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Supreme Court Confirms Application of *Mobile-Sierra* Doctrine to Rate Challenges by Non-Contracting Parties

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On January 13, the U.S. Supreme Court determined, in an 8-1 decision, that energy rates challenged by non-contracting parties are presumed to be just and reasonable, and may only be set aside if the rates seriously harm the public interest. In *NRG Power Marketing v. Maine Public Utilities Commission*, the Supreme Court reversed the U.S. Court of Appeals for the District of Columbia Circuit, which held that non-contracting parties challenging rates set forth in energy contracts need not establish that the rates upset the public interest in order to invalidate the challenged rates. The Supreme Court's decision resolves an issue of first impression by reaffirming the Court's *Mobile-Sierra* doctrine and its 2008 ruling in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1*.

Under the *Mobile-Sierra* doctrine, the Federal Energy Regulatory Commission (FERC) must presume that a rate set by a freely negotiated contract is just and reasonable, and that rate cannot be set aside unless it harms the public interest. In 2008, the Supreme Court in *Morgan Stanley* explained that the *Mobile-Sierra* presumption that rates set forth in a contract are just and reasonable may be overcome only if FERC concludes that the contract seriously harms the public interest.

In *Maine Public Utilities Commission*, the Supreme Court addressed whether a provision set forth in a settlement agreement approved by FERC applies to rate challenges brought by non-contracting parties to the settlement agreement. The provision at issue addresses rate-setting mechanisms for sales of energy capacity in New England, and provides that challenges to such capacity rates are subject to the *Mobile-Sierra* public-interest standard.

Opponents to the settlement agreement appealed FERC's approval to the D.C. Circuit, arguing that non-contracting parties should not be subject to the *Mobile-Sierra* public-interest standard. The D.C. Circuit agreed, holding that the *Mobile-Sierra* doctrine is inapplicable when rates are challenged by non-contracting third parties. Instead, the D.C. Circuit determined that the *Mobile-Sierra* doctrine only applies to rate challenges brought by parties to the contract at issue.

The Supreme Court reversed, holding that the *Mobile-Sierra* doctrine is applicable to rate challenges regardless of whether the challenges are brought by contracting or non-contracting parties. The Supreme Court held that the *Mobile-Sierra* doctrine is premised on ensuring a stability of energy supply arrangements, which are encouraged through rate certainty. As such, the Court determined that the energy supply stability goal on which the *Mobile-Sierra* doctrine is premised cannot be achieved if it is

applicable to FERC's review of negotiated contracts and challenges raised by contracting parties, but inoperable to everyone else.

Justice Stevens dissented. In a separate opinion, Justice Stevens argued that applying the *Mobile-Sierra* doctrine to non-contracting parties is an extension of the doctrine that was never intended when it was established. Further, Justice Stevens argued that requiring non-contracting parties to show that a challenged rate seriously upsets the public interest goes beyond the standard set forth in the Federal Power Act, which does not establish a "serious harm" standard of review, but instead requires that rates be just and reasonable.

If you have any questions or would like more information on any of the issues discussed in this LawFlash, please contact any of the following Morgan Lewis attorneys:

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