

LITIGATION

Robert W. Fischer Jr. of Fulbright & Jaworski says California is one of the most active jurisdictions in a 2009 litigation trends survey. **PAGE 5**

TAXATION

Robert Wood of Wood & Porter provides 10 tips on how to maneuver through California's complex tax system. **PAGE 6**

TRIAL ADVOCACY

Allonn Levy of Hopkins & Carley advises on how to get jurors to agree in complex litigation. **PAGE 7**

VOL. 122 NO. 231

WEDNESDAY, DECEMBER 2, 2009

© 2009 Daily Journal Corporation. All Rights Reserved

Lawyers Are Unprepared to Help Clients With Growing Problem of Security Lapses

# Dealing With Data Breaches

By Pat Broderick  
Daily Journal Staff Writer

With manufacturers continuing to turn out more high-tech products, and high-tech scoundrels scrambling to suck up sensitive data, lawmakers around the world have been trying to keep up with the rising threat of data breaches by churning out more rules and regulations for connect-

ing them. Increasingly, however, the mire lacks the specialized help that the majority of specialists very much need. Stephen Kobrick serves as Associate Attorney General.

Threat resource must do more than just deal with the significance of who practices. "They and information not on the overall training serve the."

"Law & teaching. Lawyers know. The affects the Joseph Francisco practice security, needed."

"In order to be conveyed large number with it. U.S. attorney office more client the risks mitigate be."

In its breach Michigan think tanks, but respondents their own more than report do more the loss or the."

But it's often been with so generating it son Straight."

Kroll Ontrack's computer forensics, electronically stored information consulting



## Sempra Wins \$6.6 Billion Power Contract Dispute With State

By Fiona Smith  
Daily Journal Staff Writer

A San Diego jury has sided with Sempra Energy in its fight to uphold a \$6.6 billion contract it signed to deliver electricity to the state Department of Water Resources in the wake of the energy crisis earlier this decade.

Sempra sued the state in 2002 after the department moved to cancel its contract, arguing Sempra was buying electricity on the open market and reselling it to the state rather than generating electricity from its planned Elk Hills power plant in Bakersfield.

The jury upheld the contract, finding that Sempra did not breach its agreement and was not obligated to provide power from Elk Hills, one of five power plants the company pledged to build. It did find, however, that Sempra had made negligent and intentional misrepresentations to the department regarding whether it was authorized to deliver energy from Elk Hills.

The department filed counter-claims seeking rescission of the contract as well as damages that could have reached into the tens of millions of dollars.

An adverse decision "would have been life changing for the whole Sempra company and we're pleased with the verdict," said J. Michael Hennigan, name partner with Hennigan, Bennett & Dorman in Los Angeles, who represented Sempra. "We provided them with exactly what they bargained for at exactly the price they bargained for and achieved five new power plants for California."

But by delaying construction of the Elk Hills power plant, Sempra failed to meet its obligations, said William Kissinger, a partner with Bingham McCutchen in San Francisco who represented the department.

"We're obviously disappointed the jury didn't award damages, but we're gratified they found that Sempra did in fact lie to us, Kissinger said. "Sempra has gotten billions out of this contract and got it through a lie...At every opportunity Sempra has taken advantage of the state."

The case sprang from the state's 2000-2001 energy crisis where partially deregulated energy markets wreaked havoc around California, leading to rolling blackouts and huge spikes in electricity

costs that pushed utilities close to ruin.

In response, the legislature directed the department to enter into long-term energy contracts that would help increase electricity supply and bring prices down. Soon after the more than 50 contracts were signed, the crisis abated and the state began moving to renegotiate better terms in the contracts. The department moved to cancel its 10-year contract with Sempra in 2002 and Sempra subsequently sued.

This week's verdict does not spell the end for the ongoing battle between the state and Sempra. The department is seeking rescission of the contract for other causes in an arbitration proceeding. And the state Public Utilities Commission is alleging Sempra has unreasonably overcharged the state for the power it has provided and is asking the Federal Energy Regulatory Commission to order Sempra to refund between \$1 billion and \$2 billion.

The jury's finding that Sempra made misrepresentations during contract negotiations strengthens the state's argument that the charges were unreasonable, said Frank Lindh, general counsel of the commission.

## Sempra Wins \$6.6 Billion Power Dispute With State

By Fiona Smith  
Daily Journal Staff Writer

A San Diego jury has sided with Sempra Energy in its fight to uphold a \$6.6 billion contract it signed to deliver electricity to the state Department of Water Resources in the wake of the energy crisis earlier this decade.

Sempra sued the state in 2002 after the department moved to cancel its contract, arguing Sempra was buying electricity on the open market and reselling it to the state rather than generating electricity from its planned Elk Hills power plant in Bakersfield.

er the attract, tricity to the tricity ant in

g that it and m Elk upany r, that tional timent red to

claims well as to the

been com- dict."

WPPRA

SS

ecting option chief federal ze two they

under counsel ehle's stock adcom ortant d Dull argues, lity to sl.

he re-mar, Flom, udges nunity muni

has already prepared guilty to one felony

See Page 3 — BROADCOM

See Page 4 — MOST

## Sempra Wins \$6.6 Billion Power Contract Dispute With State

Continued from page 1

said J. Michael Hennigan, name partner with Hennigan, Bennett & Dorman in Los Angeles, who represented Sempra. "We provided them with exactly what they bargained for at exactly the price they bargained for and achieved five new power plants for California."

But by delaying construction of the Elk Hills power plant, Sempra failed to meet its obligations, said William Kissinger, a partner with Bingham McCutchen in San Francisco who represented the department.

"We're obviously disappointed the jury didn't award damages, but we're gratified they found that Sempra did in fact lie to us, Kissinger said. "Sempra has gotten billions out of this contract and got it through a lie...At every opportunity Sempra has taken advantage of the state."

The case sprang from the state's 2000-2001 energy crisis where partially deregulated energy markets wreaked havoc around California, leading to rolling blackouts and huge spikes in electricity costs that pushed utilities close to ruin.

In response, the legislature directed

the department to enter into long-term energy contracts that would help increase electricity supply and bring prices down. Soon after the more than 50 contracts were signed, the crisis abated and the state began moving to renegotiate better terms in the contracts. The department moved to cancel its 10-year contract with Sempra in 2002 and Sempra subsequently sued.

This week's verdict does not spell the end for the ongoing battle between the state and Sempra. The department is seeking rescission of the contract for other causes in an arbitration proceeding. And the state Pub-

lic Utilities Commission is alleging Sempra has unreasonably overcharged the state for the power it has provided and is asking the Federal Energy Regulatory Commission to order Sempra to refund between \$1 billion and \$2 billion.

The jury's finding that Sempra made misrepresentations during contract negotiations strengthens the state's argument that the charges were unreasonable, said Frank Lindh, general counsel of the commission.

fiona\_smith@dailyjournal.com