

The report will state that it has been determined that the rule is not a “major rule” as defined by 5 U.S.C. 804(2).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today’s notice of proposed rulemaking.

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards, Indians, Individuals with disabilities, Reporting and record keeping requirements, Weatherization.

Issued in Washington, DC, on December 11, 2008.

David E. Rodgers,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend part 440 of chapter II of title 10, Code of Federal regulations to read as follows:

PART 440—WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

1. The authority citation for Part 440 continues to read as follows:

Authority: 42 U.S.C. 6861 *et seq.*; 42 U.S.C. 7101 *et seq.*

2. Section 440.3 is amended by revising the definition of “State” to read as follows:

§ 440.3 Definitions.

* * * * *

State means each of the States, the District of Columbia, American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the Virgin Islands.

* * * * *

3. Section 440.10 is amended by revising introductory paragraph (b), (b)(1) Table 1, and paragraph (c), to read as follows:

§ 440.10 Allocation of funds.

* * * * *

(b) Based on the total program allocations at or above the amount of \$209,724,761, DOE shall determine the program allocation for each State from available funds as follows:

(1) * * *

State	Base allocation (\$)
Alabama	1,636,000
Alaska	1,425,000

State	Base allocation (\$)
Arizona	760,000
Arkansas	1,417,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
American Samoa	120,000
Guam	120,000
Puerto Rico	120,000
Northern Mariana Islands	120,000
Virgin Islands	120,000
Total	171,858,000

* * * * *

(c) Should total program allocations for any fiscal year fall below \$209,724,761, then each State’s program allocation shall be reduced from its allocated amount under a total program allocation of \$209,724,761 by the same percentage as total program allocations for the fiscal year fall below \$209,724,761.

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[FR Doc. E8–30836 Filed 12–24–08; 8:45 am] **BILLING CODE 6450-01-P**

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM05–35–000]

Standard of Review for Modifications to Jurisdictional Agreements

Issued December 18, 2008.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of notice of proposed rulemaking and termination of rulemaking proceeding.

SUMMARY: The Commission withdraws a notice of proposed rulemaking, which proposed that, in the absence of specific contractual language enabling Commission review of proposed contractual modifications not agreed to by the signatories (or their successors) under a “just and reasonable” standard, the Commission would review such modifications under a “public interest” standard.

DATES: *Effective Date:* This withdrawal published at 71 FR 303, January 4, 2006, will become effective January 28, 2009.

FOR FURTHER INFORMATION CONTACT: Hadas Kozlowski (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8030.

SUPPLEMENTARY INFORMATION:

125 FERC ¶ 61,310.
United States of America, Federal Energy Regulatory Commission.
Before Commissioners: Joseph T. Kelliher, Chairman; Suedeen G. Kelly, Marc Spitzer, Philip D. Moeller, and Jon Wellingshoff.

Standard of Review for Modifications to Jurisdictional Agreements; Withdrawal of Notice of Proposed Rulemaking and Termination of Rulemaking Proceeding.

Docket No. RM05–35–000
(Issued December 18, 2008.)

1. On December 27, 2005, the Commission issued a Notice of Proposed Rulemaking (NOPR) in this proceeding.¹ For the reasons set forth below, we are exercising our discretion to withdraw the NOPR and terminate this rulemaking proceeding.

I. Background

2. In the NOPR, the Commission proposed to repeal its regulation at 18 CFR 35.1(d) and, in its place,

¹ *Standard of Review for Modifications to Jurisdictional Agreements, Notice of Proposed Rulemaking*, 71 FR 303 (Jan. 4, 2006), FERC Stats. & Regs. ¶ 32,596 (2005) (NOPR).

promulgate a general rule regarding the standard of review that must be met to justify proposed modifications to Commission-jurisdictional agreements under the Federal Power Act (FPA) and Natural Gas Act (NGA) that are not agreed to by the signatories (or their successors). The Commission noted that courts were divided as to whether, in the face of contractual silence, the Commission was required to apply the "public interest" standard of review or the "just and reasonable" standard of review to proposed modifications.² The NOPR thus focused on the standard of review applicable to proposed changes in contracts in the absence of contractual language specifying the standard of review preferred by the parties. The NOPR did not address other issues such as the showing needed to satisfy the "*Mobile-Sierra* presumption."³

3. The Commission, in the NOPR, proposed a regulation which provided that, in the absence of prescribed contractual language enabling the Commission to review proposed modifications to agreements that are not agreed to by the signatories (or their successors) under a "just and reasonable" standard of review, the Commission will review such proposed modifications under a "public interest" standard of review. The Commission concluded that the weight of court precedent supported application of the "public interest" standard when evaluating proposed changes to such contracts, unless the contract language expressly invokes the "just and reasonable" standard. The Commission stated that this standard would promote contract certainty. Additionally, the Commission recognized the importance of providing certainty and stability in competitive electric energy markets.

II. Discussion

4. There is no longer a need for a rulemaking regarding the default standard of review, as the Supreme Court has addressed the law in this area. Since issuance of the NOPR, the United States Supreme Court has addressed the *Mobile-Sierra* doctrine in *Morgan Stanley*. The Court held that the *Mobile-Sierra* doctrine is a presumption that

rates initially set in a freely negotiated contract meet the statutory just and reasonable requirement of the FPA.⁴ The Court explained that "parties could contract out of the *Mobile-Sierra* presumption by specifying in their contracts that a new rate filed with the Commission would supersede the contract rate," but otherwise "the *Mobile-Sierra* presumption remains the default rule."⁵

5. Because the Supreme Court in *Morgan Stanley* has since addressed the default standard, the Commission concludes that it is no longer necessary to adopt the regulation proposed in the NOPR. The Commission therefore withdraws the NOPR and terminates this rulemaking proceeding.

The Commission orders:

The Notice of Proposed Rulemaking is hereby withdrawn and Docket No. RM05-35-000 is hereby terminated.

By the Commission. Commissioners Kelly and Wellinghoff concurring with a separate joint statement attached.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

United States of America, Federal Energy Regulatory Commission.

Standard of Review for Modifications to Jurisdictional Agreements

Docket No. RM05-35-000

(Issued December 18, 2008.)

Kelly and Wellinghoff, Commissioners, *concurring*:

This order terminates the rulemaking proceeding on the standard of review for modifications to jurisdictional agreements, withdrawing the Notice of Proposed Rulemaking (NOPR) that the Commission issued in 2005. This order states that, since the issuance of the NOPR, the United States Supreme Court addressed the *Mobile-Sierra* doctrine, including the default standard of review, in *Morgan Stanley*.⁶ As a result, the majority finds that there is no longer a need for a rulemaking regarding the default standard of review.

We agree that the rulemaking proceeding on the standard of review for modifications to jurisdictional agreements should be terminated. However, we believe that in reaching that conclusion, it is appropriate to recognize not only the *Morgan Stanley* decision, but also the U.S. Court of

Appeals for the District of Columbia Circuit's recent decision in *Maine Public Utilities Commission v. FERC*.⁷ Because the Commission is bound by the rulings in *Morgan Stanley* and *Maine PUC*, we conclude that there is no longer a need for a rulemaking regarding the default standard of review.

For this reason, we concur with this order.

Suede G. Kelly,
Commissioner.
Jon Wellinghoff,
Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-150066-08]

RIN 1545-BI45

Guidance Regarding Foreign Base Company Sales Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and Treasury Department are issuing temporary regulations relating to foreign base company sales income, in cases in which personal property sold by a controlled foreign corporation (CFC) is manufactured, produced, or constructed pursuant to a contract manufacturing arrangement or by one or more branches of the CFC. The temporary regulations modify the foreign base company sales income regulations to address current business structures and practices, particularly the growing importance of contract manufacturing and other manufacturing arrangements. The temporary regulations, in general, will affect CFCs and their United States shareholders. The text of the temporary regulations also serves as the text of the proposed regulations. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by March 30, 2009. Outlines of the topics to be discussed at

² NOPR, FERC Stats. & Regs. ¶ 32,596 at P 8 (citing *Boston Edison Co. v. FERC*, 233 F.3d 60 (1st Cir. 2000)). The *Boston Edison* court stated that these issues would remain in a state of confusion until the Commission "squarely confronted the underlying issues." *Boston Edison*, 233 F.3d at 68.

³ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2739 (2008) (*Morgan Stanley*) (referring to *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*)).

⁴ *Id.* at 2737; *accord id.* at 2746.

⁵ *Id.* at 2739; *cf. Public Util. Dist. No. 1 v. FERC*, 471 F.3d 1053, 1075 (9th Cir. 2006), *aff'd and remanded sub nom., Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008).

⁶ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008) (*Morgan Stanley*).

⁷ *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, *petition for reh'g denied*, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*) (discussing, among other issues, the circumstances in which it is appropriate to apply the *Mobile-Sierra* presumption).