

**PROMOTING CERTAINTY AND STABILITY FOR POWER CONTRACTS:  
U.S. SUPREME COURT FINDS THE MOBILE-SIERRA  
PRESUMPTION APPLIES TO NONCONTRACTING PARTIES**

On January 13, 2010, the U.S. Supreme Court issued an 8-1 decision in *NRG Power Marketing v. Maine Public Utilities Commission*, holding that noncontracting parties challenging rates in energy contracts must demonstrate that the rates are unjust and unreasonable because they seriously harm the public interest. The Supreme Court's decision reversed the U.S. Court of Appeals for the District of Columbia Circuit, which held noncontracting third parties to a less burdensome standard.

Under the Mobile-Sierra doctrine, the Federal Energy Regulatory Commission ("FERC") must presume that rates set out in freely negotiated wholesale energy contracts meet the just and reasonable standard imposed by the Federal Power Act. FERC can only overcome the presumption if it concludes that the contract seriously harms the public interest. The presumption is grounded in the notion that sophisticated parties to wholesale energy transactions with equal bargaining power are expected to negotiate just and reasonable rates.

Emphasizing the "stabilizing force of contracts," the Supreme Court reasoned that the Mobile-Sierra public interest standard cannot retain its "vitality" unless it applies to FERC, contracting parties, and noncontracting parties:

A presumption applicable to contracting parties only, and inoperative as to everyone else—consumers, advocacy groups, state utility commissions, elected officials acting *parens patriae*—could scarcely provide the stability Mobile-Sierra aimed to secure.



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Also, the Supreme Court rejected the Court of Appeals' view that the public interest standard is independent of, and sometimes at odds with, the "just and reasonable standard," explaining that "the public interest standard defines 'what it means for a rate to satisfy the just-and-reasonable standard.'" Further, the Supreme Court stated, "if FERC itself must presume just and reasonable a contract rate resulting from fair, arms-length negotiations, how can it be maintained that noncontracting parties nevertheless may escape that presumption?"

Justice Stevens dissented, stating that "applying Mobile-Sierra to rate challenges by noncontracting parties loses sight of the animating purpose of the [Federal Power Act,] which is 'the protection of the public interest.'" In addition, Justice Stevens found the "serious harm" standard to be burdensome to noncontracting parties "required in practice to pay a rate [they] did not agree to."

The Supreme Court's decision promotes contract certainty and stability by establishing a high standard for parties challenging contract rates. Due to the unique facts involving the forward capacity market rates at issue in the NRG Power Marketing case, the Supreme Court remanded the issue of what rates qualify as "contract rates" for Mobile-Sierra purposes to the Court of Appeals. Thus, it is unclear whether the Mobile-Sierra doctrine applies to rates set forth in a settlement proceeding before FERC.

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