

**06-1462 AMERICAN ELECTRIC POWER SERVICE CORPORATION, ET AL V.
PUBLIC UTILITY DIST. 1**

DECISION BELOW:471 F3d 1053

LOWER COURT CASE NUMBER: 03-72511, 03-74757, 04-70712, 03-74617, 03-74208

QUESTIONS PRESENTED:

The Federal Power Act (“FPA”), 16 U.S.C. §§ 791a et seq., sets forth the standards by which the Federal Energy Regulatory Commission (“FERC”) regulates wholesale energy rates. In *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), this Court determined that, under the FPA, FERC may undo a valid wholesale energy contract only in the extraordinary circumstance when the contract is contrary to the public interest. In conflict with *Mobile* and *Sierra*, and with decisions of the D.C. and First Circuits, the Ninth Circuit in the decision below held that FERC may nullify voluntary wholesale energy contracts—absent the requisite showing of public necessity—if FERC determines in hindsight that the negotiated rate is unreasonable or that, absent the challenged contracts, retail rates for energy would be slightly lower. Thus, this petition presents the following questions:

1. Whether the Ninth Circuit misapplied this Court’s holdings in *Mobile* and *Sierra* and created conflicts with the D.C. and First Circuits when it reversed FERC’s decision to uphold valid wholesale energy contracts absent any showing that the public interest required their abrogation.
2. Whether the Ninth Circuit misapplied the *Mobile-Sierra* doctrine by determining that the *Mobile-Sierra* public interest criteria apply only to sellers, but not to buyers, under wholesale power contracts, in direct conflict with *Mobile*, *Sierra*, and the decisions of other circuits.

CERT. GRANTED 9/25/2007

CONSOLIDATED WITH 06-1457 FOR ONE HOUR ORAL ARGUMENT.
EXPEDITED BRIEFING SCHEDULE
CHIEF JUSTICE ROBERTS AND JUSTICE BREYER TOOK NO PART
WRITS OF CERTIORARI ONLY AS TO CALPINE ENERGY SERVICES, L.P.,
WERE DISMISSED PURSUANT TO RULE 46