

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

San Diego Gas & Electric Company,)	Docket Nos.	EL00-95-000
Complainant,)		EL00-95-045
)		EL00-95-075
v.)		
)		
Sellers of Energy and Ancillary Services)		
into Markets Operated by the California)		
Independent System Operator Corporation)		
and the)		
California Power Exchange,)		
Respondents.)		
)		
)		
Investigation of Practices of the California)		EL00-98-000
Independent System Operator and the)		EL00-98-042
California Power Exchange)		EL00-98-063
)		

**DECLARATION OF JOHN W. PHILLIPS
ON BEHALF OF THE CALIFORNIA PARTIES**

I, John W. Phillips, make the following Declaration in support of the California Parties' March 3, 2003 Submission.

1. I am an attorney with Heller Ehrman White & McAuliffe, L.L.P. I represent Pacific Gas and Electric Company, one of the California Parties in this proceeding.
2. Under the procedures that were established by the Discovery Master on December 12, 2002, in this proceeding, discovery responses were due ten (10) business days after the relevant request was made, using best efforts to comply. In a hearing on December 17, 2002, the Discovery Master ordered participant sellers to make tapes of recorded conversations of their traders available for review by the California Parties upon their request.

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3. Some sellers have reviewed every recorded conversation for attorney-client privilege. This has significantly slowed production. While one seller's attorney informed me that some calls were withheld on privilege grounds, the California Parties, to my knowledge, have received very few, if any, privilege logs from sellers identifying recorded conversations withheld and the basis for withholding such calls.

4. The actual review process -- by both the producing party and the California Parties -- has been constrained by the limitations of the play-back machines necessary to review the recorded conversations.

5. Acknowledging these limitations, the California Parties did not ask to review all recorded conversations for all the days of the relevant time period, which totaled some 536 days. The California Parties winnowed their request to each seller to between 12 and 46 days during the relevant time period. For a number of reasons not even all of those recorded conversations were produced or reviewed for this submission.

6. For example, the California Parties requested that Powerex provide access to a total of twenty-six selected days of recorded conversations. On January 30, 2002, Powerex made two days of such recorded telephone conversations available for review in Vancouver, British Columbia by the California Parties. Powerex reported that it took seven-and-a-half days to review a single day of recorded trader conversations for privilege. The California Parties selected eighteen calls (approximately one hour of recorded time) for production. It then took Powerex nine days to produce copies of those selected calls. To speed the process, the California Parties asked Powerex to prioritize the channels for only five traders for the remaining days. On February 19, 2003, Powerex made six additional days of recorded conversations for the five traders available for review in Vancouver. On February 28, 2003,

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Powerex made four additional days of recorded conversations for the same five traders available for review in Vancouver, but refused to copy any requested calls identified on February 28, 2003. The California Parties sought and obtained an emergency order from the Discovery Master requiring Powerex to copy and deliver to the California Parties any calls that they selected on February 28, 2003. Powerex will obviously fall far short of producing recorded telephone conversations for even the days selected by the California Parties.

7. The California Parties asked Duke to provide access to forty-one selected days of recorded conversations during the relevant time period. To date, however, Duke has provided access to nine days of recorded conversations.

8. Coral shut down access by the California Parties to its tapes of recorded trader conversations after permitting them an initial but brief review in mid-February, 2003. The California Parties were forced to move to compel further access, which was granted in the last week of the discovery period.

9. In the last week of the discovery period, the California Parties have been served with many supplemental responses to their early data requests. Much of this supplemental material has arrived too late for any meaningful review by the California Parties. For example (and without attempting to be exhaustive):

- On February 25, 2003, El Paso Merchant Energy, L.P. ("El Paso") served its fifth supplemental response to the first set of data requests. The first set of data requests was served on El Paso on December 3, 2002. The supplemental response consisted of a responses to data requests 6.1-6.6 and 30 and a CD with materials bates numbered E-YRF00314 to E-YRF01753 and RFD-0013831 to RFD-0015584. This production constitutes 3,192 documents. Some of the documents are multiple page documents. On

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February 27, 2003, El Paso's attorney sent the California Parties an email stating that "there's a batch of stuff [El Paso] expect[s] to produce tomorrow," which will include audio recordings and e-mails. El Paso's production of recorded telephone conversations on February 28, 2003 "at the earliest" will be its first production of such materials in this proceeding.

- On February 25, 2003, TransAlta served its eighth supplemental response to the first set of data requests. The first set of data requests was served on December 4, 2002. The supplemental response is a response to request 30 and includes a CD that contains hundreds of .wav files.
- Late on February 27, 2003, Dynegy served 5017 pages of additional outage information responsive to CAL-DYN-167. Dynegy responded to this request on February 18, 2003, stating at the time that it was producing all outage information it possessed. Apparently, Dynegy received this additional production for its plant operators.
- On Monday, February 24, 2003, Powerex served 2 CDs of data. One of the CDs was responsive to the California Parties' First set of Data Requests, which were served on Powerex on November 27, 2002. In addition, on Wednesday, February 26, 2003, Powerex produced documents relating to its Zainet operating system that identified records of its Real Time Arbitrage trades, although these records should have been produced on January 27, 2003.

On February 25, 2003, Coral served its third supplemental response to the first set of data requests. The first set of data requests was served on Coral on December 5, 2002. The supplemental response includes documents responsive to request 1.2 and audio tapes responsive to request 30.

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On February 26, 2003, Williams supplemented its responses to the California Parties first data requests to Williams which had been served on Williams on November 25, 2002.

That supplementation included 6,147 recorded conversations, comprising the final installment of 16 out of the 42 days of recorded conversations requested. While this production comes too late for meaningful review, Williams, at least, was one of the few participants to produce recordings for all the requested days.

- On February 26, 2003, Sempra supplemented its response to data request no. 108 of the California Parties with two CDs of emails. The emails contained over 1,000 communications. Data request No. 108 was served on Sempra on January 10, 2003. On February 28, 2003, IDACORP produced all responsive emails to the California Parties, which responsive documents had been requested by the California Parties on December 12, 2002, in their first set of data requests to IDACORP.

10. The California Parties are devoting extensive resources to the review of new discovery but will be unable to meaningfully review the vast majority of discovery and documents that they have received over the past few days (and are likely to receive on February 28, 2003, the last day of discovery in this proceeding) for purposes of inclusion in the March 3, 2003 submission.

11. In seeking discovery from Enron, I was informed by Enron's counsel that the Justice Department had seized the tapes of trader telephone conversations and that they would therefore not be available to the California Parties. When I was told by Enron's lawyers that a lap top and other materials were recently discovered, I was informed by the California Attorney General's office that the FBI, having received the same information from Enron's counsel,

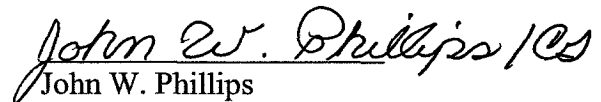
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indicated that it would take possession of those materials and that they would not be made available to the California Parties.

12. A class action complaint against Mirant alleges that an ex-Mirant employee has knowledge of claimed destruction of information contained on lap top computers used by Mirant employees relating to the California markets. When the California Parties attempted to locate that employee, they found his attorney, but were refused even his name as his counsel was negotiating immunity with the prosecutor for his client.

13. I have reviewed the foregoing Declaration of John W. Phillips in support of the California Parties' March 3, 2003 Submission, and I certify that the information contained herein is true, accurate and complete as of 1:30 p.m. (E.S.T.) on February 28, 2003. Based on the documents and other information available to, and reviewed by me, and to the best of my knowledge, information and belief, on behalf of Pacific Gas and Electric Company, I declare under penalty of perjury that the foregoing is true, accurate, and correct.

EXECUTED this 28th day of February, 2003, in Washington, D.C..


John W. Phillips