

INFORMATIONAL HEARING

Electricity Update: Status of FERC Refund Proceedings & Recommendations of the Attorney General's Energy White Paper

State Capitol, Room 112

April 22, 2004

Upon adjournment of session or 10:00 a.m.

I. Opening Comments

- Senator Debra Bowen, Chairwoman
Senate Energy, Utilities & Communications Committee

II. Overview

- Attorney General Bill Lockyer

III. The 100 Days Investigation

- Vickie Whitney, Deputy Attorney General

IV. Attorney General's Energy White Paper: A Law Enforcement Perspective on the California Energy Crisis

- Ken Alex, Acting Senior Assistant Attorney General

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Background

The effects of California's 2000-2001 energy crisis will be felt for many years, most obviously through the painfully high prices for electricity sold by investor-owned utilities. Subsequent to the crisis, there have been a number of legal efforts to provide relief to California ratepayers. The venue for seeking relief has been the Federal Energy Regulatory Commission (FERC) which, under federal law, has the responsibility of ensuring wholesale electric rates are just and reasonable, and in the federal courts.

Since the beginning of the energy crisis, there have been at least 70 lawsuits filed, formal complaints made, and investigations opened. The first complaint was filed nearly four years ago, in August 2000, when San Diego Gas & Electric (SDG&E) protested prices charged by power generators that forced San Diego electricity bills to double and triple. That complaint triggered a FERC investigation into California's wholesale power markets, which is the basis for the most significant complaints. FERC ruled the wholesale prices charged during an eight-month period – between October 2, 2000 and June 20, 2001 – were unjust and unreasonable, and ordered a number of power generators to issue limited refunds to investor-owned utility companies. California parties, including the Attorney General, the California Public Utilities Commission, and two of the state's major investor-owned utilities, appealed this decision to the United States Court of Appeals, which accepted the case.

During the appeal, new evidence surfaced, including a memo from Enron which detailed several of the tactics it used to manipulate the wholesale energy markets. In August 2002, the California parties sought and received an order from the Appellate Court requiring FERC to allow the California parties to discover and produce new evidence. That evidence was submitted to the FERC in March 2003. Concerned FERC was attempting to undermine the court order and ignore the new evidence, the California parties petitioned the Appellate Court in March 2004 to require FERC to comply with the August 2002 court order. In this proceeding, the California parties have argued Californians are owed more than \$9 billion in refunds due to the unjust and unreasonable energy prices FERC allowed power generators to charge in 2000 and 2001. FERC has ordered \$3.1 billion in refunds, while the remainder of the California parties' claims are still being contested. Separately, a major settlement was reached with El Paso Natural Gas for \$1.6 billion amid charges it manipulated the natural gas supply during the energy crisis to drive up power prices.

California's Attorney General has published a white paper detailing what he believes are the flaws in both the laws and with the regulatory agencies charged with policing the wholesale electric market. Among his observations is that FERC was the single entity with the power to avert the energy crisis, yet it failed to uphold its primary statutory duty to protect electricity and natural gas customers from unjust and unreasonable power prices.

This conclusion is critical as California considers revising the wholesale electric market structure. If California is going to increasingly rely on wholesale markets to provide California ratepayers with electricity, that decision means the state will be relying solely on FERC to police those markets, prevent market manipulation, ensure the prices being charged are just and reasonable, and to hold those sellers who break the rules accountable.

The Attorney General's white paper suggests several reforms which require congressional action to achieve and which presume FERC has an interest in vigilantly policing the wholesale market. However, if California doesn't have confidence FERC will begin doing the job the Attorney General and others contend it failed or refused to do in 2000 and 2001, California ratepayers may well be better off if the state were to minimize its reliance on the FERC-policed wholesale markets.