

Figure 11
Mobile-Sierra Doctrine:
When May FERC Change the Parties' Contract Terms?

Rebuttable presumption	The rate in a “freely negotiated contract” is “just and reasonable.” FERC’s power to modify is limited to the “public interest” exception. ^a
Applies to	Cost-based rates. ^b Market-based rates. ^c Non-signatories. ^d Some tariffs. ^e
Two paths for contracting out of the presumption	1. Contract allows each party to seek change unilaterally. ^f 2. Contract allows the FERC to change the contract if its terms are unjust or unreasonable. ^g
“Public interest” exception to the presumption	Movant must show “serious harm” to the “public interest”; i.e., “unequivocal public necessity.” A contract is not “unjust” or “unreasonable” simply because it is unprofitable to the public utility. ^h
Escape from the presumption	Movant must show that contract was obtained through fraud or duress, or that rate became unjust or unreasonable due to seller's illegal act. ⁱ

Notes

a *Morgan Stanley.*

b *Mobile, Sierra.*

c *Morgan Stanley.*

d *NRG Power Marketing.*

e *Devon Power, High Island Offshore.*

f *Memphis.*

g *Papago.*

h *Mobile, Sierra, Permian Basin.*

i *Morgan Stanley.*