

**Congress of the United States**  
**Washington, DC 20515**

January 9, 2003

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

Dear Chairman Wood,

We write to urge you to increase substantially the refund amount which was proposed by FERC Administrative Law Judge Bruce L. Birchman in the California refund case (EL00-95-045) on December 12, 2002.

Judge Birchman found that suppliers overcharged California power purchasers by \$1.8 billion during the 2000-2001 energy crisis. The judge also reported that California power buyers *owe* \$3 billion to suppliers, so if the Commission approves Judge Birchman's proposed findings, Californians will owe \$1.2 billion. In our view, given the manipulation of energy supplies and prices in the West, it is unacceptable for the Commission to approve findings that will leave Californians in debt to the energy suppliers that gouged them.

At the very least, Judge Birchman's proposed findings are incomplete because they do not reflect consideration of the full scale of corruption in the California energy market. The judge was constrained by the instructions the Commission provided when it initiated the refund proceedings on July 25, 2001. The Commission's instructions failed to allow the consideration of information that was discovered *after* the instructions were handed down.

Since July 2001, we've learned (and we continue to learn) a great deal about the malfeasance that influenced the price of energy in California and the West. If this information had been a factor in Judge Birchman's findings, it would have led to a higher proposed refund. Specific allegations and admissions of market manipulation include, among others:

- May 6, 2002 – The release of internal Enron documents, describing how the company manipulated the California electricity market to increase prices artificially.
- September 17, 2002 – The release of a California Public Utilities Commission study indicating five major generators withheld power, causing rolling blackouts in California.
- September 23, 2002 – Administrative Law Judge Curtis Wagner's finding that El Paso Corp. withheld natural gas capacity during the California energy crisis.
- September 24, 2002 – The Securities and Exchange Commission fine of Dynegy for \$3 million for illegal round-trip trades and other illegal activities.
- October 17, 2002 – The guilty plea of former Enron energy trader Timothy Belden on wire fraud charges in connection with his actions to manipulate prices in the California electricity market.
- November 18, 2002 – The testimony of Michelle Markey, former director of energy research at *Gas Daily* before a California State Senate committee, stating that energy companies made false submissions about the price they purchased and sold gas for.

- December 3, 2002 – The indictment of a former El Paso Corporation gas trader on charges that he fabricated natural gas transactions and reported them to a price index publisher.
- January 6, 2003 – The release of a report from the California Independent System Operator, identifying companies that followed the deceptive practices described in the Enron memos.

These allegations and admissions, particularly the manipulation of natural gas price indices, should have been part of the record and the basis for Judge Birchman's proposed findings. They were not.

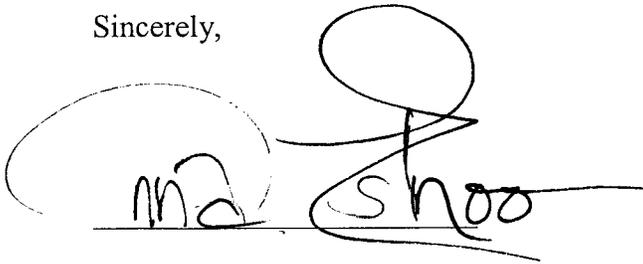
In determining refunds, Judge Birchman estimated the fair price of electricity in large part on the cost of natural gas, which is used to fuel many power plants. In so doing, he relied on industry-compiled indices. The manipulation of these indices described above creates serious doubts about the accuracy of Judge Birchman's proposed findings.

We also think that Judge Birchman's proposed findings unfairly exclude the overcharges suffered by the California Department of Water Resources. Since retail consumers in California ultimately pay these overcharges, it's irrelevant which agency or utility served as the purchaser and distributor of power. Consumers should be made whole by the Commission's decision.

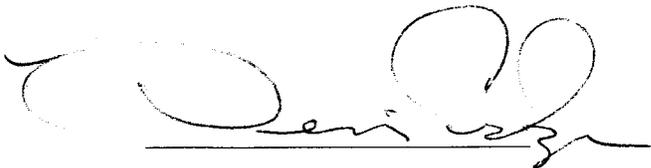
Finally, we're concerned that Judge Birchman's proposed findings rely heavily upon data provided by energy suppliers...the very suppliers who have been accused of and in some cases admitted to wrongdoing in the California energy market. Their submissions are tainted by their actions. Even if there isn't an alternative source for the data, the Commission should consider the information with a grain of salt.

Again, we urge the Commission in the strongest way possible to increase substantially the refund recommendation before it and we ask for a timely response to our call for this policy direction. Thank you for your attention.

Sincerely,

Ma Shoo

Bob Sherr

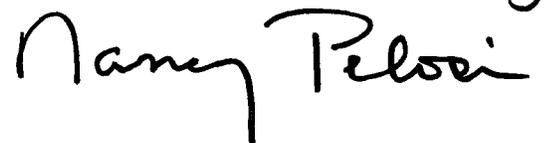
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