



2004 DEC 22 PM 4: 30

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January 4, 2005

Honorable City Council
Oakland, California

City Council President Ignacio de la Fuente and Members of the City Council:

Subject: **Resolution Authorizing and Directing the City Attorney to Compromise and Settle with Duke Energy in the Wholesale Electricity Antitrust Cases (*People of the State of Cal. ex rel. Bill Lockyer v. Dynegy, Inc. et al.*, (USDC-Northern District No. CV 02-1854-VRW) and all related cases against Duke Energy before different courts in related appellate proceedings.), in the Amount of \$500,000.00**

Summary of Action Requested

The purpose of this Resolution is to request that the City Council authorize the City Attorney to approve a proposed settlement with DUKE ENERGY CORPORATION (hereinafter "Duke"). Duke is one of the defendants in a number of lawsuits that the State of California and others filed against energy providers alleging that the independent energy providers engaged in illegal, unfair and fraudulent business practices to manipulate California energy prices. Oakland joined the lawsuits as a party plaintiff pursuant to the City Council's February 2002 authorization. Duke's settlement proposal is to pay the City \$500,000.00 in exchange for dismissing Duke from law suits that Oakland and other cities, counties and state entities filed against various energy companies.

Background

On January 18, 2001, San Francisco filed suit against a number of independent energy providers, alleging that the companies:

- unlawfully limited the energy available to California markets
- conspired to trade information relating to energy supply, pricing and demand, and
- collaborated to illegally raise the prices for energy on the market.

President de la Fuente and Members of the City Council

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On or about February 19, 2002, the City Council authorized the City Attorney to join Oakland as a party plaintiff in the litigation. The litigation was consolidated with suits the California Attorney General and others filed.

In 1996, the California legislature adopted legislation deregulating the state power industry. As a result of the deregulation, California's wholesale energy market came under the control of out-of-state energy companies that purchased the generating capacity that PG&E, San Diego Gas & Electric and Southern California Edison were required to sell. Plaintiffs allege that once the defendant energy companies gained control over the generating capacity in California, they conspired to limit the supply of electricity, forcing California to buy energy on the unregulated spot market at inflated prices.

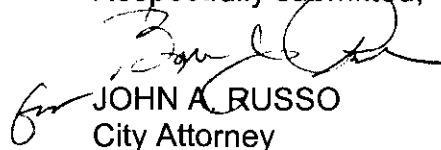
Fiscal Impact

Duke's settlement proposal is to pay the City \$500,000.00 in exchange for dismissing Duke from law suits that Oakland and other cities, counties and state entities filed against various energy companies.

Recommendation

The City Attorney recommends that the City Council authorize the City Attorney to accept Duke's settlement proposal.

Respectfully submitted,


JOHN A. RUSSO
City Attorney

Attorney Assigned:
Patrick Tang

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.



MTM

RESOLUTION AUTHORIZING AND DIRECTING THE CITY ATTORNEY TO COMPROMISE AND SETTLE WITH DUKE ENERGY IN THE WHOLESALE ELECTRICITY ANTITRUST CASES (*People of the State of Cal. ex rel. Bill Lockyer v. Dynegy, Inc. et al.*, (USDC-Northern District No. CV 02-1854-VRW) and all related cases against Duke Energy before different courts in related appellate proceedings.), IN THE AMOUNT OF \$500,000.00

RESOLVED: That the City Attorney is authorized and directed to compromise and settle the Wholesale Electricity Antitrust case, for the sum of Five Hundred Thousand Dollars and No Cents (\$500,000.00) payable to the City of Oakland.

FURTHER RESOLVED: That the City Attorney is further authorized and directed to take whatever steps as may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2004

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, REID, QUAN, WAN, AND PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

CEDA FLOYD
City Clerk and Clerk of the Council
of the City of Oakland, California