

**MEMORANDUM**

**Date:** July 2, 2010

**To:** The Commission  
(Meeting of July 8, 2010)

**From:** Frank R. Lindh, General Counsel  
Christopher Clay, Public Utilities Counsel III

**Subject:** Authorization to oppose Legislative proposals to divert Energy Crisis refund dollars to the State General Fund

**I. REQUEST FOR AUTHORIZATION**

Staff seeks approval to oppose any effort in the California Legislature to divert to the General Fund any refund settlement amounts arising from the Western Energy Crisis. This is consistent with the position taken by this Commission since the days of the Energy Crisis ten years ago – namely, that Energy Crisis refunds are to flow to the retail electricity customers of California’s three investor-owned utilities.

**II. DISCUSSION**

During the Western Energy Crisis, the ratepayers of the investor-owned utilities in California incurred billions of dollars in excess charges for electric power as a result of market dysfunction. Since the summer of 2000, the Commission, along with the California Parties,<sup>1</sup> has actively litigated on behalf of ratepayers seeking disgorgement and restitution of unjust profits from energy suppliers in the wholesale energy markets. The California Parties have settled with more than 30 suppliers, with settlement funds returned to ratepayers<sup>2</sup>, but there are still more than 30 suppliers that have not settled.

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<sup>1</sup> The California Parties include the CPUC, the California Attorney General, the California Energy Resource Scheduler (“CERS”), a division of the California Department of Water Resources (“CDWR”), and the investor-owned utilities (“IOUs”): Pacific Gas and Electric Company (“PG&E”), Southern California Edison (“SCE”), and San Diego Gas and Electric (“SDG&E”).

<sup>2</sup> Some refunds in pending settlements, such as the recently announced settlement with Sempra Energy Solutions, have not yet been collected.

It has come to the attention of Staff that efforts are underway in the Legislature to appropriate funds collected from the Energy Crisis settlements and divert them to the State of California's General Fund. The Commission should oppose these efforts because the refunds correspond, dollar for dollar, to overcharges imposed on ratepayers as a result of the Energy Crisis. Diverting settlement money to the General Fund, at a minimum, amounts to a cross-subsidization of taxpayers at the expense of ratepayers. In addition, ratepayers have funded, through their electricity rates, 100% of the costs of the litigation precipitating the settlements. It is inequitable, therefore, to divert refunds resulting from the Energy Crisis litigation to the General Fund.

Diversion of settlement refunds to the General Fund also would be inconsistent with the Commission's historical position, in litigation and in Commission decisions authorizing the allocation of settlement proceeds among utility ratepayers.<sup>3</sup> The Commission has also authorized the utilities to recover in rates the litigation costs from the Energy Crisis.

Accordingly, Staff recommends that the Commission authorize Staff to oppose any proposals in the Legislature to divert Energy Crisis refund dollars to the State General Fund.

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<sup>3</sup> See, e.g., Resolution E-3893; Resolution E-3894; D. 04-11-015.