

Mobile Sierra

The following is added to the Agreement as Section 10. FERC Standard of Review; Mobile-Sierra Waiver.

(a) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any waiver in subsection (b) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956)(the “Mobile-Sierra” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, the “sanctity of contract” principles acknowledged by FERC in its Notice of Proposed Policy Statement (Issued August 1, 2002) in Docket No. PL02-7-000, Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, (“NPPS”) shall prevail and neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) shall not apply, provided that, consistent with the foregoing subsection (a) , neither Party shall seek any such changes except under the "public interest" standard of review and otherwise as set forth in the foregoing section (a).

(c) In connection with the foregoing, the Parties acknowledge that, pursuant to the NPPS, FERC has invited interested persons to submit comments with respect to the provisions thereof and therefore agree that, if and to the extent FERC adopts in a final or subsequent policy statement (“FPS”) which requires, in order to exclude application of the just and reasonable standard under the Mobile-Sierra doctrine, the use of specific language which varies from that set out in the foregoing subsection (a), then the foregoing subsection(a) shall, without further action of either Party, be deemed amended to incorporate such specific language that requires the public interest standard of review, provided that to the extent that the specific language adopted in an FPS is in any way inconsistent with the mutual intent of the Parties in this regard as currently set forth in the foregoing subsections (a) and (b), then the Parties agree to meet to attempt to negotiate in good faith an amendment to this Section 10 to address such inconsistencies, provided further that neither Party shall be obligated in any way to agree to any such amendment if to do so would be inconsistent with such current mutual intent as expressed herein or would expose such Party in any way to greater risk of changes being ordered by FERC to this Agreement.