



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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CITY AT FOREFRONT OF EFFORT TO PURSUE JUSTICE FOR ENERGY RATEPAYERS, FEDERAL COURT OF APPEAL GRANTS RELIEF *Ruling May Result in \$25 Billion Refund For California*

San Diego, CA - The City of San Diego was the first and loudest municipality to pursue justice in the energy fiasco of 2000 according to City Attorney Michael Aguirre. That legal perseverance played a significant part in yesterday's Ninth Circuit Court of Appeal ruling that ordered the Federal Energy Regulatory Commission (FERC) to broaden the scope of its jurisdiction and consider providing refunds for unjust charges occurring prior to October 2, 2000. FERC must hold hearings regarding the "unjust and unreasonable wholesale prices" charged to ratepayers during the energy crisis of 2000, when ratepayer utility bills more than tripled throughout the state of California.

"The City of San Diego has been at the forefront of these proceedings, which encompass more than 200 petitions for relief," said City Attorney Aguirre at a press conference this morning with Mayor Jerry Sanders. "We have worked tirelessly on this matter since we first saw evidence of market manipulation. This is a gigantic accomplishment."

Mayor Jerry Sanders applauded the City Attorney's office for its diligence on behalf of ratepayers in San Diego, "who suffered first and most during this crisis."

Any refunds issued by FERC will be to the various utilities seeking relief. It will be up to the California Public Utilities Commission (CPU) to determine how the refunds will impact ratepayers, through rebates, lowered rates, or the utility's ability to renegotiate locked-in high rate contracts enacted through manipulation during the energy crisis.

The City of San Diego contended that FERC had an absolute obligation to ensure that the energy markets were functional at all times and had the duty to order refunds for unjust charges. Based on FERC's own evidence of a corrupt utility market, the Court extended the period that FERC will examine to determine refunds to the first months of 2000, much earlier than the October 2, 2000 time limit FERC had claimed. According to City Attorney Aguirre, this additional time period may result in more than \$25 billion in refunds across the state.

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According to Deputy City Attorney Fritz Ortlieb, who worked closely with the Washington, D.C. law firm Miller Balis O'Neill on the appeal, acknowledgement is due to San Diego Gas & Electric Company (SDG&E), which filed the original petition for ratepayer relief on August 31, 2000. However, SDG&E, in this instance, is distinguished from its parent company Sempra Energy, since SDG&E is a wholesale purchaser and retail seller.

Additional points made at the press conference include the following:

- The opinion involved over 200 consolidated cases with both energy buyers and sellers represented. The cases at issue were labeled the "Scope/Transaction" cases because they involved questions of law as to the extent of the jurisdiction of the FERC to regulate wholesale electricity prices under the Federal Power Act. The essence of the decision is that FERC's authority to order refunds is more expansive than FERC itself had determined.
- The City of San Diego filed the original appeal in early 2002.
- Last April, 2005, oral arguments in this case were conducted at the University of San Diego, which was a unique court forum for the Ninth Circuit Court of Appeal.
- FERC had issued orders in 2001 which held that its authority to order refunds for unjust and unreasonable wholesale prices was confined by the Federal Power Act to only those sales which occurred after October 2, 2000 (60 days after the first petition for relief was filed by SDG&E). Among the numerous California Parties in the appeal to the federal court, the City of San Diego was at the forefront in contending that FERC was mistaken about this limitation on this authority.
- The City contended that if FERC authorizes "market based" rates such as those occurring in the California Power Exchange and ISO spot markets, FERC has an absolute obligation to ensure that the markets are functional at all times, and has not only the right but the duty to order refunds for unjust charges regardless of temporal limitations if those transactions violate tariffs.
- The Appeals Court agreed with the position urged by the City and its opinion directs that FERC hold further proceedings to determine the amount of refunds due to customers for periods before October 2, 2000. The time period for parties to appeal the court's ruling has been extended by stipulation at the urging of the court's mediation office. The parties will be before a federal mediator for the next three months attempting to reach a settlement short of having the matter determined by FERC.

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