

Amicus Summary

AMICUS SUMMARY:

- California members of Congress have a strong interest in allowing California consumers to recover the billions of energy overcharges that resulted from widespread illegal manipulation of California's energy markets. California members of Congress also have a strong interest in ensuring that FERC operates in accordance with proper judicial and Congressional oversight.
- In August 2002, the 9th Circuit Court of Appeals directed FERC to give the California Parties (including the Attorney General, the California Public Utilities Commission, major California utilities and California consumers) the opportunity to discover and adduce new evidence concerning energy market manipulation during the summer of 2000.
- FERC, however, has ignored the court's order and instead initiated a plethora of new, frequently non-public investigations against individual generators. Settlements in these dockets have been minuscule in light of the billions taken from California consumers and industry during the energy crisis.
- The California Parties have been largely shut out of these new proceedings, and FERC maintains that they can never be subject to judicial review.
- FERC's approach ignores the 9th Circuit's order directing FERC to take discovery about the crisis and prevents the California Parties from addressing the extent to which they were harmed and from challenging facially inadequate FERC settlements.
- As a result, FERC has been able to minimize the amount that energy wholesalers and marketers will be required to pay back.
- In its *amicus* brief, the Congressional and State legislative parties have asked the 9th Circuit to clarify that FERC needs to use the existing Remedy Proceeding – a forum subject to judicial review – to collect evidence of energy market manipulation, rather than non-public investigatory proceedings that shut California consumers out of the process.

CASE BACKGROUND:

FERC was on its way to ignoring evidence of market manipulation when the California Parties were able to locate evidence, notably from Enron, that the generators and traders were responsible for sky-high prices. This was taken to the 9th Circuit, which ordered FERC to take testimony and other evidence. Subsequently, FERC has spun off so-called investigative dockets to resolve claims against individual generators. Historically, these dockets do not include affected parties – here the people of California. The California Attorney General and the California Public Utilities Commission have filed motions in the 9th Circuit challenging FERC's actions. This *amicus* supports these motions.