-000

FEDERAL ENERGY REGULATORY COMMISSION - COMMISSION

90 F.E.R.C. P61,316; 2000 FERC LEXIS 683

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

March 29, 2000

CORE TERMS: tariff, regulation, revision, outage, bid, transmission, notice, sheet, scheduled, calendar, import, protest, reliability, hour-ahead, derate, cancellation, effective date, generation, protestors', revised, billing, cancel, unduly, congestion, six-month, day-ahead, effective, one-month, canceled, regional

PANEL:

[**1] Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

OPINION:

[*62,044]

In this order, we conditionally accept tariff revisions and other proposals filed by the California Independent System Operator Corporation (ISO), to become effective as discussed herein.

Background

On January 27, 2000, the ISO submitted for filing Tariff Amendment No. 25 containing numerous amendments to the ISO Tariff and related Protocols. Briefly, these revisions would modify the ISO's Tariff and Protocols by: (1) removing current restrictions on the import of Regulation service; (2) clarifying the ISO's procedures for canceling or rescheduling planned transmission outages; (3) providing for the publication of individual bid data with a six-month delay and providing earlier release of data sets under certain circumstances; (4) implementing improvements to the ISO's payments calendar; (5) modifying the Tariff to implement firm transmission rights (FTRs); (6) allocating Reliability Must-Run (RMR) costs in the event the San Onofre Nuclear Generating Station (SONGS) facility is designated as an RMR unit; and (7) requiring the ISO to provide Scheduling Coordinators with certain information in the event of transmission derates between the day-ahead and hour-ahead markets.

Regarding effective dates, the ISO requests (1) waiver of notice requirements and an effective date of February 1, 2000, for revisions related to FTRs, (2) for the revised payments calendar, an effective date of the later of March 27, 2000, or at least 10 days after the ISO posts notice on its home page that the software is ready for use, (3) waiver of notice [*62,045] requirements to allow the release of bid information, after a six month delay, for the period beginning on January 28, 2000, and (4) an effective date of March 27, 2000, for all other revisions.

Notice, Interventions, and Responsive Pleadings

Notice of the ISO's filing was published in the Federal Register, 65 Fed. Reg. 6204 (2000), with motions to intervene and protests due on or before February 17, 2000. A notice of intervention was filed by the Public Utilities Commission of the State of California (California Commission). Timely motions to intervene, comments, and protests were filed by the Bonneville Power Administration (Bonneville); the California Department of Water Resources (DWR); California Electricity [**3] Oversight Board (Oversight Board); California Power Exchange Corporation (PX); Cities of Redding and Santa Clara, California and M-S-R Public Power Agency (Cities/M-S-R); City and County of San Francisco, California; City of Vernon, California (Vernon); Duke Energy Trading and Marketing, LLC (Duke); Dynegy Power Marketing, Inc. (Dynegy); Los Angeles Department of Water & Power (LADWP); Metropolitan Water District of Southern California (Metropolitan); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Pacific Gas and Electric Company (PG&E); Sacramento Municipal Utility District (SMUD); Southern California Edison Company (SoCal Edison); Southern Energy California, LLC, Southern Energy Potrero, LLC, and Southern Energy Delta, LLC, jointly (Southern); Transmission Agency of Northern California (TANC); Turlock Irrigation District (Turlock); Western Area Power Administration (WAPA); and Williams Energy Marketing & Trading Co. (Williams). On February 18, 2000, the Northern California Power Agency (NCPA) filed a motion to intervene one day out-of-time. On March 3, 2000, the ISO filed an answer.

Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's [**4] Rules of Practice and Procedure, n1 the notice of intervention and the timely, unopposed motions to intervene serve to make the above-listed intervenors parties to this proceeding. In view of the early stage of this proceeding and the absence of any undue prejudice or delay, we will grant NCPA's motion to intervene out-of-time for good cause shown. Although answers to protests generally are prohibited under 18 C.F.R. @ 385.213 (a)(2), we nevertheless find good cause to allow the ISO's answer in this proceeding because it provides additional information that assists us in the decision-making process.

- - - - -Footnotes- - - - -

n1 18 C.F.R. @ 385.214 (1999).

- - - - -End Footnotes- - - - -

Imports of Regulation Service

The ISO proposes to allow Scheduling Coordinators to procure regulation services from resources located outside the ISO's control area, where technically feasible and consistent with the Western Systems Coordinating Council (WSCC) criteria. Currently, the ISO's Tariff allows Scheduling Coordinators to import energy and spinning, non-spinning and replacement reserves, [**5] but precludes the importation of regulation service (Section 2.5.7.4). In AES Redondo Beach L.L.C., et al., 87 FERC P61,208, at p. 61,816

(1999) (AES Redondo), the Commission recognized the ISO's need to govern the instantaneous electrical output of the generating units providing regulation service and accepted the ISO's proposal that, by the end of 1999, each generator supplying regulation service be capable of being controlled and monitored by ISO by remote control.

In the instant filing, the ISO explains that the purchase of regulation service from generating units located outside of its control area is contingent on the ability of the sending control area to support dynamic interchange of such service based on control signals issued by the automatic generation control function within the ISO's energy management system. At the urging of numerous stakeholders, the ISO proposes to initiate a certification process for Scheduling Coordinators who want to import regulation service and for operators of the control areas where resources are to be scheduled. This certification process will require the control area operator and scheduling coordinator to demonstrate [**6] that they have made the appropriate arrangements and have put in place the equipment and services necessary to deliver the regulation service to the point of interchange with the ISO control area. The ISO proposes to post the technical standards and operating procedures that must be satisfied to make such a demonstration on the ISO's home page. In addition, the ISO will require the operator of any control area from which imports of regulation service are to be scheduled to enter into an agreement with the ISO for interconnected control area operations.

Turlock, Cities/M-S-R and Modesto want the technical standards and procedures for delivery of regulation service from outside the ISO control area to be included in the ISO's Tariff and approved by the Commission, instead of being placed on the ISO's home page. Bonneville [*62,046] notes that the ISO's Interconnected Control Area Operating Agreements (ICAOAs) do not include the complex and unique requirements to transfer regulation service, and objects to the ISO's proposal to link imports of regulation service to unilaterally developed standards and conditions. Bonneville believes that the requirements for inter-regional transfer of reliability [**7] products between control areas should be developed in cooperation with the interconnected control area and that unilateral standards developed in isolation may not be sufficient to meet the reliability needs of other control areas or may conflict with regional practices. Bonneville suggests that Commission should direct the ISO to participate with WSCC participants to determine the technical requirements and allow the interconnected parties to negotiate bilateral agreements. Citing Order No. 889-A, n2 Bonneville also claims that this is an attempt by the ISO to rebundle what the Commission has functionally unbundled, because the ISO will purchase the regulation service from merchant functions or power marketers and not from the control area operator.

- - - - -Footnotes- - - - -

n2 Open Access Same-Time Information System and Standards of Conduct, Order No. 889-A, FERC Stats. & Regs. P31,049 (1997), order on reh'g, Order No. 889-B, 81 FERC P61,253 (1997), order on reh'g, Order No. 889-C, 82 FERC P61,046 (1998).

- - - - -End Footnotes- - - - -

[**8]

In its response, the ISO continues to claim that its requirements for the import of regulation service are appropriate and that the protestors'

remarks are misplaced. The ISO advises that the importation of regulation service is relatively new to control areas within the western interconnection, that several dedicated telecommunication links necessary for dynamic interchange of regulation service have been installed since its initial start-up, and more are planned. With respect to Bonneville's protest over unilateral standards and conditions, the ISO explains that its Interconnected Control Area Operating Agreements (ICAOAs) entered into to date are too general because the level of coordination required between control area operators will be far greater for the moment-to-moment importation of regulation service. The ISO responds to Bonneville's concerns over reliability needs of other control areas and regional practices by reiterating that its technical standards will reflect WSCC criteria and regional practices and the technical requirements and procedures will be available for stakeholder review and comment prior to implementation. With respect to Turlock, Cities/M-S-R and Modesto's [**9] concern that technical requirements and procedures be included in the ISO's Tariff, the ISO cites a case where the Commission determined that the performance standards for generators to qualify for regulation service need not be incorporated into the ISO's tariff. n3 Regarding Bonneville's claim that the ISO is attempting to rebundle generation with transmission, the ISO first notes that Bonneville incorrectly refers to the ISO as the purchaser when actually Scheduling Coordinators will purchase the regulation service, and further explains that nothing in its proposal would require collaboration between a transmission provider and its merchant function.

- - - - -Footnotes- - - - -

n3 AES Redondo Beach, L.L.C., et al., 87 FERC P61,208, at p. 61,816 (1999), order on reh'g, 90 FERC P61,036 (2000).

- - - - -End Footnotes- - - - -

We will accept this proposal and deny the protestors' requests for modifications. As noted by the ISO and Bonneville, n4 ICAOAs accepted by the Commission to date n5 are too general to address imports of [**10] regulation, and specific provisions will need to be added to them. However, the ICAOAs and/or amendments thereto will be filed with the Commission, and so specific control area needs do not need to be addressed here. Under our existing "rule of reason," n6 we agree with the ISO that technical standards for the provision of regulation imports need not be included in its tariff. These standards will merely specify the types of equipment and arrangements necessary to import regulation into the ISO control area. We note that the ISO commits that its technical criteria will comply with WSCC requirements. Regional reliability standards are typically minimum standards, and individual control areas usually incorporate specific practices that are unique to their systems and that exceed the minimum general regional practices. Therefore, it is not unusual that the ISO will have specific needs for its control area. We also agree with the ISO that the proposal does not require Bonneville's merchant function to collaborate with its transmission personnel. Bonneville's merchant function, providing generation to California, will have to procure transmission from Bonneville under its tariff. The addition [**11] of imports of regulation service from outside the ISO control area will deepen the supply of resources available for regulation service in the ISO markets, and result in lower costs and increased system reliability.

- - - - -Footnotes- - - - -

n4 ISO's Answer at 16; Bonneville at 6.

n5 See, California Independent System Operator Corporation, et al., 82 FERC P61,174 (1998).

n6 See, e.g., Pacific Gas and Electric Company, et al., 80 FERC P61,128, at p. 61,423, and 81 FERC P61,320, at p. 61,442 (1997).

- - - - -End Footnotes- - - - -

Release of Bid Information [*62,047]

The ISO proposes to publish individual bid data after a six-month delay. Also, the proposal would authorize the ISO to publish data sets analyzed in conjunction with a published ISO or Market Surveillance Committee (MSC) report, with as little as a one-month lag, subject to the approval of the ISO Board of Governors.

The proposed tariff revision provides that the ISO will not reveal the specific resource or the name of the bidding Scheduling [**12] Coordinator, but that data will be released in a manner that allows the bidding behavior of individual, unidentified sources and Scheduling Coordinators to be tracked over time. The ISO plans to begin releasing the bid information for the period starting on the first trading day after the instant application was filed, i.e., January 28, 2000, subject to the six-month delay described above. The ISO would not begin to publish the bid information until the later of (1) the date six months after January 27, 2000, or (2) the date on which the software is implemented that will enable the publication of the bid information. The information released on that date and thereafter would include the bid information collected for the 60-day period after January 27, 2000. The release of bid data for that period would be subject to the six-month delay.

Dynegy, Williams, and Southern all protest the release of bid information with a one-month lag, even if approved by the ISO Board of Governors. Dynegy and Williams also oppose the release of bid information at any time. Dynegy and Southern assert that the ISO should release comparable information, such as decision-making behind the ISO's out-of-market [**13] calls and RMR unit dispatch. Williams also points out an inconsistency in the ISO's proposed tariff language regarding its intent to publish data with as little as a one-month lag.

The ISO answers that the Commission has previously mandated that bid data should be posted in a way that allows tracking each individual bidder's bids over time and has established that six months is a sufficient delay for the release of bid data to protect the commercial sensitivity of the information. The ISO also points out that the Commission has recognized that an ISO is not a market participant and therefore is not required to release its information on dispatch requirements, and further notes that the ISO provides a wealth of information on its Home Page and OASIS site. The ISO states that its proposal to release information with as little as one month delay is designed to minimize objections by market participants when the ISO or the MSC releases a report that includes an analysis of market data less than six months old. Finally, the ISO commits to correct in a compliance filing the inconsistent language identified by Williams.

We find that the proposed release of bid information with less than [**14] six months' delay does not protect the commercial sensitivity of the data. The approval of the ISO's Board of Governors does not make one-month old bid information any less sensitive. The Commission has previously found that a six month delay is sufficient to protect the interests of bidders. n7 Accordingly, we will accept the ISO's proposal, except for the proposal to release bid information with as little as a one-month delay on the approval the Board of Governors. The ISO is directed to file revised tariff sheets eliminating this provision. We will grant waiver of the 60-day notice requirement so that the ISO may release bid data, after a six-month delay, for the period beginning on trading day January 28, 2000.

- - - - -Footnotes- - - - -

n7 See PJM Interconnection, L.L.C., 88 FERC P61,274, at pp. 61,854-55 (1999), in which the Commission reaffirmed that bid information must be made public after 6 months.

- - - - -End Footnotes- - - - -

FTR Implementation

The ISO states that, while preparing to implement FTRs, it has discovered three revisions necessary [**15] to conform its FTR provisions to Commission requirements and to existing settlement policies. The ISO states that the proposed revisions are necessary to facilitate the implementation of FTRs. First, reference to the clearing account in Section 9.4.2.7 will be removed because a separate account for FTR auction proceeds has already been established and the clearing account is not appropriate for FTR purposes. Second, the ISO proposes to amend the tariff to include FTR holders among the entities that are entitled to credits or debits of usage charge revenues. Finally, consistent with prior Commission direction, a revision to specify that FTRs which are resold in secondary markets are subject to the same tariff terms and conditions applicable to FTRs acquired in the ISO auction is proposed. n8

- - - - -Footnotes- - - - -

n8 See California Independent System Operator Corp., 89 FERC P61,153, at p. 61,436 (1999), reh'g pending (November 10, 1999 Order).

- - - - -End Footnotes- - - - -

Metropolitan objects to other changes included in the "clean" ISO tariff [**16] sheets which were submitted in a compliance filing in Docket No. ER99-4545-003 and which had not yet been approved by the Commission. Metropolitan requests that the Commission either direct the ISO to make changes to these tariff sheets for the changes that Metropolitan proposed in Docket No. ER99-4545-003 or, in the alternative, clarify that the tariff sheets here are not effective pending further action by the Commission. Cities/M-S-R and Modesto take [*62,048] issue with the provision that, when FTRs are assigned, sold or transferred by the FTR holder, the assignee or new owner must abide by all terms and conditions for FTRs in the ISO tariff. Modesto and Cities/M-S-R claim that this provision places substantive obligations on municipal utilities and results in an improper exercise of jurisdiction by the Commission over municipal utilities. They request that the tariff language be limited only to those

entities over which the Commission has jurisdiction.

We will accept the proposed revisions. The issues raised by these parties are already before the Commission in other proceedings. Metropolitan acknowledges that it protested these tariff sections in a compliance filing in Docket No. ER99-4545-003. [**17] In an order addressing that compliance filing, which is being issued concurrently with this order, we accept those tariff sheets as filed. Therefore, we reject Metropolitan's arguments for the reasons stated there. n9 Modesto and Cities/M-S-R have raised the issue of the jurisdictional reach of the FTR provisions on rehearing of the November 10, 1999 Order, and that issue is beyond the scope of this proceeding. We will grant waiver of the 60-day notice requirement for this proposal to become effective on the implementation date for FTRs, February 1, 2000, as requested.

- - - - -Footnotes- - - - -

n9 We note that tariff sheets should reflect the proposed accumulated changes to date. If the Commission were to order changes to those tariff sheets in another docket, then superseding tariff sheets would follow.

- - - - -End Footnotes- - - - -

SONGS RMR Cost Allocation

The ISO states that the SONGS facility may be designated as an RMR unit, but the ISO and the affected stakeholders have determined that application of current RMR cost allocation principles to the SONGS facility would [**18] be inappropriate. Currently, the tariff requires that the participating transmission owner in whose service area an RMR unit is located (the "Responsible Utility") pay 100 percent of the costs of the RMR generation. In turn, the Responsible Utility passes these costs on to transmission customers. In order to provide for a more equitable allocation of costs for the SONGS facility, the proposed revision provides for the allocation of RMR costs between the Responsible Utility in whose service territory SONGS is located and the contiguous Responsible Utility that benefits from the RMR generation, in proportion to the benefits that the ISO determines each receives. The ISO states that this proposal is specifically limited to the situation presented by SONGS, and that, consistent with the order regarding its Amendment No. 22, n10 it will make a separate filing under Federal Power Act section 205 B n11 to allocate the SONGS RMR costs to each Responsible Utility.

- - - - -Footnotes- - - - -

n10 See California Independent System Operator Corp., 89 FERC P61,229 (1999), reh'g pending (Amendment No. 22 Order). [**19]

n11 16 U.S.C. @ 824d (1994).

- - - - -End Footnotes- - - - -

The California Commission reiterates the position it took in its rehearing request of the Amendment No. 22 Order that separate section 205 filings are required where the ISO seeks to pass through the costs of RMR contracts between the ISO and a non-FERC jurisdictional entity to a Responsible Utility.

Vernon seeks clarification of the circumstance where an RMR facility is located within the service area of a Responsible Utility but less than 100% of the associated facility costs is allocated to the Responsible Utility in whose service area the facility is located. Vernon wants clarification that a section 205 filing is required in this case. Vernon is also concerned that section 5.2.8.1 does not limit cost allocation to a Responsible Utility that is contiguous to the service area of the Responsible Utility in which the SONGS facility is located. Finally, Vernon suggests additional language for inclusion in sections 5.2.8 and 5.2.8.1.

Metropolitan again objects to revisions submitted in Docket No. ER99-4545-003 n12 being shown in the [**20] tariff sheet submitted in the instant filing, when they have not yet been accepted by the Commission.

- - - - -Footnotes- - - - -

n12 This docket relates to the ISO's compliance filing required by the Amendment No. 22 Order.

- - - - -End Footnotes- - - - -

SMUD does not oppose the proposed treatment for the SONGS facility but requests that the Commission state that the allocation of SONGS RMR costs is not precedential for treatment of other RMR units in California.

PG&E requests that the Commission direct the ISO to modify its existing RMR rules so that a Responsible Utility only pays a portion of RMR unit costs based on the proportional share of benefits it receives from the unit being designated as RMR, the remainder of the costs remaining the responsibility of the generation owner, or non-participating TO in whose area the unit is located.

In its answer, the ISO maintains that 5.2.8.1 is a subsection of 5.2.8 and therefore "pursuant to this section" does not need to be repeated in 5.2.8.1. The ISO, in response to the California Commission's concern, states that there is [**21] no basis for conditioning Amendment No. 25's [*62,049] limited and unrelated change to RMR cost allocation on the resolution of the issue raised on rehearing of the Amendment No. 22 Order. The ISO cites Vernon's argument as premature, and without basis for limiting the allocation of costs to contiguous Responsible Utilities. In response to SMUD, the ISO states that the proposed revision does not encompass any other generating unit. The ISO states that PG&E's argument is not relevant to the limited changes proposed in this filing.

We find that the protestors' requests and arguments are either premature, beyond the scope of this proceeding, or unnecessary. The proposed revision establishes a special case for allocation of RMR costs from SONGS only at this time, and our finding that this proposal is acceptable holds no precedential value. Metropolitan's concerns are moot, as the Commission is accepting the Amendment No. 22 revisions in an order on the ISO's compliance filing that will be issued concurrently with this one. PG&E's instant protest raises the same issues as in its rehearing request of the Amendment No. 22 Order and is more appropriately addressed in the rehearing order, which is being [**22] issued concurrently with this order.

Transmission Owner Debit Clarification

The ISO previously proposed in Amendment No. 13, and the Commission accepted, changes in the calculation and distribution of usage charge revenues in the event of transmission derates between the day-ahead and hour-ahead markets. n13 The ISO now proposes to clarify how it will notify Scheduling Coordinators of the hours in which the derate applies and the extent of the derate. Specifically, the ISO proposes to issue to Scheduling Coordinators a notice of the applicable hours, the extent of the derate, and the relevant hour-ahead markets to which the derate will apply. It states that further details concerning the timing and form of notice will be set forth in a revised Operating Procedure M-414.

-Footnotes-

n13 California Independent System Operator Corporation, 86 FERC P61,122, at pp. 61,419-20 (1999).

-End Footnotes-

The PX cites two deficiencies in the ISO's proposal: (1) the ISO does not commit to providing final billing information prior to the [**23] close of the hour-ahead market, and (2) the ISO has not yet provided the timing and form of notice to be set out in OP M-414 to Scheduling Coordinators. The PX wants acceptance conditioned on a requirement that the ISO provide final settlement quality information about interface derates concurrent with the close of the hour-ahead market.

The ISO states that the Commission approved the reallocation of congestion charges in the Amendment No. 13 Order without imposing a requirement to provide settlement quality usage charge information prior to the close of the hour-ahead market, and that the proposed addition of a requirement for notice to Scheduling Coordinators does not provide an appropriate occasion for the PX to question the order. With respect to the timing and content information of the notice that the ISO will issue in OP M-414, the ISO states that the Commission has already ruled that the ISO need not include all details of this kind in the tariff. n14

-Footnotes-

n14 The ISO cites California Independent System Operator Corp., 89 FERC P61,169, at p. 61,511 (1999); AES Redondo Beach, L.L.C., et al., 87 FERC P61,208, at p. 61,616 (1999).

-End Footnotes-

[**24]

We find that the addition of timing and content requirements for transmission derate notifications does not need to be included in the ISO's tariff under our "rule of reason." n15 Also, the Commission previously determined that there is no need to provide final settlement quality usage charge information prior to the close of the hour-ahead market, and this proposed revision does not justify the PX's collateral attack on our prior decision. Accordingly, we will accept this revision, as proposed.

-Footnotes-

n15 See supra n.6.

- - - - -End Footnotes- - - - -

Payments Calendar

The Commission previously accepted an extension of the payments calendar as an interim measure on the condition that the ISO complete an evaluation of its billing process. n16 In Amendment No. 25, the ISO proposes to reduce the average number of calendar days suppliers wait for payment from 93 to 73. The ISO states that it believes that the proposed approach, as an initial step, appropriately balances the benefits of the shortened collection period with the timing impact on customers and [**25] the impact on ISO capital resources and staff requirements necessary for development and implementation. Further, the ISO states that it intends to conduct additional payment process studies in the future.

- - - - -Footnotes- - - - -

n16 See California Independent System Operator Corp., 88 FERC P61,182 (1999) (Amendment No. 17 Order).

- - - - -End Footnotes- - - - -

The PX protests the proposal, requesting that the period to pay invoices be increased from the 5 business days proposed by the ISO to 6 business days, in order to give it sufficient time to complete the necessary tasks. The PX states that the ISO usually sends its invoices by approximately 6 p.m. of the first business day and expects payment by 10 a.m. of the fifth business day thereby not providing even a [**62,050] full five business days for completion of all required tasks. The PX further states that under the proposal, it will have to go through the payment cycle twice each month, once for the preliminary invoice and once for the final invoice, which would present a significant burden.

Noting [**26] the ISO's request for an effective date of March 27, 2000, or ten days after it posts notice that the software modifications are complete, the PX requests that the effective date of the proposed payments calendar be deferred until May 1, 2000, in order to allow sufficient time for it to make the required tracking system changes to its software.

Cities/M-S-R object that the proposed revision may be construed as a statute of limitations on billing disputes and requests that Commission order the tariff to be revised to explicitly state that issuance of settlement statements does not affect rights to seek and obtain relief from billing errors.

Williams complains that the ISO did not give serious consideration to other calendar revision options which would have provided an additional 30 days' advance in payments over the proposed method, and requests that the Commission order the ISO to explore and examine alternatives to the payment calendar method, especially the method favored by sellers.

The ISO answers that stakeholders were involved in selection of the current payment calendar option and that Williams' proposal was considered but was not

accepted because of higher costs and lesser [**27] accuracy. The ISO states that it will study further possible improvements to the payments calendar. In response to the PX's comments, the ISO states that it opposes extending the payment date by one day but that it does not object to implementing the new payments calendar on or after May 1, 2000. Finally, the ISO states that Cities/M-S-R's comment regarding billing disputes is unrelated because the proposed revision does not affect the dispute resolution provisions.

We find that the proposed revision is an appropriate initial step in improving the payment process which balances the benefits of a shortened payment collection period with impacts on customers and the ISO's resources. We note that the ISO has agreed to continue to study potential additional improvements in the payments process. The PX's request to extend the payment calendar from five to six days is not consistent with the purpose of shortening the payment cycle. However, the effective date of this provision should be extended to May 1, 2000 to allow the PX to make the necessary changes to its systems. The proposed revisions do not affect the right to seek and obtain relief from billing errors, and no revisions to the [**28] tariff are necessary.

Maintenance Outage Scheduling

The ISO proposes a revision to clarify and specify its authority to cancel and/or reschedule a planned transmission outage due to system reliability or significant market impacts prior to 5 a.m. of the day prior to the operating day on which the planned outage is scheduled to occur. Prior to the onset of the day-ahead market, the ISO will notify market participants of any such canceled or rescheduled transmission outage and will consult with the affected participating transmission owner to determine the impact of such a cancellation or rescheduling. If a transmission owner cancels or reschedules a planned transmission outage after the 5 a.m. deadline described above, for reasons unrelated to system reliability (e.g., in response to market impacts), the ISO will not reflect the effects of the modified outage schedule on the related ISO day-ahead markets. However, the ISO states that it will notify market participants and adjust the hour-ahead market to reflect the physical capabilities of the facilities, as required, as soon as possible.

Many of the protestors took issue with the ISO's proposal to be able to cancel a scheduled outage [**29] "to avoid unduly significant market impacts." n17 The protestors argue that the criterion "to avoid unduly significant market impacts" is ambiguous, not defined, too broad, provides undue discretion and needs clarification. Further, WAPA believes that the dramatic increase in the number of canceled scheduled maintenance outages is a result of the ISO's congestion management and cites the Commission's finding that serious flaws exist in the existing intra-zonal congestion management scheme (i.e., distorted bids, artificial congestion, and potential market issues). n18 WAPA states that it was placed in a position where it was almost unable to complete essential maintenance because of the cancellation of scheduled maintenance outages. WAPA argues that granting the ISO authority to cancel prescheduled outages to prevent market impacts, especially in a market where there are [*62,051] distorted bids, artificial congestion, and potential market power, could lead to a situation where there is an even greater risk to the reliability of the transmission system. Bonneville similarly argues for better coordination with neighboring regions. Several protestors also argue that Transmission Owners should [**30] be compensated when scheduled outages are canceled by the ISO and point to the Commission's recent Regional

Transmission Organization Order n19 as support for such compensation.

- - - - -Footnotes- - - - -

n17 See, e.g., Modesto, Metropolitan, Bonneville, SMUD, Cities/M-S-R, and TANC.

n18 See California Independent System Operator Corporation, 90 FERC P61,006 (1999), reh'g pending.

n19 Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. P31,089 (2000), 89 FERC P61,285 (1999), order on reh'g, Order No. 2000-A, 90 FERC P61,201 (2000) (RTO Order).

- - - - -End Footnotes- - - - -

The ISO responds to the protests by emphasizing that a cancellation of an outage "to avoid unduly significant market impacts" notice must be made no later than 5 a.m. of the day prior to the day when the outage is scheduled to begin; thus, it could only exercise this cancellation authority when it is aware well in advance of some unexpected [**31] circumstances. The ISO concludes that it could not use this authority to determine on the day of the outage that bids received were higher than market buyers would prefer, and that only severe market disruptions due to unexpected conditions that manifest themselves before the day-ahead market opens would allow the use of this cancellation authority.

In reply to Bonneville, the ISO states that it supports outage coordination but that it is responsible for reliable and efficient operation and cannot ignore unanticipated events. In recognition of the Commission statements in the RTO order, the ISO states that any direct, unavoidable, and demonstrated cost incurred by Participating Transmission Owners in rescheduling canceled outages should be paid by the beneficiaries of the cancellation and commits to modify the tariff to implement this concept.

We find that the ISO's proposal that it may, upon specified notice, cancel an approved maintenance outage when necessary to avoid unduly significant market impacts that would arise if the outage were to proceed as scheduled requires modification. First, the ISO has not clearly defined the triggering term "unduly significant market impacts" in [**32] order to give all parties sufficient assurance as to the necessity for the cancellation of an approved maintenance outage. Furthermore, the ISO includes an additional caveat that, in these instances, eliminates the applicability of sections 2.3.3.6.1 and 2.3.3.6.2 of the tariff regarding communication and consultation with the transmission operator. The ISO has provided no support for the elimination of these provisions.

Other than these concerns, we find that the proposal is acceptable, given that to cancel a scheduled outage under the proposed provision the ISO must do so no later than 5 a.m. of the day prior to the scheduled outage. Further, the ISO's acknowledgment of the appropriateness of reimbursing transmission owners for costs associated with a canceled maintenance outage, and its commitment to modify its tariff to provide for such reimbursement, will provide an additional incentive for the ISO to carefully consider the consequences and costs of canceling a scheduled maintenance outage. Accordingly, we will accept

the revision, as modified in the ISO's answer and in the discussion above. The ISO is directed to file revised tariff sheets modifying this proposal to provide compensation [**33] for costs incurred by transmission owners in rescheduling maintenance outages. We will also require the ISO to include in the tariff as a defined term the definition of "unduly significant market impacts." n20 Finally, the ISO is directed to modify the tariff sheets to reflect the continued applicability of sections 2.3.3.6.1 and 2.3.3.6.2.

- - - - -Footnotes- - - - -

n20 We would expect that the definition contain specific criteria, e.g., using the examples enumerated in the ISO's answer, p. 7.

- - - - -End Footnotes- - - - -

The Commission orders:

(A) The ISO is hereby directed to submit a compliance filing as discussed in the body of this order within 30 days of the date of this order.

(B) The ISO's proposed tariff changes, as modified in Ordering Paragraph (A), are hereby accepted for filing, without suspension or hearing, to become effective on March 27, 2000, or as otherwise discussed in the body of this order.

(C) The ISO is hereby informed that the rate schedule designations will be supplied in a future order. Consistent with our prior orders, the ISO is hereby directed [**34] to promptly post the proposed tariff sheets as revised in this order on the Western Energy Network.

By the Commission.

EXHIBIT C

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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

FILED

JUL 31 2001

UNITED STATES BANKRUPTCY COURT
SAN FRANCISCO, CA

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 ...;

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

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

25 20.3.3 Other Parties

26 No Market Participant shall have the right hereunder to receive
27 from the ISO or to review any documents, data or other information
28 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
13 Day with respect to which the bid or Adjustment Bid was
14 submitted and in a manner that does not reveal the specific
15 resource of the name of the Scheduling Coordinator
16 submitting the bid or Adjustment Bid, but that allows the
17 bidding behavior of individual, unidentified resources and
Scheduling Coordinators to be tracked over time; and (ii)
may publish data sets analyzed in any public report issued
by the ISO or by the Market Surveillance Committee,
provided that such data sets shall be published no sooner
than six (6) months after the latest Trading Day to which
data in the data set apply, and in a manner that does not
reveal any specific resource or the name of any Scheduling
Coordinator submitting bids or Adjustment Bids included in
such data sets.

18
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 be competing against each 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 of market power on a system-wide by individual suppliers under tight supply and
25 demand conditions, when even a single individual supplier 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.

20
21 
22 Eric Hildebrandt

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.

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EXHIBIT D

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company,)	Docket No. EL00-95-045
)	
Complainant,)	
)	
v.)	
)	
Sellers of Energy and Ancillary Service Into)	
Markets Operated by the California)	
Independent System Operator Corporation)	
and the California Power Exchange,)	
)	
Respondents.)	
)	
Investigation of Practices of the California)	Docket No. EL00-98-042
Independent System Operator and the)	
California Power Exchange.)	

FILED
OFFICE OF THE SECRETARY
01 AUG 20 PM 4:57
FEDERAL ENERGY
REGULATORY COMMISSION

**JOINT MOTION OF THE MARKETER GROUP TO CONFINE THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR'S DATA DISTRIBUTION**

To: The Honorable Bruce Birchman,
Presiding Administrative Law Judge;

Pursuant to the provisions of Rule 212 of the Commission's Rules of Practice and Procedure, the Marketer Group¹ submits this Joint Motion in response to the California Independent System Operator's ("CAISO") distribution and disclosure of individual market participant energy, ancillary services, replacement reserve and out-of-market data ("Transaction Data") to all hearing participants. In support of this Motion, the Marketer Group states:

¹ The Marketer Group consists of Enron Energy Services, Coral Power, L.L.C., El Paso Merchant Energy, L.P., PPL Montana, LLC and PPL EnergyPlus, LLC, Constellation Power Source, Exelon Corporation, on behalf of Exelon Generation Company, LLC, PECO Energy Company and Commonwealth Edison Company, Transalta Energy Marketing (U.S.), Inc., Merrill Lynch Capital Services, Inc., Morgan Stanley Capital Group Inc., PGE Energy Trading, Avista Energy, Inc., Idacorp Energy, LP, Sempra Energy Trading Corp., and Powerex Corp.

BACKGROUND

In its July 25, 2001 Order, the Commission stated:

In order to develop the factual record, the ISO will be directed to provide Judge Birchman with a re-creation of the mitigated prices that result from using the methodology described herein for every hour from October 2, 2000 through June 20, 2001, within fifteen days of the date this order is issued. The ISO and PX are further directed to rerun their settlement/billing process as described above and provide this data to Judge Birchman.

We will direct Judge Birchman to make findings of fact with respect to: (1) the mitigated price in each hour of the refund period; (2) the amount of refunds owed by each supplier according to the methodology established herein; and (3) the amount currently owed to each supplier (with separate quantities due from each entity) by the ISO, the investor owned utilities, and the State of California.²

During the August 13, 2001 prehearing conference, the hearing participants agreed that CAISO would provide the Presiding Administrative Law Judge with Transaction Data that reflects individual market participant's potential liability based on CAISO's interpretation of the new mitigated market clearing prices.³ It was the Marketer Group's understanding that CAISO would provide the Presiding Administrative Law Judge and the Commission Staff⁴ with hourly Transaction Data for all market participants. In addition, CAISO would provide each market participant involved in the hearing only with its own Transaction Data.

On or about August 14, 2001 and August 16, 2001, CAISO distributed two compact discs, which included Transaction Data that CAISO attributed to specific market participants (the "Data Submission"). Individual Marketer Group members received compact discs from CAISO that

² *San Diego Gas & Electric Co., et al.*, Order Establishing Evidentiary Hearing Procedures, Granting Rehearing in Part, and Denying Rehearing in Part, 96 F.E.R.C. ¶ 61,120, slip op. at 42. (2001).

³ CAISO's interpretation and implementation of the Commission's refund methodology is subject to revision through this refund hearing.

⁴ The Marketers Group assumes that the Commission will share this information only with Commission Staff that were not involved in Judge Wagner's California settlement conference.

appear to include Transaction Data for all market participants, not only the individual recipient. The Marketer Group assumes that other hearing participants received compact discs from CAISO that contained the same data.

There was no reason to expect that all hearing participants would have access to CAISO's Transaction Data for every market participant. Rather, to the extent that CAISO had Transaction Data for a particular market participant, it was expected that CAISO would provide this data only to the market participant, the Presiding Administrative Law Judge and the Commission Staff. If not corrected immediately, the Marketer Group is concerned that CAISO's decision to disseminate confidential, market-sensitive data to all hearing participants will harm competition and their competitive market positions and chill the willingness of marketers to participate in the California market, while not giving the Complainants any information that is critical to their refund case.⁵

At this point in time, the Marketer Group understands that many hearing participants have encountered difficulties opening CAISO's files due to their size. Consequently, the Presiding Administrative Law Judge has an opportunity to act before the confidential data is widely circulated. As discussed further below, the Marketer Group urges Presiding Administrative Law Judge to:

1. Order all hearing participants, except the Presiding Administrative Law Judge and the Commission Staff, that received CAISO's Transaction Data to destroy or return all copies and not to further disseminate, disclose, manipulate, copy or otherwise use this data.

⁵ Suppliers that fear that their competitors, including the California IOUs, know their legitimate, region-specific market strategies may prefer to sell their power elsewhere. Throughout this docket, the Commission has made decisions with the goal of keeping and increasing California's energy supply. This principle should serve as a guide in the refund hearing, as well.

2. Order CAISO to be barred from using, disclosing or distributing market participant information in this or other fora.
3. Order CAISO to redistribute to each market participant only that market participant's Transaction Data.
- I. **CAISO's DATA SUBMISSION DISCLOSES CONFIDENTIAL INFORMATION THAT HARMS COMPETITION AND MARKET PARTICIPANTS AND DOES NOT GIVE THE CALIFORNIA IOUs DATA THAT IS CRITICAL TO THEIR REFUND CLAIMS**

CAISO's decision to disseminate confidential, market-sensitive data to all hearing participants unnecessarily harms competition and places certain market participants at a competitive disadvantage. For example, CAISO has disclosed hourly data for transactions that occurred as recently as June 20, 2001. This Transaction Data shows who sold power, in what amounts, at what times, to what delivery points and at what prices, making each affected market participant's legitimate trading strategies transparent. The release of such data might undermine market participants' expectation of confidentiality, discourage market participation, cause suppliers to modify bid levels to mask cost information, allow sellers to exercise market power or reduce competition. It also could permit suppliers to reconstruct very sensitive data regarding their competitors' costs. Despite the Protective Order applicable in this case,⁶ the Presiding Administrative Law Judge should stop the broad dissemination of this type of market-sensitive data when it is not critical to the Complainant's case. Particularly at this point in the case, that the harm associated with disclosing individual Transaction Data to all hearing participants supercedes any benefits that could accrue from disclosure.

The Commission has imposed significant restrictions on competitively-sensitive information disclosure. In the present case, some of the data that CAISO released is less than six

⁶ The current Protective Order does not adequately restrict access to, and use of, individual market participant

months old —four full months of data prior to June 20, 2001. The Commission generally does not release data that is less than six months old. Thus, the CAISO Tariff Amendment No. 25 provides that individual bid data is published only after a six-month delay. In approving Amendment No. 25, the Commission rejected a CAISO proposal to allow data publication with as little as a one-month lag, where such data was part of an ISO or Market Surveillance Committee report. The Commission stated that the "proposed release of bid information with less than six months' delay does not protect the commercial sensitivity of the data."⁷ Even where competitively sensitive data is released, codes are used to mask an individual seller's data or identity.⁸

The Commission established a refund procedure whereby CAISO is supposed to apply the Commission's refund calculation methodology to derive hourly mitigated market clearing prices. Using these mitigated prices, CAISO and CalPX would identify which spot market transactions had original settlement prices that exceeded the mitigated prices and derive a total refund figure for these transactions. CAISO and CalPX then would tell each individual market participant its total refund liability and provide that participant with detailed information related to the transactions subject to mitigation.

A market participant can present its own Transaction Data to the extent it disagrees with the CAISO and/or CalPX figures.⁹ Unless and until a dispute arises, there are very few reasons why a market participant should have to provide its Transaction Data to any other participant¹⁰ or

transaction information.

⁷ *California Independent System Operator*, 90 F.E.R.C. ¶ 61,316 at p.62,047 (2000).

⁸ See *PJM Interconnection*, 88 F.E.R.C. ¶ 61,274, at 61,854-55 (1999); *Central Hudson Electric and Gas Corp.*, 86 F.E.R.C. ¶ 61,062, at 61,231 (1999) (NYISO).

⁹ The Marketer Group supports the City of Burbank's motion seeking clarification that individual market participants will have the option to present their own refund and offset arguments.

¹⁰ Exceptions might include when a market participant acts as a scheduler for other market participants.

why any market participant should need or want to assume the burdens associated with having access to individual market participant data.

Moreover, for purposes of presenting their case, the Complainants should be indifferent as to who owes them refunds. Their only concern should be the gross refund amount. The Presiding Administrative Law Judge, with the help of the Commission Staff, can allocate individual refund responsibility using a combination of the CAISO, CalPX and market participant Transaction Data submitted during the course of the hearing. Thus, there is no apparent reason why the Complainants also need to see the individual transaction data.

Finally, to the extent that the Commission finds that any seller has a refund obligation, this refund obligation is separate and distinct from any other seller's potential refund obligation. At this point in the proceeding, there is no compelling evidence suggesting that market competitors, including Complainants, need to see each other's data.

II. CAISO's DATA SUBMISSION IS OVERLY BROAD IN THAT IT DISCLOSES CONFIDENTIAL INFORMATION FOR TRANSACTIONS THAT ARE NOT SUBJECT TO REFUNDS

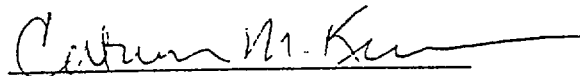
CAISO's Data Submission is also unnecessarily broad in that it provides data for transactions that originally cleared the market at unmitigated prices that are less than the mitigated market clearing prices that CAISO derived using the Commission's refund calculation methodology. These transactions are not subject to further review or refunds, and any Transaction Data related to these transactions is wholly irrelevant to the issues being addressed in the refund hearing.

III. CAISO's DATA SUBMISSION IS UNDULY BURDENSOME IN THAT IT PRECLUDES MARKET PARTICIPANTS FROM HAVING TIMELY AND EFFICIENT ACCESS TO INDIVIDUALIZED DATA UNDERLYING CALIFORNIA's REFUND ALLEGATIONS

CAISO's Data Submission totals more than 610 megabytes of data. Marketer Group members attempting to open these files have experienced a variety of problems – complete access failure, repeated system crashes, and partial data loading. To the extent that certain Marketer Group members have been able to see any data, data access and manipulation is so slow as to make the data useless. Consequently, while CAISO may have technically fulfilled its obligation to deliver Transaction Data to market participants, practically, it is as though CAISO never delivered the Transaction Data. The Presiding Administrative Law Judge can correct this problem by ordering CAISO to break the Transaction Data down based on individual market participants and then redistribute to each applicable market participant only their own Transaction Data.

WHEREFORE, in consideration of the foregoing, the Marketer Group requests that the Presiding Administrative Law Judge: 1) order all hearing participants, except the Presiding Administrative Law Judge and the Commission Staff, that received CAISO's Transaction Data to destroy or return all copies and not to further disseminate, disclose, manipulate, copy or otherwise use this data; 2) order CAISO to be barred from using, disclosing or distributing market participant information in this or other fora, and 3) order CAISO to redistribute to each market participant only that market participant's Transaction Data.

Respectfully submitted,



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On Behalf of the Marketer Group

Dated: August 20, 2001



News Release

Oct. 30, 2000

DUKE ENERGY MOVES FORWARD WITH FOUR MAJOR SOLUTIONS TO CALIFORNIA'S POWER SUPPLY SHORTFALL AND HIGH RETAIL PRICES

MORRO BAY, CALIF. – Moving forward on its commitment to provide solutions for California's troubled electricity market, Duke Energy North America (DENA) today outlined four initiatives to address the state's power supply shortfall and high retail prices.

"Duke Energy North America is committed to continue playing a major role to help California address its electricity shortfall and the high prices many felt this summer," said Bill Hall, vice president of the Western region for DENA. "The Cal-ISO has said the state will face a 5,000-megawatt shortfall during next summer's peaks, and supplies will continue to be tight in 2002 and 2003. It's critical that all players in the state's electricity market work together with state and federal officials to solve this problem."

Hall said DENA, a wholly owned subsidiary of Duke Energy, has taken four steps in the past week that will bolster the California market.

- It has signed a series of substantial long-term wholesale electricity contracts with Pacific Gas & Electric (PG&E) that will help stabilize the price volatility for the distributor's retail customers. The specific price of the contracts is proprietary.
- DENA has received all the permits necessary to begin its full-scale, \$500 million modernization of its Moss Landing Power Plant in Monterey County within the next 30 to 60 days. DENA received final approval from the California Energy Commission on Oct. 25 to upgrade the existing plant and add 1,060 megawatts of new capacity to the site's current 1,500 megawatts. The plant received a seawater discharge permit from the local water board on Oct. 27. The project represents a substantial portion of the new generation scheduled to come on line in California during summer 2002.
- On Oct. 23, DENA re-filed with the California Energy Commission its 2,500-page application for to modernize the 1,000-megawatt Morro Bay Power Plant. The project has been expanded to include complete replacement of the existing plant with a new one that will be smaller and cleaner while producing more electricity. The new 1,200-megawatt facility represents a \$600 million investment. If the certification is received, DENA expects to bring the new plant on line by summer 2003 and demolish the existing plant by 2007.
- Finally, Hall said DENA has begun to work with City of Chula Vista officials to accelerate the schedule for replacing the South Bay Power Plant with a cleaner and more efficient facility. Current plans call for the plant to be replaced in 2009.

These steps to enhance the California electricity market build on proposals Duke Energy made to Governor Gray Davis in August, which included an offer to provide up to 2,000 megawatts of electricity to incumbent utilities at \$50 per megawatt hour for a five-year period. The company's leadership is continuing discussions with PG&E and other California utilities to help them mitigate their retail customers' exposure to high wholesale electricity prices.

For more information about DENA's California operations, power plant modernization plans and position on California's electricity crisis, see the Web site www.duke-energy.com/California.

DENA is a leading wholesale energy services company. DENA and its affiliates including Duke Energy Trading and Marketing provide natural gas and power supply and services and risk management products to wholesale energy producers and users. DENA also develops, owns and manages a portfolio of merchant generation facilities.

Duke Energy, a diversified multinational energy company, creates value for customers and shareholders through an integrated network of energy assets and expertise. Duke Energy manages a dynamic portfolio of natural gas and electric supply, delivery and trading businesses -- generating revenues of nearly \$22 billion in 1999. Duke Energy, headquartered in Charlotte, N.C., is a Fortune 100 company traded on the New York Stock Exchange under the symbol DUK. More information about the company is available on the Internet at: www.duke-energy.com.

Note for members of the media: DENA will hold an audio conference today at 11 a.m. Pacific time. Bill Hall, vice president of DENA's California operations, and Nancy DeSchane, vice president of DENA's western trading operations, will discuss the major solutions DENA is moving forward with to help address California's electricity crisis.

Media representatives should dial 800/946-0722 and provide confirmation code 440110 to participate in the call. The call will be replayed later this afternoon. Dial 888/203-1112 for the replay and use the same confirmation code above:

Contact: Tom Williams
Phone: 805/595-4270
24 Hour Phone: 704/382-8333
Email: tcwillia@duke-energy.com