SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 06/10/2009 Time: 10:00:00 AM Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager
Clerk: Kathleen Sandoval

Bailiff/Court Attendant: L. Wilks
ERM: Monica Andrade12836

Case Init. Date: 12/03/2001

Case No: JCCP4221

Case Title: JCCP4221 COORDINATION PROCEEDING NATURAL GAS ANTI-TRUST CASES

Case Category: Civil - Unlimited

Case Type: Antitrust/Trade Regulation

Event Type: Motion Hearing (Civil)

Causal Document & Date Filed:

Appearances:

The Court, having taken the above-entitled matter under submission on 06/10/2009 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on California Department of Water Resources ("CDWR") motion for leave to intervene as follows:

After taking the matter under submission, the Court affirms its tentative ruling.

The motion to intervene is denied for the reasons stated below.

CDWR brings this motion pursuant to Code of Civil Procedure section 387. It contends that it may intervene as of right since it is an intended third party beneficiary of the Settlement Agreement between class plaintiffs and Sempra. (CDWR Complaint, ¶¶6-12 and Exh. A, pp. 11-12, §4.1(b)(1).) Furthermore, its interests are not being adequately represented by the existing parties since no one has filed an action to enforce the Settlement Agreement. (Id. at ¶18.) Alternatively, it also contends that it is entitled to intervene under the permissive intervention aspect of section 387, noting that it has a direct interest in the Settlement Agreement and that its Complaint will not enlarge the issues in this case because its is focused on the Settlement Agreement. (Id. at ¶¶1, 6-18.)

However, Sempra presented evidence to show that the Court, Class Counsel, Defendants, CDWR, the AG and others recognized that CDWR was not an intended beneficiary of the contract discounts. (Oppo., p. 1 and Fogelman Dec., Exhs. A and D.) Furthermore, the fact that CDWR was designated as a conduit for money to pass through to class members is not the same thing as CDWR being an intended beneficiary of that money. (Grossmont Union High School Dist. v. Cal. Dept. of Edu. (2008) 169 Cal.App.4th 869, 890-891 and Eastern Aviation Group, Inc. v. Airborne Express, Inc. (1992) 6 Cal.App.4th 1448, 1454.) Finally, the option in the Settlement Agreement to provide a one time payment to the Settlement Fund in lieu of providing the contract discount shows that the discounts were only one of several ways to benefit the class and further evidences that CDWR was not an intended beneficiary.

CDWR also raised an argument for the first time in its reply that it was an intended third party beneficiary since the class and Sempra agreed to an insurance policy in section 4.1(b) of the Settlement Agreement. However, Sempra presented evidence to show that the insurance policy metaphor applied only to the class members themselves. (Sur-Reply, pp. 3-4.) More importantly, Sempra correctly noted that no insurance policy, in fact, exists in this case. Thus, the insurance cases cited by CDWR are inapposite.

IT IS SO ORDERED.