

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



April 20, 2004

TO PARTIES OF RECORD IN APPLICATION 00-10-045/01-01-044.

On December 30, 2002, Decision 02-12-064 was mailed to the parties without the dissent of Commissioner Loretta M. Lynch. The dissent is now available, and is enclosed herewith.

/s/ ANGELA K. MINKIN  
ANGELA K. MINKIN  
Chief, Administrative Law Judge

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Enclosure

**COMMISSIONER LYNCH DISSENT ON  
AB 265**

The decision approved today by a majority of my colleagues inappropriately allows SDG&E to keep the majority of profits it garnered by overcharging its customers for power SDG&E obtained for its customers via some low cost contracts. Rather than passing along the savings from those utility-signed and managed contracts (as required by state law) SDG&E kept those benefits for its shareholders. After being caught at this attempt to gouge its customers by the ORA staff, SDG&E presented a “deal” to this Commission that would refund less than half the profits to ratepayers. A majority of my colleagues have voted today to allow SDG&E to keep these ill-gotten gains.

This inappropriate process used in this instance is heightened by the fact that SDG&E negotiated this proposal behind closed doors with a PUC commissioner, without complying with the Commission’s ex parte rules and publicly notifying other parties regarding these off-record contacts. The limitations forced on parties in responding to this proposal have severely undermined their ability to provide the Commission with all the facts necessary to consider whether or not it is in the public interest.

In fact, this is not a reasonable proposal, it is a giveaway to SDG&E. By approving SDG&E’s proposal, the Commission has allowed SDG&E’s shareholders to keep \$200 million in profits and interest that it has made by charging excessive prices for power from its customers. Allowing SDG&E to keep these profits is illegal under statutes enacted by the legislature, specifically AB 265, which require that all generation assets owned and managed by utilities

be charged at cost to ratepayers. There was never any dispute that the contracts at issue were, as defined by AB 265, “owned and managed” by SDG&E. By allowing SDG&E to charge its customers more than the actual costs of these contracts, the Commission is not complying with the mandates of California law.

Allowing SDG&E to keep these profits is also inconsistent with the Commission’s litigation before FERC. We have consistently asked FERC to require that **all** generators that charged excessive prices for power in the fall of 2000 be required to refund their excessive charges to ratepayers. In this decision, we would be allowing SDG&E, alone among all the price-gouging generation companies, to keep the unreasonable profits they made by overcharging its customers in 2000.

This decision is also factually incorrect by relying upon SDG&E’s assertions that it is agreeing to give up \$175 million in profits earned after January 2001 as part of this proposal. The decision goes on to repeat SDG&E’s assertion that ratepayers are thereby receiving more than half the profits from these contracts. This is simply factually wrong.

As SDG&E testified in our proceeding, less than \$175 million in profits post-January 2001 is being refunded to ratepayers. There is only a refund of \$151 million in contract profits. The other \$24 million that ratepayers receive under SDG&E’s proposal is not contract profits, but rather headroom under the 6.5 cent/kwh rate cap affecting retail rates for SDG&E to which ratepayers are already entitled. There was never any question that this headroom ever belonged to anyone but ratepayers. It is inaccurate for SDG&E to represent this headroom as something that they are giving to ratepayers, and incorrect for this decision to rely upon and perpetuate SDG&E’s false characterization.

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Overall, SDG&E's proposal allows SDG&E to keep \$200 million in profits and interest from these contracts, while ratepayers receive much less. This decision allows SDG&E shareholders to illegally keep the majority of profits it made by gouging its customers during the height of the electricity crisis in 2000 and 2001.

For the reasons stated above, I dissent.

Dated December 12, 2002, at San Francisco, California.

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Loretta M. Lynch  
Commissioner