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PUBLIC UTILITIES - FEDERAL

Shell Energy North America (US), L.P. v. Federal Energy Regulatory Commission

United States Court of Appeals, District of Columbia Circuit - July 9, 2024 - F.4th - 2024 WL 3335557

Sellers of wholesale electricity, California Public Utilities Commission (CPUC), and investor-owned utility petitioned for review of orders of Federal Energy Regulatory Commission (FERC), 2022 WL 1058002, 2022 WL 5243242, 2022 WL 1154871, 2022 WL 5243289, 2022 WL 1208000, 2022 WL 4397219, 2022 WL 1208033, 2022 WL 5243177, 2022 WL 1208013, 2022 WL 5243180, 2022 WL 1208004, 2022 WL 4397324, 2022 WL 1208037, 2022 WL 4397517, 2022 WL 1601920, 2022 WL 12179536, 2022 WL 1601924, 2022 WL 12186014, 2022 WL 1601918, 2022 WL 12193846, 2022 WL 2188379, 2022 WL 17077042, 2022 WL 2188380, 2022 WL 17077046, 2022 WL 2191889, and 2022 WL 17077044, determining that sellers failed to justify their short-term electricity sales above soft price cap in western United States during summer heat wave and requiring partial refunds of sale prices that exceeded cap.

The Court of Appeals held that:

- FERC was required to find sellers' negotiated contract rates seriously harmed public interest before ordering refunds, and
- Claim by CPUC and utility that FERC erroneously calculated refunds that would lead to higher future electricity prices was moot.

Federal Energy Regulatory Commission's (FERC) final order, determining that sellers failed to justify their short-term electricity sales above soft price cap and requiring partial refunds of sale prices that exceeded cap, violated *Mobile-Sierra doctrine*, *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 76 S.Ct. 373; *Federal Power Comm'n v. Sierra Pac. Power Co.*, 76 S.Ct. 368, guiding FERC's just-and-reasonable review of market-based-tariff contracts under FPA; FERC ordered refunds for rates that were mutually contracted by sellers and customers in competitive marketplace, yet FERC altered those negotiated rates by ordering refunds without first finding that rates seriously harmed public interest or that *Mobile-Sierra* framework did not apply. Federal Power Act § 205, 16 U.S.C.A. § 824d(a).

Under the *Mobile-Sierra doctrine*, *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 76 S.Ct. 373; *Federal Power Comm'n v. Sierra Pac. Power Co.*, 76 S.Ct. 368, Federal Energy Regulatory Commission (FERC) can rebut the presumption that the electricity rate set out in a freely negotiated wholesale-energy contract meets the just and reasonable requirement, imposed by the FPA, only by making a particularized finding that a given contract seriously harms the public interest, even if that contract's price exceeds the soft price cap, or can avoid that inquiry by demonstrating that the presumption should not apply at all. Federal Power Act § 205, 16 U.S.C.A. § 824d(a).

California Public Utilities Commission's (CPUC) and investor-owned utility's challenge to Federal Energy Regulatory Commission's (FERC) order, which allegedly would lead to higher future

electricity prices by purportedly erroneously calculating refunds required from sellers that failed to justify their short-term electricity sales above soft price cap, was rendered moot by determination that FERC's refund orders failed to satisfy preconditions, in violation of *Mobile-Sierra doctrine*, *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 76 S.Ct. 373; *Federal Power Comm'n v. Sierra Pac. Power Co.*, 76 S.Ct. 368, since any judicial pronouncement about correctness of calculated refunds would not presently affect parties' rights or have more-than-speculative chance of affecting them in future.