

122 FERC ¶ 61,051
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

East Texas Electric Cooperative, Inc.	Docket Nos. EL07-27-000
Tex-La Electric Cooperative of Texas, Inc.	EL07-27-001
Deep East Texas Electric Cooperative, Inc.	

Southwest Power Pool, Inc.	Docket Nos. ER07-396-000
	ER07-396-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 23, 2008)

1. On October 31, 2007, East Texas Electric Cooperative, Tex-La Electric Cooperative of Texas, Inc., Deep East Texas Electric Cooperative, Inc., Southwest Power Pool (SPP), and American Electric Power Service Corporation (collectively, Parties) filed a settlement agreement to resolve all issues in this proceeding, which concerns the revision of SPP's Open Access Transmission Tariff and certain billing and cost-allocation issues that have arisen among the Parties.
2. On November 20, 2007, Commission Trial Staff submitted comments in support of the settlement. No other comments were filed. On November 26, 2007, the settlement was certified to the Commission as uncontested.¹
3. The settlement fair, reasonable, and is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
4. The standard of review for any modifications to this settlement after approval shall be the "public interest" standard under the Mobile-Sierra doctrine.² As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast*

¹ *East Texas Electric Cooperative, Inc., et al.*, 121 FERC ¶ 63,013 (2007).

² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Utilities Service Co. v. FERC, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case, we find that the public interest standard should apply.

5. This order terminates Docket Nos. EL07-27-000, EL07-27-001, ER07-396-000, and ER07-396-001.

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

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

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KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any future changes to the settlement, whether proposed by a party, a non-party or the Commission acting *sua sponte*. This settlement involves, among other things, certain revisions to SPP’s Open Access Transmission Tariff.

As I explained in *Transcontinental Gas Pipe Line Corporation*,¹ I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of approving such a provision. As I have previously noted,² this is particularly the case where, as here, the settlement agreement will impact a generally applicable tariff under which customers take service, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

Suede G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

² *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

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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 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).