

# SUPERIOR COURT OF CALIFORNIA

County of San Diego

DATE: July 10, 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

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## TENTATIVE RULING

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

The attached Court's ruling regarding **TXU MOTION TO QUASH SERVICE OF SUMMONS**- 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

**The Motion of TXU Corp to Quash Service of Summons and Complaint is DENIED. (CCP section 418.10) The Court grants the parties' respective requests for judicial notice.**

**"California courts may exercise jurisdiction on any basis that is not inconsistent with the state and federal Constitutions. (Citations) By imposing only these constitutional limitations, our Legislature has authorized the broadest possible exercise of jurisdiction. (Citations)" (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal. App. 4th 100).**

**The Court finds TXU Corp has maintained sufficient minimum contacts with California such that the exercise of jurisdiction over it is fair and just under the Representative Services Doctrine. *Sonora Diamond Corp v. Superior Court* (2000) 83 CA4th 523. The Court recognizes that exercise of jurisdiction over a non-resident defendant may be rare, but under the circumstances of this case and based on the evidence supporting opposition to the motion to quash, the policies expressed in *In re Automobile Antitrust Cases* are outweighed by the interests of California and its citizens.**

**In order to establish jurisdiction under the Representative Services Doctrine, Plaintiff need only show 1) strong evidence of pervasive control of a local subsidiary by a parent manufacturer; 2) the foreign parent corporation permitted the subsidiary to perform acts in the forum state that the parent would otherwise have had to perform itself as a part of the parent's expected business operations" (*Sonora Diamond, supra*, 83 CA4th at 542-543).**

**In this case, the Court is persuaded that TXU Corp is subject to personal jurisdiction based on the control it exercised over its subsidiaries TXU Energy Trading Company and TXU Energy Services Company, which have voluntarily consented to this Court's jurisdiction.**

**The evidence tends to establish that TXU Corp's involvement in TXU Energy Trading Company and TXU Energy Services Company was pervasive.**

- TXU Corp had the requisite control to relocate TXU Energy Trading to Dallas, Tx., which is also TXU Corp's corporate headquarters. (Request for Judicial Notice ("RJN"), Exh. 6);
- TXU responded for all its subsidiaries when the SEC made inquiries to them on the "wash trading" issue (Exh. 15);
- Some of TXU's key personnel perceive "TXU" as a single entity and reflect that perception to the public. (Exhs. 8 and 9)
- The press, in one instance, referred to Rob McCoy (TXU Energy Services President) as "president of TXU's retail business", again reflecting the public perception of TXU as a single, but diverse business entity. (RJN Exh. 10)
- TXU Energy Trading was expected, per a News Release of 4/3/00, to have "strong daily links" with TXU Corp (Exh. 6);
- TXU Energy Trading was expected to "interact continuously with top management and headquarters operation" (Exh. 6);
- TXU has a strategy designed to "achieve operations of significant scale in selected regions [including the West Coast] by integrating and leveraging its capabilities across multiple products and services...TXU Corp. manages and leverages the knowledge and value from these positions through effective portfolio management and trading capabilities that manage the risk and enhance the value of existing positions while adjusting the portfolio as needed to address market condition..." (Exh. 2 at p. 9 of 134);
- TXU Corp has a successful "corporate identity program" (Exh. 2 at p. 4 of 134; and Exh. 5) and uses similar names, all reflecting the "TXU" root (Exh. 2, at p. 4 of 134);

Further, there is evidence that TXU Corp permitted the subsidiary to perform acts in the forum state that the parent would otherwise have had to perform itself as a part of the parent's expected business operations:

- TXU Corp. has a history as "one of America's leading energy services companies and energy retailers". (RJN, Exh. 1). There is evidence that over the years, TXU Corp acquired companies so as to have presence in all aspects of the utilities business, including manufacturing, trading, marketing and service to the customer. (RJN, Exh. 1);
- TXU Corp. holds itself out to the public as a multinational, integrated energy company that is diverse geographically, operationally and financially (RJN, Exh. 4);

- TXU Corp. has now expanded so as to be “...integrated and leveraged across the full stream of commerce – from energy production to trading and marketing, to serving the customer...” (RJn, Exh. 4);
- This benefits TXU Corp. and assists in its business “...By operating along the entire stream of commerce, we can be flexible, efficient and more cost-effective. We can pick the best opportunities in a competitive market... (RJN, Exh. 4);

The benefits derived from such a business design should not be without reciprocal responsibilities. The court finds that there is evidence that TXU Energy Trading Company and TXU Energy Services Company function more as an incorporated departments of TXU Corp than as separate businesses, despite the maintenance of separate corporate structures. Dorel Industries, Inc. v. Sup. Ct (2005) 134 CA4th 1267; Paneno v. Centres for Academic Programmes Abroad, Ltd. (2004) 118 CA45h 1447. Such evidence is sufficient to exercise general jurisdiction over TXU Corp in this case.

The court notes that the ruling on this motion to quash is not the equivalent of a finding of alter ego liability in general. The court makes no finding on that issue and does not base its exercise of jurisdiction on control or agency theories other than as set forth above.

Defendant TXU Corp. shall respond to the Plaintiff’s complaint within 10 days of the date of this ruling.