

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.

Nevada Power Company

Docket No. EL06-84-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 9, 2007)

1. On October 3, 2006, Nevada Power Company (Nevada Power) filed a settlement to resolve all outstanding issues in the above-referenced docket. On October 23, 2006, the Commission's Trial Staff submitted comments in support of the settlement. No other comments were received. On November 8, 2006, the settlement was certified to the Commission as uncontested.<sup>1</sup>
2. The settlement is fair and reasonable and 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. The applicable standard of review for any changes to the settlement, whether proposed by a party, a non-party, or the Commission acting *sua sponte*, is the *Mobile-Sierra* public interest standard.<sup>2</sup>
3. The settlement incorporates by reference a revised transmission service agreement No. 05-0399 between Nevada Power and PacifiCorp, filed pursuant to section 205 of the Federal Power Act. In conjunction with the Commission's approval of the settlement, this transmission service agreement is accepted for filing and made effective as of June 1, 2006.

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<sup>1</sup> *Nevada Power Co.*, 117 FERC ¶ 63,029 (2006).

<sup>2</sup> *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). As a general matter, parties may bind the Commission to a public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> 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.

4. This order terminates Docket No. EL06-84-000.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

( S E A L ) Commissioner Wellinghoff dissenting in part with a separate statement attached.

Philis J. Posey,  
Acting Secretary.

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Docket No. EL06-84-000

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KELLY, Commissioner, *dissenting in part*:

The parties to this settlement have specified that the standard of review for any future change to the settlement considered by the Commission shall be the *Mobile-Sierra* “public interest” standard. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> 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 by the Commission acting *sua sponte*, I do not believe the Commission should approve such a contract provision.<sup>2</sup>

Accordingly, I must respectfully dissent in part from this order.

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Sudeen G. Kelly

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<sup>1</sup> *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61, 232 (2006).

<sup>2</sup> Additionally, I note that even under the policies outlined in *Standard of Review for Modifications to Jurisdictional Agreements, Notice of Proposed Rulemaking*, 113 FERC ¶ 61,317 at P 6 (2005), which provides for a very liberal interpretation of when the public interest standard may apply, the provisions of the settlement that seek to apply the *Mobile-Sierra* “public interest” standard to the rollover provision in this OATT service agreement would be rejected.

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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.*,<sup>1</sup> 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.*,<sup>2</sup> 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.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).