

JPMorgan Says RICO Suit Undermines FERC's Power

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Law360, New York (May 05, 2015, 8:53 PM ET) -- A proposed class of California consumers accusing a JPMorgan Chase & Co. subsidiary of rigging electricity prices is trying to improperly piggyback off the bank's \$410 million settlement with the Federal Energy Regulatory Commission, the bank argued Monday.

The suit claims ratepayers were forced to pay artificially high prices for electricity because of JPMorgan Ventures Energy Corp.'s bidding manipulations in violation of the Racketeer Influenced and Corrupt Organizations Act, but JPMorgan argued in a motion that the suit is trying to interfere with FERC's exclusive ability to set rates.

"Plaintiffs cannot use RICO to dodge FERC's exclusive statutory authority to police the very violations of the Federal Power Act about which plaintiffs complain," the motion to dismiss said.

FERC first looked into allegations of bid rigging in 2011 after being alerted about wholesale electricity market bidding strategies that regional transmission operators believed were abusive, according to court documents.

Upon investigation, FERC determined that JPMorgan Ventures Energy, which sells the electrical output of several power plants in southern California, used as many as 12 bid-rigging tactics that violated FERC's prohibition of electric energy market manipulation. The commission ultimately reached a settlement in 2013 in which JPMorgan agreed to pay \$125 million in unjust profits to customers in California and the Midwest as well as \$285 million in civil penalties.

The current suit, brought by a class of customers of Pacific Gas & Electric Co., Southern California Edison and San Diego Gas & Electric, argues that the \$125 million paid in unjust profits is significantly below the actual damages the customers suffered as a result of JPMorgan's market manipulations.

JPMorgan contends, however, that Ninth Circuit precedent bars the suit after the circuit court affirmed the dismissal of a nearly identical suit against Duke Energy Trading and Marketing to avoid undermining FERC's authority to set rates.

The bank also argued that the suit is deficient because the customers are at most indirect victims of its subsidiary's actions, rather than direct victims as required by RICO pleadings, and that a RICO suit requires participation in a fraudulent enterprise, which JPMorgan didn't do. In fact, the bank pointed out, the plaintiffs recognize that the other alleged participants were victims of JPMorgan's alleged conduct.

As a result, JPMorgan argued the suit is both barred by precedent and insufficient under RICO and should be dismissed.

Representatives for the parties didn't immediately respond to requests for comment Tuesday.

The plaintiffs are represented by Joseph Siprut and Todd McLawhorn of Siprut PC and Mitchel J. Olson of The Law Office of Mitchel J. Olson.

JPMorgan is represented by Robert W. Perrin, James E. Brandt and Jonathan M. Jackson of Latham & Watkins LLP.

The case is Woolsey et al. v. JPMorgan Energy Ventures Corp. et al., case number 3:15-cv-00530 in the U.S. District Court for the Southern District of California.

--Additional reporting by Keith Goldberg. Editing by Kat Laskowski.