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LEGAL PROCESS #1

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Bill Lockyer, Attorney General of the State of California

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA EX REL. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA, Plaintiff, v. SEMPRA ENERGY TRADING CORPORATION and DOES 1-100, Defendants.	**Case No.** 05AS05115 **COMPLAINT FOR INJUNCTION, DAMAGES, CIVIL PENALTIES, AND OTHER EQUITABLE AND ANCILLARY RELIEF (Bus. & Prof. Code, § 17200 et seq.; Corp. Code, § 29536 et seq.)** **DEMAND FOR JURY TRIAL**

The People of the State of California, by and through Bill Lockyer, Attorney General of the State of California, allege on information and belief as follows:

NATURE OF ACTION

1. This is an action brought by the Attorney General of the State of California to enforce the State's police and regulatory powers under California's Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.) and the California Commodity Law of 1990 (Corp. Code, § 29500 et seq.) against SEMPRA ENERGY TRADING CORPORATION (SET) for engaging

in a number of unlawful, unfair, fraudulent, and manipulative trading schemes to the detriment of the People of the State of California. A fundamental element of the trading schemes was the deliberate use of false or misleading information.

2. In this action, the Attorney General seeks an injunction, damages, civil penalties, and other equitable relief as authorized under California Business and Professions Code section 17206 and California Government Code section 12660.

PARTIES

3. Plaintiff Bill Lockyer is the Attorney General of the State of California and is the chief law officer of the State. (Cal. Const., art. V, § 13.) He is authorized by California Business and Professions Code section 17204 to prosecute in a court of competent jurisdiction any unlawful, unfair, or fraudulent business act or practice which is prohibited by the Unfair Competition Law. The Attorney General is also authorized under California Government Code section 12658 to enforce the California Commodity Law of 1990.

4. Defendant SET is a Delaware corporation based in Connecticut. SET is a top independent power marketer in North America and Europe. At all relevant times alleged in this Complaint, SET was and is a marketer of wholesale energy products and services and was and is engaged in energy merchant and commodity market businesses and trading activities in the western United States, including California.

5. The true names and capacities of defendants sued in this Complaint under fictitious names of DOES 1 through 100, inclusive, are unknown to plaintiff, who sues such defendants by such fictitious names. Each of the fictitiously-named defendants engaged in or is otherwise responsible in some manner for the acts, omissions, misrepresentations, use or misuse of information or other occurrences which caused the violations alleged herein.

6. Unless otherwise alleged, whenever reference is made in this Complaint to any act of defendants, such allegation shall mean that each defendant acted individually and jointly with the other defendants named in the Complaint.

7. Unless otherwise alleged, whenever reference is made in this Complaint to any act of any corporate or other business defendant, such allegation shall mean that such corporation or

other business did the acts alleged in this Complaint through its officers, directors, employees, agents and/or representatives who were acting within the actual or ostensible scope of their authority.

8. At all relevant times alleged in this Complaint, each of the defendants has acted as an agent, representative, or employee of each of the other defendants and has acted within the course and scope of their actual or ostensible authority.

JURISDICTION

9. This Court has jurisdiction to hear the claims alleged in this Complaint and is a court of competent jurisdiction to grant the relief requested.

10. This Court has jurisdiction over Defendant SET because SET is a Delaware corporation registered with the California Secretary of State to conduct business in California and did conduct business in California by engaging in the offer, sale, and purchase of electricity in the State of California and/or the control area of the California Independent System Operator ("ISO")[1], and because SET otherwise has sufficient minimum contacts in California, to render the exercise of jurisdiction over it by this Court consistent with traditional notions of fair play and substantial justice.

VENUE

11. Venue is proper in this Court because the causes of action arise in the County of Sacramento where some of the violations of law have occurred.

STATUTORY BACKGROUND

A. California Business and Professions Code Section 17200 et seq.: The Unfair Competition Law

12. California Business and Professions Code section 17200 provides that "unfair competition" shall mean and include *any* unlawful, unfair, or fraudulent business act or practice.

13. Section 17203 of the California Business and Professions Code provides that

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1. The California Independent System Operator ("ISO") is a not-for-profit corporation established through California's deregulation legislation. The ISO is responsible for operating the high-voltage transmission grid serving most of California. The area encompassing this transmission grid is known as the ISO control area.

"[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction." The court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition or as may be necessary to restore any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition.

14. Section 17206 of the California Business and Professions Code provides that any person who engaged, has engaged, or proposes to engage in unfair competition shall be liable for a civil penalty for each violation, which shall be assessed and recovered in a civil action brought in the name of the People of the State of California by the Attorney General. Section 17205 of the California Business and Professions Code further provides that the remedies or penalties thereunder are cumulative to each other and to the remedies or penalties available under all other laws of this State.

B. California Corporations Code Section 29500 et seq.: The California Commodity Law of 1990

15. Section 12657 of the California Government Code provides the Attorney General with concurrent enforcement powers to enforce the California Commodity Law of 1990 (Corp. Code, § 29500 et seq.).

16. Section 12658 of the California Government Code provides that whenever it appears to the Attorney General that any person has engaged or is about to engage in any act or practice constituting a violation of the California Commodity Law, the Attorney General may, in his discretion, bring an action in the name of the People of the State of California in superior court to enjoin any act or practice constituting a violation of the commodities laws, and, where appropriate, seek ancillary relief, including damages.

17. Section 12661 of the California Government Code also authorizes the Attorney General to take any actions as are authorized by the federal Commodity and Exchange Act as amended before or after January 1, 2004, the effective date of Section 12661.

18. Section 13a-2 of the Commodity Exchange Act (7 U.S.C. § 13a-2) authorizes the

Attorney General to bring suit for any act or practice constituting a violation of the Commodity Exchange Act (7 U.S.C. § 1 et seq.) against any person (other than a contract market, derivatives transaction execution facility clearinghouse, floor broker, or floor trader). Section 13a-2(7) of the Commodity Exchange Act further provides that:

> Nothing contained in this section shall prohibit an authorized State official [defined by Section 13a-2(1) to include the attorney general of any State] from proceeding in State court on the basis of an alleged violation of any general civil or criminal antifraud statute of such State.

19. The Attorney General is enforcing only the general unfair competition and antifraud provisions contained in California Business and Professions Code section 17200 et seq. and California Corporations Code section 29500 et seq., and not provisions of the Commodity Exchange Act, against SET in this action.

20. Section 29504 of the California Commodity Law defines a "commodity" to include any fuel (whether liquid, gaseous, or otherwise), and all other goods, articles, products or items of any kind. (Corp. Code, § 29504.) Section 29510 of the California Commodity Law defines a "commodity option" as the right but not the obligation to purchase or sell one or more commodities. (Corp. Code, § 29510.)

21. Section 29513 of the California Commodity Law defines an "offer" to include "every offer to sell, offer to purchase, or offer to enter into a commodity contract or commodity option." (Corp. Code, § 29513.)

22. Section 29516 of the California Commodity Law defines "sale" or "sell" to include "every sale, contract of sale, contract to sell, or disposition, for value." (Corp. Code, § 29516.)

23. Section 29536 of the California Commodity Law provides that it is unlawful for any person, directly or indirectly, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into, a commodity, commodity contract, or commodity option to: (a) willfully employ any device, scheme or artifice to defraud; (b) willfully make any false report, enter any false report, make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the

circumstances under which they were made, not misleading; (c) willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons; or (d) willfully misappropriate or convert the funds, security, or property of any other person. (Corp. Code, § 29536.)

24. Section 12660 of the California Government Code provides that any person who violates any provision of the California Commodity Law shall be liable for a civil penalty for each violation, which shall be assessed and recovered in a civil action brought by the Attorney General in the name of the People of the State of California.

FACTS

A. Deregulation of California's Electric Generation Market

25. Prior to restructuring of the electricity industry in California, the State's major investor-owned utilities ("IOUs"), namely Pacific Gas & Electric Company ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas & Electric Company ("SDG&E"), provided bundled services for electricity, including generation, transmission, and distribution, to the majority of retail customers in the state. In September 1996, the California Legislature enacted Assembly Bill 1890 ("AB 1890"), with the goal of introducing competition in the generation and sale of electricity, at both the wholesale and retail levels. In order to promote competition, AB 1890 encouraged the IOUs to divest themselves of a significant portion of their generating capacity. As a consequence, the IOUs sold almost all of their natural gas-fired generating capacity to five merchant generating companies: Duke, Dynegy, AES, Mirant, and Reliant.

B. The ISO and PX Markets

26. AB 1890 also established two new institutions: the California ISO and the California Power Exchange ("PX").

27. The ISO was established to operate the high-voltage transmission grid serving most of the state and is responsible for all real-time operations, such as continually balancing generation and load and managing congestion on the transmission system it controls.

28. The PX was established to operate two auction-style markets for the purchase and sale of electricity for delivery during the same or next day. These were the "day-ahead" and

"day-of" markets. The intent of the deregulation plan was that 95 percent of the power needed to serve customers in the ISO control area would be sold and purchased through the PX markets. In the day-ahead and day-of markets, the PX established a single market clearing price that all sellers collected and all buyers paid for power delivered in each hour across the entire ISO control area, provided there were no transmission constraints. When transmission congestion existed, a separate clearing price was established for each transmission constrained area or zone in California.[2/]

29. At all relevant times alleged in this Complaint, the ISO was responsible for managing congestion on the ISO-controlled grid. The ISO solicited "adjustment bids" in order to allocate the limited transmission capacity available across congested transmission paths to those market participants that valued it most highly. Adjustment bids represent the amount of money per megawatt hour that an entity is willing to pay to have its power transmitted over a particular congested path, or to be paid to reduce the amount of power it plans to send over a congested path.

30. At all relevant times alleged in this Complaint, in addition to operating the congestion management system, the ISO administered a variety of auction markets for the purpose of procuring the electricity necessary to operate the transmission system reliably, including an energy market to procure the power needed to continuously match the amount of power being supplied to the grid with the amount of energy being demanded by customers. This market is known as the "real-time" energy market or the "imbalance" energy market.

31. The ISO also procured various types of capacity, known as ancillary services, that

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2. A transmission path is "congested" when the total amount of electricity scheduled to be transmitted between two areas across that path exceeds the path's available transmission capacity. A "schedule" is a statement submitted to the ISO that indicates both (1) an electricity demand requirement (including the quantity of electricity need, the duration of the need and where the delivery is needed) and (2) the proposed electricity supply that is to be used to meet the demand in question (including the quantity of electricity to be delivered, the duration of delivery, the location of the generating facility, along with other technical information regarding transmission losses and what ancillary services will be associated with the delivery). A schedule is considered to be "balanced" when the schedule's demand level is matched with an equivalent level of supply.

could be called upon by the ISO to produce electricity in the event of a system emergency, such as a major plant outage, or to correct a routine imbalance between supply and demand on the grid. The ISO procured four different types of ancillary services through auction markets run one day and one hour ahead of actual ("real-time") consumption of the electricity. The four different services are differentiated by the amount of time it takes the producer to deliver the energy to the grid when called on by the ISO.

32. A generator or marketer of energy wishing to participate in the PX and ISO energy markets was required to do so through a scheduling coordinator. A scheduling coordinator is an entity authorized to submit energy bids and schedules to the PX and ISO on behalf of electricity suppliers and purchasers. A generator or marketer could serve as its own scheduling coordinator or use a third party to act as its scheduling coordinator. The PX was also considered to be a scheduling coordinator but with restricted capabilities. Many scheduling coordinators performed several functions, including coordinating many generators and loads; negotiating generator and load changes with clients; negotiating bilateral contracts with or between clients; aggregating contracts between market participants; acting as energy service provider; owning, contracting for, or brokering generation; bundling generation and load; acting as the sole agent to the ISO; and submitting schedules and bids for electricity and ancillary services.

33. The IOUs were required by law to sell all of the output from the generating units that they had not previously divested into markets administered by the PX and ISO, and to purchase all of their energy and capacity requirements from those PX and ISO markets. As a result, the PX was the largest scheduling coordinator in California, representing at times approximately 90 percent of the load served by the ISO grid.

34. As a scheduling coordinator, the PX was required to submit a balanced schedule of load and generation to the ISO for the following day. In order to maintain balance on the transmission grid, the ISO would dispatch power from sellers that submitted successful bids in the real-time, imbalance energy market or ancillary services markets. If there were insufficient bids in the ISO real-time market to meet customer demand, the ISO, as a last resort, would purchase energy "out-of-market" in order to procure the resources necessary to operate the

system.[3]

35. Neither the ISO nor the PX purchased or sold energy for their own accounts or benefit. Rather, they served as "market-makers" or clearinghouses to facilitate the sale and purchase of wholesale power by market participants such as SET. In markets administered by the PX and ISO, sellers submitted bids specifying the amount of electricity and/or capacity they wished to sell and the price at which they were offering to sell. The auction operator ranked all bids in merit order, (i.e., from lowest to highest price) and then selected all of the bids it needed in order to meet the demand in a given interval. The bid submitted by the highest priced unit selected by the ISO set a single, "market-clearing price" that all buyers paid, and all sellers received.

36. At all relevant times alleged in this Complaint, Defendant SET was a scheduling coordinator authorized to submit bids in the PX and ISO markets to purchase and sell energy. In its capacity as a scheduling coordinator, SET also submitted schedules to the PX and ISO detailing generation and load information for bilateral energy transactions it purportedly negotiated on behalf of itself with other market participants or energy entities within or outside of the ISO control area. SET also communicated and interacted with the ISO regularly, including during real-time and system emergencies, regarding scheduling and transmission issues or to negotiate out-of-market sales with the ISO to help balance the grid.

C. The Breakdown of the Market, Skyrocketing Electricity Prices, and Rolling Blackouts

37. In May 2000, the price of wholesale power began to quickly rise to historically unprecedented levels in California and did not begin declining until June 2001 (the period referred to as "the California Energy Crisis").

38. During the Energy Crisis, buyers of wholesale power incurred massive losses. The two largest IOUs, SCE and PG&E, incurred enormous debts and, as a result, defaulted on payments to both the PX and the ISO. PG&E filed for bankruptcy in April 2001, and SCE teetered on the brink of bankruptcy. On January 29, 2001, the PX suspended trading in its

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3. An out-of-market, or "OOM", purchase refers to a purchase of energy by the ISO that was not bid into the energy markets or was bid at a price above the price cap.

markets, effectively ceasing its operations, and declared bankruptcy on March 9, 2001.

39. On January 17, 2001, Governor Davis declared a state of emergency in order to ensure that a continuous supply of energy was available in California. Governor Davis authorized the State, through the California Department of Water Resources ("DWR"), to purchase electricity to protect health, safety, and vital economic interests of California citizens and businesses.

40. The crisis posed a serious threat to the safety and reliability of the high voltage transmission grid serving the State, which was subjected to extended periods of ISO-declared system emergencies in which operating reserves fell below system requirements. The ISO declared numerous Stage 3 system emergencies (the highest level of system emergency) because actual or anticipated operating reserves were less than or equal to one and a half percent (1½%) of projected peak demand. For the first time ever in California history, businesses and residents in the State were subjected to rolling blackouts.

D. SET's Fraudulent Trading Schemes

41. As a marketer of energy and a scheduling coordinator, SET sold electricity into the California markets. SET operated in all of the organized spot markets, including day-ahead, day-of, real-time, and ancillary services. SET made tens of thousands of electricity transactions in those markets starting in approximately 1998 and continuing through to the present.

42. Beginning as early as 1999 and continuing at least through 2001, SET willfully engaged in an array of manipulative and fraudulent schemes designed to enable them to obtain "congestion relief" payments for taking actions that did not relieve any congestion, to receive payment for excess generation through the submission of false schedules, and to circumvent the ISO's price cap by falsely representing the source of the energy. These gaming schemes were disclosed in Spring 2002 when memoranda released by Enron Corporation described in detail numerous fraudulent trading strategies which have become widely known as the "Enron trading strategies" but were in fact employed by several market participants, including SET. Until the disclosure of the Enron memoranda, market participants, including SET, publicly denied any wrongdoing with regard to its trading activities in the PX and ISO markets. The trading

strategies used by SET include, but are not limited to, the following:

1. Congestion Games

43. SET engaged in several strategies designed to collect payment for taking actions that would purportedly "relieve" congestion along constricted transmission paths. SET willfully submitted false schedules to the ISO for the purpose of creating illusory congestion and collecting payment for taking actions to "relieve" congestion that were bogus and did not relieve any actual congestion. These sham "congestion-relief" schemes include, but are not limited to, the following:

a) "Death Star"

44. Under the "Death Star" strategy, a market participant submits circular schedules in the day-ahead and hour-ahead markets to create the appearance of relieving congestion when in fact no congestion is relieved. In a "Death Star" transaction, the market participant uses two back-to-back transaction schedules that schedule energy in a circular route by way of an export and a re-import of that energy. In one schedule, energy is imported into the ISO control area through a transmission interface. This energy is scheduled to flow in a direction opposite to congestion and is then exported over another transmission interface. The counterflow created by this schedule is supposed to relieve congestion, and the market participant receives a congestion relief payment. However, in a second schedule, the same energy is then circled back to the ISO control area along transmission lines outside of the ISO system. The energy is circled back to the first transmission interface in which the energy was imported in the first schedule. As a result of this circular schedule, no congestion is relieved because no energy is put onto or taken off of the ISO grid.

45. At all relevant times alleged in this Complaint, SET engaged in numerous "Death Star" transactions in which it scheduled power in the opposite direction of congestion without having any intention of delivering the power. SET collected payments for "relieving" congestion but put no actual power onto the grid and took no power off of the grid. Thus, no congestion was relieved. Between January 2000 and June 2001, SET submitted circular schedules in at least 205

hours with a total of approximately 9,728 megawatt hours ("MWh").[4] Between January 2000 through April 2000, SET submitted circular schedules in at least 57 hours involving 2,288 MWh. Between May 2000 through September 2000, SET submitted circular schedules in at least 28 hours involving 1,570 MWh. Between October 2000 through January 2001, the number of "Deathstar" transactions by SET increased, with at least 120 hours in which it submitted circular schedules involving 5,970 MWh.

b) Cut Schedule Strategies: "Wheel-Out" and "Non-Firm Export"

46. Under "Wheel-Out", also known as a "cut schedule" strategy, a market participant submits a schedule that it knows or expects the ISO will cut due to transmission limitations or outages. Often under this strategy, the scheduling coordinator will intentionally schedule energy over a transmission path that it knows is out-of-service. Once the ISO cuts the schedule, the scheduling coordinator receives a congestion counterflow payment.

47. Under "Non-Firm Export", also known as a "cut schedule" strategy, a market participant will provide a counterflow of energy to relieve congestion, in whole or in part, in the day-ahead or hour-ahead markets and receive a congestion relief payment from the ISO. The schedule providing the counterflow, however, is "cut" after the ISO awards the congestion relief payment, which cannot be rescinded by the ISO's accounting system. In the "Non-Firm Export" variation of the "cut schedule" strategy, congestion is supposed to be relieved by scheduling power from California to flow in the opposite direction of congestion on a constrained path within the ISO control area and to an external control area. However, the market participant has no intention of providing power under the schedule, because the market participant either cannot or will not deliver.

48. At all relevant times alleged in this Complaint, SET engaged in numerous "Wheel-Out" transactions in which it knew that an inter-tie line at the ISO border (connecting the ISO control area with outside grids) was completely constrained (i.e., its available capacity is set

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4. A megawatt is equivalent to 1 million watts or 1,000 kilowatts. One megawatt hour is a unit of energy equivalent to the power of one megawatt operating for one hour. For example, ten thousand 100-watt light bulbs burning for one hour would consume one megawatt of electric energy.

at zero) or out-of-service. SET scheduled power over the inter-tie line for the sole purpose of creating the appearance of congestion on the affected path. SET submitted these bogus schedules knowing that the schedule ultimately would be "cut" by the ISO and that it would receive a congestion relief payment from the ISO without having to send any power over the line in the first place, and without having to "relieve" any congestion.

49. At all relevant times alleged in this Complaint, SET engaged in numerous "Non-Firm Export" transactions under the "cut schedule" strategy. Pursuant to this strategy, SET scheduled non-firm energy from a point in California to a control area outside of California in the opposite direction of congestion without having any intention of making the delivery. As soon as SET collected payment for purportedly "relieving" congestion on constrained transmission line, it cut the export schedule. As a result, no power was transmitted and no congestion was relieved, even though a congestion relief payment was collected. 50. Between January 2000 and June 2001, SET engaged in "cut schedule" transactions in at least 160 hours involving 3,811 MWh for which it earned congestion revenues. Between January 2000 through April 2000, SET engaged in "cut schedule" transactions in at least 11 hours involving 698 MWh. Between May 2000 through September 2000, SET's use of this strategy increased, with "cut schedule" transactions during at least 22 hours involving 1,944 MWh. Between October 2000 and January 2001, SET engaged in "cut schedule" transactions in at least 34 hours involving 1,076 MWh. Between January 2001 and June 2001, SET engaged in "cut schedule" transactions in at least 3 hours involving 93 MWh.

c) "Load Shift"

51. Market participants within the ISO-control area are required to submit balanced schedules to the ISO in which anticipated generation is scheduled against an equal amount of load that the market participant expects to serve. The schedules also must identify the zone within the ISO control area in which the load resides. Identification of the location of the load is an important factor in the ISO's efforts to manage congestion on transmission lines. At all relevant times alleged in this Complaint, under the "Load Shift" strategy, SET intentionally submitted false schedules which overscheduled load in one zone in order to create congestion on

the transmission line leading into that zone. After creating the congestion, SET adjusted, or "shifted", it loads on both ends of the transmission line to appear to relieve the falsely created congestion and receive a congestion payment. Between January 2000 and June 2001, SET engaged in "load shift" transactions during at least 1,300 hours involving over 150,000 MW of false flows across transmission lines.

2. Ancillary Services-Related Games / "Get Shorty"

52. Market participants providing ancillary services to the ISO are paid by the megawatt for keeping their capacity in reserve in the event it is needed by the ISO to generate power. In the event the ISO orders a market participant to produce electricity from this reserve capacity, the ISO also pays the seller by the megawatt hour for the power provided.

53. At all relevant times alleged in this Complaint, SET engaged in a manipulative scheme, known both as "Get Shorty" or paper trading of ancillary services, under which it collected payment for ancillary services it did not provide, and never intended to provide. SET carried out this scheme by willfully submitting bids to provide ancillary services in the day-ahead market without having any physical resources (i.e., actual generating reserves) backing up the sale. SET then "covered" all or part of its commitment by buying ancillary services in the hour-ahead market so that it could profit from selling high in the day-ahead market and buying back at a lower price in the hour ahead or real-time markets. In submitting its bids to provide ancillary services to the ISO, SET willfully and falsely represented that the capacity it was obligated to keep in reserve was actually available for dispatch, when in fact it did not exist.

54. Between May 1, 2000, and October 1, 2000, SET repurchased day-ahead ancillary service sales during 204 hours. During those hours with buybacks, SET's day-ahead sales were 2.5 times as much as its ancillary services sales during hours without buybacks. When buybacks occurred, SET was buying back more than 75% of its day-ahead sales. Between October 1, 2000, and December 31, 2000, SET had 155 transaction hours in which it repurchased its day-ahead ancillary services sales. When these buybacks occurred, SET bought back more than 83% of its day-ahead sales. Between January and June 2001, SET repurchased 98% of its day-ahead ancillary services sales during 565 hours. When repurchasing ancillary services, its day-ahead

sales were more than 3.7 times higher than its ancillary services sales during transaction hours without buyback. SET sold ancillary services without buybacks during only 141 hours.

3. Submission of False Load Schedules / "Fat Boy"

55. Market participants within the ISO-control area are required to submit balanced schedules to the ISO, in which anticipated generation must be scheduled against an equal amount of load that the market participant expects to serve. At all relevant times alleged in this Complaint, SET willfully submitted false schedules that overstated the load it intended to supply, knowing that the "excess" generation would be accounted for by ISO as an "uninstructed deviation" and paid the market clearing price for imbalance energy.

56. At all relevant times alleged in this Complaint, SET submitted numerous false load schedules in which it scheduled more load than was actually served. Between January 2000 and May 2000, SET submitted false load schedules for at least 1,052 hours. During many of these hours, the average scheduled load exceeded the average metered (or actual) load by more than 100 MW. From May 2000 to October 2000, SET submitted false load schedules for at least 1,473 hours. During many of these hours, the average scheduled load exceeded the average metered load by more than 184 MW. From October 2000 to June 2001, SET submitted false load schedules for at least 746 hours. During these hours, the average scheduled load exceeded the average metered load by approximately 262 MW.

4. "Ricochet" or "Megawatt Laundering"

57. At all relevant times alleged in this Complaint, SET engaged in a manipulative trading scheme known as "ricochet" or "megawatt laundering" designed to evade the price cap in the ISO's real-time, imbalance energy market. The ISO had a practice of paying prices above its cap for power imported from sources located outside the State when supplies bid into the real-time market were insufficient to meet demand. Such sales, known as "out-of-market" or "OOM" sales, were completed outside the centralized, imbalance energy market.

58. In a ricochet transaction, SET purchased energy in the PX day-ahead or day-of market, exported it to another control area where it briefly stayed, and then imported it back into the ISO control area through an OOM sale to the ISO at a greatly inflated price. Through this

strategy, SET willfully and falsely represented to the ISO that the energy it sold as OOM had been imported into California in order to avoid the price caps, despite the fact that, as a practical matter, no energy ever left or re-entered the State.

59. At all times alleged in this Complaint, SET engaged in numerous ricochet transactions. Between January 2000 and May 2000, SET exported and re-imported in the same hour at least 13 MWh during at least one hour. Between May 2000 and October 2000, SET's ricochet transactions increased. During this period, SET exported and re-imported in the same hour at least 58,316 MWH during at least 224 hours. Between October 2000 and January 2001, SET exported and re-imported in the same hour at least 8,801 MWh during at least 84 hours. Between January 2001 and June 2001, SET's ricochet activities again increased, exporting and re-importing in the same hour at least 12,157 MWh during at least 294 hours.

FIRST CAUSE OF ACTION

UNFAIR BUSINESS COMPETITION
(Business & Professions Code § 17200 et seq.)

60. Plaintiff realleges and incorporates by reference paragraphs 1 through 59 inclusive as if fully set forth herein.

61. Section 17200 of the California Business and Professions Code prohibits unfair competition, which includes any unlawful, unfair, or fraudulent business act or practice.

62. Beginning in 1999 and continuing through at least 2001, SET willfully engaged in unfair competition that includes, but is not limited to:

(a) offering to sell ancillary services to the ISO without having any physical resources backing up the sale, and collecting payment for ancillary services it did not provide and had no intention of providing;

(b) misrepresenting "out-of-market" sales of power to the ISO as "imports," and collecting payment for "out-of-market" sales at prices above the price cap, when in fact the power originated in California;

(c) overstating the amount of load it expected to serve, and thereby collecting payment for the "excess" generation at the market clearing price;

(d) scheduling non-firm energy in the opposite direction of congestion to a point outside the ISO control area without having any intention of delivering the power, collecting payment for purportedly relieving congestion, and then cutting the schedule before putting any energy on the grid;

(e) scheduling power across an inter-tie with the knowledge that it was out-of-service or already completely constrained, and without having any intention of delivering the power, and collecting payment for purportedly relieving congestion on the line without relieving any congestion.

(f) scheduling power in the opposite direction of congestion without having any intention of delivering the power, and collecting payment for purportedly relieving congestion, when in fact no congestion was relieved; and

(g) submitting false schedules to over-schedule load in one zone in order to create congestion on transmission lines, and collect payment for relieving the falsely created congestion.

63. Each of the acts and practices of SET, including, but not limited to, those alleged in Paragraph 62 to this Complaint are "unfair" within the meaning of California Business and Professions Code section 17200.

64. Each of the acts and practices of SET, including, but not limited to, those alleged in Paragraph 62 to this Complaint are "fraudulent" within the meaning of California Business and Professions Code section 17200.

65. Each of the acts and practices of SET, including, but not limited to, those alleged in Paragraph 62 to this Complaint are "unlawful" within the meaning of California Business and Professions Code section 17200 because they violate California law, including but not limited to California Corporations Code section 29536.

66. As a direct consequence of SET's unlawful, unfair, and fraudulent business practices, the operations of the ISO and PX markets were adversely affected, overall system-wide grid reliability was degraded, and the health, safety, and economic well-being of California businesses and residents were put in danger.

67. As a direct consequence of SET's unlawful, unfair, and fraudulent business practices, California businesses and residents were subjected to the risks and dangers of power supply interruptions, rolling blackouts and other adverse consequences.

SECOND CAUSE OF ACTION

UNLAWFUL COMMODITY TRANSACTIONS
(California Corporations Code § 29500 et seq.)

68. Plaintiff realleges and incorporates by reference paragraphs 1 through 67 inclusive as if fully set forth herein.

69. Under California Government Code sections 12658 and 12660, the Attorney General has authority to enforce the California Commodity Law (Cal. Corp. Code § 29500 et seq.) and to seek injunctive relief, civil penalties, and ancillary relief, including damages, for violations thereof.

70. Electricity is a "commodity" as defined under section 29504 of the California Commodity Law.

71. Ancillary services are "commodity options" within the meaning of section 29510 of the California Commodity Law.

72. SET engaged in transactions in which it offered to sell, sold, offered to purchase, and purchased commodities and commodity options in the PX and ISO markets.

73. Section 29536 of the California Commodity Law provides in relevant part:

> It is unlawful for any person, directly or indirectly, in connection with the purchase or sale of, the offer to sell, the offer to purchase, the offer to enter into, or the entry into, a commodity, commodity contract, or commodity option, to do any of the following:
>
> (a) To willfully employ any device, scheme, or artifice to defraud.
>
> (b) To willfully make any false report, enter any false record, make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
>
> (c) To willfully engage in any transaction, act, practice, or course of business which operates or would operate as a fraud or deceit upon any persons.

(d) To willfully misappropriate or convert the funds, security, or property of any other person.

74. Beginning in 1999 and continuing through at least 2001, in connection with its offers to sell, sales, offers to purchase, and purchases, of commodities and commodity options in the PX and ISO markets, SET violated section 29536(a)-(d) of the California Commodity Law by engaging in conduct including, but not limited to, the following:

(a) willfully and fraudulently offering to sell ancillary services to the ISO without having any physical resources backing up the sale, and collecting payment for ancillary services it did not provide and had no intention of providing;

(b) willfully and fraudulently misrepresenting "out-of-market" sales of power to ISO as "imports," and collecting payment for "out-of-market" sales at prices above the price cap, when in fact the power never left or re-entered California;

(c) willfully and fraudulently overstating the amount of load it expected to serve, and thereby collecting payment for the "excess" generation at the market clearing price;

(d) willfully and fraudulently scheduling non-firm energy in the opposite direction of congestion to a point outside the ISO control area without having any intention of delivering the power, collecting payment for purportedly relieving congestion, and then cutting the schedule before putting any energy on the grid;

(e) willfully and fraudulently scheduling power across an inter-tie with the knowledge that it was out-of-service or already completely constrained for the purpose of creating the appearance of congestion, and then collecting payment for relieving congestion on the line without relieving any congestion, and without having any intention of doing so.

(f) willfully and fraudulently scheduling power in the opposite direction of congestion without having any intention of delivering the power, and collecting payment for purportedly relieving congestion, when in fact no congestion was relieved; and

(g) submitting false schedules to over-schedule load in one zone in order to create congestion on transmission lines, and collect payment for relieving the falsely created congestion.

75. As a direct consequence of SET's violations of section 29536(a)-(d) of the California Commodity Law, the operations of the ISO and PX markets were adversely affected, overall system-wide grid reliability was degraded, and the health, safety, and economic well-being of California businesses and residents were put in danger.

76. As a direct consequence of SET's violations of section 29536(a)-(d) of the California Commodity Law, California businesses and residents were subjected to the risks and dangers of power supply interruptions, rolling blackouts and other adverse consequences.

PRAYER FOR RELIEF

WHEREFORE, the Attorney General prays for judgment against Defendants, and each of them, as follows:

1. For an injunction, as authorized by Business and Professions Code section 17203 and Government Code section 12658, enjoining Defendants, its successors, agents, representatives, employees and all persons acting in concert with them, from engaging in acts and practices that are in violation of Business and Professions Code section 17200 and Corporations Code section 29536, including but not limited to the types of acts and practices alleged herein.

2. For an order assessing civil penalties against each Defendant for each violation of Business and Professions Code section 17200 et seq., as authorized by Business and Professions Code section 17206;

3. For an order awarding damages, according to proof, as authorized by Government Code section 12658(b), for violations of Corporations Code section 29500 et seq.;

4. For an order assessing civil penalties for each violation of the California Commodity Law, as authorized by California Government Code section 12660;

5. For an order awarding Plaintiffs their costs of suit herein;

6. For such other and further relief as the nature of the case may require and the court deems appropriate and just.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand trial by jury.

DATED: November 16, 2005

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TOM GREENE
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MARK BRECKLER
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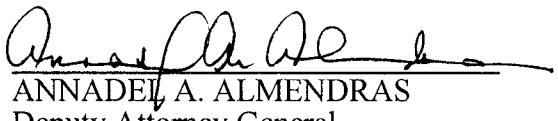

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