



FEDERAL ENERGY REGULATORY COMMISSION

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News Media Contact

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FERC Terminates Proposed Rule on Standard of Review

The Federal Energy Regulatory Commission (FERC) today withdrew its proposed rule that would have established a default “public interest” standard of review that would apply in the absence of contractual language expressly specifying the standard of review. Because the Supreme Court in its recent *Morgan Stanley* decision addressed the default standard of review, FERC concluded that it no longer was necessary to adopt the proposed rulemaking, and terminated the proceeding.

“FERC issued the proposed rule because the federal courts had asked the Commission to clarify the default standard,” FERC Chairman Joseph T. Kelliher said. “Since the Supreme Court clarified the law in the same manner proposed by the Commission, namely in favor of the public interest presumption, the proposed rule is no longer necessary.”

In December 2005, FERC issued a proposal to establish a default “public interest” standard of review in the absence of specific contractual language on the appropriate standard of review. FERC’s proposal was intended to help promote certainty in contracts, as well as provide certainty and stability in competitive electric energy markets.

Since the Commission issued its proposed rulemaking, the U.S. Supreme Court addressed the *Mobile-Sierra* doctrine in *Morgan Stanley Capital Group, Inc. v Public Utility District No. 1 of Snohomish County*. The Court held that the *Mobile-Sierra* doctrine is a presumption that rates initially set in a freely negotiated contract meet the statutory just and reasonable requirement of the Federal Power Act. The Court decision stated that “parties could contract out of the *Mobile-Sierra* presumption by specifying in their contracts that a new rate filed with the Commission would supersede the contract rate,” but otherwise “the *Mobile-Sierra* presumption remains the default rule.” In light of this determination, FERC concluded that there was no need for FERC to specify a default rule.

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