SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: January 25, 2007 **DEPT. 71** **REPORTER A:** **CSR#**

PRESENT HON. RONALD S. PRAGER **REPORTER B:** **CSR#**

JUDGE

CLERK: K. Sandoval

BAILIFF: **REPORTER'S ADDRESS: P.O. BOX 120128**

SAN DIEGO, CA 92112-4104

IN RE: JCCP 4221/4224/4226&4428 – Natural Gas Anti-Trust Cases (Price Indexing)

FINAL RULING

DEMURRER ENSERCO ENERGY, INC.

The attached Court's ruling regarding applies to all cases listed as follows:

4221-00020	**UYEDA vs CENTERPOINT ENERGY INC**
4221-00021	**BENSCHEIDT vs AEP ENERGY SERVICES INC**
4221-00022	**COUNTY OF SANTA CLARA vs SEMPRA ENERGY**
4221-00023	**CITY AND COUNTY OF SAN FRANCISCO vs SEMPRA ENERGY**
4221-00024	**COUNTY OF SAN DIEGO vs SEMPRA ENERGY**
4221-00025	**OLDER vs SEMPRA ENERGY**
4221-00026	**CITY OF SAN DIEGO vs SEMPRA ENERGY**
4221-00027	**TAMCO vs DYNEGY INC**
4221-00028	**A L GILBERT COMPANY vs CORAL ENERGY RESOURCES LP**
4221-00029	**OBERTI WHOLESALE FOOD INC vs ENCANA ENERGY SERVICES INC**
4221-00030	**BROWN vs ENCANA ENERGY SERVICES INC**
4221-00031	**LOIS THE PIE QUEEN vs ENCANA ENERGY SERVICES INC**
4221-00032	**VITTICE CORPORATION vs ENCANA CORPORATION**
4221-00033	**COUNTY OF ALAMEDA vs SEMPRA ENERGY**
4221-00034	**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA vs RELIANT ENERGY SERVICES INC**
4221-00035	**SCHOOL PROJECT FOR UTILITY RATE REDUCTION vs SEMPRA ENERGY**
4221-00036	**ASSOCIATION OF BAY AREA GOVERNMENTS vs SEMPRA ENERGY**
4221-00037	**OWENS-BROCKWAY GLASS CONTAINER INC vs SEMPRA ENERGY**
4221-00038	**TEAM DESIGN DBA TIMOTHY ENGELN INC vs RELIANT ENERGY INC**
4221-00039	**CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER vs RELIANT ENERGY SERVICES INC**

4221-00040	**SACRAMENTO MUNICIPAL UTILITY DISTRICT vs RELIANT ENERGY SERVICES INC**
4221-00041	**SHANGHAI 1930 RESTRAURANT PARTNERS LP vs ENCANA ENERGY SERVICES INC**
4221-00042	**PODESTA vs ENCANA ENERGY SERVICES INC**
4221-00044	**COUNTY OF SAN MATEO vs SEMPRA ENERGY**
4221-00045	**BUSTAMANTE vs WILLIAMS ENERGY SERVICES**
4221-00046	**PABCO BUILDING PRODUCTS vs DYNEGY INC**
4221-00047	**BOARD OF TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY vs DYNEGY INC**
4221-00043	**NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY**

FINAL RULING:

The Court rules on defendant Enserco Energy, Inc.'s ("Enserco") demurrer as follows:

As a preliminary matter, the Court grants the Independent Plaintiffs' and Enserco's requests for judicial notice.

The demurrer to the first cause of action for violation of the Cartwright Act is sustained with leave to amend. A cause of action based on conspiracy accrues on the date of the commission of the last overt act pursuant to the conspiracy. See Wyatt v. Union Mortgage Co. (1979) 24 Cal. 3d 773, 789; See also Schessler v. Keck (1954) 125 Cal. App. 2d 827, 832. Here, the Independent Plaintiffs' alleged that the actions were continuing but failed to allege when the last overt act took place. Ibid.; See also Independent Plaintiffs' Request for Judicial Notice, Exhibit A (CSU Complaint), ¶99. Furthermore, the Independent Plaintiffs' reference to plea agreements that the Court has taken judicial notice of do not assist them, as the plea agreements involved misreporting by Aquila traders that occurred from 1999-2002, but were not disclosed to federal investigators for a period that ended in 2005. An act of concealment does not constitute an overt act sufficient to extend the statutory period. See Liven v. F.C. Fin. Assoc. (1981) 124 Cal. App. 3d 413, 419. Also, since the Independent Plaintiffs did not address the applicability of the Doe statute or tolling by fraudulent concealment or the discovery rule in their opposition brief, it is assumed that they have conceded these points.

The demurrer to the second cause of action for unjust enrichment is sustained with leave to amend, as the Court's prior ruling did not address the statute of limitations argument in any way. Furthermore, the Independent Plaintiffs' argument that the statute of limitations remained open since they continue to suffer damages as a result of an alleged conspiracy has been rejected by California courts. See Teitelbaum v. Borders (1962) 206 Cal. App. 2d 634, 638.

The Independent Plaintiffs are directed to file and serve their amended complaints by February 5, 2007.

IT IS SO ORDERED.