

**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.

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**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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