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CALIFORNIA POWER CRISIS
Big-ticket long-term power buy is upheld
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In a move that could affect **energy** consumers throughout the West Coast, a federal regulatory judge yesterday said the high-priced power contracts signed during California's **energy** crisis should be upheld -- brushing away complaints that they were signed under duress.

For the past year, utilities and government agencies in California, Oregon, Nevada and Washington have been trying to overturn the long-term **energy** contracts they signed to resolve the **energy** crisis of 2001.

The utilities say the multibillion-dollar price tags on the contracts were "unjust and unreasonable" -- signed at a time when such companies as Enron, Williams and Dynegy were manipulating the market by filing false data.

But yesterday, Carmen A. Cintron, an administrative law judge with the Federal **Energy** Regulatory Commission, ruled against four utilities that were trying to overturn their **energy** contracts -- Nevada Power, Sierra Pacific Power, Southern California Water Co. and Public Utility District 1 of Snohomish County, Wash.

Cintron said she saw no link between the alleged manipulation of short-term **energy** prices and the rise in long-term prices. "As a result, it is concluded that the contracts at issue in this case should not be modified," Cintron said.

Cintron's ruling is at odds with a ruling last week by FERC judge Bruce Birchman, who found that the **energy** companies had overcharged California by \$1.8 billion during the **energy** crisis. But Birchman said the state actually owes the **energy** companies \$1 billion, because it had not fully paid for the power.

The California Electricity Oversight Board, which says that the **energy** overcharges totaled \$8.9 billion, plans to appeal.

"FERC is increasing what had been a high burden of proof for consumers to an extraordinarily high, amazing burden of proof," said Eric Saltmarsh, attorney for the oversight board, which is pursuing claims of overcharges before another FERC judge. "We believe this is a real misapplication of the law. But they have been hostile to our claims."

Both rulings, which will go to the FERC board for approval, show that utilities are having a hard time convincing FERC that they are due compensation from the **energy** companies, which reaped billions of dollars from the West Coast at the peak of the **energy** crisis.

"FERC is telling consumers on the West Coast that consumer protection is going to be weak or nonexistent," said **Robert McCullough**, head of McCullough Research in **Portland**, who works as a consultant for Sierra Pacific and the Snohomish utility.

"This is a situation when we have had **energy** traders who have pleaded guilty to wire fraud and **energy** firms that have settled court charges for enormous amounts, but FERC cannot find a connection between that and the overcharges," McCullough said.

The deals involved in yesterday's hearing were signed in late 2000 and early 2001, when prices on the spot market were \$300 per megawatt hour or more. To ensure that they would get a reliable supply of power, the utilities signed contracts with Enron, Mirant, Duke **Energy** and El Paso **Energy** with hourly megawatt prices ranging from \$33 to \$290.

In comparison, spot market prices today are roughly \$30 per megawatt hour.

Despite the wide gap between the prices, Cintron ruled that the utilities were wrong to link spot prices and long-term prices. And she added that it has not been proven what effect market manipulation may have had on the prices.

The claims presented by the utilities are similar to California's claims in three separate cases now winding their way through FERC: the appeal for \$8.9 billion in refunds, a plea to overturn the state's long-term contracts, and a complaint against market manipulation.

McCullough said Cintron's decision might affect the way California's claims are treated by other judges at FERC.

"This will have implications for California because some of the same issues that we've been arguing are present in California's complaints," he said.

California attorney Saltmarsh disagreed.

"Even though the public likes to think that judges hearing the same facts about the same situation might make the same decision, the findings in one case don't carry over into another," he said.

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