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September 27, 2002

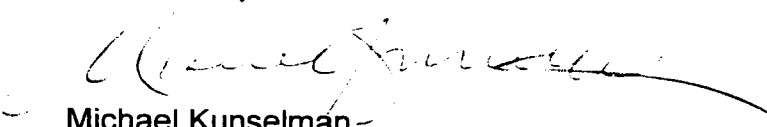
The Honorable Magalie Ramon Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: San Diego Gas & Electric Co., et al.
Docket Nos. EL00-95-045, et al.**

Dear Secretary Salas:

Enclosed is an original and fourteen copies of the Statement Of The California Independent System Operator In Support Of The Motion Of The California Parties For A Discovery Order To Adduce Additional Evidence. Also enclosed is an extra copy of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,



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Counsel for the California
Independent System Operator Corporation

Enclosures

cc: Service List

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

San Diego Gas & Electric Company,)	
Complainant,)	
)	Docket No. EL00-95-045
)	
v.)	
)	
Sellers of Energy and Ancillary Services)	
Into Markets Operated by the California)	
Independent System Operator 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)	

**STATEMENT OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR IN
SUPPORT OF THE MOTION OF THE CALIFORNIA PARTIES FOR A DISCOVERY
ORDER TO ADDUCE ADDITIONAL EVIDENCE**

On September 6, 2002, The California Parties¹ filed a motion in the above captioned proceeding requesting that the Federal Energy Regulatory Commission ("Commission") issue an order establishing procedures to allow the opportunity to conduct discovery concerning market manipulation by the various sellers who operated in the California market prior to June 21, 2001. This motion was in direct response to the August 21, 2002 order of the United States Court of Appeals for the Ninth Circuit remanding this issue to the Commission for further consideration.

¹ The California Parties, for purposes of this Motion, are the Attorney General of the State of California, the California Electricity Oversight Board, the California Public Utilities Commission, Pacific Gas & Electric Company and Southern California Edison.

The motion of the California Parties specifically requests that the Commission establish a 100-day period for discovery in which additional evidence may be adduced on the issue of market manipulation by sellers in the California market. The motion further requests that an Administrative Law Judge be appointed to deal with discovery disputes that may arise from time to time during the period, and that at the end of the 100 days, parties have the right to file with the Commission the new evidence that they had adduced along with any recommendations associated therewith.

I. STATEMENT IN SUPPORT OF ADDITIONAL DISCOVERY

The California Independent System Operator (“ISO”) is fully in support of the request by the California Parties for the 100-day discovery period to determine if, and how, manipulation of the California market occurred and its impact on the wholesale price of electricity prior to June 21, 2001. The motion of the California Parties² specifically mentions memoranda drafted by attorneys of the now bankrupt Enron Corporation that evidenced an intent by at least some sellers to manipulate California’s energy markets in an attempt to elevate electricity prices above levels that would have prevailed in a competitive market. In addition, the Commission’s own staff³ recently completed a thorough analysis of natural gas price indices in California and concluded that prices and the resulting indices were higher during the Refund Period⁴ than would have been the case under competitive market conditions. This conclusion is further bolstered by the September 23, 2002 Initial Decision in the El Paso proceeding, in

² See California Parties’ motion at 3.

³ Fact finding investigation of Potential Manipulation of Electric and Natural Gas Prices, Initial Report on Company Specific-Separate Proceedings and General Pre-evaluations; Published Natural Gas Price Data; and Enron Trading Strategies; Docket No. PA-02-2-000, August 2000 (“Initial Report”).

which the Commission's Chief Administrative Law Judge stated: "The new evidence produced in this phase of the case shows a clear withholding of substantial capacity during the relevant period, which clearly indicates an exercise of market power"⁵

These examples indicate that as the Commission and its staff investigate further, evidence continues to mount of manipulation by energy suppliers of the various factors that affect supply and demand in the California market. Only complete discovery of the facts surrounding this manipulation and the magnitude of the manipulation will fully inform the Commission and the people of California of the impact of this manipulation on their energy markets.

In addition, the ISO believes that it is extremely important that the above captioned proceeding, frequently referred to as the "Refund Case," proceed expeditiously on the procedural schedule determined by the assigned judge. There should be no stay or extension of time in that proceeding due to the additional discovery period requested. The California Parties⁶ and the ISO agree on the need for a timely resolution of the Refund Case, notwithstanding the request for the additional discovery related to manipulation. (Of course, the ultimate resolution of the Refund Case must take into account any evidence adduced during the discovery period requested by the California Parties, as well as any revised methodology for determining gas prices in calculating the mitigated market clearing prices.)

⁴ The Refund Period is October 2, 2000 through June 20, 2001.

⁵ Initial Decision, Docket No. RP00-241-006, September 23, 2002, mimeo at 22.

II. THE ISO CANNOT PROVIDE THE CONFIDENTIAL INFORMATION SOUGHT BY THE CALIFORNIA PARTIES AS PART OF THIS DISCOVERY EFFORT WITHOUT AN APPROPRIATE ORDER FROM THE COMMISSION

The ISO has great sympathy with, and supports, the proposed investigation of market manipulation in California during the period prior to June 21, 2001. However, the ISO is bound by its Tariff to keep certain information confidential. Specifically, section 20.3.2⁷ of the ISO tariff requires virtually all information relating to individual bids to be kept confidential. The ISO must maintain the trust of its market participants, and in particular their trust that the ISO will adhere to its Tariff provisions with respect to maintaining the confidentiality of bids. The California Parties contend that this information should be subject to release primarily because of its age and the importance of accelerating and streamlining the discovery they request.⁸

The ISO agrees that facilitating and expediting discovery in this matter is in the public interest. Under competitive market conditions, the immediate release of such data may facilitate an open and transparent market and encourage participants to continue bidding competitively as well as deter gaming by subjecting bidding to a high degree of public scrutiny. On the other hand, there is always a danger that allowing participants to view each others' bids and schedules may facilitate the unilateral exercise of market power, gaming, and implicit market collusion to the detriment of market efficiency. However, the passage of time significantly diminishes the potential for anti-competitive uses of information in a changing marketplace. Since the data being sought by the California Parties is now over a year old and would be provided for

⁶ California Parties' motion at 10.

⁷ ISO Tariff, section 20.3.2, original sheet 290 (issued October 13, 2000).

use in a proceeding that is addressing the very issue of whether anti-competitive conduct occurred, and, if so, what remedy may be appropriate, the balance in this case weighs in favor of disclosure.

Nevertheless, section 20.3.2 of the ISO Tariff does not contain any time-expiration provisions, except for a provision that allows for the release of confidential bid data six months after the trade date, provided that the identity of the bidder and resource is masked. See ISO Tariff, section 20.3.4(a), original sheet 291 (issued October 13, 2000). Therefore, until the Commission issues an appropriate order (see section 20.3.4(b) of the Tariff), the ISO is bound to maintain the confidentiality of its participants' bid and availability information as mandated in its Tariff. Of course, should the Commission issue an order that the information be released as requested by the California Parties, the ISO will comply with the order's terms.

⁸

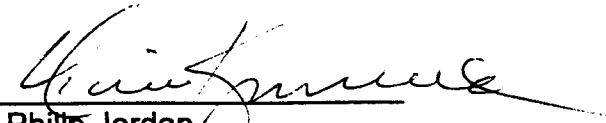
California Parties' motion at 8.

III. CONCLUSION

Wherefore, the California ISO respectfully moves to support the motion of the California Parties for a 100-day discovery period to adduce additional evidence on the subject of potential and actual manipulation of the California electricity markets.

Respectfully submitted,

Charles F. Robinson
General Counsel
Gene Waas
Regulatory Counsel



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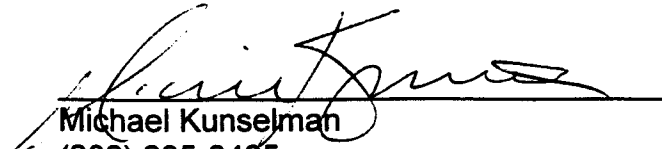
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Dated: September 27, 2002

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Washington, D.C. on this 27th day of September, 2002.


Michael Kunselman
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