



American Bar Association
Section of Environment, Energy, and Resources



Gas and Electricity Marketing Committee
and Energy and Natural Resources Litigation Committee

Present a "Quick Teleconference" program

Energy Contracts in Context: The Ninth Circuit Revisits *Mobile-Sierra* Review in Light of the Western Energy Crisis

Wednesday, January 24, 2007

12:30 p.m. – 2:00 p.m. Eastern Time / 11:30 a.m. – 1:00 p.m. Central Time
10:30 a.m. – 12:00 p.m. Mountain Time / 9:30 a.m. – 11:00 a.m. Pacific Time

Program Overview:

The Federal Power Act requires FERC to ensure that all rates, terms and conditions for the sale of power are "just and reasonable." Since 1956, the Supreme Court has recognized a stringent standard of review, known as the *Mobile-Sierra* doctrine, which under certain circumstances forbids attempts to modify contracts unilaterally unless such modifications are required by the "public interest." For decades, this standard has been regarded by many as "practically insurmountable." That era may now have come to a close.

On December 19, 2006, the Ninth Circuit published a pair of decisions arising from the Western Energy Crisis of 2000-2001 that revisit the application of *Mobile-Standard* review in the modern context of market-based rates. In *Public Utility District No. 1 of Snohomish County Washington v. FERC*, and its companion case, *Public Utilities Commission of the State of California v. FERC*, the Ninth Circuit determined that the *Mobile-Sierra* public interest standard of review should apply only when: "(1) the contract by its own terms must not preclude the limited *Mobile-Sierra* review; (2) the regulatory scheme in which the contracts are formed must provide FERC with an opportunity for effective, timely review of the contracted rates; and (3) where . . . FERC is relying on a market-based rate-setting system to produce just and reasonable rates, this review must permit consideration of all factors relevant to the propriety of the contract's formation."

Whatever one's perspective might be, any attorney involved with energy contracts or similar contracts in other regulated industries should be familiar with the Ninth Circuit's new *Mobile-Sierra* requirements and the implications of those requirements for contracting practices going forward.

Educational Objectives:

- Describe and discuss the Ninth Circuit's Orders.
- Gain insight and understanding as to the arguments for and against the validity of the Orders.

Faculty:

Moderator:

Russ Campbell, Balch & Bingham LLP, Birmingham, AL

Panelists:

Jared des Rosiers, Pierce Atwood LLP, Portland, ME

John Estes, Skadden, Arps, Slate, Meagher & Flom, Washington, DC

Melissa Lauderdale, Director, Industry Legal Affairs, Edison Electric Institute, Washington, DC

Questions?

Do you have a question that you would like the panel to address? Please email your question to Russ Campbell at rcampbell@balch.com by January 23, 2007 at noon Eastern Time and the panel will make every effort to address your inquiry. You will also have an opportunity to ask questions of the panel live at the conclusion of the program.

