ON REMAND FROM THE UNITED STATES SUPREME COURT

In the United States Court of Appeals for the District of Columbia Circuit

Nos. 06-1403, 06-1427 and 07-1193

MAINE PUBLIC UTILITIES COMMISSION, *et al.* ,
PETITIONERS,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
RESPONDENT.

ON PETITIONS FOR REVIEW OF ORDERS OF THE
FEDERAL ENERGY REGULATORY COMMISSION

SUPPLEMENTAL BRIEF FOR RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION

THOMAS R. SHEETS
GENERAL COUNSEL

ROBERT H. SOLOMON
SOLICITOR

LONA T. PERRY
SENIOR ATTORNEY

FOR RESPONDENT
FEDERAL ENERGY REGULATORY
COMMISSION
WASHINGTON, D.C. 20426

MARCH 30, 2010

TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

COURT CASES: **PAGE**

---

* Cases chiefly relied upon are marked with an asterisk.

TABLE OF AUTHORITIES

COURT CASES: **PAGE**

ADMINISTRATIVE CASES:

TABLE OF AUTHORITIES

STATUTES: **PAGE**

REGULATION:

GLOSSARY

Commission or FERC	Federal Energy Regulatory Commission
FPA	Federal Power Act
ICR	Installed Capacity Requirement
ISO	Independent System Operator
JA	Joint Appendix
Settlement Order	*Devon Power LLC*, 115 FERC ¶ 61,340 (2006), JA 2019
Rehearing Order	*Devon Power LLC*, 117 FERC ¶ 61,133 (2006), JA 2357

STATEMENT OF THE ISSUES

Pursuant to this Court's Order of March 1, 2010, this Supplemental Brief addresses issues raised on remand by the U.S. Supreme Court in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 130 S. Ct. 693 (2010). Specifically, the Supreme Court remanded for this Court's consideration the following two issues:

1. Whether the auction results and transition payments arising from a contested settlement approved by the Federal Energy Regulatory Commission (FERC or Commission) constitute contract rates that must be reviewed by the Commission under the *Mobile-Sierra*[1] public interest standard.

2. If the auction results and transition payments are not contract rates, whether FERC acted within its discretion in approving a settlement provision imposing the *Mobile-Sierra* public interest standard of review on certain future challenges to the auction results and transition payments.

As explained below -- and as explained in the Commission's brief to the Supreme Court in *NRG* -- the settlement rates at issue are not contract rates that, under *Mobile-Sierra*, require a presumption that the rates are just and reasonable. Rather, they more closely resemble tariff rates than contract rates; as such, the Commission has full discretion to consider whether they meet the just and reasonable standard (the only statutory standard) under the Federal Power Act

[1] *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*), and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

(FPA). Here, FERC reasonably found that a particularly stringent application of the just and reasonable standard (whether the rates remain consistent with the public interest), while not otherwise binding on the Commission and would-be rate challengers, was nevertheless appropriate under the circumstances.

STATEMENT OF FACTS

In the orders challenged in this appeal, *Devon Power LLC*, 115 FERC ¶ 61,340 (2006) (Settlement Order), *on reh'g*, 117 FERC ¶ 61,133 (2006) (Rehearing Order), FERC accepted a contested settlement agreement redesigning the New England market for installed electric generation capacity (Settlement). The Settlement established a Forward Capacity Market, which would use annual auctions to set the price of capacity. Settlement Order PP 15-29, JA 2022-24. In these auctions, capacity is procured three years in advance of its use, with the first auction procuring capacity for the one-year period beginning June 1, 2010. *Id*. P 30, JA 2024. To address the period between December 1, 2006 -- the Settlement effective date -- and June 1, 2010, the Settlement included a transition mechanism which provided fixed payments to capacity suppliers. *Id*. PP 30-31, JA 2024.

Of the 115 parties to the Settlement proceedings, eight opposed the Settlement. *Id*. P 15, JA 2022. In the challenged orders, the Commission approved the Settlement because, "as a package, it present[ed] a just and reasonable outcome for this proceeding consistent with the public interest." *Id*. P 2, JA 2019. The

Settlement provided a necessary solution to serious deficiencies in the New England market that were impairing critical infrastructure development and threatening reliability. *Id*. PP 62-65, JA 2030-31. Of particular interest here, section 4.C of the Settlement imposed the *Mobile-Sierra* public interest standard of review on certain future challenges to the auction results and transition payments. The Commission found that this provision was fully consistent with Commission policy and that it appropriately balanced the need for rate stability with the requirement that rates be just and reasonable. Settlement Order PP 182-186, JA 2051-52; Rehearing Order PP 88-95, JA 2372-74.

On appeal, this Court rejected most of petitioners' challenges to the Commission's orders. *Maine Pub. Utils. Comm'n v. FERC*, 520 F.3d 464, 467 (D.C. Cir. 2008), *rev'd in part sub. nom., NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 130 S. Ct. 693 (2010). However, this Court agreed with petitioners that applying *Mobile-Sierra* to non-settling parties "unlawfully deprived non-settling parties of their rights under the Federal Power Act." *Id*.

The Supreme Court reversed that determination, finding that "the public interest standard is not, as the D.C. Circuit presented it, a standard independent of, and sometimes at odds with, the 'just and reasonable' standard, *see* 520 F.3d at 478; rather, the public interest standard 'defines what it means for a rate to satisfy

the just and reasonable standard in the contract context.'" *NRG*, 130 S. Ct. at 700 (quoting *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733, 2746 (2008)). Thus, *Mobile-Sierra* "is not limited to challenges to contract rates brought by contracting parties. It applies, as well, to challenges initiated by third parties." *Id*. at 701.

The Supreme Court remanded for further consideration, however, the question of whether the auction results and transition payments subject to the *Mobile-Sierra* clause in the Settlement are contract rates to which the Commission is required to apply the *Mobile-Sierra* standard. *Id*. at 701. If not, this Court is to consider whether FERC has discretion, under the circumstances, to approve the Settlement provision imposing the *Mobile-Sierra* standard on future challenges to those results and payments. *Id*.

SUMMARY OF ARGUMENT

This is not a case in which the FPA itself, as construed over 50 years ago by the Supreme Court in *Mobile* and *Sierra*, and recently in *Morgan Stanley* and *NRG*, requires application of the public-interest standard. The auction results and transition payments at issue here were set not by contract, but pursuant to a tariff that was contained in a contested settlement approved by the Commission. The Commission therefore was not required to prescribe the public-interest standard for future challenges to those results and payments.

However, the Commission properly acted within its broad discretion in choosing to approve the *Mobile-Sierra* clause. The Commission's determination represents a permissible application of the FPA's "just and reasonable" standard in the circumstances of this case, because the transition payments and auction mechanisms were found just and reasonable in the challenged orders, and because the interests in promoting market stability and assuring an adequate supply of energy which underlie the *Mobile-Sierra* requirement are also present here. The Settlement -- of which the *Mobile-Sierra* clause was simply one non-severable piece -- advanced the public interest, and was acceptable under the Commission's just and reasonable review, because it offered a package of initiatives that worked together to the overall benefit of all New England market participants, including petitioners and any future challengers to the settlement rates.

ARGUMENT

I. FERC WAS NOT REQUIRED TO APPLY THE *MOBILE-SIERRA* STANDARD OF REVIEW TO FUTURE CHALLENGES TO THE AUCTION RESULTS AND TRANSITION PAYMENTS.

Under *Mobile* and *Sierra*, the Commission is required to apply the public-interest standard in reviewing rates set by contracts that are freely negotiated between the contracting parties. *See Morgan Stanley*, 128 S. Ct. at 2737 (*Mobile-Sierra* presumption applies to "a freely negotiated wholesale-energy contract"); *id*.

at 2746 (*Mobile-Sierra* applies to a "mutually agreed-upon contract rate"). The more stringent public interest standard is based on "the commonsense notion that '[i]n wholesale markets, the party charging the rate and the party charged [are] often sophisticated businesses enjoying presumptively equal bargaining power, who could be expected to negotiate a "just and reasonable" rate as between the two of them.'" *Id.* at 2746 (quoting *Verizon Commc'ns, Inc. v. FCC*, 535 U.S. 467, 479 (2002)).

By contrast, the *Mobile-Sierra* presumption does not apply, of its own force, when the parties have not agreed to set rates by contract. *See Morgan Stanley*, 128 S. Ct. at 2750. For that reason, neither of the two types of rates to which section 4.C of the Settlement applies -- the auction results or transition payments -- is subject to the *Mobile-Sierra* presumption, and the Commission was not *required* to apply the public-interest standard to its review of those rates.

The results of the capacity auctions, although possessing certain contractual characteristics, do not constitute contracts between buyers and sellers. The "demand" side of each auction is set not by the load-serving entities that ultimately pay for the capacity, but by the Independent System Operator (ISO) New England, which determines the estimated amount of capacity -- known as the installed capacity requirement (ICR) -- that the system as a whole will require for reliability three years in the future. *See Connecticut Dep't of Pub. Util. Control* v. *FERC*,

569 F.3d 477, 480 (D.C. Cir. 2009) (describing the auction mechanism), *cert. denied*, 130 S. Ct. 1051 (2009). The ISO then announces the auction starting price, which is initially twice the estimated cost of new entry, and capacity providers state how much capacity they would offer at that price. *Id*. If more capacity is offered than required to meet the ICR, the ISO employs a "descending clock" process, lowering the offering price until the quantity of capacity offered equals the ICR. *Id*. The ISO then assesses each utility a capacity charge equal to the utility's share of the ICR multiplied by the market clearing price. *Id*.

Thus, while a conventional auction may result in a contract between the buyer and seller, *see, e.g.*, *In re GWI PCS 1 Inc.*, 230 F.3d 788, 807 (5th Cir. 2000) (the close of the auction creates a binding contract between the seller and the highest bidder), the forward capacity auctions bear little resemblance to a conventional auction. The utilities "buying" capacity in the forward capacity market have no role in the auction at all, and cannot be said to be "contracting" with the capacity sellers. Rather than agreeing to pay a specific seller an amount set by a voluntary bid for a particular property -- as in a conventional auction -- the "buyers" in the capacity auction are assessed a standard rate, based upon the intersection of the ICR set by the ISO and the offers made by the capacity sellers. While the bids of the capacity sellers commit them to supply the amount they offer

at the clearing price, there are no voluntary agreements of any sort between them and the buyers of the capacity provided. To the contrary, the standard capacity charge paid by each utility in the system for its share of the ICR more closely resembles a conventional cost-based tariff rate.

Similarly, the transition payments apply to all suppliers and purchasers of capacity -- including contesting parties and future entrants into the market -- not just to the settling parties. As to these non-settling participants, the transition payments do not resemble contractually negotiated rates at all. A contractual obligation can only arise from a promise, *see* Restatement (Second) of Contracts § 1 (1981), and therefore a non-settling party's obligation to make a transition payment -- an obligation to which it has never agreed -- cannot be said to be based on a contract. Instead, non-settling parties have an obligation to make transition payments because the Commission has approved the Settlement prescribing those payments, which therefore are properly viewed as tariff rates. *See NRG*, 130 S. Ct. at 698 (FPA differentiates between rates set "unilaterally by tariff" and rates set "by contract" between a seller and a buyer).

Even if the auction results and transition payments were considered to be contract rates, it still would not follow that the Commission was required to approve section 4.C of the Settlement, imposing the public interest standard of review on future challenges to those results and payments. As it was contested, the

Settlement could not become effective until the Commission determined that it was just and reasonable. *Mobil Oil Corp.* v. *FPC*, 417 U.S. 283, 312-314 (1974); 18 C.F.R. 385.602(h). Had the Commission believed that the overall Settlement was not just and reasonable, it could have refused to approve it. Alternatively, the Commission could have approved the Settlement on the condition that it be modified in some way, such as by requiring that all future challenges to rates be subject to the ordinary just-and-reasonable standard of review.

Indeed, following the *Maine PUC* remand, the Commission issued an order approving the Settlement on the condition that the settling parties revise the standard of review applicable to non-settling third parties consistent with *Maine PUC*. *Devon Power LLC*, 126 FERC ¶ 61,027 (2009). The settling parties complied, but reserved the right to advocate as they deem appropriate with regard to the standard applicable to non-settling parties in the event that *Maine PUC* was reversed or vacated by the Supreme Court. *See Devon Power LLC*, Docket No. ER03-563-065, Report of Compliance, filed February 17, 2009 at 3-4.

II. FERC HAD DISCRETION TO APPROVE APPLICATION OF *MOBILE-SIERRA* TO FUTURE CHALLENGES TO THE AUCTION RESULTS AND TRANSITION PAYMENTS.

In the challenged orders, FERC did not expressly address whether the auction results and transition payments were contract rates. A second remand to

the agency, however, is not appropriate, and this Court can (and should) act on the issues remanded by the Supreme Court, because FERC recognized that it was not compelled by the *Mobile-Sierra* doctrine (or the presence of *Mobile-Sierra* contracts) to apply the public-interest standard to those results and payments.

Instead, FERC found that it had "broad authority and discretion . . . to address contested settlements," Settlement Order P 58, JA 2029; Rehearing Order P 31, JA 2363, and approved the Settlement after finding that it was "consistent with the public interest," Settlement Order P 62, JA 2030, and "achieve[d] an overall just and reasonable result," *id*. PP 69-71, JA 2032. With respect to section 4.C, the Commission stated that application of the public-interest standard of review to future challenges to rates would be "fully consistent with current Commission policy." *Id*. P 183, JA 2051; *see id*. P 184, JA 2051 ("[W]e find this *Mobile-Sierra* provision reasonable.") *See also Morgan Stanley*, 128 S. Ct. at 2745 (where FERC has provided a rationale, there is no need for a remand that "could be an idle and useless formality" and that would "convert judicial review of agency action into a ping-pong game") (quoting *NLRB v. Wyman-Gordon Co*., 394 U.S. 759, 766-67 n.6 (1969)).

In approving section 4.C, the Commission specified the standard of review applicable to future complaints about the auction results and transition payments. Settlement Order P 172, JA 2049. Because such complaints would invoke the

Commission's authority under FPA § 206, 16 U.S.C. § 824e(a), to set aside rates that are "unjust, unreasonable, unduly discriminatory or preferential," as well as its authority under FPA § 205, § 16 U.S.C. 824d(a), to ensure that "[a]ll rates and charges . . . shall be just and reasonable," FERC's approval of section 4.C represents an interpretation and application of § 205 and § 206.

Neither § 205 nor § 206 speaks directly "to the precise question at issue" in this case -- the standard of review that FERC must apply to future complaints about the auction results or transition payments -- and thus FERC's interpretation of the just and reasonable standard must be upheld as long as it is reasonable. *Chevron U.S.A. Inc.* v. *NRDC*, 467 U.S. 837, 842 (1984). Indeed, because "[t]he statutory requirement that rates be 'just and reasonable' is obviously incapable of precise judicial definition," courts "afford great deference to the Commission in its rate decisions." *Morgan Stanley*, 128 S. Ct. at 2738.

Such deference to the Commission's reasoned judgment in approving this limited application of the *Mobile-Sierra* standard is appropriate here. The FPA requires only that rates be just and reasonable; it does not specify the manner in which that general formulation will be implemented in any particular context. Under the "just and reasonable" standard, the Commission is not "bound to any one ratemaking formula." *Morgan Stanley*, 128 S. Ct. at 2738; *accord Permian*

Basin Area Rate Cases, 390 U.S. 747, 767 (1968); *Montana-Dakota Utils. Co.* v. *Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951); *FPC* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944). The public interest standard of review is simply one application -- albeit a particularly rigorous application -- of the more general just and reasonable standard in the Act. *Morgan Stanley*, 128 S. Ct. at 2740.

Given the flexibility inherent in the just and reasonable standard, the Commission may require varying types and degrees of justification for challenges to particular rates or practices, depending on the circumstances. When rates are set by contract, *Sierra* requires application of the public-interest standard. Nothing in the FPA or in this Court's cases precludes the Commission from applying a similar standard of review to other rates as a matter of discretion, if considerations relevant to what is "just and reasonable" make that approach appropriate.

III. APPLICATION OF THE *MOBILE-SIERRA* STANDARD TO FUTURE CHALLENGES TO THE AUCTION RESULTS AND TRANSITION PAYMENTS WAS REASONABLE.

FERC reasonably approved section 4.C's application of the public-interest standard to any challenges to the auction results brought after an initial 45 day period when the results are subject to ordinary just and reasonable review.[2] Although these auctions will not result in contracts between buyers and sellers, *see*

[2] Under the settlement, the ISO is required to make a § 205 filing with the auction results, to which parties can object under the ordinary just and reasonable standard for 45 days. Settlement Order PP 179, 185, JA 2050-51.

section I *supra*, they share with freely negotiated contracts certain market-based features that tend to assure just and reasonable rates. The Commission reviewed the design of the proposed auctions and found that they would produce just and reasonable prices. Settlement Order PP 109-171, JA 2038-48; *see id.* P 71, JA 2032. This Court has recognized that rates set by a market are consistent with FPA requirements. *See, e.g.*, *Elizabethtown Gas Co.* v. *FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993) ("[W]hen there is a competitive market the FERC may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result."). *See also Louisiana Energy & Power Auth.* v. *FERC*, 141 F.3d 364, 365 (D.C. Cir. 1998); *Cajun Elec. Power Coop., Inc.* v. *FERC*, 28 F.3d 173, 176, 179, 180 (D.C. Cir. 1994). Accordingly, FERC reasonably could presume that capacity auctions would result in just and reasonable rates. *See Morgan Stanley*, 128 S. Ct. at 2746.

In addition, the Commission determined that application of the public-interest standard to auction results would promote rate stability. "Stability is particularly important in this case, which was initiated in part because of the unstable nature of [capacity] revenues and the effect that has on generating units, particularly those who are critical to maintaining reliability." Settlement Order P 186, JA 2051; *see* Rehearing Order P 95, JA 2373 ("[P]rice certainty is important

to ensure that the [forward capacity market] achieves its goals of attracting and retaining generators needed for reliability."). *See also Morgan Stanley*, 128 S. Ct. at 2749 (the *Mobile-Sierra* public-interest standard is "a key source of stability"). That finding, coupled with the presumptively just and reasonable nature of the auction results, amply supports FERC's discretion to assess the auction results under the public-interest standard, after the initial 45-day period during which those results may be challenged under ordinary just and reasonable principles.

The Commission also reasonably approved application of the public-interest standard to any future challenges to the transition payments. The Commission reviewed the transition payments in the challenged orders and found them just and reasonable, Settlement Order PP 75-108, JA 2033-38, a finding that this Court up-held, *Maine PUC*, 520 F.3d at 470-75. The Commission could reasonably determine that, given the interest in the stability of the Settlement and its provision for prompt transition to capacity auctions, Settlement Order P 186, JA 2051, a party seeking to alter the transition payments should have to show that they were impairing the public interest.

Significantly, the transition payments last only for a limited time, with the final payment to be made in May 2010. Settlement Order P 30, JA 2024. The short duration of the payment regime makes it unlikely that the transition payments will become unjust or unreasonable. Indeed, the parties challenging the Settlement

have not indicated that they are likely to bring a renewed challenge to the transition payments. They surely have not shown that circumstances in the New England capacity market are likely to change in a way that would undermine FERC's initial determination that the transition payments are just and reasonable.

CONCLUSION

For the reasons stated, this Court should find that the Commission properly exercised its discretion in approving Settlement section 4.C, and affirm the Commission orders on that one remaining issue.

Respectfully submitted,

Thomas R. Sheets
General Counsel

Robert H. Solomon
Solicitor

/s/ Lona T. Perry

Lona T. Perry
Senior Attorney

Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426
Phone: 202-502-6600
Fax: 202-273-0901
lona.perry@ferc.gov

March 30, 2010

Maine Pub. Utils. Comm'n. v. FERC **Docket No. ER03-563**
D.C. Cir. Nos. 06-1403 *et al.*

CERTIFICATE OF COMPLIANCE

In accordance with this Court's order of March 1, 2010, I certify that the Brief of Respondent Federal Energy Regulatory Commission contains 15 pages, not including the tables of contents and authorities, the glossary, or the certificates of counsel.

/s/ Lona T. Perry
Lona T. Perry
Senior Attorney

Federal Energy Regulatory
Commission
Washington, D.C. 20426
Tel: (202) 502-6600
Fax: (202) 273-0901
Email: lona.perry@ferc.gov

March 30, 2010

Maine Public Utilities Comm'n v. FERC **Docket No. ER03-563**
D.C. Cir. Nos. 06-1403, 06-1427 and 07-1193

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d), and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that I have, this 30th day of March 2010, served the foregoing upon the counsel listed in the Service Preference Report via email through the Court's CM/ECF system or via U.S. Mail, as indicated below:

Aaron J. Bullwinkel — US MAIL
David T. Musselman
International Power America, Inc.
62 Forest St., Suite 102
Marlborough, MA 01752-0000

Barry S. Spector — EMAIL
Paul M. Flynn
Wright & Talisman, PC
1200 G St., NW, Suite 600
Washington, DC 20005-1200

Betsy R. Carr — US MAIL
Timothy W. Muller
Dynegy, Inc.
1000 Louisiana, Suite 5800
Houston, TX 77002-0000

Christopher C. O'Hara — EMAIL
NRG Energy, Inc.
211 Carnegie Center Dr.
Princeton, NJ 08540

Donald J. Sipe — US MAIL
Linda S. Lockhart
Preti, Flaherty, Beliveau & Pachios LLP
45 Memorial Circle
PO Box 1058
Augusta, ME 04332-1058

Jonathan G. Mermin — US MAIL
Preti, Flaherty, Beliveau & Pachios LLP
PO Box 9546
Portland, ME 04112-9546

George E. Johnson — US MAIL
Dickstein Shapiro LLP
1825 Eye St., NW
Washington, DC 20006-5403

James F. Bowe, Jr. — EMAIL
Dewey & LeBoeuf LLP
1101 New York Ave., NW, Suite 900
Washington, DC 20005-4213

James H. McGrew — EMAIL
Bruder, Gentile & Marcoux, LLP
1701 Pennsylvania Ave., NW, Suite 900
Washington, DC 20006-5805

James K. Mitchell — EMAIL
Davis Wright Tremaine LLP
1919 Pennsylvania Ave., NW, Suite 200
Washington, DC 20006-3402

John N. Estes III — EMAIL
John L. Shepherd, Jr.
Paul F. Wright
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Ave., NW
Washington, DC 20005

John S. Wright
Michael C. Wertheimer
Attorney General's Office of State of Connecticut
Department of Public Utility Control
10 Franklin Square
New Britain, CT 06051-0000

EMAIL

Kathleen A. Carrigan
Kerim P. May
ISO New England Inc.
One Sullivan Road
Holyoke, MA 01040-0000

US MAIL

Kenneth L. Wiseman
Mark F. Sundback
Jennifer L. Spina
Andrews Kurth LLP
1350 I St., NW, Suite 1100
Washington, DC 20005

EMAIL

Kenneth M. Simon
Latham & Watkins LLP
555 11th St., NW, Suite 1000
Washington, DC 20004-1304

US MAIL

Kenneth R. Carretta
PSEG Services Corp.
80 Park Plaza, T5G
Newark, NJ 07102-0570

EMAIL

Lisa C. Fink
Maine Public Utilities Commission
242 State Street
State House Station
Augusta, ME 04333-0018

US MAIL

Lisa S. Gast — EMAIL
Duncan, Weinberg, Genzer & Pembroke, PC
1615 M St., NW, Suite 800
Washington, DC 20036-3203

Mary Ellen Grover — EMAIL
NSTAR Electric & Gas Corporation
800 Boylston St, P1700
Boston, MA 02199-8003

Randall L. Speck — EMAIL
Kaye Scholer LLP
The McPherson Bldg., Suite 1100
901 15th St., NW
Washington, DC 20005

Robert A. Weishaar, Jr. — EMAIL
McNees, Wallace & Nurick
777 North Capitol St., NE, Suite 401
Washington, DC 20002-0000

Vasiliki Karandrikas — EMAIL
McNees, Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166

Robin E. Remis — US MAIL
Schiff Hardin LLP
225 Franklin St., 26th Floor
Boston, MA 02110-0000

Sherry A. Quirk — US MAIL
Schiff Hardin LLP
1666 K St., NW, Suite 300
Washington, DC 20006-4390

Scott G. Silverstein
Sithe Energies, Inc.
330 Madison Ave., 25th Floor
New York, NY 10017-0000

US MAIL

Scott H. Strauss
Spiegel & McDiarmid LLP
1333 New Hampshire Ave., NW
Washington, DC 20036

EMAIL

Scott P. Myers
7 Old Meadow Road
West Hartford, CT 06117-1333

US MAIL

Stephen L. Teichler
Duane Morris LLP
505 9th St., NW, Suite 1000
Washington, DC 20004-2166

EMAIL

William R. Derasmo
Troutman Sanders LLP
401 9th St., NW, Suite 1000
Washington, DC 20004-2134

US MAIL

Jesse S. Reyes
Joseph W. Rogers
Attorney General's Office
One Ashburton Place
Boston, MA 02108-1598

EMAIL

/s/ Lona T. Perry
Lona T. Perry
Senior Attorney

Federal Energy Regulatory
Commission
Washington, D.C. 20426
Tel: 202 502-8334
Fax: 202 273-0901
e-mail: lona.perry@ferc.gov