

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PUBLIC UTILITIES
COMMISSION OF THE STATE OF
CALIFORNIA; CALIFORNIA ELECTRIC
OVERSIGHT BOARD,

Petitioners,

PACIFIC GAS AND ELECTRIC
COMPANY; NEVADA POWER
COMPANY; SOUTHERN CALIFORNIA
EDISON Co. (“EDISON”);
DEPARTMENT OF WATER AND
POWER OF THE CITY OF LOS
ANGELES, PUBLIC SERVICE
DEPARTMENT OF THE CITY OF
BURBANK, PUBLIC SERVICE
DEPARTMENT OF THE CITY OF
GLENDALE, AND WATER AND POWER
DEPARTMENT OF THE CITY OF
PASADENA (COLLECTIVELY
“LADWP, ET AL.”); SEMPRA
ENERGY; MIRANT AMERICAS ENERGY
MARKETING, L.P.; CORAL POWER;
PPM ENERGY; PUBLIC UTILITY
DISTRICT No. 1 OF SNOHOMISH
COUNTY, WASHINGTON; DYNEGY
POWER MARKETING INC.,

Intervenors,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Respondent.

No. 03-74207
FERC Nos.
EL02-60
EL02-62
Northern District of
California,
San Francisco

CALIFORNIA ELECTRIC OVERSIGHT
BOARD; CALIFORNIA PUBLIC
UTILITIES COMMISSION,

Petitioners,

NEVADA POWER COMPANY;
SOUTHERN CALIFORNIA EDISON CO.
("EDISON"); DEPARTMENT OF
WATER AND POWER OF THE CITY OF
LOS ANGELES, PUBLIC SERVICE
DEPARTMENT OF THE CITY OF
BURBANK, PUBLIC SERVICE
DEPARTMENT OF THE CITY OF
GLENDALE, AND WATER AND POWER
DEPARTMENT OF THE CITY OF
PASADENA (COLLECTIVELY
"LADWP, ET AL."); SEMPRA
ENERGY; MIRANT AMERICAS ENERGY
MARKETING, L.P.; PPM ENERGY;
PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, WASHINGTON;
DYNEGY POWER MARKETING INC.,

Intervenors,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Respondent.

No. 03-74246
FERC No.
EL 02-60--000
Northern District of
California,
San Francisco
ORDER

On Remand from the United States Supreme Court

Filed December 4, 2008

Before: Harry Pregerson, Marsha S. Berzon and
Richard R. Clifton, Circuit Judges.

ORDER

In light of the Supreme Court's order in *Sempra Generation, et al. v. Public Utilities Commission of California, et al.*, 128 S. Ct. 2993 (2008), and its opinion in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008), we VACATE our prior opinion and REMAND to the Federal Energy Regulatory Commission for further proceedings consistent with the Supreme Court's rulings. We do not at this time decide the question reserved by our prior opinion as to whether the *Mobile-Sierra* doctrine applies to the California Public Utilities Commission, which was not a signatory to the long-term contracts at issue in this case; our remand is without prejudice to Petitioners' ability to raise this question anew before FERC, or before this Court at a later time.

The mandate shall issue forthwith.

VACATED and REMANDED.

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