



FEDERAL ENERGY REGULATORY COMMISSION

NEWS

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FERC Orders Hearing To Address Ninth Circuit Remand

The Federal Energy Regulatory Commission (FERC) today ordered a hearing into whether any individual public utility sellers' violations of market-based rate reporting requirements led to unjust and unreasonable rates for buyers in California's 2000-2001 energy market.

The key question before FERC is whether, based on the facts and circumstances of each individual seller, a seller's improper or untimely filing of its quarterly transaction report masked an accumulation of market power such that the market rates were unjust and unreasonable.

"The Ninth Circuit affirmed FERC's authority to grant market-based rates," said FERC Chairman Joseph T. Kelliher. "Today we take action to properly address the court's remaining concerns and bring the unresolved issues related to this proceeding to a conclusion. I strongly encourage parties to work toward a settlement – a path that has produced faster and more equitable resolution of these complex proceedings – rather than litigation."

In *State of California ex rel Lockyer v. FERC*, the U.S. Court of Appeals for the 9th Circuit held that FERC's authorization of market-based tariffs complied with the Federal Power Act (FPA), but the Commission erred when it said that it lacked authority to order remedies for violations of its reporting requirements. The court remanded the case for further proceedings.

The hearing, to be scheduled before a FERC administrative law judge, will determine whether any buyer paid unjust and unreasonable rates during the 2000-2001 California energy crisis as the result of a seller violating quarterly market-based rate requirements. If so, FERC must then determine whether it should exercise its remedial discretion and order a disgorgement of profits by that seller.

A disgorgement of unjust profits relates to a violation of a rule, statute, regulation, or order that results in the violator collecting unjust profits.

The hearing will allow FERC to supplement the record. Wholesale power purchasers that bought energy through the California Independent System Operator (CAISO) and the California Power Exchange (CalPX) under short-term market-based rates, and those making spot market purchases of energy through the California Energy Resources Scheduling Division of the California Department of Water Resources (CERS) from Jan. 1, 2000, to Oct. 1, 2000, may present evidence as to whether any seller that violated the quarterly reporting requirements caused market-based rates to be unjust and unreasonable. Sellers will be allowed to present opposing evidence. The hearing will focus on the individual facts and circumstances relevant to each seller.





FERC directed all marketers and other public utility sellers that made short-term sales at market-based rates to CERS or into the CalPX or CAISO markets to submit copies of all previously filed quarterly reports for Jan. 1, 2000, to Oct. 1, 2000, for the hearing record.

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