

# Legal Briefs

*News You Can Use from the City of Oakland Office of the City Attorney*

*Legal Briefs is a series of essays by City Attorney John Russo to update the community on key projects, major initiatives and important legal developments in the Office of the City Attorney.*

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## **OAKLAND SUES ENERGY COMPANIES FOR CONSPIRACY AND CORRUPTION**

**By John A. Russo, City Attorney, City of Oakland**

Last winter, when electricity prices exploded, over a dozen energy providers raked in obscene profits, lining their pockets while California's softening economy teetered into recession. The party line in Washington, which was to disparage California for the colossal failure of de-regulation, obscured the seedy truth: the fix was in. Greed and manipulation corrupted California's deregulated electricity market, costing our residents and businesses billions of dollars and threatening the stability of our state's economy.

The ill-gotten profits stolen from California ratepayers must be returned. Seeking its portion of damages estimated at well over \$1 billion, the City of Oakland recently joined San Francisco in a class action lawsuit filed against 13 independent energy providers under California's Unfair Competition Law (Business and Professional Code Section 17200), including Dynegy, Enron, PG&E, Reliant, Sempra, Southern Company, Williams, Duke, NRG Energy, and Morgan Stanley Capital Group.

Our lawsuit contends that "California's deregulation plan envisioned that . . . competitive market forces would attract new sources of power and lower the price of electricity. Instead, as we have all witnessed, it created the opportunity for a limited group of inside players to manipulate supply and price levels in California to extract unconscionable profits. . . Defendants were free to create artificial energy shortages and fix astronomically high prices in the market, which, of course, is exactly what they did."

As originally conceived, deregulation was supposed to protect consumers by liberating the electricity market from the monopoly of three companies (PG&E, SDG&E and SoCal Edison) that both generated electricity and sold it to consumers. Deregulation sought to replace a cumbersome government bureaucracy with a more nimble, fair, and competitive free market governed by the dynamics of supply and demand and safe from wild price fluctuation due to the expected monitoring of the market by the Federal Energy Regulatory Commission (FERC).

Instead, a grasping cabal of electricity generators took advantage of a market that lacked scrutiny and regulation by colluding to withhold and manipulate supply, manufacturing exorbitant prices, and pocketing astronomical profits.

Our lawsuit's factual contentions are not mere surmise: both the California Public Utilities Commission and FERC have now concluded that improper market manipulation was a primary cause of California's energy crisis.

These companies used a number of unlawful, unfair and anti-competitive acts and practices to drive up prices and profits. In fact, over 90% of the generators' electricity spot sales were based upon the manipulation of shortages and withholding of electricity.

Records show that during the summer of 2000, 13 electricity generation and/or trading companies created false shortages by shutting down fully operational generation power plants and ordering plant workers to prolong maintenance and repairs as well as destroy vital spare parts and repair tools.

The defendants also engaged in "megawatt laundering," where a trader purchases electricity from a generator and sells the rights to the electricity to affiliates outside the state, further reducing the supply available in California. The reduced supply would cause prices to rise, at which point the affiliate would sell the power back to California at a higher price.

In another illegal business practice, energy companies created "phantom congestion" over critical transmission lines by scheduling electricity over lines they knew would be congested, even though they did not need to use those lines for transmission. The company would then receive a substantial payment to **not** use the line to reduce traffic on that line.

The lawsuit claims that the energy providers have violated California's Unfair Competition Law, which is a powerful legal tool used in consumer protection cases. Under this law, a business practice or act can be lawful and non-fraudulent but still be found to be unfair. It also prohibits business practices where "members of the public are likely to be deceived," even if there was no intent to deceive. A business practice is unfair if it is found to harm the consumer more than it benefits the consumer. It also allows higher penalties for unfair practices targeted senior and disabled citizens.

Through the 1990s, San Francisco used the Unfair Competition Law to win several substantial landmark consumer protection suits against the tobacco industry and Bank of America. In the tobacco litigation, California counties and cities won a \$12 billion judgement, of which \$586 million was awarded to San Francisco. The Bank of America case resulted in a \$20 million award to San Francisco.

Now, at long last, Oakland is joining the team to fight the exploitation of consumers. Our office is pursuing several other cases using the Unfair Competition Law aggressively on behalf of the public against businesses that create neighborhood nuisances and deceive or defraud Oakland consumers.

If you know of any other nuisances or scams, please call or write so we can defend our city from fraud. Con artists—seedy or in tailored suits—be advised: Oakland is wise to you and we are on alert.

*Contact us by telephone at (510) 238-6628, by email at [info@neighborhoodlawcorps.org](mailto:info@neighborhoodlawcorps.org) or by U.S. mail at 1 Frank H. Ogawa Plaza, 6<sup>th</sup> Floor, Oakland, CA 94612.*