
FEDERAL ENERGY REGULATORY COMMISSION



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NEWS RELEASE

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COMMISSION PROMOTES CONTRACT SANCTITY WITH PROPOSED RULES ON STANDARD OF REVIEW

The Federal Energy Regulatory Commission today proposed changes to its rules that will help reduce the time and expense involved in resolving disputes concerning modifications to jurisdictional wholesale power and gas sales contracts filed under the Federal Power Act and Natural Gas Act.

Under the Federal Power Act and Natural Gas Act, contracts between individual parties can be used to set rates, terms and conditions of service. In such contracts, parties may agree to voluntarily restrict some or all of their freedom to change the contract terms, rates, and conditions. In some cases a seller and buyer may have contracted for a particular rate and not expressly reserved the right to propose any changes. In such cases, the courts have differed on the applicable standard of review, when a seller, or buyer, seeks to file a new rate or change the existing contract.

Today's proposed rule reflects the need to clarify the standard of review governing proposed modifications to jurisdictional agreements in the event the parties do not expressly reserve their right to make changes. The courts have asked the Commission to squarely confront the underlying issues and eliminate the confusion and regulatory uncertainty around these issues by clarifying the default standard of review that will govern when the parties fail to expressly adopt a standard in their contracts.

"This proposal will help promote the sanctity of contracts, provide greater stability in competitive energy markets and provide adequate protection for energy customers," stated Commission Chairman Joseph T. Kelliher. "The proposed rules provide regulatory certainty, while preserving the Commission's ability to review and modify agreements to protect customers under the public interest standard," Chairman Kelliher added.

Upon review of the case law, the Commission concluded that the weight of precedent supports the conclusion that the public interest standard applies in the case of contractual silence. That standard is consistent with the Supreme Court decisions in

Mobile and Sierra. Under the proposed rules, parties to a contract remain free to adopt the just and reasonable standard for review of modifications to jurisdictional agreements.

The proposed rule would specify boilerplate language the parties must include in a jurisdictional agreement, if they wish subsequent modifications to be reviewed under a just and reasonable standard. In the absence of the prescribed boilerplate language, the Commission is proposing to review such modifications under a stricter public interest standard. The proposed rule would not apply to service agreements entered into pursuant to a form of service agreement included in the tariff of an interstate natural gas pipeline or electric transmission provider.

The Commission adopted the proposal with Commissioner Sudeen Kelly dissenting in a separate statement. The proposed rule would be applied prospectively, and would take effect for all jurisdictional contracts under the Federal Power Act and Natural Gas Act executed 30 days or more after the final rule is published in the Federal Register. Comments on the proposed rule, *Standard of Review for Modifications to Jurisdictional Agreements*, are due within 30 days after the proposed rule is published in the Federal Register (www.gpoaccess.gov).