

Court: CA Superior Court County of San Diego

Judge: J Haden

LexisNexis File & Serve Reviewed Filing ID: 2712375

Date: 12/10/2003

Case Number: JCCP4221 4224 4226 4228

Case Name: In re: Natural Gas Anti-Trust Cases I II III IV (JCCP)

Order signed on December 10, 2003.

Modification:

Word "Proposed" stricken from the title of the document and at footer on all pages of order.

/s/ Judge J Haden



GRANTED WITH MODIFICATIONS
(Attached)

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Co-Lead Counsel for the Settlement Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
(UNLIMITED JURISDICTION)

Coordination Proceeding Special Title
(Rule 1550(b)):

NATURAL GAS ANTI-TRUST CASES
I, II, III & IV

This Document Relates to:

Sweetie's, et al., v. El Paso Corporation, et al., Case
No. 319840 (San Francisco Superior Court);
*Continental Forge Company vs. Southern California
Gas Co., et al.*, (Los Angeles Superior Court) Case
No. BC237336;
Berg, et al., v. Southern California Gas Co., et al.,
(Los Angeles Superior Court) Case No. BC241951;
*City of Long Beach v. Southern California Gas Co., et
al.*, (Los Angeles Superior Court) Case
No. BC247114;
*City of Los Angeles v. Southern California Gas Co., et
al.*, (Los Angeles Superior Court) Case
No. BC247215;
*City of Los Angeles v. Southern California Gas Co., et
al.*, (Los Angeles Superior Court) Case
No. BC265905;
Phillip v. El Paso Merchant Energy LP, (San Diego
Superior Court) Case No. GIC 759425; and
Phillip v. El Paso Merchant Energy LP, (San Diego
Superior Court) Case No. GIC 759426.

J.C.C.P. Nos. 4221, 4224, 4226 &
4228

The Honorable J. Richard Haden
Coordination Trial Judge

**[AMENDED PROPOSED]
JUDGMENT, FINAL ORDER,
AND DECREE GRANTING
FINAL APPROVAL TO THE
CLASS ACTION SETTLEMENT
WITH THE EL PASO
DEFENDANTS**

Hearing Date: November 20, 2003
Time: 1:30 p.m.
Dept: 72

GRANTED WITH MODIFICATIONS

1 This matter is before the Court on the motion for final class certification and final
2 approval of a proposed class action settlement (the “Settlement”) of the above-captioned cases
3 (the “Class Actions”) entered into between, on the one hand, plaintiffs Thomas L. French,
4 William P. Bower, Doug and Valerie Welch, Frank and Kathleen Stella, United Church
5 Retirement Homes, Long Beach Brethren Manor, Robert Lamond, John and Jennifer Frazee;
6 Continental Forge Company; Andrew and Andrea Berg, John C. Molony, Gerald Marcil, and
7 SierraPine, Ltd. (collectively, the “Class Representatives”) and, on the other hand, defendants El
8 Paso Corporation, El Paso Natural Gas Company, and El Paso Merchant Energy, LP (collectively,
9 the “El Paso Settling Parties”) on behalf of themselves and defendants El Paso Merchant Energy
10 Company, Mojave Pipeline Company, El Paso Tennessee Pipeline Company, El Paso Merchant
11 Energy-Gas Company, El Paso Merchant Energy-Gas, LP, El Paso Gas Marketing Company, El
12 Paso Mojave Pipeline Company, Mojave Pipeline Operating Company, EPNG Mojave, Inc., El
13 Paso Energy West Coast Holding Company, and El Paso Merchant Energy Holding Company
14 (together with the El Paso Settling Parties, the “El Paso Defendants,” and, together with the Class
15 Representatives and the El Paso Settling Parties, the “Settling Parties”), as set forth in the Master
16 Settlement Agreement dated as of June 24, 2003 (the “MSA”).

17 By the [Second Amended] Order Conditionally Certifying Settlement Class; Granting
18 Motion for Preliminary Approval of Settlement; and Scheduling Hearing on Final Settlement
19 Approval, dated August 6, 2003 (the “Preliminary Approval Order”), this Court: (a) conditionally
20 certified the Settlement Class and Subclasses defined therein (collectively, the “Settlement
21 Classes”); (b) appointed the Class Representatives and their counsel (“Class Counsel”) to
22 represent the Settlement Classes, as set forth therein; (c) granted preliminary approval to the
23 Settlement; and (d) ordered that notice of the Settlement be disseminated to the Settlement
24 Classes, as directed therein, on or before September 14, 2003.

25 In compliance with the Preliminary Approval Order, notice was published and/or mailed
26 to the members of the Settlement Classes on or before September 14, 2003.

27 On November 20, 2003, the Settling Parties and other interested persons appeared before
28 the Court at the final approval and fairness hearing (the “Fairness Hearing”), represented by their

1 respective attorneys. An opportunity to be heard was given to all persons requesting to be heard.
2 The Court has reviewed and considered all of the pleadings filed in connection therewith, all the
3 argument and evidence presented at the hearing in support of the Settlement, and the submissions
4 and arguments of objectors to the Settlement.

5 The entire matter of the proposed Settlement having been duly noticed, and having been
6 fully considered by the Court,

7 **IT IS HEREBY ADJUDGED, ORDERED, AND DECREED** that:

8 1. This Court has jurisdiction over the claims of the members of the Settlement
9 Classes asserted in this coordination proceeding, personal jurisdiction over the Settling Parties
10 (including the members of the Settlement Classes), and subject matter jurisdiction to approve the
11 Settlement.

12 2. Notice given to the members of the Settlement Classes was reasonably calculated
13 under the circumstances to apprise the class members of the pendency of the Class Actions, all
14 material elements of the proposed Settlement, and their opportunity to exclude themselves from,
15 to object to, or to comment on the Settlement and to appear at the Fairness Hearing. The notice
16 was reasonable and the best notice practicable under the circumstances; was due, adequate and
17 sufficient notice to all class members; and complied fully with the laws of the State of California,
18 the California Code of Civil Procedure, the California Rules of Court, due process, and any other
19 applicable statutes or rules. A full opportunity has been afforded to the members of the
20 Settlement Classes to participate in this hearing, and all members of the Settlement Classes and
21 other persons wishing to be heard have been heard. Accordingly, the Court determines that all
22 members of the Settlement Classes are bound by this Judgment, Final Order, and Decree.

23 3. The Court finds that the applicable requirements of the California Code of Civil
24 Procedure section 382 and California Rules of Court 1859 and 1860 have been satisfied with
25 respect to the Settlement Classes and the Settlement.

26 4. On August 6, 2003, this Court conditionally certified a Settlement Class defined
27 as:

28 All individuals and entities in California that purchased natural gas

1 and/or electricity for use and not for resale or generation of
2 electricity for the purpose of resale, between September 1, 1996 and
3 March 20, 2003, inclusive. Excluded from the Class are
4 Defendants, Defendants' predecessors, affiliates, subsidiaries,
5 officers and directors, federal agencies, state agencies, cities,
6 counties and other municipalities, any and all judges and justices
7 assigned to hear any aspect of this litigation, along with their
8 spouses and any minor children residing in their households, and
9 any persons within the third degree of relationship of any judge or
10 justice assigned to hear any aspect of this litigation. Also excluded
11 from the Class are the County of Los Angeles and San Bernardino,
12 the Cities of Long Beach, Upland, Vernon, and Culver City, the
13 California Dairies Plaintiffs, Dry Creek Corporation, Gallo Glass
14 Company, World Oil Corporation, and Edgington Oil Co.

15 In addition, on that same date, this Court conditionally certified three Settlement Subclasses,
16 defined as:

17 **The Core Natural Gas Subclass**

18 All individuals and entities that were "core" or "core subscription"
19 natural gas customers of one or more of California's natural gas
20 utilities, Southern California Gas Company, Pacific Gas & Electric
21 Company, San Diego Gas & Electric Company, City of Long
22 Beach Energy Department, and Southwest Gas Corporation, at any
23 time between September 1, 1996 and March 20, 2003.

24 **The Non-Core Natural Gas Subclass**

25 All individuals and entities that were "non-core" natural gas
26 customers (excluding "core subscription" customers) of one or
27 more of California's natural gas utilities, Southern California Gas
28 Company, Pacific Gas & Electric Company, San Diego Gas &
Electric Company, City of Long Beach Energy Department, and
Southwest Gas Corporation, or who otherwise purchased natural
gas pursuant to contract, at any time between September 1, 1996
and March 20, 2003.

The Electricity Subclass

All individuals and entities that purchased electricity as customers,
including "direct access" customers, of any California public utility,
including municipal electric utilities, at any time between
September 1, 1996 and March 20, 2003.

5. Membership in the three Subclasses is subject to the same limitations and
exclusions as the Settlement Class, including that purchases must have been made by members of
these subclasses for consumption and not for resale or generation of electricity for the purpose of
resale, and the exclusion of governmental entities. Settlement Class members who switched from

1 “core subscription” to “non-core” natural gas service during the class period (or vice-versa) are
2 members of both the Core Natural Gas Subclass and the Non-Core Natural Gas Subclass.

3 6. The Court appointed the Class Representatives as representatives of the Settlement
4 Class. The Court appointed the law firms of Lief, Cabraser, Heimann & Bernstein, LLP;
5 O’Donnell & Shaeffer LLP; Girardi & Keese; and Engstrom, Lipscomb and Lack as lead counsel
6 for the Settlement Class, and the law firms of Baker, Burton & Lundy; Astrella and Rice, P.C.;
7 and Francis O. Scarpulla, M. Brian McMahon, J. Tynan Kelly, Michael J. Ponce, Douglas A.
8 Stacey, and Kiesel, Boucher & Larson, LLP as additional counsel for the Settlement Class
9 (collectively, “Class Counsel”).

10 7. The Court appointed Thomas L. French, William P. Bower, Doug and Valerie
11 Welch, Frank and Kathleen Stella, United Church Retirement Homes, Long Beach Brethren
12 Manor, Robert Lamond, and John and Jennifer Frazee as representatives of the Core Natural Gas
13 Subclass. The Court appointed the law firm of Lief, Cabraser, Heimann & Bernstein, LLP as
14 lead counsel for the Core Natural Gas Settlement Subclass, and Francis O. Scarpulla, M. Brian
15 McMahon, Michael J. Ponce, and Douglas A. Stacey as additional counsel for the Core Natural
16 Gas Subclass.

17 8. The Court appointed Continental Forge Company as representative of the Non-
18 Core Natural Gas Subclass. The Court appointed the law firm of Engstrom, Lipscomb and Lack
19 as lead counsel for the Non-Core Natural Gas Subclass, and J. Tynan Kelly as additional counsel
20 for the Non-Core Natural Gas Subclass.

21 9. The Court appointed Andrew and Andrea Berg, John C. Molony, Gerald Marcil,
22 and SierraPine, Ltd. as representatives of the Electricity Subclass. The Court appointed the law
23 firms of O’Donnell & Shaeffer LLP and Girardi & Keese as lead counsel for the Electricity
24 Subclass, and the law firms of Baker, Burton & Lundy and Astrella and Rice, P.C. as additional
25 counsel for the Electricity Subclass.

26 10. Class certification is an appropriate method for protecting the interests of the class
27 members and resolving the common issues of fact and law arising out of the alleged violations of
28 California’s antitrust and unfair competition laws.

1 11. California Code of Civil Procedure section 382 provides for class certification
2 when there is an ascertainable class and a well-defined community of interest among class
3 members. The Settlement Class and each Subclass continue to meet this standard for class
4 certification, so that final certification of the Settlement Class and Subclasses is appropriate.
5 There have been no objections to the propriety of class certification.

6 12. The Court finds for the purposes of settlement that: (a) the Settlement Classes are
7 ascertainable; (b) the members of the Settlement Classes are so numerous that joinder would be
8 impractical; (c) there is a community of interest between the members of the respective
9 Settlement Classes; (d) there are questions of law and fact that are common to the respective
10 Settlement Classes and those common questions predominate over individual questions; (e) the
11 claims of the Class Representatives are typical of the claims of absent members of the Settlement
12 Classes to which they belong; and (e) the Class Representatives and Class Counsel have and will
13 fairly and adequately represent the interests of the absent members of the Settlement Classes.

14 13. The Settlement Class and each Subclass meet the predominance and superiority
15 requirements for class certification. Common issues of fact and law predominate in this
16 proceeding, for the claims of members of the Settlement Classes all hinge on whether a
17 conspiracy existed among certain El Paso Defendants and/or between certain El Paso Defendants
18 and actual or potential competitors, and whether such conspiracies resulted in supra-competitive
19 prices. These Class Actions are also superior to individual actions because, given the substantial
20 costs associated with litigating an individual action and the relatively small amount of recoverable
21 damages per class member, the El Paso Defendants would likely pay no damages absent class
22 treatment of the claims of Settlement Class members.

23 14. Accordingly, pursuant to California Code of Civil Procedure section 382, the
24 Court makes final its conditional certification of the Settlement Class and each of the three
25 Subclasses for settlement purposes only, and confirms the appointment of the Class
26 Representatives and Class Counsel to represent the Settlement Classes, as set forth above.

1 15. Eleven members of the Settlement Class timely requested exclusion.¹ Pursuant to
2 stipulation, two additional Settlement Class members have been permitted to exclude themselves
3 from the Settlement Class.² Three additional entities timely filed requests for exclusion on behalf
4 of themselves and related entities, stating that they did not consider themselves members of the
5 Settlement Class.³ Each of these persons and entities are excluded from the Settlement Classes.

6 16. The Court hereby grants final approval to the Settlement and finds that it is fair,
7 reasonable, and adequate, and in the best interests of the Settlement Classes as a whole. The
8 MSA requires the El Paso Settling Parties to pay a total of approximately \$1.55 billion.⁴ After
9 deduction of amounts payable to the non-class settling parties -- the States of Oregon,
10 Washington, and Nevada, and the Cities of Los Angeles and Long Beach -- approximately \$1.4
11 billion will go to benefit the Settlement Classes, having a total present value of over \$1 billion.

12 17. The Settlement is entitled to a presumption of reasonableness, as it was negotiated
13 at arms'-length over an extended period of time by experienced and well-prepared Class Counsel,
14 and the number of objections received is negligible. 7-Eleven Owners for Fair Franchising v.
15 Southland Corp. (2001) 85 Cal. App. 4th 1135, 1151. The Court also notes that the California

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18 ¹ These persons and entities are: Wayne E. Williams, 815 Middleton Drive, Boulder Creek, CA 95006; Rita J.
19 Hamilton, 4817 Calderwood Court, Oakland, CA 94605; Karen Morgan, 4135 Roble Way, Rocklin, CA 95677;
20 Dorothy Reyes, 3233 Elmore St., Simi Valley, CA 93063; Jessica Romo, 424 Julie Street, Colton, CA 92324; Karl
21 and Della Esparza, 424 Julie St., Colton, CA 92324; Ramon V. Bedolla, 1624-1/2 North "L" St., San Bernardino,
22 CA; Elena Espitia, 500 Pacific #148, Coalinga, CA 93210; Wayne E. Williams, Owner, W/A Insurance Services,
23 12788 Hwy. 9, Suites 2 & 3, Boulder Creek, CA 95006; and IMC Chemicals, Inc., 13200 Main St., Trona, CA
24 93592.

25 ² Walter F. Ellingwood, III and Rent Tech, Inc.

26 ³ These entities are: Williams Production RMT Company, successor by merger to Barrett Resources Company, One
27 Williams Center, P.O. Box 2400, Tulsa, OK 74102; Mirant Corporation, 1155 Perimeter Center West, Atlanta, GA
28 30338, on behalf of itself, its subsidiaries, and related entities; and Sierra Pacific Resources and its subsidiaries and
affiliates (a complete list of these entities is included in Exhibit 4 to the Declaration of Gene D. Kennedy in Support
of Plaintiffs' Motion for Final Approval of Class Action Settlement).

⁴ The MSA requires the El Paso Settling Parties to: (1) deposit \$78,590,070 into escrow; (2) deposit an additional
\$243,229,464 within 180 days after execution of the MSA; (3) deposit an additional \$2 million from a bonus pool for
El Paso corporate officers prior to the effective date of the MSA; (4) beginning on July 1, 2004, make semi-annual
payments of \$21,890,651 for 20 years, for a total of \$875,626,072, which the El Paso Settling Parties may prepay by
July 1, 2004 for either \$442 million or \$525 million, depending on whether it has regained an investment-grade credit
rating; (5) deposit proceeds of the sale of 26,371,308 shares of El Paso Corporation common stock, to be sold at the
direction of the Class Representatives and the other settling claimants; and (5) reduce the price paid by the California
Department of Water Resources under a power contract by \$125 million through December 31, 2005, the cost of
which would otherwise be passed-along to Electricity Subclass members.

1 Attorney General, the Governor, and the California Public Utilities Commission have all
2 endorsed the Settlement as parties to the MSA.

3 18. The Settlement is also fair, reasonable, and adequate, as measured by the relevant
4 criteria. See Dunk v. Ford Motor Co. (1996) 48 Cal. App. 4th 1794, 1801 (listing and applying
5 factors). Specifically, this \$1.4 billion antitrust settlement is reportedly one of the largest in U.S.
6 history. In light of El Paso Corporation's financial condition at the time the settlement was
7 reached, the likelihood that plaintiffs could have actually collected a judgment larger than the
8 Settlement was dubious at best.

9 19. Prior to entering into the proposed Settlement, Class Counsel, who have extensive
10 experience in class action and antitrust litigation, were well-informed about the potential risks and
11 rewards of continued litigation, having conducted extensive discovery and investigation, having
12 consulted extensively with experts concerning class members' damages, having overcome
13 numerous pleading challenges, and having moved for class certification. In a case as complex as
14 this, continued litigation presents serious risks for plaintiffs at trial, and further risks on appeal, as
15 the survival of any judgment rendered in plaintiffs' favor may turn on appellate resolution of a
16 number of legal defenses raised by the Settling Defendants, such as federal preemption and the
17 Copperweld doctrine.

18 20. Finally, the reaction of class members strongly favors settlement approval. While
19 the Settlement Class contains approximately 13 million members, only a handful have opted-out
20 of the Settlement Class or objected to the Settlement. Of the approximately 3,000 Non-Core
21 Natural Gas Subclass members, which constitute the largest industrial users of natural gas, with
22 the largest potential damage claims, only one has opted-out of the Settlement Class.

23 21. The allocation of Settlement proceeds, set forth in the Allocation Agreement and
24 described in the notices disseminated to the Settlement Class, is also hereby approved as fair,
25 adequate, and reasonable. The allocation was based on a detailed estimate of the relative
26 damages suffered by the members of the Subclasses and other parties to the MSA, prepared by a
27 team of experts. The allocation discussions occurred under the supervision of three respected
28 retired jurists, who have attested to Class Counsel's extensive and constructive involvement in

1 those discussions. The Court also notes that the California Attorney General, the Governor, and
2 the California Public Utilities Commission have all endorsed the agreed-upon allocation as parties
3 to the Allocation Agreement.

4 22. The few objections which have been filed have been considered by the Court and
5 are overruled.⁵

6 23. The California League of Food Processors (“CLFP”) submitted a “comment” filed
7 with the Court on October 16, 2003, two days after the deadline for filing objections. To the
8 extent this constitutes an objection, it is stricken as untimely.

9 24. In addition, the CLFP itself does not claim to be a member of the Non-Core
10 Natural Gas Subclass; it purports to “comment” on the settlement on behalf of its members, a
11 number of which are located in Southern California. In its comment, the CLFP argues that the
12 claims procedure for Non-Core Natural Gas Subclass Members should be modified so that more
13 of the settlement consideration allocated to the Non-Core Natural Gas Subclass goes to Subclass
14 members with operations in Northern California, and less goes to Subclass members with
15 operations in Southern California. CLFP Comment, at 2-6. By advocating on behalf of some of
16 its members at the expense of others, the CLFP is enmeshed in an intractable conflict-of-interest
17 that deprives it of standing to object to the settlement on behalf of its members. Rebney v. Wells
18 Fargo Bank, N.A. (1990) 220 Cal. App. 3d 1117, 1134.

19 25. Turning to the merits of the CLFP’s argument, “a Plan of Allocation need not be,
20 and cannot be, perfect.” In re Cendant Corp. Sec. Litig. (D. N.J. 2000) 109 F. Supp. 2d 235, 272.
21 A plan of allocation need only be fair, adequate, and reasonable. In re Citric Acid Antitrust Litig.
22 (N.D. Cal. 2001) 145 F. Supp. 2d 152, 154. “An allocation formula need only have a reasonable,
23 rational basis, particularly if recommended by ‘experienced and competent’ class counsel.”
24 Maley v. Del Global Technologies Corp. (S.D.N.Y. 2002) 186 F. Supp. 2d 358, 366 (citation
25 omitted). The expert Declaration of Matthew P. O’Loughlin, submitted by the Class
26 Representatives, adequately responds to the CLFP’s concerns, and establishes that it is both

27 _____
28 ⁵ Walter F. Ellingwood, III, Rent Tech, Inc., and Duke Energy Trading & Marketing, L.L.C. have each withdrawn
their objections. Accordingly, there is no need to address them here.

1 reasonable and rational to treat Non-Core Natural Gas Subclass members from Northern and
2 Southern California equally.

3 26. Kenneth Weissman, an attorney who has previously objected to class action
4 settlements, objects that Settlement Class members who no longer pay for gas or electricity or
5 who have moved outside the state will not receive any benefit from the Settlement, which will be
6 passed-through to class members in the form of utility rate reductions or credits. The Court finds
7 that such a “fluid recovery” is especially appropriate in this case. As the California Supreme
8 Court has explained: ““The theory underlying fluid class recovery is that since each class
9 member cannot be compensated exactly for the damage he or she suffered, the best alternative is
10 to pay damages in a way that benefits as many of the class members as possible and in the
11 approximate proportion that each member has been damaged, even though, most probably, some
12 injured class members will receive no compensation and some people not in the class will benefit
13 from the distribution” Kraus v. Trinity Management (2000) 23 Cal. 4th 116, 128 (quoting
14 Bruno v. Superior Court (1981)127 Cal. App. 3d 1220, 123-24). Accord In re Vitamin Cases
15 (2003) 107 Cal. App. 4th 820, 826; Corbett v. Superior Court of Alameda County (2002) 101 Cal.
16 App. 4th 649, 665. Given the large number of class members, and the difficulty and
17 administrative expense associated with processing individual claims, it is appropriate to distribute
18 the consideration to the Settlement Class members as ordered by the California Public Utilities
19 Commission in its October 30, 2003 Opinion Regarding Treatment of Consideration Received
20 Pursuant to El Paso Settlement, Order Instituting Rulemaking No. 03-07-008. See In Re Vitamin
21 Cases, 107 Cal. App. 4th at 826 (settlement approved awarding entire recovery to charitable and
22 non-profit organizations, where administrative cost of distributing funds to class members
23 rendered this option infeasible).

24 27. Ernest Thayer, an attorney acting pro se, mailed an objection to the Settlement to
25 Class Counsel, but did not file his objection with the Court, as required by both the Preliminary
26 Approval Order and the notices disseminated to the Settlement Class. Accordingly, his objection
27 is not properly before the Court. In any event, based on Class Counsel’s description of Mr.
28 Thayer’s objections, if they were before the Court, they would be overruled.

1 28. Mr. Thayer reportedly objects that class members did not receive individual notice
2 of the Settlement. Because Mr. Thayer himself obtained the notice, he lacks standing to raise this
3 objection. See In re Scientific Control Corp. (S.D.N.Y. 1978) 80 F.R.D. 237 (“Griffin also
4 protests that notice to the class was inadequate. This is plainly not correct, and in any event,
5 having received notice himself, he lacks standing to complain.”); Holmes v. CSX Transportation
6 (E.D. La. June 24, 1999) Case No. Civ. A. 97-3863, 1999 WL 447087 (“[c]lass members who
7 receive notice lack standing to complain of the adequacy of the notice”); Rebney, 220 Cal. App.
8 3d at 1132 (“the Abascal appellants were not aggrieved by the errors they assert with regard to the
9 . . . fairness of the settlement, and thus they lack standing to assert those errors as a basis for
10 reversal”).

11 29. Even if Mr. Thayer had filed his objection with the Court, and had standing to
12 object to the sufficiency of class notice, the objection would be overruled because individual
13 notice is not required under California law, which requires only that the notice have “a reasonable
14 chance of reaching a substantial percentage of the class members.” Cartt v. Superior Court
15 (1975) 50 Cal. App. 3d 960, 974. Indeed, Rule 1856(e)(7) of the California Rules of Court
16 expressly authorizes notice by publication, where notice to individual class members is
17 impractical or unduly expensive. Harvey Morris of the California Public Utilities Commission
18 explains that the investor-owned utilities subject to the Commission’s jurisdiction declined a
19 request to include a notice of the proposed settlement with their monthly bills, and that in Pacific
20 Gas & Elec. Co. v. Public Utilities Comm’n (1986) 475 U.S. 1, the Supreme Court held that the
21 utilities cannot be required to include information concerning third-parties in their monthly billing
22 statements. Andrew Novak, the Class Representatives’ notice expert, estimates that the
23 publication notice reached 70.8% of California homeowners and renters an average of 1.5 times,
24 and reached 79.8% of business executives an average of 1.6 times. This more than satisfies the
25 applicable standard.

26 30. Finally, Mr. Thayer’s reported complaint that the notice included only a reference
27 to an internet website address for more information is belied by the notice itself, which contains a
28 toll-free number for class members to call to receive additional information.

1 31. Accordingly, the MSA, attached hereto as Exhibit A, and the Allocation
2 Agreement, attached hereto as Exhibit B, are approved and made a part of this judgment as if
3 fully set forth herein, and shall have the full force and effect of an order of this Court. The parties
4 shall consummate the MSA and Allocation Agreements according to their terms.

5 32. Under California Code of Civil Procedure sections 578, 579, and 664.6, the Court,
6 in the interests of justice, there being no just reason for delay, expressly directs the Clerk of the
7 Court to enter this Judgment, Final Order, and Decree, and hereby decrees, that upon entry, it be
8 deemed as a final judgment and appealable with respect to all claims by members of the
9 Settlement Classes against the El Paso Defendants, in accordance with the terms of the MSA.

10 33. In addition to the effect of this final judgment, all members of the Settlement
11 Classes have released and forever discharged the El Paso Defendants and their present and former
12 parents, subsidiaries, divisions, affiliates, officers, directors, employees, agents and any of their
13 legal representatives (and the present and former parents, subsidiaries, divisions, affiliates,
14 officers, directors, employees, agents, and legal representatives of each of the foregoing), and the
15 predecessors, heirs, executors, administrators, successors, and assigns of each such entity and
16 individual (the "Released Parties") from all manner of claims, demands, actions, suits, causes of
17 action, whether class, individual, or otherwise in nature, damages whenever incurred, liabilities of
18 any nature whatsoever, including costs, expenses, penalties and attorneys' fees, known or
19 unknown, suspected or unsuspected, in law or equity, that any member of the Settlement Class,
20 who has not timely excluded himself/herself/itself from the Class Actions (including any of their
21 past, present or future agents, legal representatives, trustees, parents, partners, estates, heirs,
22 executors and administrators), and whether or not they object to the settlement, ever had, now
23 have, or hereafter can, shall or may have, relating in any way to any conduct through March 20,
24 2003, as set forth in the MSA, concerning the pricing, marketing, or distribution natural gas and
25 any alleged collusive activities alleged in the complaints filed in the Class Actions, and including
26 without limitation claims which have been asserted or could have been asserted in any litigation
27 against the Released Parties or any one of them, and which arise under or relate to any federal or
28 state antitrust, unfair competition, unfair practices, or other similar law or regulation or common

1 law, including, without limitation, the Cartwright Act (Cal. Bus. & Prof. Code § 16720 et seq.),
2 the Unfair Practices Act (Cal. Bus. & Prof. Code § 17000 et seq.), and the Unfair Competition
3 Act (Cal. Bus. & Prof. Code § 17200 et seq.) (hereinafter, and as further defined in the MSA, the
4 “Released Claims”). Nothing in the MSA is intended to release any nonsettling defendant, or any
5 other nonsettling entity, other than the Released Parties. Each member of each Settlement Class
6 (including their past, present or future agents, legal representatives, trustees, parents, estates,
7 heirs, executors and administrators) hereby covenants and agrees that he, she or it shall not,
8 hereafter, assert any claim, demand, action, suit, or cause of action, whether class or individual,
9 against any Released Party based, in whole or in part, upon any of the Released Claims. No
10 claims other than Released Claims shall be released. For example, personal injury claims or
11 product defect claims, are not released.

12 34. Additionally, each member of any of the Settlement Classes hereby expressly
13 waives and releases any and all provisions, rights and benefits conferred by California Civil Code
14 section 1542. Each member of any of the Settlement Classes may hereafter discover facts other
15 than or different from those which he, she or it knows or believes to be true with respect to the
16 claims which are the subject matter of the provisions of the MSA, but each member of any of the
17 Settlement Classes hereby expressly waives and fully, finally and forever settles and releases, any
18 known or unknown, suspected or unsuspected, contingent or noncontingent claim with respect to
19 the subject matter of the provisions of the MSA, whether or not concealed or hidden, without
20 regard to the subsequent discovery or existence of such different or additional facts.

21 35. Without affecting the finality of this Judgment, Final Order, and Decree, the
22 Settling Parties, including the members of the Settlement Classes, have submitted to the exclusive
23 and continuing jurisdiction of this Court, and this Court reserves exclusive and continuing
24 jurisdiction over the Settlement and the MSA, including the administration and consummation of
25 the Settlement.

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36. As to each El Paso Defendant, the Class Actions are dismissed with prejudice, and, except as provided herein or in the MSA, without costs.

Dated: November __, 2003

J. RICHARD HADEN
Coordination Trial Judge
Superior Court of the State of California
County of San Diego