



**Federal Energy Regulatory Commission
FACT SHEET
October 18, 2007
FERC Accepts Court Decision Limiting
Refund Authority Over Non-Public
Utilities
MA07-16
Docket No. EL00-95-164**

The Federal Energy Regulatory Commission today vacated each of the Commission's California refund orders to the extent that they subject non-public utility entities to the Commission's refund authority under the Federal Power Act. Today's action stems from a remand of a prior Commission decision by the U.S. Court of Appeals for the Ninth Circuit.

Background

Whether the Commission has refund authority over wholesale electric energy sales made by governmental entities and other non-public utilities participating in Commission-regulated energy markets was remanded to the Commission. Originally, the Commission required governmental and other non-public utilities to pay refunds for sales made during a 2000-2001 period of the California energy crisis. These entities participated in the California Independent System Operator Corporation (CAISO) and California Power Exchange Corporation (PX) markets. On appeal, the court found that the Commission had no authority under the Federal Power Act to order non-public utilities to pay refunds and remanded the case to the Commission for proceedings consistent with its findings. The Energy Policy Act of 2005 has since given the Commission the authority to order some non-public utilities to pay refunds in certain circumstances.

Order

The Commission vacated each of its California refund orders to the degree that they subject non-public utility entities to the Commission's refund authority under the Federal Power Act (FPA). The Commission also directed the CAISO/PX to complete their refund calculations including all entities that participated in the CAISO/PX spot markets from Oct. 2, 2000, through June 20, 2001. As a result of the Ninth Circuit's holding, the total amount of refunds that otherwise would have been paid by non-public utility entities for their sales into the CAISO and PX spot markets must be reflected in reduced refund amounts that buyers will receive. This shortfall will be allocated by using a *pro rata* reduction to all refund recipients, based on their final net refund position in relation to total net refunds. This includes both public and non-public utility entities.