

April 17, 2001

The Honorable Curt Hebert, Jr.  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Mr. Hebert:

I am writing to protest your decision to order power suppliers to produce copies of confidential contracts with the State of California for disclosure to the House Government Reform Committee (*San Diego Gas & Electric Co. vs. All Sellers*, 95 FERC ¶61,058 (2001)).

The Federal Energy Regulatory Commission (FERC) has repeatedly denied providing needed assistance to California and the other Western states. FERC has refused to meaningfully enforce the federal requirement that wholesale rates be just and reasonable. Additionally, FERC has refused requests by governors to impose cost-of-service based rates in the Western region that would protect Western families. FERC's denial of assistance to the West has left Western governors seeking solutions on their own.

Now, however, FERC is taking action that could affirmatively undermine California's efforts to address its energy problems. As you know, the adoption of long-term contracts has been a key element of the strategy to rein in skyrocketing wholesale prices in California. The negotiation of these contracts has been difficult because electricity generators are fully aware that FERC, as currently comprised, does not intend to meaningfully enforce the Federal Power Act. Now, FERC threatens to intensify the difficulty of negotiating these contracts by jeopardizing the confidentiality of the contracts that have already been executed.

This confidentiality is critical if California is to negotiate reasonable contracts that protect the interests of consumers. As you must appreciate, revealing the terms of contracts which have already been executed would severely undermine the state's position in negotiating additional contracts.

The FERC order expressly states that "the Commission intends to provide copies of the contracts to the Committee on Government Reform under confidential seal." As the ranking minority member of the Committee, I can assure you that the Committee has a history of

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inappropriately releasing confidential information. For example, in the 105<sup>th</sup> Congress, as part of the Committee's investigation of campaign finance matters, Mr. Burton subpoenaed Bureau of Prisons tape recordings of conversations between former Associate Attorney General Webster Hubbell and his wife and others. Although these tapes are covered by the Privacy Act and could not be lawfully released by any federal agency, Mr. Burton released tapes that did not relate to the campaign finance investigation with the sole effect of embarrassing and demeaning Mr. Hubbell. He also released transcripts of these tapes that were selectively edited to remove exculpatory passages.

Last year, Mr. Burton obtained confidential financial disclosure forms from the Department of Health and Human Services with the explicit written understanding that the Committee would release the documents only by agreement with the ranking minority member or by a vote of the Committee. Contrary to that understanding, without the consent of the ranking minority member or a Committee vote, Mr. Burton's staff then posted a report on the Committee's website that released information from those confidential documents.

You should be under no illusion: information you provide to the Committee may enter the public domain. I am enclosing copies of correspondence with Mr. Burton that provide more detail about the Committee's unfortunate practices.

Besides jeopardizing the confidentiality of these agreements, FERC's use of its order authority to collect information for the Government Reform Committee is questionable. FERC is an independent commission in the executive branch, and the Committee is part of the legislative branch. Your approach seems inconsistent with the separation among the branches of government. In fact, I am unaware of any precedent for FERC's action.

I look forward to your prompt reply explaining how you intend to proceed regarding obtaining and handling this confidential information. If you have any questions, please contact me at 225-3976, or my chief counsel, Phil Barnett, at 225-5051.

Sincerely,

Henry A. Waxman  
Ranking Minority Member

Enclosures

cc: The Honorable Dan Burton  
The Honorable Doug Ose