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INSIGHTS

U.S. Supreme Court Will Not Review Decision Prohibiting Courts from Ruling on Wholesale Power Prices

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Fallout from the 2000-2001 western energy crisis persisted in April. In a case involving one of the relatively smaller claims to arise out of the crisis, on April 18, 2005, the US Supreme Court denied the petition of the State of California for review of a lower court ruling that only FERC can decide whether the state was unlawfully double-billed for wholesale power. In a claim filed in state court in 2002, California alleged that certain generators violated the state's unfair business competition laws by double-billing the California Independent System Operator ("CAISO") over $100 million during the crisis. The double-billing occurred, according to California, when the generators charged the CAISO for energy reserves and then later sold the same electricity used to back up these reserves into the spot market at "exorbitant" prices. The generators, on the other hand, claimed they did nothing wrong and argued that the electricity was always available when the reserves were called upon. In July 2004, the Ninth Circuit denied California's claims, ruling they were not appropriately heard by the courts, but instead could only be decided by FERC since the Federal Power Act conferred on FERC exclusive jurisdiction to establish lawful prices in public utility wholesale power sales. By denying California's petition, the Supreme Court allowed this ruling to stand. Spokesmen for the State have promised to continue pursuing these claims at FERC. ***(U.S. Supreme Court, Case No. 04-1028) [UPDATE]***