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FREE DOUBLE ISSUE

Whistleblower Alleges PG&E Proposed Dry Casks Slipshod

Spent-fuel storage casks proposed by Pacific Gas & Electric for use at its Diablo Canyon and Humboldt Bay nuclear power plants fail Nuclear Regulatory Commission standards, according to a former quality-control engineer for Midwestern utility Exelon. PG&E, however, continues to stand behind its chosen storage-cask manufacturer.

PG&E selected Holtec—the manufacturer chosen by Exelon for its radioactive waste casks—to manufacture the spent-fuel casks it proposes to use in California. Thus, allegations by the former Exelon employee could affect the perception, if not the reality, of Holtec's integrity.

The casks "are nothing but garbage cans" if they are not made in accordance with government specifications, said whistle-blower Oscar Shirani.

Shirani discovered alleged flaws in the casks used at Exelon's Dresden plant in Illinois during a quality-control inspection. He subsequently notified the NRC of potential radioactive hazards from the substandard containers. The former quality-control engineer claims the NRC has refused to investigate or intervene to stop the manufacturing deficiencies.

"I thought the NRC was a big dog and a force," he said, but without the kind of oversight he maintains was thwarted, the safety of nuclear plants "is suspect."

If the casks are as shoddy as Shirani fears, would they leak radioactivity and endanger public health? He could only guess at the impact on millions of people.

Shirani said he tried to put a "stop work" order on the casks' fabrication, but to no avail. Antinuclear activists have followed up on his claims, filing Freedom of Information Act requests to find out what the

> "No one…should have to guess about the consequences of the manufacturing flaws."

government did about these claims. Even in reading the fine print, those activists, as well as Shirani, were unable to not quantify the potential danger.

"No one—not Shirani, the public, the NRC, or cask makers—should have to guess about the consequences of the manufacturing flaws," said David Lochbaum, Union of Concerned Scientists nuclear safety engineer. "The regulations require a certain level of performance, and his findings were below that minimum level. It may not be that the casks will fail when challenged, but they are unnecessarily and illegally closer to the failure point," he added.

Shirani audited Holtec and its suppliers for the Nuclear Users Procurement Issues Committee, identifying what he calls "major design

and fabrication issues" with Holtec in 1999 and 2000. He filed those with the NRC in November 2000. The NRC closed the preliminary investigation a year later.

Welds on the casks were performed by "unqualified welders," and materials control for the casks was inadequate, resulting in brittle and weak material, Shirani reported to Exelon in mid-2000. Shirani maintains Holtec failed to report holes in the neutron shielding material. In addition, Exelon "falsified" quality-assurance documents and "misled" the NRC in last year's investigation of the problem. He found "hundreds of nonconformance items" during his inspections. Overall, Shirani claims that the casks being manufactured to hold nuclear waste are not what the federal government approved in conceptual design.

The NRC as a whole has not picked up Shirani's claims, but he does have at least one supporter within the agency—Ross Landsman, NRC Region III inspector.

"I called my people in Washington and tried to get them to do something, but they didn't do anything," said Landsman. "Every time I find some stuff wrong with any of the Holtec stuff, my brilliant cohorts in Washington say, 'Give them an exemption'," Landsman said sarcastically. "Holtec, as far as I'm concerned, has a noneffective QA [quality assurance] program."

At the NRC, Landsman is supposed to be governmental enforcer for utility quality-assurance employees. He reviews technical reports and is one of the people to make the calls on whether there are potential problems with spent-fuel storage devices.

Landsman added that the issues raised by Shirani on the casks headed for the Dresden plant have not been resolved, despite an August 2000 audit stating that the problems had been fixed. *California Energy Circuit* has requested NRC documents on the Holtec casks through the Freedom of Information Act. The NRC provided a couple of the more inconsequential documents. However, one April 2002 memo did reveal that an NRC review panel concluded that "weld quality records are not in agreement with the code requirements." The NRC refuses, even on appeal, to provide Landsman's document of serious allegations. Other FOIA requests are still pending at the NRC.

In spite of the controversy, PG&E continues to stand by its choice of Holtec for its spent-fuel casks. "We understand that any issues raised have been resolved and that subsequent audits last year revealed no additional findings relative to Holtec's dry storage systems" was the terse response from Jeff Lewis, PG&E spokesperson.

"We have every confidence that Holtec [and its manufacturer] will meet or exceed all applicable regulatory requirements for Diablo Canyon's and Humboldt's used fuel storage projects. We are committed to protecting the health and safety of the public, as is Holtec and the NRC," Lewis added.

The NRC's inspector general did not return calls for this story, but there have been media reports that the office is in the process of investigating Shirani's claims.

"The NRC did approve the design as a snapshot in time," Brian Gutherman, Holtec manager of licensing, responded. "We're allowed to make certain changes below the safety threshold." Gutherman said Holtec "is absolutely not concerned" about cask safety and potential leakage, and that between the NRC and Holtec's clients, "nowhere has anyone suggested such a thing." As for Shirani, Gutherman said, "He's just making things up."

Holtec sent a letter to its stakeholders in late June. "We are confident that all of our dry spent fuel storage and transportation cask products and services are provided in a manner that meets or exceeds all applicable regulatory requirements," the letter stated. In a public statement in July, Holtec added, "Had we known of [Shirani's] concerns we would have most definitely helped him sort out the facts under our concerns resolution process. . . . The allegations are being used as a springboard by the anti-nuclear groups to attack both the Private Fuel Storage and the Yucca Mountain projects." The company added that Shirani's allegations are an "insult."

> "We have every confidence [in Holtec]."

Holtec casks have also been chosen by Southern California Edison, among other backers of a proposed radioactive waste-storage site in Utah known as Private Fuel Storage.

If the casks are found to be fabricated below specifications, the NRC could ignore that fact because there are no set policies on such matters. "They could be accepted as is or get approval of the [changed] design. There could also be an exemption," said NRC spokesperson John Monninger. He added that there is, however, a possibility the government would not allow the casks to be used.

What course of action will be taken and whether it will affect PG&E's plans remain unclear.

—J.A. Savage

Sempra Energy Pulls Ahead in Race To Build LNG Terminal in Baja California

Sempra Energy's proposed liquefied natural gas terminal in Baja California received requisite permits, and the new facility could lop off 20 percent of the current price of natural gas. Mexico's Energy Regulatory Commission and the city of Ensenada issued final permits mid-August. The company plans to begin construction next year.

Sempra's proposed pipeline would carry one billion cubic feet a day of gas into existing pipelines between the

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JUICE

A Circuit-Breaking Work of Staggering Genius

In *A Heartbreaking Work of Staggering Genius*, the protagonist puts together a successful publication—a 'zine, as in magazine—with the help of underpaid friends and the random luck of good public relations. While author Dave Eggers' aforementioned novel has a snappier title than ours here at *Energy Circuit*, we too have talent, perspicacity, fearlessness, and a strong commitment to our audience.

"We will be your virtual eyes and ears."

Many of you are familiar with our bylines. We have been covering the business and politics of energy collectively for more than 30 years. We are fascinated by California's energy policy. It can make or break the fifth-largest economy in the world and has vast environmental ramifications. The business and politics of energy can be brutal and involve subtle nuances. In short, the energy field is complex, exasperating, intriguing, and often entertaining.

Here at *Energy Circuit*, we will provide you energy business and policy news. We will provide the news highlights, like other media outlets, but in more depth and with analyses drawn from extensive experience and independent observation. We will also report the stories that others miss—those more technical ones, which together provide subtle color and context.

Regarding *Energy Circuit's* inception: we attempted to name our new publication something more poetic—along the lines of *A Circuit-Breaking Work of Genius.* In fact, we brainstormed for weeks. The first title pitched was *Power Trip.* That was met with collective groans and rotten tomatoes. "That is sooo Berkeley" was one of the printable responses. One of *Energy Circuit's* intrepid founders ran countless publication name ideas by her spouse morning, noon, and night. "Honey, what do you think of *AC/DC* or *Watts Up*? she asked before his snoring became audible. His responses, in spite of sleep deprivation, were usually charitable. Others' feedback was not. Subsequent proposals were shot down like ducks in a row for being too dry, too long, confusing, or unavailable. That was until *California Energy Circuit* was proposed.

We admit our name is about as inspired as a hardware store. However, it portrays our mission of covering and being wired to the energy scene, and connecting the electric dots.

Our focus is California. The Golden State is the leader and remains the bellwether —whether it becomes a calamity or its wild deregulation ride turns out to be a blessing in disguise. With a dozen energy agencies, the biggest utility (geographically) in the nation, scores of municipal power agencies, and the California Independent System Operator, California's energy business policy is challenging to master. *Energy Circuit* will stay on top of the energy scene for you. We will be your virtual eyes and ears and report on agency meetings and legislative and court hearings you are unable to attend.

Energy Circuit will be available to you 24 hours a day on line. For important, breaking stories, we will post articles shortly after the news occurs. If you are nursing insomnia, groping for catchy titles, and burning to find out what happened at the Ninth Circuit Court of Appeals you can access the on-line edition without waiting. Our electronic publication with the week's news will be sent to you every Friday—except holidays. You will also be able to access single stories on line and research our archives with our search engine.

Also, we will offer guest editorials. We invite our readers to submit pieces for our review to offer different and/or fuller perspectives on our evolving energy world. See our editorial policy at *www.californiaenergycircuit.net*.

We here at *Energy Circuit* take pride in the publication and are dedicated to fair and honest reporting. We look forward to our future together—whether it is a re-, de-regulated world or some re-called mix in between.

–J.A. Savage & Elizabeth McCarthy,
editors & publishers

United States and Baja California to serve end users in California and Mexico. The Golden State consumes six billion cubic feet a day of natural gas, and the additional supplies are expected to lower costs, said Donald Fesinger, president of Sempra Energy Global Enterprises. Californians have been paying between $4.50/MMBtu and $5.00/MMBtu, but Fellsinger believes gas from the company's Energia Costa Azul terminal will cost power plants or others users $3.50/MMBtu.

Sempra's proposed LNG terminal is one of five such plants slated for the Baja California coast, just south of the Tijuana–San Diego border, that energy companies developed other energy companies are seeking to bring LNG to Baja California from countries around the world that lack developed natural gas markets. Natural gas can be liquefied by cooling it to minus 260 degrees Fahrenheit, a temperature at which it occupies 600 times less space than at room temperatures. Like petroleum, it can be shipped across oceans to industrial countries where it is needed. Once unloaded from ships, it regasifies as it slowly warms to atmospheric temperature and then is sent through pipelines to businesses and households.

Royal Dutch/Shell, ChevronTexaco, and Marathon

Oil Co. have proposed terminals in Baja California, and Phillips Petroleum and El Paso Corp. have made a joint proposal. Sempra, however, is ahead, say both the company and observers such as Chris Psenti of the environmental group Pro Peninsula.

Mexico's Secretaria de Medio Ambiente y Recursos Naturales granted environmental approvals for Sempra's terminal on the coast between Ensenada and the tourist town of Rosarita Beach this spring. The company hopes to have the $600 million facility built as early as 2006.

> "Our area is 100 % tourist-resort type development."

But the approvals have not deterred local opposition.

"Our area is 100 percent tourist-resort type development," said Roberto Valdes, president of Bajamar Real Estate Services and developer of the Bajamar resort community just a little more than a mile from Sempra's proposed site. "The introduction of a huge industrial complex will definitely change the outlook for the area."

Valdes said that a group of attorneys are challenging the environmental approval, first through an administrative appeal process. Though Ensenada has asked Sempra to provide $15 million to upgrade municipal facilities, such as its boardwalk and public-works trucks, the final land-use permit and energy commission approval may be challenged. "We have not seen any documents, and until they are made public we will not know if a legal challenge is possible," Valdes said. "There are a thousand environmental issues, but the world obeys the power of money, and these companies are very powerful," he added.

Sempra's proposed Costa Azul terminal is closer to developments than would be allowed in the United States, according to Psenti. Upscale communities of homes and condominiums—with their customary red tile roofs and white stucco walls—have risen along the barren and rocky coastline, once dotted only by tiny fishing villages. With the development, the local economy has become dependent upon U.S. and Mexican tourists, who flock to the scenic shoreline where gray whales migrate just beyond the surf line. Opponents of Sempra's plan contend that placing a large industrial facility with two looming tanks and a long pier for offloading tanker ships would be inappropriate in the resort area—where green golf courses now lie—and would interfere with the seasonal movements of the whales.

To address these concerns, the groups have proposed that an LNG terminal be built offshore. However, Sempra spokesperson Doug Kline said the company has not considered an offshore facility. One has never been built, and it would raise the cost of the project, he said. A terminal built on the ocean floor could increase the total cost of the project by up to 20 percent, but a floating terminal actually could cost less than a land-based facility, according to Bill Powers, president of Powers Engineering in San Diego, who has provided technical assistance to community groups in Baja California on energy facility permitting.

As challenges mount, the short-term outlook is for an adequate supply of natural gas in Southern California this winter, according to Rick Morrow, vice president of customer services for Southern California Gas. However, state energy officials fret over the longer-term outlook. "California needs more natural gas over the long haul," said James Boyd, a member of the California Energy Commission. As the economy recovers, he predicted, Californians will use more natural gas, which will put upward pressure on prices unless new supplies are developed.

—William J. Kelly

New Governor Could Affect CPUC, CEC Layoffs

The California Public Utilities Commission and the California Energy Commission may manage to skirt layoffs by cutting some remaining fat—even under California's tough new budget signed by Governor Gray Davis. In the event of a recall and a party change, however, changing political power could hack into the meat of the institutions if the new governor is so inclined.

"A new governor could make cuts deeper or less so. Within the existing budget there's lots of authority for changes," said Steve Larson, chief deputy director, Department of Finance.

The head of the state finance department is expected to carry out his boss's orders. "The director of finance's [position] is totally dependent on the governor's will," said Larson, former CEC director. The finance director, former state senator Steve Peace, has leeway on where to perform economic surgery. The legislature, for example, mandated state agencies cut 16,000 jobs, and some agencies could be eviscerated so others can survive intact.

There has been an "informal indication" that the CPUC may get some flexibility, said Bill Ahern, CPUC executive director. The CPUC has given up 60 vacant positions to help meet state budget goals and has identified another 21 for

of the state's general fund, the CEC might need to cut 29 positions, according to Claudia Chandler, CEC spokesperson. She added that the Department of Finance, however, "may tell state agencies that they can use contract dollars for positions."

One of the CPUC's concerns is that it be left with enough staff to enforce its policies. Under the current administration, there is a political eagerness to keep its oversight and maintain the offices that litigate and bring enforcement actions against energy companies. That may or may not continue if Governor Davis is recalled.

Meanwhile, the agencies are trying to keep filled staff positions and, in the CPUC's case, are staying at home. CPUC president Mike Peevey said that instead of the next commission meeting being in Los Angeles as planned, it will be held in San Francisco to rein in the travel budget.

At the CEC, $20 million was "loaned" to the general fund out of its Public Interest Energy Research program, $6 million was "loaned" to the California Power Authority, and $15 million was taken from renewables accounts, according to Chandler.

—J.A. Savage

Non-Utilities Pleased with CPUC's Short-Term Energy-Efficiency Allocation, but Tug of War Continues

To the relief of energy-conservation advocates, the California Public Utilities Commission voted to continue making $110 million available for energy-efficiency programs offered by non–utility organizations for the next two years. The efficiency proponents will, however, continue to urge the commission to subject the entire program to open bidding and will sue if necessary.

"The battle will continue until the utilities stop using ratepayer money to influence the CPUC to act in a way contrary to ratepayers," said Dan Meek, attorney for Sesco, a minority contractor.

The CPUC last month allocated one-fifth of the $550 million in public-goods fees paid by ratepayers to fund public and private efficiency programs and earmarked 70 percent to investor-owned utilities' administration for 2004-05. The commission also set aside 10 percent for statewide marketing and adopted evaluation criteria for the program.

At the August 21 meeting, CPUC member Susan Kennedy said the decision provides "some stability and continuity while we debate" the direction and goals of the program. Commissioner Carl Wood had doubts about the funding allocation and wondered whether it would hamper integrated resource planning. Although he voted for the decision, he said the commission should be encouraging third parties' efforts and "tapping into that kind of enthusiasm."

The money for measures to make electricity and natural gas use in homes and businesses more efficient comes from public-goods charges included in ratepayers' bills. The IOUs were forced to relinquish control over 20 percent of that amount by the CPUC under AB 117 by Assemblymember Carole Migden (D-San Francisco) two years ago. Early this year, the utilities pushed unsuccessfully for legislation that would put all the money back under their control, under AB 1734 by Assemblymember Sarah Reyes (D-Fresno), chair of the Assembly Utilities and Commerce Committee. The IOUs also urged the commission to give them access to the purse strings via partnerships with the non-utilities—much to the fury of conservation groups.

> "Local and state information programs may act as a marketing arm for IOUs."

The fate of the energy-efficiency program funds is also tied up with the procurement proceedings CPUC president Michael Peevey is overseeing. Peevey told the IOUs that they will be handed back their former "obligation to serve" responsibility and must figure out how to meet load. In response, the utilities came up with energy-efficiency resource-acquisition plans. Peevey wants to merge the IOUs' proposed pot with efficiency program funds, amounting to $400 million a year, which worries non-utility efficiency proponents. Workshops on the matter are expected to he held be late September or October.

The fight is part of a decade-long dispute over who should administer the energy-efficiency money, with conservation groups pushing for an independent administrator. The CPUC has not administered the public-goods efficiency funds because of state contracting rules. Non-utility efficiency advocates have argued—and continue to argue—that giving Pacific Gas & Electric, Southern California Edison, and San Diego Gas & Electric the money creates an inherent conflict of interest because conservation measures will not boost the utilities' bottom line. The IOUs have also been known not to spend all the program money they receive.

The recent CPUC decision "is a qualified victory," said Barbara George, head of Women's Energy Matters. She, The Utility Reform Network, Local Power, and Sesco feared the commission would put the 20 percent allocation back under the utilities' control. The efficiency advocates have asked the commission to do away with the hefty set-aside for PG&E, Edison, and SDG&E. The groups' reading of the community-choice law, AB 117, is that 100 percent of the efficiency pot should be on the table and all parties required to compete on an equal footing.

The latest CPUC ruling left conservation proponents concerned because the language linked to the 20 percent allocation left the CPUC wiggle room as to the exact division of the efficiency program pie. The non-utility parties have until September 25 to submit bids, which must demonstrate their programs' benefits—including cost-effectiveness, energy savings, and the ability to reduce peak demand.

Prior to the August 21 hearing, Sesco argued that the IOU residential programs are not cost-effective. "The IOU programs may be a disproportionate beneficiary of various local and statewide information programs which act as the marketing arm for those programs," stated Richard Esteves, Sesco president.

Sesco is seeking a rehearing on the commission's July 11 decision that held the CPUC's policies and procedures meet AB 117 requirements. The law states "any party" may apply to become an administrator of an energy-efficiency program if it meets certain criteria. However, according to Sesco's application for rehearing, the commission "grants IOUs overwhelming preference in awarding both the administration and implementation of [public-goods-funded] EE programs."
D03-08-06, vote 4-1, Lynch filing dissent
—Elizabeth McCarthy

CPUC Returns $1 Billion to Ratepayers

In an accounting true-up resulting from initial overfunding, the California Public Utilities Commission returned $1 billion to ratepayers to be credited in bills beginning in the next few days. The credit, requested by bond financiers, is in one lump sum and amounts to $0.006/kWh of use for the last 12-month period.

In the September 4 CPUC meeting, the commission released $440 million for Pacific Gas & Electric ratepayers, $422 million for Southern California Edison customers, and $135 million for San Diego Gas & Electric ratepayers—amounting to about a $40 credit on an average residential electric bill.

Given the pending recall vote, some cynics said the governor may get some positive political public relations mileage from the credit. But commission president Mike Peevey declared that he had not received a phone call from the governor's office through Richard Katz, governor Davis' energy adviser, to pressure the commission for such a credit decision.

> "Ratepayers receive $1 billion in principal but no interest."

Ratepayers will receive their $1 billion in principal back from the state but will not get any interest on that money. In fact, ratepayers have to keep paying interest to the bondholders. State officials were not able to calculate what that interest is. "Our feeling is that the most important thing was to get money back to ratepayers" so they can start circulating it in the economy, said Peevey.

"It's the result of restructuring of DWR bonds last fall," explained commissioner Loretta Lynch. The Department of Water Resources took over buying energy for utilities during the energy crisis because utilities were in financial straits and unable to consummate energy contracts. That procurement ability was originally funded out of the state's general fund, but was eventually refinanced through bonds. The bond underwriters demanded that an extra $1 billion be added to the principal on the condition that when and if DWR extricated itself from the energy-buying business, that money would be refunded.

The adage "What's a few millions between friends?" may have applied to a CPUC decision on Edison's accounting practices. A vestige of the rate freeze, the transition revenue account, was collecting funds from California Power Exchange credits to offset direct-access customer liability.

According to commissioner Geoffrey Brown, Edison had originally calculated the direct-access customer undercollection at $540 million, but the commission rejected that amount. Back at the drawing board, the utility came up with a more refined number of $392 million and subsequently revised it again to $473 million. The commission allowed the latter amount for Edison's accounting.

Despite the access to cheap capital at the moment, the commission proceeded to allow PG&E to implement hedging plans to keep the cost of its access to capital manageable. Brown noted that the utility's hedging plans should still be submitted to the commission for approval, but he voted for the bankrupt utility's plan nevertheless. Lynch was annoyed that PG&E pressured the commission to act on its plans, but she couldn't dispute that "every [interest] point saved translates into millions of dollars" for ratepayers.

In a decision that a majority of commissioners dubbed "special interest," Sierra Pine still was able to waive its direct-access surcharge because it met criteria set up by AB 1284—a bill written for the company. "Your vote today will save 200 jobs," said commissioner Susan Kennedy. Commissioners Lynch, Carl Wood, and Brown all said they felt "obligated" to vote for the exemption because of the legislature's direction.

Sierra Pine had been returned to utility service involuntarily when Enron collapsed, thus exposing it to the $0.027/kWh exit fee. The company uses energy-intensive methods to recycle wood waste into particleboard.

Decision numbers unavailable at press time.
All decisions unanimous.
–J.A. Savage

Firms Acquiesce in High Court Affirmation of Closed-Door SCE Rate Hike Deal

Southern California companies large and small have quietly accepted last week's California Supreme Court decision upholding a 40 percent electricity rate hike negotiated privately between the California Public Utilities Commission and Southern California Edison. Meanwhile, consumer groups pledge to seek new strictures on the commission to prevent future closed-door deals.

On August 21, the court ruled that the 40 percent rate hike in 2001—worth more than $3 billion—did not violate the state's electricity market deregulation or open-meeting laws. The rate hike allowed Edison to recoup losses suffered during California's electricity crisis when wholesale power prices rose and retail prices remained regulated, putting the squeeze on investor-owned utilities.

The decision came amid two other developments on Edison's rates. One a 13 percent cut, on average, that took effect August 1. The other, a August 21 decision that exempted the company from filing a cost-of-capital application for 2004, allowing its 11.6 percent cost of capital authorized by regulators in 2002 to stand for at least another year.

"It's a great thing for not only the utility, but for the restoration of stability to the electric system in Southern California," said John Bryson, Edison chair. He called the court decision "a complete win" and said it probably will clear the way for the company to begin paying shareholder dividends again.

Moody's Investors Service on August 25 announced that it is considering upgrading Edison's financial rating.

However, The Utility Reform Network—which mounted the legal challenge to the closed-door deal—called on Governor Gray Davis to "rein in" the commission.

> "A complete win."

Another consumer group, the Utility Consumers' Action Network in San Diego, which closely followed the case, agrees with TURN. "It creates a loophole so large that al Qaeda could drive a munitions truck through it," said Michael Shames, UCAN executive director. He predicted consumer groups would seek action by the legislature to prevent future closed-door decisions by the state commission.

However, Southern California businesses were more measured in their reaction.

"In our heart of hearts, I don't think we felt there was a chance of getting a favorable legal decision," said the energy

manager of one large company that pays more than $1 million a month for electricity. “This was a very special case brought up by the perfect electrical storm and will not open the door to regular closed-door negotiations at the utilities commission,” said the manager, who spoke on condition of anonymity.

While the cost of electricity remains a business-climate issue throughout Edison’s territory, workers’ compensation and other problems have eclipsed energy costs as leading concerns, explained Jack Kyser, chief economist for the Los Angeles County Economic Development Corporation. Rates are “not the biggest drag,” he said. “It’s one concern of many.”

“It’s not the hot-button issue that it was a couple years ago,” added Brendan Huffman, staff director of the energy and environment committee of the Los Angeles Area Chamber of Commerce. Rather than buying from Edison, a variety of companies have switched to direct access to save money, he said. Others have implemented conservation measures, and a few have moved out of state.

Restaurants, for example, are installing more energy-efficient appliances when it comes time to replace old refrigerators and stoves, noted Mark Taylor, vice president of the local chapters of the California Restaurant Association.

California Supreme Court S110663
CPUC Cost of Capital: Docket D03-08-063, votes 3-2, Lynch and Wood opposing.
—William J. Kelly

CPUC Handing Utilities Financial Latitude

In a trio of decisions this week, the California Public Utilities Commission affirmed one by one that utilities are getting the benefit of financial doubt, post-energy crisis. Pacific Gas & Electric was given authority to sign early contracts for short-term needs, and Southern California Edison received $24 million in funds that had been denied by the Federal Energy Regulatory Commission. Southern California Gas received a shareholder incentive award that one commissioner noted was one-fourth higher than other utilities got.

These decisions, hot on the heels of the California Supreme Court ruling approving the Edison deal with the CPUC, show little doubt that utilities are back in regulators’ favor. (On August 21, the state’s highest court allowed the $3.2 billion settlement between the CPUC and Edison to proceed, dismissing consumer concerns that it was done behind closed doors and with knowledge of the risks of the rate freeze while buoying the commission’s and utility’s plans to pass though the costs of the energy crisis to ratepayers.)

On August 21, PG&E was allowed on a unanimous vote to contract for half of the difference between its total load and what its hydroelectric facilities and nuclear plant can provide in electricity for 2004 (net short) without the usual CPUC oversight. The underlying reasoning is that having more lead time to contract for the utility’s net short leaves it, and ratepayers, less vulnerable to high prices. Many have pointed to the inability of utilities to contract for supplies on the fly without commission preapproval as one of the major contributors to the energy crisis.

> “Utilities are back in regulators’ favor.”

The commission isn’t letting PG&E proceed completely without oversight. Although the deal allows PG&E’s contracts for supply to be deemed ìreasonable and prudent for the purposes of cost recovery instantly, the commission still holds the keys to the reasonableness review process. PG&E is limited to 50 percent of non-baseload need, and contracts are not to extend beyond 2004. Any contracts made have to be finalized through the CPUC’s advice letter process. That process is often a formality–it does not require hearings and involves a relatively cursory overview by commission staff. There was some discussion that the comment period on advice letters should be shortened for these cases, but the commission granted the normal comment period instead. The contract proposals do, however, go to the ‘procurement review group.’

For Edison, the commission decided that funds that could have been claimed as transmission spending, and thus out of CPUC jurisdiction, were actually distribution costs and refundable.

“Edison has met its burden of proof in order to receive the funds,” said commissioner Susan Kennedy. Edison’s $24 million in transmission expenditures fell into the cracks between what FERC would approve and what the CPUC considers reasonable expenditures. The CPUC’s decision found the costs to be considered under distribution and not transmission, and thus eligible for CPUC approval. The decision ends what Kennedy called “regulatory Ping-Pong” between the two commissions–with Edison as the ball.

SoCal Gas got $17.4 million in shareholder incentive bonuses for reasonably managing its gas acquisition for core customers between April 2000 and March 2002 Edison had questioned whether SoCal, during that time, had caused gas prices to spike and engaged in anticompetitive behavior. However, those issues will be taken up in another proceeding–02-11-040–and the shareholder award is subject to refund.

At the CPUC, the continuing holdout for tighter control of utilities’ pass-through to ratepayers’ bill is recently being exemplified by commissioner Loretta Lynch. Commissioner Carl Wood, a strong advocate of re-regulation and a return to integrated utility resource planning, is walking the tough-on-utilities line on one side and getting utilities to a position of financial strength on the other. For instance, he sees PG&E’s latitude for contracting its net short as a ìtransitionî while the commission contemplates the larger issue of integrated planning. Commissioner Geoffrey Brown is also counted on for the tough-on-utility vote, but it was not evidenced in the August 21 meeting.

In the Edison transmission issue, Lynch proposed that Edison submit the details of the $24 million for adjudication. “Edison chose to ignore” reasonable direction on the matter, said Lynch. In the SoCal incentive decision, Lynch argued that the utility’s profits from the incentive program were one-fourth higher than those of San Diego Gas & Electric and PG&E.
–J.A. Savage

PG&E Competes with Irrigation Districts on Noncommodity Costs

Pacific Gas & Electric can now offer cut-rate prices to customers who might otherwise choose irrigation districts as their providers, but the latter are not too worried. PG&E is not allowed to discount the commodity of electricity, nor surcharges. Other bundled costs, however, are up for negotiation–as long as a sale does not raise rates for other utility consumers. Customers must use an excess of 20 kW to get the sale prices.

"We don't think it will have a material impact on competition with PG&E because we compete on more than just price," said Garith Krause, Merced Irrigation District assistant general manager. Since AB 2638 was signed into law three years ago, PG&E has been allowed to compete, and irrigation districts have opposed the utility only on implementation terms in overlapping territories, Krause added.

The California Public Utilities Commission redefined the applicable rate in PG&E's tariff August 21, 2003.

Irrigation districts such as Merced, Turlock, and Modesto are eager to snag PG&E customers, whether they are existing or new. In Merced's case, the irrigation district is focusing on new residential developers for its competitive hook-ups. "Less than one-third of our new customers are prior PG&E customers," said Krause.

CPUC Resolution E-3801

–J.A. Savage

TURN and ORA Push to Lower Cost of PG&E Bankruptcy Deal

Consumer advocates urged the California Public Utilities Commission to rework the proposed bankruptcy settlement reached between Pacific Gas & Electric and the CPUC staff. They specifically called for replacing the proposed $2.2 billion regulatory asset with a dedicated rate component to save ratepayers billions of dollars in avoidable costs.

In August 29 filings to the CPUC, The Utility Reform Network and the Office of Ratepayer Advocates said the current agreement would unfairly enrich PG&E and its shareholders and saddle ratepayers with a bill as high as $5 billion. Both groups are calling for a dedicated rate component backed by bonds in place of the regulatory asset, which would allow PG&E to achieve investment-grade rating while saving utility customers between $3 billion and $5 billion over nine years.

> " The burden imposed on ratepayers and the economy would be far too great."

The proposed $2.2 billion regulatory asset would allow PG&E to issue long-term debt to meet its cash needs. Creating a regulatory asset specifically would boost PG&E's rate base by 15 percent without any capital investment or risk, and also carry "substantial tax and return on equity costs" to ratepayers, said Margaret Meal, TURN's financial expert. On the other hand, creating a $2.2 billion dedicated rate component, which is a straight pass-through, would not include hefty costs and is the reason why TURN and ORA support this financing alternative.

"The savings that can be achieved through this relatively simple and modest modification are far too large, and the burden that would otherwise be imposed on ratepayers and the economy far too great, for the commission to disregard this opportunity," stated Mike Florio, TURN senior attorney. TURN's filings also point out that the proposed settlement would allow PG&E shareholders to reap returns well in excess of returns under a traditional cost-of-service ratemaking.

Under the proposed tentative bankruptcy settlement reached in late June, which must be approved by the CPUC by the end of the year, PG&E would keep its generating assets under commission control. The investor-owned utility in turn would keep the $3.6 billion in headroom it collected at the end of 2002. A fictitious $2.2 billion regulatory asset would be created, accompanied by an 11.2 percent rate of return over nine years to boost its bottom line. Beginning in January, rates would drop by $0.005/kWh. The CPUC raised them $0.04/kWh during the energy crisis.

Bob Glynn, PG&E Corp. chief executive officer, in a speech to Lehman Brothers September 3, said the tentative settlement would allow the company to deliver a strong financial performance. "We believe the agreement is on track to achieve the first-quarter 2004 target for the utility's exit from Chapter 11," he said.

In their filings, TURN and the ORA came out with different estimates of what the tentative settlement would cost utility customers.

TURN's Florio estimated the change in the borrowing structure would save ratepayers $2.8 billion. He also asked the commission to establish a balancing account to track future tax benefits arising from the energy crisis and bankruptcy proceeding.

ORA proposed extending the current rates, which have allowed PG&E to reap about $825 million this year in headroom–a rate above cost of service–to reduce PG&Eís procurement tab. If any debt remains, it should be paid off via a dedicated rate component, for an estimated net savings between $3.6 billion and $4.9 billion.

–Elizabeth McCarthy

CEC Approves Support for Conservation and Renewable Projects

The California Energy Commission unanimously approved nearly $7 million in loans for energy efficiency and renewable projects, and a $4.4 million award to a new wind project in Solano County.

The Florida-based High Wind LLCís new 70 MW wind farm near Rio Vista was granted an incentive award of up to $4.4 million over the next five years during the commission's September 3 meeting. The renewable builder's original incentive bid was for $0.008 per kilowatt hour produced but was reduced to $0.004/ kWh because of project delays. The new wind farm, which went on line end

of June, includes mega windmills that can produce 1.8 MW.

The CEC also signed off on two low-interest loans of more than $5 million to the City and County of San Francisco. One is for $2.7 million to replace old, inefficient steam turbines that serve as back up generators at the county hospital, as well as new chillers for the facility. The equipment upgrade is estimated to save $544,000 a year in energy costs. The other loan approved was for $2.5 million to install a 250 kW photovoltaic system and efficiency project at one of San Francisco's water treatment plans. The interest rate on the loans is 3.95 percent but will be 3.85 percent if the projects are completed and invoiced within 9 months, said Joseph Wang, CEC energy specialist.

The five commissioners also signed off on a $1.8 million loan to the California Department of Mental Health to put in place an efficient motor on a chilled water pump and to install an Energy Management System. The estimate annual savings are $180,000.

Also approved by the CEC was a $200,000 augmentation and extension of a contract with the Electricity Oversight Board, under which the commission provides accounting support. The commission will be handing over the financial services it has provided the EOB since it came into being to the Department of General Services. "We are at a point we can wean ourselves" from the support services, said Mark Hutchinson, CEC manager of financial services.
– Elizabeth McCarthy

CEC Back in Integrated Planning Saddle; Transmission Siting Authority Discussed

Although vetting the contents of the California Energy Commission's Integrated Energy Policy Report was the subject of two days of hearings last week, the recent Eastern blackout begged questions beyond supply and demand. The concept that the CEC might have some streamlined transmission siting authority in order to expedite the bogged-down process of new transmission infrastructure was touched upon but not yet publicly developed.

"There are cultural and institutional constraints" to efficient transmission siting. "You have to start by suspending belief in the status quo," Les Guliasi, Pacific Gas & Electric director of state agency relations, told a CEC panel during the August 27 and 28 hearings. "The [California Public Utilities Commission] has not managed to stay on schedule with one of these projects."

Steven Kelly, Independent Energy Producers policy director, said that between the California Independent System Operator (CAISO), the CEC, and the CPUC, a transmission project could take between five and six years.

> "You have to start by suspending belief in the status quo."

"Itís the least appetizing responsibility one could be given," Bill Keese, CEC chair, commented after the meeting. He added, however, there is a "broad recognition" that there needs to be a change in the process. For instance, the CPUC now ties the cost of a utility's upgrade to the direct benefit of the ratepayers for that utility. "Maybe it will benefit those ratepayers and maybe it won't," said Keese, adding that it may in fact benefit the entire state.

The three agencies–the CEC, CAISO, and the CPUC–could develop a streamlined transmission siting process through the coordination they currently have on the energy Action Plan. CAISO could determine "need" for new transmission, the CEC could resolve its appropriateness, and the CPUC could decide who pays for it, according to Keese.

There is no indication yet out of Sacramento that there is any stomach for giving the CEC the same kind of expedited statutory authority it had for siting new generation in the wake of the energy crisis for new transmission. One source close to energy legislation expected the votes would be difficult because it would mean overriding local opposition. Another source, however, said the issue is so compelling that by the time the issue gets on the Legislature's radar, the votes will fall in line.

On the supply and demand side, the CEC has historically been set up to do such analysis. The authority was suspended, however, during deregulation, and only last year's SB 1389 authorized the agency to reposition its old computer-modeling crown to handle the matter. In order for policy makers to decide overarching state law, the commission is supposed to give them the underlying facts of future supply availability, future prices, the influence of efficiency, and environmental protection.

"Hopefully, we will set the facts in concrete. [Then] let's get on with discussing the policy issue," said Keese.

One part of the discussion that may or may not become a fact is the state's seriousness about incorporating liquefied natural gas (LNG) as a feedstock for power plants and natural gas end use.

Commissioner Jim Boyd repeatedly expressed concern that the stateís pipelines have enough gas to meet demand and said that LNG could fill the bill. A Sempra representative noted that those anxious to send potential Alaskan LNG to California have contacted the company after seeing Sempra's current success with securing LNG permits in Baja California.

Siting LNG terminals in the state might just be as difficult as siting new transmission lines if recent history is any indication. Environmentalists and neighbors alike drove a Bechtel/Chevron proposed plant out of Mare Island last year. LNG is extremely volatile. It also increases tanker ship traffic.

More public hearings on the integrated plan are set for October. According to commissioner John Geesman, the final report goes to the governor November 1, and he (or she) has 90 days to accept it. "There are a lot of people who think this is a long-overdue reform," Geesman added.

Feds Push Biomass in Healthy Forests Measure

Despite a long track record and sporadic subsidies, biomass-fueled electricity has not had much success in California. That, however, is not deterring the federal government from moving ahead with a plan to boost its use nationwide.Despite the lack of commercial success for biomass-fueled electricity in California, the federal government is pushing for its use nationwide.

Yet, as the promise of federal subsidies loom, California's biomass industry is wary of riding on the coattails of the Healthy Forest Act.

The George W. Bush administrationís , however, push to expand sees biomass' commercial use, including in the Golden State, is as part of its strategy and parcel of opening to open up to logging 190 million acresóan area the size of Idaho, Wyoming, and Montana combined.

President Bush's Healthy Forest Initiative–to be adopted administratively–and the Healthy Forest Act, pending in the Senate, promote logging forests for biomass as well as fire prevention.

> "A lot of people oppose LNG, nuclear, and coal. . . California [is at] a point where they have no energy to support the economy."

Rebecca Watson, Department of Interior assistant secretary for land and minerals, pitched biomass use as a non-lumber angle to Bush's controversial forest agenda. She said biomass offers an alternative to the overdependence on natural gas.

"We're becoming natural gas dependent. We as a society have made a choice to use natural gas for environmental reasons. And a lot of people oppose LNG, nuclear, and coal," Watson said. "California [is at] a point where they have no energy to support the economy."

"That's where biomass can help." In addition, "California [is at] a point where they have no energy to support the economy."

Watson acknowledged that getting biomass-produced electricity to the end user remains a problem but said the government was exploring the use of portable generators. She added that the pending energy legislation includes a transportation subsidy for biomass. "Transportation is a thorny problem," she said, adding that the Department of Energy and the Bureau of Land Management were addressing the issue. The latest subsidy proposal in the federal measure would offer up to $20.00 per green ton of biomass, with a maximum $100,000 per project.

While seen as a way to make use of burnable cellulose, biomass generation has not been commercially viable in California. Because of the waste-utilization benefits of biomass fuel, the state has provided subsidies, but they have not proved enough to put the industry on solid financial ground. Biomass is usually located far away from the transmission system that carries the juice to end users, which raises its costs. The industry calls those "chipping and shipping" costs. Even its boosters admit that biomass is more expensive than other renewable alternatives–with wind at about $0.05/kWh and biomass a bit higher.

Efficient biomass generators located in areas where the fuel resides barely exist in California. Peter Weiner, a lobbyist for biomass owners and partner at the Paul Hasting law firm, said there are older cogeneration plants scattered across the north state and foothill areas at lumber mills. More efficient ones could replace those, but air-quality issues remain, he noted.

In addition, translating the federal legislation into state action will not be easy–and not only because of economic issues and associated air pollution.

California politics and Washington politics are often like petroleum and water–they don't mix. According to Weiner, the California biomass industry might be better off politically if it avoided the Healthy Forest Initiative according to Weiner. "The question is, how much California would embrace [the act or initiative] or how much California would stand in its way," he said.

At the same time, using biomass to fuel power plants is gaining popularity at the federal level and filtering through the top echelons of federal agencies and the administration. However, in interviews with *Energy Circuit*, Watson, her boss, Interior Secretary Gale Norton, and Mark Rey, Department of Agriculture undersecretary for natural resources and environment, made it is clear that there is a large gap between the administration's current concept and planned implementation.

As Weiner remarked, "They see biomass as a part of the Healthy Forest Initiative, but what do they mean?"

–J.A. Savage

Davis Howls over NSR Routine Maintenance Provision; AG will Sue

Governor Gray Davis has been a man of action since the effort to recall him from office became a reality. Shortly after signing the long, hard-fought privacy legislation, he announced he would fight the Bush administrationís latest changes to the New Source Review (NSR) rule. The contentious language at issue deals with the new definition of "routine maintenance," which allows power plants, refineries, and other industrial plants to expand without installing air-pollution controls if the modification costs less than 20 percent of the cost of a major piece of equipment, much to the dismay of state officials and clean-air advocates.

"As we speak, the Bush administration is threatening to impose Texas-style environmental standards on California," Davis said. The administration's plans to ease the federal Clean Air Act standards "aid and abet industrial polluters," he added.

Power plants in California that could reap the benefit of the new rule, announced August 27, include Reliant's Etiwanda facilities in Southern California. Curtis Kebler,

Reliant's director of asset management, said the company was in the process of reviewing the provision to see what it entails.

Other industry representatives, however, were quick to applaud the new routine maintenance rule, stating the earlier provision deterred facility upgrades. "The EPA is helping to remove powerful disincentives that stand in the way of better efficiency and reliability for the electrical system in the United States," said Scott Segal, director of the Electric Reliability Coordinating Council, an industry lobbying organization.

The state attorney general and the California Air Resources Board plan to sue over the latest NSR rewrite. "The regulation turns the Clean Air Act on its head by defining 'routine maintenance' so broadly that plant owners will be able to make major, multi-million-dollar upgrades without having to install modern pollution control-technology," Attorney General Bill Lockyer said last week.

> "The EPA is helping to remove powerful disincentives that stand in the way of energy efficiency."

Also getting into the fray were gubernatorial hopefuls Arnold Schwarzenegger and Senator Tom McClintock (R-Thousand Oaks). The Terminator has broken ranks with his Republican brethren and pledged this week to back standards protecting the Golden State's air. McClintock, on the other hand, supports the rule rewrite for the same reason industry officials do.

Under the new regulation, "equipment replacement" was redefined. Facility replacements that cost less them one-fifth of the price of a key part of a plant's "production system," which includes boilers, generators, and turbines, need not include installation of emissions controls, even if the upgrade leads to higher air pollution.

The NSR overhaul has been under fierce attack since it was released in late December. A dozen attorneys generals from Northeastern states and California filed suit in the District Court of Appeals in Washington, D.C., to bar implementation of the proposed revisions. AGs from New York, New Jersey, Massachusetts, and Pennsylvania announced at the end of August that they would also challenge the latest rule change.

The new NSR rule has led not only to state-federal clashes, but possibly to a clash with the judiciary branch. On August 7, a federal court held that FirstEnergy Ohio Edison's failure to install pollution controls when it made significant plant upgrades violated the Clean Air Act's routine maintenance provision.

Adding fuel to the fire over what is seen as a pro-industry rule change was the revelation that a key EPA air official involved in the revision will move to Southern Co. The Natural Resources Defense Council, which has been fighting the rewrite, learned that John Pemberton, chief of staff to EPAís assistant administrator for air and radiation, will become a senior executive at Southern. The power company is a defendant in dozens of suits alleging it violated the NSR rules. "Industry bought and paid for the Bush administration's assault on our clean-air protections, so it's fitting that one of the nation's biggest polluters should reward this EPA official by putting him on its payroll," said John Walke, NRDC's director of clean air.

At the state level, Davis is also working to void the new rule via legislation. He said he would sign a bill by Senator Byron Sher (D-Palo Alto), SB 288, which would require plants that upgrade in California to comply with stronger pollution standards. "These programs would ensure that emission controls are installed at the most cost-effective time in the construction or major modification of a facility," Davis said. The Assembly Appropriations Committee passed the bill on a 17-7 vote August 29.

Industrial plant owners, however, got more good news from the EPA. At the end of August, the EPA rejected a petition that sought to have carbon dioxide regulated as a pollutant on grounds that the agency lacks the authority to regulate greenhouse gases.

–Elizabeth McCarthy

FERC's Latest Settlements Reflect Dwindling Dollar Signs

Federal regulators may be running out of ammunition against companies that allegedly gamed California's deregulated market during the energy crisis if the latest rash of settlements is any indication. The Federal Energy Regulatory Commission ordered more than 40 companies to "show cause" why they shouldn't have to repay Californians. Out of those cases, 10 were settled and 16 dismissals were requested. The rest have until November 3 to conclude discussions.

The amounts in the current batch of settlements are a fraction of what was recovered in earlier, totaling about $2 million. The state administration, however, continues to allege that energy companies bilked Californians of nearly $9 billion. Unofficial amounts reached by the California Independent System Operator (CAISO) and energy companies in FERC discussions earlier this year were hovering around $1.1 billion. Tallying the most recent settlements with earlier ones, along with fines, energy companies are returning less than $1 billion.

"I think the $8.9 billion figure . . . may be a very conservative lower bound," said Frank Wolak, Stanford professor and head of CAISO's market surveillance committee. His computations of the exercise of "unilateral market power" from June to October 2000–only three months out of the year-and-half-long crisis–add up to $4.44 billion.

The settlements include:

American Electric Power - $45,240 for congestion revenues.

Aquila - $75,975 for allegedly parking energy

outside the state.

Morgan Stanley Capital Group - $857,089 for allegedly cutting non-firm power and circular scheduling. Public Service New Mexico was contracted as a source and/or sink to hedge long power positions for transactions. The time period was May through August 2001, using PSNM service up to 11 times.

PacifiCorp - $67,745 for congestion revenues in October 2000. FERC also alleged the company earned $12.08 from cutting non-firm power during the same time, but that amount was not challenged.

Portland General - $12,730 for allegedly cutting non-firm energy in two transactions, for a total of 127 MWh. Puget Sound Energyó$17,092 for alleged revenue from cutting non-firm energy from January 2000 through June 2001.

Reliant - $836,000 for apparently double-selling 6,458 MW of ancillary services in June 2000, and 4,900 MW the following August.

Redding - $6,300 because the city ìmay have engaged in circular scheduling.î A staff report indicates Redding agreed to an Enron strategy for transactions involving PacifiCorp and Enron.

San Diego Gas & Electric - $27,972 for congestion revenues.

Williams Energy Services - $45,230 for allegedly scheduling ancillary services above its capacity and circular scheduling.

FERC also filed motions to dismiss allegations in the following cases:

Anaheim
Azusa
Bonneville Power Administration
Cargill-Alliant (now Cargill Power Markets)
FP&L Energy
Los Angeles Department of Water & Power
Pasadena
PG&E Energy Services
Public Service of Colorado
Public Service New Mexico
Riverside
Salt River Project
Sierra Pacific
Tucson Electric
TransAlta Energy Marketing
Western Area Power Administration

> "I think the $8.9 billion figure . . . may be a very conservative lower bound."

"It is disheartening that they are missing the point in doing these piecemeal settlements for mainly paltry sums. They should be doing a marketwide remedy for refunds since every game impacted the market and every participant in the market benefited," said Vickie Whitney, deputy attorney general for California. The AGís office formally objected to what it called the piecemeal approach. Whitney also took exception to the proposed dismissal of LADWP's case and some others because FERC's parameters ìexclude a substantial amount of bad conduct.

Gary Ackerman, director of the Western Power Trading Forum, said, "It's a hell of a lot better to give the money to Californians than the attorneys." He said that things appear to be going in generators' and traders' direction, but that in this case, he couldn't figure out what FERC was going after. Ackerman noted there is one more FERC case open on refunds, but that involved money sitting in the former California Power Exchange account.

–J.A. Savage

Northeast Blackout Hastens FERC Authority in Energy Bill

The August 14 Eastern blackout has begun shaping the contents of the federal energy bill. While earlier versions of the legislation pressured the Federal Energy Regulatory Commission to back off from its mandate for regional transmission organizations (RTOs), it appears the new debate includes increasing FERC's authority as a way to circumvent more blackouts.

In hearings before the House Committee on Energy and Commerce, chaired by Billy Tauzin (D-LA), on September 3 and 4, Congress members hosted a stream of witnesses that largely advocated strengthening a national transmission system with FERC at the helm. However, when it comes to allowing federal regulators to trump state and local authorities in siting transmission lines, sharp divisions remain.

"This looks and feels to us like a pretty heavy-handed power grab," Tom Allen (D-ME) said of the potential for FERC to gain siting authority.

"Nobody thinks twice if a pipeline or a highway is sited by the federal government," replied Secretary of Energy Spencer Abraham. "We ought to identify serious congestion areas. We should give the opportunity for states to act. But the question is: if the stateís donít act, then there should be an opportunity for the federal government to site as a last resort."

FERC chair Pat Wood supported his agency as being the transmission equivalent of the national air traffic control, asking for the ability and the money to address transmission problems.

> "This looks and feels to us like a pretty heavy-handed power grab."

California senators and Southeastern lawmakers are the primary opponents to boosting FERC's authority. Californians reject increasing federal regulatory power because they dislike what FERC did or failed to do during the

energy crisis. Anna Eshoo (D-CA), for instance, used the hearings to rail against "deeply flawed deregulation," and said that "California has been screwed." Southerners are balking because a stronger FERC threatens states' rights.

Many members of Congress questioned why there has been a lack of utility and other investment in transmission systems when investments are guaranteed to get about an 11 percent rate of return. Witnesses primarily responded that capital investments cannot be controlled and that investing in a regulated system that may or may not be regulated in the future, or regulated in the same manner, scares off investors.

Although Wall Street had only one witness at the hearing, investors are pushing for a stronger FERC. These investors want a stable regulatory environment before they part with their funds, and FERC oversight is seen as a commonality for such stability.

In addition, FERC is seen as the organization that can, for instance, mandate common standards for communication between transmission owners–one of the problems fingered in the August 14 blackout.

The Energy bill saga was last visited before Congress took its August break. To the surprise of many, lawmakers tossed out the existing bill's provisions, agreed upon by both houses, returning to the original Democratic version of HR 6 authored by Tauzin. Both bills mandate national transmission reliability standards. Both bills repeal the Public Utility Holding Company Act and reauthorize the nuclear industry's insurance subsidy through the Price-Anderson Act. The original HR 6 now in play, however, discourages FERC's efforts to establish RTOs and doesn't allow transferring federally owned transmission to private companies. The current bill also doesnít allow FERC to overrule states on transmission siting.

–J.A. Savage

Suits Against Duke Alleging Gaming Dismissed

The federal district court in Southern California dismissed seven class actions filed against Duke Energy for alleged illegal gaming of the market during the 2000-01 energy debacle.

Duke was pleased the court ruled in its favor. "Duke Energy has said all along that FERC is the only appropriate forum for hearing disputes over the prices charged for electricity," said Pat Mullen, Duke spokesperson.

Judge Robert Whaley ruled August 27 that both the Federal Power Act and filed rate doctrine preempted claims seeking refunds under state law. Whaley rejected the plaintiffsí claims that the ancillary trades at issue were protected by California Business and Professions Code Section 17200 because they were intrastate sales. While the power plants that produced the energy at issue were located inside California, the power itself was sent over the grid, which is regulated by the federal government, he stated. Thus, the actions were interstate and regulated solely by federal law. In addition, "The filed rate doctrine bars all claims–state and federal–that attempt to challenge a rate that a federal agency has reviewed and filed," his decision states.

Case No. CV-02-2176

–Elizabeth McCarthy

Energy Policy is a High Priority for Governor and Candidates

Editor's note: Those of us in and around the energy industry sometimes feel we're toiling in obscurity. The language in our world is often highly technical, and we are all too familiar with that glazed-over look that appears when we're talking those who are not energy specialists. If the recall/governor's race is any indication, however, policy makers remain keenly interested in energy policy and practice.

Below are remarks by the governor and the leading candidates excerpted from transcripts of the debate held September 3. Transcript courtesy of KTVU.

Gov. Gray Davis response to public criticism over his handling of the energy crisis:

I have their message. I know they are angry. This has been a humbling experience. But I know they want me to fight for their future so I have specific things to get done, including reregulating energy. We'll get to them. Trust me.

I think that I was too slow to act on the energy crisis. This is what we were facing faced with. People ought to know. Everyone told me to raise consumer rates even though the promise of deregulation was that rates would go down.

I felt something was amiss, either with the utilities or energy companies and consumers should not have to pay the full load.

Everyone asked me to do it. I hesitated, hesitated because I did not want to do it. Eventually we raised the rates 10 to 20%, not the 400% we wanted. We built 24 plants. People conserved magnificently. Our lights did not go off two weeks ago, like they did on the East Coast and in London, because we have made the investments and generated the conservation to prepare for California's future.

. . . Let me take the energy crisis. It is a major issue. Without going through the details, California had its hands tied when I became governor because it had told the utilities sell your plants to other people. Have the other people, which are the Enrons of the world, sell you back the power. And then sell it to you.

But we sell it to you, reduce it 5%.

The state surrendered the ability to be part of the transaction, between the people who bought from PG&E and what they sold it for. The PG&E rates went up 100%. We had

to buy power. We had the *Wall Street Journal*, editorial boards, everyone saying we were doing the wrong thing.

We fought to get 24 plants on-line. We fought for conservation. It took some experience to get through that. To get the increase that we needed in our energy infrastructure to sustain our high technology.

That is the kind of experience that you need. When you smell something is wrong, can you not quite prove it, two years later the federal government says you are right, 40 companies manipulated California.

Cruz Bustamante: I think that the energy crisis, I was there at the time, I voted for it. It was a mistake. The deregulation of energy has been a mistake in every single state. We need to ensure we have the kind of legislation to protect utilities and basic services for California and for the people of California.

Tom McClintock: This state is not suffering a revenue problem. This state spends a larger portion of your earnings than any time in its history and delivers less with that than any time in the history. . . . We have not seen the increase in school performance, electricity, water storage, all of the things that we pay through the nose for this government to provide.

Peter Camejo: You know, casinos, I would never accept money from casinos, tobacco companies or energy companies, whatever.