Dirty Diesel

SEVEN MANUFACTURERS OF HEAVY DUTY DIESEL ENGINES will pay $1 billion to settle allegations that they illegally designed the engines to defeat clean air laws.

The seven companies are: Caterpillar, Cummins Engine, Detroit Diesel, Mack Trucks and its business partner Renault Vehicles, Navistar and Volvo Truck.

The Justice Department alleged that the companies violated the Clean Air Act by selling heavy duty diesel engines equipped with defeat devices — software that alters an engine's pollution control equipment under highway driving conditions. Environmental Protection Agency (EPA) chief Carol Browner says that the illegal devices "allow engines to pass EPA's emissions tests in the lab, but turn off pollution control equipment under normal driving conditions."

The companies continue to deny any wrongdoing in connection with the case.

The affected engines emitted more than 1.3 million tons of excess nitrogen oxide (NOx) in 1998 alone, which is six percent of all NOx emissions from cars, trucks, and industrial sources this year. This is equivalent of the NOx emissions from an additional 65 million cars on the road, Browner says.

Justice Department official John Cruden made it clear that the settlement was a global one and that no criminal action was contemplated, despite the allegations of deliberate company action. "We decided that the civil action was the way to go," he says.

The October agreement requires the companies to collectively spend more than $1 billion, including $83.4 million in civil penalties, the largest in environmental enforcement history. The companies will be required to significantly reduce emissions from new heavy duty diesel engines by the end of the year and then meet tougher standards by 2002. The companies are also required to ensure that when older heavy duty trucks are rebuilt, their excess emissions will be reduced.

Stranded Citizens

ELECTRIC UTILITIES IN 11 STATES ARE DEMANDING more than $112 billion to bail out their failed investments as deregulation of the electric industry begins, according to a new report released last week in Washington, D.C.

That is the contention of an October report, "The Great Ratepayer Robbery: How Electric Utilities Are Making Out Like Bandits At The Dawn Of Deregulation," issued by the Safe Energy Communication Council (SECC), a Washington, D.C.-based energy policy watchdog coalition.

Utilities claim they are entitled to recover the value of assets that will not be competitive in a deregulated electric market — their "stranded costs." The utility argument is that because state utility commissions authorized the non-competitive investments, the state should bear the burden of paying for them in a competitive market. Absent this bail out, the utilities say, they will be at an unfair disadvantage versus the independent energy companies.

But the SECC's report finds that stranded cost recovery unfairly punishes residential and commercial ratepayers, lacks a sound legal foundation, handcuffs the fledgling competitive market and hurts local economies.

"The practice of stranded cost recovery steals from families and rips-off small businesses while rewarding utilities for dumb investments and dumber management decisions," says Christopher Moser, SECC's Policy Associate and the study's primary author.

The report found that:

- Stranded cost estimates in just 11 states already total more than $112 billion dollars;
- Nuclear power, once touted as "too cheap to meter," now accounts for the majority of stranded costs; and
- Utilities inflate stranded cost estimates. The SECC found that 15 out of 23 utilities claimed an average of 36 percent higher stranded cost estimates than did Moody's Investor Service.

Toy Conspiracy

THE FEDERAL TRADE COMMISSION (FTC) HAS ORDERED Toys "R" Us, the largest toy retailer in the United States, to stop engaging in illegal practices that keep toy prices higher and reduce choice for consumers.

In its October order, the FTC said that Toys "R" Us wanted "to prevent consumers from comparing the price and quality of products in [warehouse price] clubs to the price and quality of the same toys displayed and sold at Toys "R" Us, and thereby to reduce the effectiveness of the clubs as competitors."

To eliminate the warehouse club competitive threat, Toys "R" Us used its dominant position as a toy distributor to extract agreements from and among toy manufacturers to stop selling to warehouse clubs the same toys that they sold to other toy distributors. Toys "R" Us buys about 30 percent or more of the large toy companies' total output and is usually their most important customer.

The Commission noted that retail margins enjoyed by different types of retailers vary widely. Toys "R" Us' average margins are close to 30 percent above cost. Warehouse clubs sell toys at prices as low as 9 percent above wholesale cost.

Fearing that warehouse clubs presented a greater threat than Wal-Mart and Target had to Toys "R" Us' prices and profits, Toys "R" Us planned to restrict or cut off the clubs' supply of key toy products. The Commission found that Toys "R" Us did this by inducing its suppliers to sell to the clubs only toys that were unique and highly differentiated — most often so-called "combo" packages of two or more toys — from the toys sold to Toys "R" Us. According to the Commission, beginning in 1992, Toys "R" Us entered into vertical agreements with 10 manufacturers — including Mattel, Hasbro, Fisher Price and Tyco — to restrict their sales to clubs.

— *Russell Mokhiber*