

# GTH UPDATE Energy

## NINTH CIRCUIT UPHOLDS MARKET-BASED RATES FOR ELECTRICITY

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On October 13, 2011, the U.S. Court of Appeals for the Ninth Circuit rejected challenges to the Federal Energy Regulatory Commission's market-based regulatory regime.

The appeal (*Montana Consumer Counsel v. FERC*, No. 08-71827, brought by a coalition of consumer advocates and state attorneys general, asserted that FERC's market-based rates are a per se violation of the Federal Power Act's requirements for pre-filing of rates and the requirement that rates be "just and reasonable." Although the U.S. Supreme Court has yet to reach this issue, the Ninth Circuit decision is in line with a number of previous Circuit Court decisions concluding that FERC is authorized under the Federal Power Act to use market-based rates, which are set by market forces, rather than traditional cost-based rates set by Commission-approved tariffs. In the absence of a Supreme Court appeal, the decision appears to put to rest any doubts about the legality of FERC's market-based reforms of electric regulation, initially launched in 1994.

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The attorneys at Gordon Thomas Honeywell have extensive experience in all areas of the energy and utility industries, including regulatory matters, project development, renewable energy, power purchase agreements, REC purchase agreements, transmission, taxation, municipal law, cooperative law, public records requests and general operations.

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