

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Westar Energy, Inc.

Docket No. ER08-1396-000

(Issued October 10, 2008)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The parties to the Agreement before us request that the Commission apply a just and reasonable standard of review with the exception of certain specific provisions. In those instances, including future changes to the return on equity and standard of review provisions, the parties request that the Commission apply the “public interest” standard of review to changes sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the parties’ proposed standard of review. The majority sets the other provisions of the Agreement for hearing, but accepts the standard of review provision, conditioned upon the parties revising it to be consistent with the Commission’s decision in *Duke Energy Carolinas, LLC*.²

We continue to disagree with the majority’s characterization of the D.C. Circuit’s holding in *Maine PUC* as to the applicability of the “public interest” standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC* and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Jon Wellinghoff
Commissioner

Sudeen G. Kelly
Commissioner

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).