

SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: July 20, 2006 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

MINUTE ORDER

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

The attached Court's **TENTATIVE RULING** regarding **MOTION TO QUASH CENTERPOINT ENERGY AND REI** 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 RESTAURANT PARTNERS LP vs ENCANA ENERGY SERVICES INC
4221-00042 PODESTA vs ENCANA ENERGY SERVICES INC

4221-00043 NURSERYMAN'S EXCHANGE OF HALF MOON BAY vs SEMPRA ENERGY
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

Specially Appearing Defendants CenterPoint Energy, Inc. and Reliant Energy, Inc.'s motion to quash service of summons for lack of personal jurisdiction is **DENIED**.

Code of Civil Procedure section 410.10 allows California courts to exercise jurisdiction of a nonresident defendant on any basis that is not inconsistent with state or federal constitutional principles. *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 535 (2000). The general rule is that a court can exercise jurisdiction where the defendant's "minimum contacts" are sufficient to make the maintenance of the action inoffensive to the tradition concepts of fair play and substantial justice. Minimum contacts exist where the defendant's conduct is such that the defendant should reasonably anticipate being subject to suit in the state. (citation omitted). *Id.* The concept of minimum contacts is based upon two types of jurisdiction, general and specific.

General jurisdiction results where the defendant's contacts with the forum state are so "systematic and so continuous as to make it consistent with traditional notions of fair play and substantial justice to subject the defendant to the jurisdiction of the forum, even where the cause of action is unrelated to the contacts." (citation omitted).

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Specific jurisdiction results when the defendant's contacts with the forum state, though not enough to subject the defendant to the general jurisdiction of the forum, are sufficient to subject the defendant to suit in the forum on a cause of action related to or arising out of those contacts. (citations omitted). Specific jurisdiction exists if: (1) the defendant has purposefully availed itself of forum benefits with respect to the matter in controversy; (2) the controversy is related to or arises out of the defendant's contacts with the forum; and (3) the assertion of jurisdiction would comport with fair play and substantial justice. (citations omitted).

Id. at 536.

CenterPoint, as successor in interest to Former REI, meets the criteria for specific jurisdiction. Former REI purposefully availed itself of the benefits of conducting activities in California.

- Former REI participated in the wrongful "churning" and "wash" trades by RES and Ms. Zanaboni. Ms. Zanaboni worked for Reliant Services and conducted her unlawful trades from her apartment in California. (Ex. 51). In addition, Ms. Zanaboni reported to the "desk head" (the individual in charge of gas trading activities) who reported to the Office of the Chief Executive Officer of Former REI. (Ex. 6, p. 47).
- Former REI participated in the purchase of power plants in California. Former REI provided funding and guarantees. REI guaranteed the purchases of four of the plants and participated in negotiation of the deals. (Ex. 7, p. 25:10-27:13, p. 32, p. 33, p. 71). The purchase of the California power plants was part of a

corporate strategy to expand its unregulated power generation and trading businesses into California. (Ex. 51, pp. 129:25-130:13). Former REI provided surety bonds and guarantees. (Ex. 52, p. 11; Ex. 37, p. 4) Some of

- the bonds and guarantees expressly invoked the protection of California law and some specified California forums.
- Former REI conducted extensive public relations and lobbying activities in California. (Ex. 47, pp. 71:3-21, 88:13-92:3). Former REI issued press releases in California and conducted extensive outreach to California through print, radio and television. (Ex. 47, pp. 64:19-67:15; 152:13-154:3;). Former REI senior management met with its California public relations professionals in Houston and California. (Ex 47, pp. 72:10-73:1, 85:5-86:4). Senior management conducted daily telephone conferences with its public relations staff in California from January through August, 2001. (Ex. 47, pp.73:2-74:14)

The controversy is related to or arises out of the Defendants' contacts with California. Plaintiff alleges that Former REI wrongfully manipulated the market through "churning" and "round trip" trades. As previously shown, Former REI senior executives participated in the trades. In addition, the purchase of the plants enabled them to manipulate the markets. Furthermore the massive public relations campaign was specifically directed as a response to the price crisis.

Exercising jurisdiction over Former REI, and CenterPoint, comports with fair play and substantial justice. Former REI availed itself of the benefits of conducting business in California in the participation and funding of the purchase of the power plants and in conducting the public relations campaign. Therefore, it is not unreasonable to have them come forward in California.

Jurisdiction is proper under the concept of agency. Agency is found where the nature and extent of the control exercised over the subsidiary by the parent is so pervasive and continual, such that the subsidiary is no more than an instrumentality of the principal. *Diamond Sonora*, 83 Cal. App. 4th at 541. Defendants are correct that interlocking officers and directors alone is insufficient. *Id.* at 549. However, here, Former REI exercised daily control over its California subsidiaries.

- The money was transferred to the parent on a daily basis. (Ex. 20, p. 39:14-41:25; 47:8-9)
- The RES trading "desk heads" who implemented the "hedging" of the power generated by the California plants, reported directly to the Office of the Chief Executive Officer of Former REI. (Ex. 6, p. 47). Senior executives of Former REI received comprehensive daily reports on RES trading activities. (Exs. 25-33). The Risk Oversight Committee which was made up of primarily senior Former REI executives oversaw all trading activities. (Ex. 12, p. 10; Ex. 19, p. 11, Ex. 10, p.4 & 5).

Jurisdiction can be exercised based upon the representative services theory. This is found where the subsidiary performs a function that is compatible with, and assists the parent in the pursuit of the parent's own business. *Id.* at 543. It is not found where the parent is merely a holding company whose only business pursuit is the investment in the subsidiary. *Id.* Former REI was in the power business and was not merely holding the California subsidiaries as investments. Based upon all of the above factors, jurisdiction under this theory is appropriate.

CenterPoint is the successor in interest to Former REI. Though CenterPoint argues that after the complete reorganization, it is not successor to the California unregulated utilities, this argument is unavailing for the purposes of jurisdiction.

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