



**Federal Energy Regulatory Commission
December 18, 2008
Open Commission Meeting
Staff Presentation
Item E-1**

"Good morning Chairman and Commissioners.

The draft order establishes a paper hearing on the two issues remanded to the Commission by the Supreme Court. Also, the draft order holds the hearing in abeyance to provide the parties time to explore the possibility of settling their disputes.

This matter concerns long-term, bilateral contracts that were entered into during the period of spot market dysfunction in the west in 2000 and 2001. There are three buyers involved in this matter: NV Energy (formerly Nevada Power Company and Sierra Pacific Power Company), Golden State Water Company (formerly Southern California Water Company) and Public Utility District No. 1 Snohomish County, Washington. The buyers in the contracts at issue filed complaints with the Commission seeking modification of their contracts between late 2001 and early 2002. The crux of the complaints was that the dysfunctional spot markets tainted the long-term markets, and thus the long-term contracts signed during the period of dysfunction required modification.

These matters were consolidated and set for hearing. The Commission affirmed the Administrative Law Judge's finding that the *Mobile-Sierra* presumption applied to these contracts and was not met. The buyers appealed the matter to the 9th Circuit, and the 9th Circuit found that the Commission should not have applied the *Mobile Sierra* presumption and also found that the Commission misapplied the *Mobile Sierra* presumption.

The Supreme Court disagreed with the 9th Circuit's findings but remanded the matter to the Commission for amplification and clarification of two issues: (1) The first issue concerns allegations of unlawful activity by certain sellers in the dysfunctional spot market, and whether, if unlawful market activity by a particular seller is demonstrated, there is a causal connection between that seller's activity and its contract negotiations, (such a finding would preclude the application of the *Mobile-Sierra* presumption); (2) If the *Mobile-Sierra* presumption of reasonableness does apply to a particular contract, the second issue concerns the comparison of the contract rates to the rates available once the spot market was no longer dysfunctional, and how the Commission should evaluate any burden imposed by those contracts.

The draft order directs the parties to participate in a paper hearing in which they may submit briefs and evidence on the specific issues remanded by the Supreme Court.

Also, the draft order holds the paper hearing in abeyance to allow the parties to pursue settlement. The filings submitted by numerous parties indicate a willingness to participate in settlement discussions, and the Commission's Dispute Resolution Services office has been in contact with the parties. Holding the paper hearing in abeyance should encourage those discussions.

We would be pleased to answer any questions that you may have."