

I discern no exception for market-based (as opposed to stated) rates.

I fail to see how the Commission, even if it wanted to order refunds for prices charged to San Diegans during the summer of 2000, could do so in the present circumstances. Neither the Staff Report nor today's order contains any finding that any power supplier exercised market power or otherwise engaged in inappropriate behavior. Indeed, neither the Staff Report nor the order reaches definite conclusions about any seller or category of sellers. In these circumstances, how could the Commission order individual sellers or categories of sellers to make refunds, much less allocate responsibility for refunds among sellers?

Curiously, the Commission does state in a footnote that it is willing to consider "other forms of equitable relief" to mitigate the "severe financial consequences of last summer's high prices." Frankly, I do not know what this statement means. If the Commission intends to suggest that it enjoys the power to do indirectly what it cannot do directly—*i.e.*, exercise its considerable powers of persuasion to motivate power suppliers to reimburse buyers in some respect—then I reject that suggestion as legally unfounded.

As for refunds for future periods, today's order informs power suppliers that their sales into California ISO and PX markets are now "subject to refund." I addressed the practical effect of "subject to" language in my concurrence to the August 23 order initiating the Commission's investigation into California markets. 92 FERC at 61,611. I believe that the inclusion of "subject to" language will act to exacerbate supply deficiencies in California. This is because power suppliers, uncertain whether the Commission later may decide to alter the rate they have charged, justifiably will decide to sell their capacity in markets outside California. This will only accelerate the exodus of power outside California, a factor recognized by the Staff Report as contributing to the summer increase in the wholesale price of electricity.

I also have serious reservations about conditioning market-based rate authorization on maintaining a "subject to refund" obligation through the end of 2002. This has the practical effect of extending the refund protection under section 206 of the FPA for a total of 27 months of protection. In contrast, section 206 is explicit that, absent dilatory behavior of the type not present here, refund relief may extend only 15 months from the refund effective date

established by the Commission (here, October 2, 2000).

To address credible claims of anticompetitive behavior, I would employ the Federal Power Act as it was drafted and promulgated, not as it arguably should be revised to recognize modern-day power sales. I continue to believe that the Commission should act vigorously to detect and remedy real abuses of market power. If a complaint or Commission staff-initiated investigation can establish, to the Commission's satisfaction, such an abuse, the Commission should order refunds prospective from the date of that complaint or investigation. By directing the imposition of a "subject to refund" condition on California sellers of power, the Commission now goes beyond the limitations of the FPA by allowing for the potential award of refunds for conduct prior to the filing of a complaint or the initiation of an investigation.

Next Tuesday represents the most political day of our American heritage. It is our birthright as Americans. Today, there is no room for politics. The question is not whether or not I want to give refund relief to California ratepayers. I do, but I want to follow the law. I am certainly not above it.

### Conclusion

In conclusion, there is much I like and much I dislike about today's order. I believe that it is important to keep the process moving forward and to inform California ratepayers and officials of our judgments as soon as possible. I look forward to public input. I remain committed to respond to the needs of California ratepayers in a balanced manner that, hopefully, will allow them to enjoy the benefits of a competitive market as quickly as possible.

For all of these reasons, I respectfully concur.

Curt L. Hebert, Jr.,

*Commissioner.*

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket Nos. EL00-95-000, EL00-98-000, EL00-107-000, ER00-3461-000, ER00-3673-000]

**San Diego Gas & Electric Company, Complainant, 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 Independent System Operator and the California Power Exchange; Public Meeting in San Diego, California; California Power Exchange Corporation; California Independent System Operator Corporation; Order specifying time of conference and procedure for seeking participation**

Issued November 1, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

In this order, the Commission specifies the time and place for the November 9, 2000 public conference announced by Commission order on October 19, 2000,<sup>1</sup> and the procedure for interested persons to follow in seeking participation in the conference.

### Background

On October 19, 2000, in the consolidated dockets listed above, the Commission issued an order announcing in advance the procedures it expects to follow over the coming weeks to move forward in these proceedings. Among other things, the Commission indicated that it expected to hold a public conference on November 9, 2000 to discuss proposed remedies and stated that a separate order would be issued to specify the date and time of the conference and the manner for seeking participation in the conference.

### Discussion

#### *Time and Place of Conference*

The Commission announces that it will convene a public conference to be held on Thursday, November 9, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will commence at 9 a.m. and will be open to all interested persons.

<sup>1</sup> San Diego Gas & Electric Company, *et al.*, 93 FERC ¶61,051 (2000).

### *Participation in Conference*

Persons wishing to speak at the conference must submit a request to make a statement in the above-captioned dockets. The request should be submitted by e-mail to David Boergers at [david.boergers@ferc.fed.us](mailto:david.boergers@ferc.fed.us) (include Docket No. EL00-95-000 in the subject heading of the e-mail), and should be followed up, at the same time, with a letter to the Secretary of the Commission. The request should clearly specify the name of the person desiring to speak, his or her title and affiliation, and the party or parties the speaker represents. In addition, the request should include a telephone number for notifying the speaker. The request should also include a brief summary of the issue or issues the speaker wishes to address, not to exceed one page. All e-mail requests must be submitted on or before Friday, November 3, 2000.

The number of persons desiring to speak at the conference may exceed the time available. Thus, interested persons are encouraged to join with other persons with similar interests. Based on the requests to participate, panels of

speakers will be specified. The Secretary will issue a notice listing the speakers and panels for the conference.

In addition, all interested persons are invited to submit written comments on matters addressed at the conference. These comments should be submitted on or before November 22, 2000, in the above-captioned proceedings. All comments will be placed in the Commission's public files and will be available for inspection or copying in the Commission's Public Reference Room during normal business hours. Comments are also accessible via the Commission's Records Information Management System (RIMS).

The conference will be transcribed. Information about obtaining transcripts will be provided on the Commission's website, [www.ferc.fed.us](http://www.ferc.fed.us).

The Capitol Connection will offer this conference live over the Internet, as well as via telephone and satellite. For a reasonable fee, you can receive these meetings in your office, at home or anywhere in the world. To find out more about The Capitol Connection's internet, phone bridge or satellite

coverage, contact David Reininger or Julia Morelli at 703-993-3100 or visit the website ([www.capitolconnection.org](http://www.capitolconnection.org)).

In addition, National Narrowcast Network's Hearing-On-The-Line service will cover this conference live by telephone so that interested persons can listen at their desks, from their homes, or from any phone, without special equipment. Billing is based on time on-line. Call 202-966-2211.

Anyone interested in purchasing videotapes of the conference should call VISCOM at 703-715-7999.

### **The Commission Orders**

The Commission hereby orders that a public conference be convened on Thursday, November 9, 2000, at 9 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

By the Commission.

**David P. Boergers,**  
*Secretary.*

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