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Sempra Didn't Breach California Power Contract, Jury Says

By Bill Callahan and Edvard Pettersson - Dec 01, 2009

Dec. 1 (Bloomberg) -- [Sempra Energy](#), owner of the largest U.S. natural-gas distributor, won a jury verdict in a lawsuit with the [California Department of Water Resources](#) over failure to build a power plant on time.

The jury in San Diego Superior Court yesterday agreed that Sempra didn't breach a \$6.6 billion 2001 contract to provide a stable supply of power in the wake of the state's 2000-2001 energy crisis.

"The jury found that there was no harm to the Department of Water Resources and Sempra provided the agency with everything they bargained for in the contract," Sharon Cohen, Sempra's assistant general counsel, said after the verdict was read. "Sempra built five power plants at a cost of over a billion dollars to do this."

[Sempra Energy](#) sued the state's power-buying agency in May 2002 to keep it from canceling the power-supply contract. The agency had threatened to cancel the Sempra accord after learning the company planned to buy electricity on the open market and resell it rather than use a new power plant near Bakersfield, California, which was specified in the contract.

The jury agreed with Sempra that the company was entitled to provide the state with energy from any project or market source and wasn't obliged to have the 550-megawatt Elk Hills plant in operation when it wasn't commercially reasonable.

The Elk Hills plant, jointly owned with [Occidental Petroleum Corp.](#), didn't start producing power until 2003. The state had said the 10-year contract called for power to start flowing April 1, 2002.

'Electricity Is Electricity'

"The state got what they wanted, power, and Sempra provided it and there were no more rolling blackouts," juror Gil Loder said in an interview yesterday. "Where it came from was not important. Electricity is electricity."

Ted Thomas, a Department of Water Resources spokesman, said the state's lawyers hadn't analyzed the verdict and had no immediate comment.

“Sempra has made hundreds of millions of dollars of [profits](#) from this contract and never provided the state with one dime’s worth of power from Elk Hills,” Frank Kaplan, a lawyer for the state, told the jury during the trial.

Sempra claimed it lived up to the contract because there were provisions giving it outs if it didn’t make economic sense to build the plant. As energy prices dropped and cheaper power was available elsewhere, the San Diego-based company didn’t have to build the plant, said its lawyer, [J. Michael Hennigan](#). He told the jury there is nothing in the contract that prevents Sempra from providing power from sources outside California.

The Department of Water Resources started buying power for the state’s retail utilities in 2001, when soaring energy prices left them unable to pay for electricity. State regulators subsequently tried to renegotiate \$43 billion in long-term contracts with generators that locked California into paying inflated prices for more than a decade.

The case is Sempra Energy Resources v. Department of Water Resources, GIC789291, San Diego County Superior Court (San Diego.)

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