

Congress of the United States
Washington, DC 20515

September 30, 2003

The Honorable Pat Wood, III, Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Dear Chairman Wood,

It's with an increasing sense of frustration that we write to you again to plead California's case for refunds. Quite frankly, we don't believe the interests of California consumers have been served in the proceedings before the Commission so far. The refund process has dragged on too long and consumers seem to be losing ground.

More than three years have passed since the Commission took up San Diego Gas & Electric Company's (SDG&E) complaint alleging that wholesale electricity rates in the West were "unjust and unreasonable." Since then, it has been proved that not only energy suppliers did overcharge Californians, but many of these suppliers concocted schemes in order to manipulate prices throughout the market. Their efforts contributed heavily to California's economic downturn. Yet in three years, Californians haven't been refunded a single cent of the unjust and unreasonable charges they paid, and the Commission's current refund formula promises to restore only a small fraction of what has been taken from them.

The Commission has long acknowledged that Californians were gouged. Beginning with an order issued November 1, 2000, and in orders issued subsequently, the Commission wrote that wholesale electricity prices have been and have the potential to continue to be unjust and unreasonable. After failing to control these runaway prices for more than a year, the Commission warned energy companies that they would be liable for overcharges. On that basis and with the revelation of internal company memos detailing how Enron manipulated the California energy market, our constituents were led to believe that they might receive substantial refunds. Today, they wonder if energy companies will ever pay any restitution at all.

From the beginning, California's position has been discounted by the Commission. In June 2001, on the eve of Commission-mandated settlement negotiations between the California parties and energy sellers, Chief Administrative Law Judge Curtis L. Wagner Jr., the designated mediator, told the press that the state's refund demand of \$9 billion "seems a little high. And the generators numbers seem low. We'll probably come out somewhere in between." With energy companies offering an aggregate \$703 million to settle, Judge Wagner's middle-ground came very close to the position of the energy companies. In his recommendation to the Commission, the judge wrote:

"That very large refunds are due is clear. In fact, the Commission so found in its June 19, 2001, Order. While the amount of such refunds is not \$8.9 billion as claimed by the State of California, they do amount to hundreds of millions of dollars, probably more than a billion dollars in aggregate sum."

Judge Wagner's recommended methodology for calculating refunds was accepted by the Commission in July 2001. In proceedings before Administrative Law Judge Bruce L. Birchman, his methodology was applied, resulting in the finding last December that \$1.8 billion in refunds were owed. With California utilities (including the bankrupt Pacific Gas and Electric Company) still owing roughly \$3 billion in unpaid bills, the recommended refund left Californians owing \$1.2 billion to suppliers. However, as we wrote in our January 9, 2003 letter to you, Judge Birchman's finding did not take into account the market manipulation that was omnipresent during the Western energy crisis.

On March 3, 2003, the California parties (including the Governor and the Attorney General of California, the California Public Utilities Commission, and the state's major independently-owned utilities) presented to the Commission more than 1,000 pages of evidence of widespread market power abuse and market manipulation. While the California parties had to go to the Ninth Circuit Court of Appeals to force the Commission to allow them to discover and present this evidence, the Commission never responded directly to the evidence.

With little time to review the California parties' evidence or the comments that were submitted in response, the Commission concluded its examination of market manipulation with the issuance on March 26, 2003 of its *Final Report on Price Manipulation*. Even without a thorough review of the California parties' evidence, the Commission's report found "epidemic false reporting" and "significant market manipulation" in the Western energy market during the energy crisis. The report went on:

"[P]rices in the California spot markets were affected by economic withholding and inflated bidding. Staff finds that this violated the antigaming provisions of the Cal ISO and Cal PX tariffs...."

Despite the report's finding, the only significant change the Commission made to the refund formula was to adjust the natural gas price component. No other changes were made to account for the exercise of market power, withholding of supplies, the creation of fictitious transmission constraints, and other schemes to manipulate the market.

Contrary to the request we made in our January 9th letter, the Commission did not make the State of California's emergency, short-term energy purchases part of the refund proceeding. These purchases were made to keep the lights on day-to-day and hour-to-hour. If they were part of the proceeding, California consumers could expect to benefit from up to \$5 billion in additional refunds.

The Commission also rejected requests to reset the refund effective date to start in early 2000 instead of October 2000. Changing the refund effective date to earlier in the year would have allowed the Commission to order refunds of all unjust and unreasonable rates for the full period of the energy crisis. Under this scenario, the Commission would simply apply its refund methodology to earlier transactions. Instead, the Commission has taken a different approach. Rather than ordering market-wide refunds, it's pursuing the disgorgement of profits for specific transactions where blatant manipulation can be proved. In effect, the Commission has said that in order to be sanctioned, generators must be caught with their hands on the dimmer switch, describing exactly how their actions will influence the market.

This standard does not fully or fairly compensate California consumers for the unjust and unreasonable rates they paid. It doesn't recognize that the energy companies who manipulated the market raised not only their own prices but made prices for all electricity sold in the California market unjust and unreasonable.

Much of the Commission's scattershot enforcement in the market manipulation cases has been conducted outside the public view, enabling energy companies to negotiate settlements with the

Commission staff without the participation of California's representatives and over the objections of the California parties. In fact, the Commission has gone so far as to deny the California parties, who represent the victims of manipulation, party status in the Commission's separate secret investigations of physical and economic withholding.

This August, Commission staff recommended dropping investigations into the conduct of several energy suppliers. More recently, the press has reported settlements between Commission staff and Mirant Corporation, American Electric Power Companies, and others. In the AEP settlement, the company reportedly agreed to pay \$45,240 without admitting guilt. This is a continuation of a deeply disturbing trend.

In January of this year, the Commission reached a settlement with Reliant Resources, Inc. in one of the most egregious cases of manipulation. The Commission obtained transcripts of telephone conversations in which employees bragged about how they shut down plants to create a shortage of power then exploited the shortage to charge higher prices. Even with this smoking-gun, the Commission refused to revoke Reliant's market rate authority and the company did not have to admit to wrongdoing under the settlement. This is shameful.

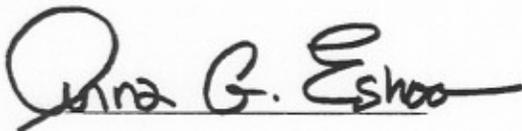
As we've catalogued above, the Commission has had a poor record in defending the interests of consumers. It failed for months to impose an effective price mitigation plan, it refused to order the renegotiation of unjust and unreasonable long-term contracts, and it has thus far short-changed consumers in the refund proceedings. With the refund proceeding on the verge of conclusion (indeed, we expected a final order before the end of August), there's still an opportunity to set things right. We, therefore, ask the Commission to:

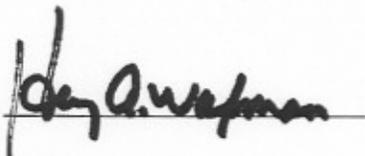
- 1) address all the market power and manipulation cases and issues in a single, consolidated, public proceeding, i.e. the California refund proceeding (Docket EL00-95),
- 2) grant the California parties, particularly governmental entities, party status in the Commission's separate secret investigations of physical and economic withholding,
- 3) apply the market-wide refund methodology to transactions during the May to October 2000 period,
- 4) make refunds available for the short-term energy purchases made by the state of California, and
- 5) rule promptly on outstanding issues in the refund case, so that refunds can flow quickly to California customers.

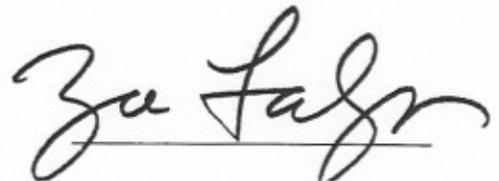
By undertaking these steps, the Commission can at last restore its credibility with the people of California and consumers nationwide.

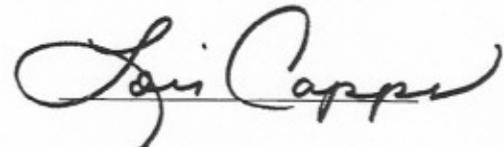
We look forward to your timely reply about the Commission's prompt action on this most critical matter.

Sincerely,









Maxine Waters

Lucille Roybal-Allard

Robert J. Matsui

Jane Harman

Tom Lantos

Bob Filner

Howard T. Berman

George Miller

Lynn Woolsey

Wick Simpson

Shirley P. Natcher

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Barbara Lee

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Nancy Pelosi

Sam Farr

Mike Stark

Luigi E. Giannini

Joe Baca

Chris Berman

Grace J. Napolitano

Cal Dooley

cc. Hon. William L. Massey
Hon. Nora Meade Brownell

Hon. Pat Wood, III
September 30, 2003

Signatures – Page 3

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Signatures – Page 4

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