

121 FERC ¶ 61,013
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 4, 2007

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER05-1052-000

Wright & Talisman, P.C.
1200 G Street, NW, Suite 600
Washington, DC 20005-3802

Attn: Matthew K. Segers, Esq.
Attorney for Southwest Power Pool, Inc.

Reference: Southwest Power Pool, Inc.

Dear Mr. Segers:

1. On August 2, 2007, Southwest Power Pool, Inc. (SPP) submitted an offer of settlement on behalf of itself, Westar Energy, Inc., and Kansas Power Pool in the above proceeding. On August 16, 2007, Commission Trial Staff submitted initial comments in support of the settlement. No other initial comments or reply comments were filed. The settlement was certified to the Commission as uncontested on September 13, 2007.¹

2. The subject settlement resolves all of the issues pending in Docket No. ER05-1052-000, concerning the Ancillary Services Agreement between the parties. The settlement is fair and reasonable and in the public interest and is hereby approved. The rate schedule submitted as part of the settlement is properly designated and made effective consistent with the settlement. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000). The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

3. The standard of review for any modifications to this settlement, excluding the Revised Ancillary Services Agreement, made by any of the settling parties without agreement of the other settling parties or by the Commission acting *sua sponte* is the

¹ *Southwest Power Pool, Inc.*, 120 FERC ¶ 63,021 (2007).

“public interest” standard under the *Mobile-Sierra* doctrine.² Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound.³ In this case, we find that the public interest standard should apply for any modifications to this settlement made by any of the settling parties without agreement of the other settling parties or by the Commission acting *sua sponte*, except that the just and reasonable standard should apply for modifications to the Revised Ancillary Services Agreement. The Commission retains the right to investigate the rates, terms and conditions of the Revised Ancillary Services Agreement under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

4. Refunds and adjustments shall be made pursuant to the settlement. SPP shall submit a compliance refund report to the Commission within 30 days of the date the refunds are made, in accordance with 18 C.F.R. § 35.19a. Copies shall be furnished to each party to the settlement and the applicable state commissions.

5. This order terminates Docket No. ER05-1052-000.

By direction of the Commission. Commissioner’s Kelly and Wellinghoff
dissenting in part with separate statements
attached.

Kimberly D. Bose,
Secretary.

² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993).

³ *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket No. ER05-1052-000

(Issued October 4, 2007)

KELLY, Commissioner, *dissenting in part*:

The settling parties have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future modifications to this settlement, excluding the Revised Ancillary Services Agreement, which may be proposed by a party, a non-party or the Commission acting *sua sponte*. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

Accordingly, I respectfully dissent in part from this order.

Suede G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket No. ER05-1052-000

(Issued October 4, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement, except for the Revised Ancillary Services Agreement included therein, that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).