



# FEDERAL ENERGY REGULATORY COMMISSION

December 18, 2008

Docket Nos. EL02-28-006, EL02-33-007, EL02-38-006;  
EL-02-29-006, EL02-30-006, EL02-31-006, EL02-32-006,  
EL02-34-006, EL02-39-006; EL02-43-006; EL02-56-006

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## FERC Takes Major Step Toward Resolution of California-Western Power Crisis

The Federal Energy Regulatory Commission (FERC) today ordered paper hearings to supplement the record of a matter on remand from the U.S. Supreme Court involving attempts to abrogate or reform a series of bilateral wholesale energy contracts in the Western power markets entered into between 2000 and 2001. FERC further ordered that the paper hearings be held in abeyance so that the parties can explore settlement.

In its earlier decisions, FERC declined to direct any modifications to the contracts, saying that the *Mobile-Sierra* public interest standard applied to all the contracts. On appeal, the Ninth Circuit Court of Appeals remanded the cases to the Commission, stating it found flaws in FERC's application of the *Mobile-Sierra* public interest standard. On review of that decision, the Supreme Court in June 2008 rejected several aspects of the Ninth Circuit's interpretation of the *Mobile-Sierra* standard but required FERC to "amplify or clarify" its findings on the contracts' effects on the public interest and whether there is a causal connection between alleged unlawful market activity and the contracts at issue.

"This dispute is now seven years old, and we are greatly encouraged that some of the parties are willing to work through settlement to resolve this matter," FERC Chairman Joseph T. Kelliher said. "Resolution by settlement is always preferable to litigation. But if parties do not settle their disputes, we will perfect our record and resolve them ourselves."

The paper hearing will focus on whether there was any evidence of a burden on consumers over the contract terms, and whether there was any market manipulation by sellers involved in the case that caused their contract rates to be unjust and unreasonable.

FERC stressed that the record in this case already is voluminous, and as the Supreme Court's opinion does not require a reopening of the entire record to allow the submission of new evidence, this process is not an opportunity for parties to effectively resubmit in blanket fashion evidence already in the record.

All submissions must pertain directly to the specific issues remanded by the Supreme Court. The submission deadline is 90 days from the date of the conclusion of settlement procedures, while reply submissions have 90 days after that initial deadline date. Comments are limited to 75 pages for initial briefs and 50 pages for replies, excluding evidentiary attachments.

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