

08-674 NRG POWER MARKETING V. MAINE PUB. UTILITIES

DECISION BELOW:520 F.3d 464

LOWER COURT CASE NUMBER: 06-1403, 06-1427, 07-1193

QUESTIONS PRESENTED:

Section 206 of the Federal Power Act (FPA), 16 U.S.C. § 824e(a), requires that rates for the transmission and sale of electricity in interstate commerce be "just and reasonable." Under the Mobile-Sierra doctrine-named for this Court's decisions in *United Gas Pipeline Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956)-the Federal Energy Regulatory Commission ("FERC") must "presume that the rate set out in a freely negotiated wholesale-energy contract meets the 'just and reasonable' requirement imposed by law," and that "presumption may be overcome only if FERC concludes that the contract seriously harms the public interest." *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No.1*, 128 S. Ct. 2733, 2737 (2008). In the decision below, the court of appeals held that, "when a rate challenge is brought by a non-contracting third party, the Mobile-Sierra doctrine simply does not apply." The question presented is:

Whether Mobile-Sierra's public-interest standard applies when a contract rate is challenged by an entity that was not a party to the contract.

CERT. GRANTED 4/27/2009