

1 EDWARD BERLIN  
RICHARD H. WYRON  
2 JONATHAN P. GUY  
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP  
3 3000 K Street, NW, Suite 300  
Washington, DC 20007-5115  
4 Telephone: (202) 424-7500  
Facsimile: (202) 424-7643  
5

6 DAVID L. NEALE (SBN 141225)  
LEVENE, NEALE, BENDER, RANKIN & BRILL, LLP  
7 1801 Avenue of the Stars, Suite 1120  
Los Angeles, California 90067  
8 Telephone: (310) 229-1234  
Facsimile: (310) 229-1224  
9

Attorneys for Defendant

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 In re

14 PACIFIC GAS AND ELECTRIC  
15 COMPANY, a California Corporation,

Debtor.

16 Federal I.D. No. 94-0742640  
17

18  
19 PACIFIC GAS AND ELECTRIC  
20 COMPANY, a California Corporation,

Plaintiff,

21 v.

22 CALIFORNIA INDEPENDENT SYSTEM  
23 OPERATOR CORPORATION,  
24

Defendant.  
25  
26  
27  
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Case No. 01-20923 DM

Chapter 11 Case

Adv. Pro. No. 01-3086 DM

**DECLARATION OF JAMES W.  
DETMERS IN SUPPORT OF  
OPPOSITION TO PG&E'S  
APPLICATION FOR  
PRELIMINARY INJUNCTION**

Date: June 4, 2001

Time: 10:00 a.m.

Place: 235 Pine Street, 22<sup>nd</sup> Floor  
San Francisco, CA

Judge: Hon. Dennis Montali

## DECLARATION OF JAMES W. DETMERS

James W. Detmers, being first duly sworn, deposes and says:

1. I am an adult over the age of eighteen and am competent to testify herein.
2. I am employed as the Vice President of Grid Operations for the California Independent System Operator Corporation ("ISO")<sup>1</sup>. My duties include overseeing the operation of the entire electric transmission system controlled and operated by the ISO ("ISO Controlled Grid"). I make this Declaration based upon my personal knowledge and upon information and documents available to me and which I utilize in the course of performing my duties for the ISO.

3. The ISO operates the real-time market for Imbalance Energy, procures Ancillary Services and performs additional functions pursuant to its Tariff for the benefit of all Market Participants, including California's investor-owned utilities - PG&E, Southern California Edison ("SCE") and San Diego Gas & Electric Company ("SDG&E") - and other California utility systems, in order to permit the utilities to serve their retail customers. The kinds of services the ISO provides today, and the purposes for which it must purchase energy and capacity, have remained essentially unchanged since the ISO began operation in 1998. The ISO performs, and since its inception has performed, the same kinds of tasks for and on behalf of PG&E as the ISO performs and has performed for and on behalf of the other Market Participants and utilities that utilize the ISO Controlled Grid, including SCE and SDG&E. Every utility in the ISO Control Area, including PG&E, requires the services provided by the ISO pursuant to its Tariff in order to continue in business and serve its customers.

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<sup>1</sup> Terms capitalized herein that are not defined are defined in the Memorandum of Points and Authorities in Support of Defendant's Opposition to PG&E's Application for Preliminary Injunction.

4. To the extent that PG&E has been unable or unwilling to procure sufficient energy to meet the demand of its customers in the forward markets or through bilateral contracts (e.g., contracts with power producers, such as Qualified Facilities), the ISO procures, on PG&E's behalf, Imbalance Energy in the real time market to serve the unmatched demand of PG&E's customers (i.e., that portion of the customers' electrical demand that is not already matched against scheduled generation).

5. While forward contracts are negotiated days or months in advance, and the former markets operated by the California Power Exchange Corporation included "day-ahead" purchases, the real-time market fulfills power needs of the moment, in "real-time." This real-time market – the "market of last resort" – is the mechanism through which PG&E satisfies its duty to provide reliable service to the customers in its service territory, if PG&E has not purchased or generated sufficient power to serve their needs in advance of real-time demands.

6. This real-time Imbalance Energy market is also critical if the ISO is to operate the ISO Controlled Grid in accordance with North American Electric Reliability Council and Western Systems Coordinating Council ("WSCC") regional reliability criteria. Unmatched demand from PG&E's customers draws electricity from the ISO Controlled Grid, and unless this demand is balanced against additional sources of generation, the reliability and stability of the California transmission system is compromised. If the unmatched demand of PG&E's customers is not met in real time through the use of imbalance energy purchases and other measures, the ISO must take necessary actions, including the drastic steps of rotating blackouts to ensure reliable operation of the transmission grid.

7. The ISO also provides other services needed to maintain the reliability of PG&E's transmission facilities and to ensure that PG&E's customers are able to receive reliable electric service. One example of these services is maintaining

adequate operating reserves as required by the WSCC in order to maintain the reliability of that system. Operating reserves are procured by the ISO in the form of ancillary services. Ancillary services are electrical capacity products, from which a system operator can call for increased or decreased energy generation in real-time as may be necessary to address changing electric demand, transmission, and generation conditions. Ancillary service capacity is also a source of the Imbalance Energy needed to meet unmatched demand in real-time. Ancillary service requirements are directly linked to the level of customer demand that draws power from the California transmission grid. The reliability of PG&E's transmission facilities and service to California customers could not be maintained if sufficient ancillary services were not available.

8. Utilities that serve customers through distribution systems interconnected to the ISO Controlled Grid are responsible, under their contracts with the ISO and under the ISO Tariff, for providing sufficient ancillary services to the ISO to serve their customers. These ancillary services can be self-provided by utilities such as PG&E through the use of generation that they own or control. To the extent that a Market Participant, or utility such as PG&E, fails to self-provide its ancillary service requirements, the ISO operates day-ahead and hour-ahead ancillary service markets through which ancillary services are procured on behalf of such Market Participant or utility and its customers. As with the ISO's Imbalance Energy market, the ISO runs these ancillary service markets as a backstop measure in case a Market Participant or utility such as PG&E fails to satisfy its ancillary service requirements.

9. The capability of PG&E's transmission system is constrained in many areas, which requires the ISO to procure certain services on behalf of PG&E. These constraints mean that power cannot reliably flow on certain transmission lines unless specific generators are operating. PG&E could and can choose to upgrade its

transmission facilities to eliminate these constraints. PG&E has thus far elected not to do so, choosing instead to rely upon the operation of a number of specific generators in key locations to maintain the reliability of its system and the electric service to its customers. Such an approach was less expensive to PG&E when it was a vertically integrated utility that owned these generators, and the transmission network.

10. As part of the restructuring process that created the ISO, PG&E sold many of these generators to new owners. When the ISO assumed operational control of PG&E's transmission network, these generators were designated as "Reliability Must-Run" or "RMR" generators, in accordance with orders of the FERC and the ISO Tariff. In recognition of the fact that these generators must operate in order to maintain the reliability of PG&E's transmission system, the RMR generators are required to provide capacity and energy to the ISO pursuant to mandatory FERC-approved RMR contracts.<sup>3</sup> PG&E, as the Responsible Participating Transmission Owner, is responsible for the costs incurred by the ISO under RMR contracts for generators in PG&E's service area. PG&E has been a party to several settlement agreements approved by the FERC that establish the rates, terms, and conditions of the RMR contracts as well as the terms under which PG&E will pay for RMR services. PG&E's obligation to pay for necessary RMR services is also established by numerous FERC orders and is set forth in the ISO Tariff approved by the FERC.

11. The ISO provides scheduling services for PG&E and other Market Participants that schedule energy and capacity transactions over the ISO Controlled Grid. Assuming that PG&E obtains the energy and ancillary services

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<sup>3</sup> Since the ISO can call on RMR generators to provide both capacity and energy under certain conditions, these RMR generators are one source of the ancillary services described above.

needed to satisfy its obligations to serve its customers in advance of the ISO's backstop markets, the delivery of such energy and the availability of such ancillary services must be scheduled with the ISO on a day-ahead and hour-ahead basis. All Market Participants (i.e., Scheduling Coordinators) provide similar balanced schedules on a day-ahead and an hour-ahead basis. This allows the ISO to ensure reliable operation of the ISO Controlled Grid, to coordinate PG&E's transactions, and to determine the residual energy and ancillary services that must be purchased for the system, including PG&E, in the ISO's markets. The ISO can only provide these reliability services if there are sufficient resources available.

12. The electric demand forecasts are not always reflective of the actual demand experienced due to weather conditions and many other factors. This routinely results in unscheduled and unmatched supply and demand. The ISO balances supply and demand of the system in real time, however, at that time, the ISO cannot track or identify the source of any unscheduled supply or demand. The ISO operates an integrated system and does not operate by, or track in the real time, any individual scheduling coordinator, resource, or load. The ISO has no indication of which entity is causing an Energy Imbalance that requires the purchase of residual energy or capacity. In the event of a shortfall, the ISO has no immediate ability or ability in real time to determine the source of imbalance in the ISO Controlled Grid.

13. It is not until 45 days after provision of the energy to cover the shortfall that the ISO receives and reviews the meter data submitted by all Market Participants. At this point, the ISO can determine for which load the energy or capacity was purchased.

14. If the meter data establishes that the energy or capacity was purchased on PG&E's behalf, and the ISO is enjoined from collecting from PG&E, there is no other practical source of reimbursement.

15. If the ISO is enjoined from purchasing energy on PG&E's behalf, yet the ISO in real time cannot identify the load causing the energy or capacity shortfall, the only realistic way to assure there will be no purchase on PG&E's behalf and no lack of payment is to forego buying any energy and capacity.

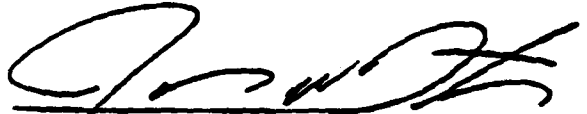
16. The consequence of the ISO being unable to purchase energy would be significant and dire, and could impact the service of energy statewide. The ISO would be compelled to take immediate steps to curtail energy throughout the system(*i.e.*, commencement of blackouts).

17. As a revenue-neutral, not-for-profit entity that passes through all of its costs to the Market Participants that rely upon its services, including the California utilities, the ISO has neither the authority, the duty, nor the financial wherewithal to cover the costs of providing energy and related services to PG&E's customers.

18. Since April 6, 2001, the ISO has not entered into any real time transaction unless a creditworthy counter party has provided assurances of payment. The ISO has implemented hourly and daily procedures involving the California Department of Water Resources to assure payment coverage by a creditworthy counter party for all purchases of Imbalance Energy in the real time market, including those purchases later determined to have been made on PG&E's behalf.

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

By:



James W. Detmers

Title: Vice President of Grid Operations

May 21, 2001