

FERC 121 ¶ 61,244
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 7, 2007

In Reply Refer To:
Docket No. RP07-310-000

Mojave Pipeline Company
Attn: Catherine F. Palazzari
Vice President
Mojave Pipeline Company
2 North Nevada Avenue
Colorado Springs, CO 80903

Dear Ms. Palazzari:

1. On October 9, 2007 Mojave Pipeline Company (Mojave) filed an Offer of Settlement and Stipulation and Agreement (Settlement), and an accompanying Explanatory Statement, to resolve all issues in Docket No. RP07-310-000. On October 19, 2007, Commission Trial Staff, Mojave, BP America Production Company, BP Energy Company, Chevron Natural Gas, a Division of Chevron U.S.A., Inc., ConocoPhillips Company, and Occidental Energy Marketing, Inc. filed comments in support of the Settlement. On October 24, 2007, Mojave filed reply comments in support of the Settlement. On October 25, 2007, the presiding administrative law judge certified the Settlement to the Commission as uncontested.¹
2. The Settlement consists of the following major features. Article I describes the factual background and procedural history of this proceeding. Article II describes the agreement reached as to the base rates Mojave will be authorized to charge for the term of the Settlement. Article II further describes the agreement reached as to certain rate components, services and other benefits including establishing a new depreciation rate, enhancement of Mojave's fuel retention true-up mechanism, the creation of a new park and lending service, and a revenue sharing mechanism with eligible shippers during the term of the Settlement, and Article 2.3 provides that Mojave, within 90 days after the effective date of the Settlement, will pay refunds for the payments it received in excess of the Settlement rates. Article 2.6 provides that Mojave's \$20.3 million regulatory liability, which results from Mojave, in the Settlement, changing from levelized rates to traditionally designed rates, will be completely extinguished by August 31, 2010. Article

¹ *Mojave Pipeline Co.*, 121 FERC ¶ 63,004 (2007).

II establishes that Mojave will file another rate case to be effective no later than September 1, 2010, and states that Mojave may file a rate increase to be effective any time after June 30, 2008.

3. Article III describes the term of the Settlement and the waivers by the parties. This article provides that the term of the Settlement shall be from the effective date established in Article IV through the effective date of Mojave's next general rate case filing under Section 4 of the Natural Gas Act (NGA). In exchange for the provisions of the Settlement, the Consenting parties agree that they will not challenge, under NGA section 5, the Settlement rates during the term of the agreement.

4. Article III provides that the standard of review for any changes to the Settlement proposed at the request of a Consenting or Contesting Party shall be the *Mobile-Sierra* standard.² However, for changes proposed by the Commission *sua sponte*, the standard of review will be the "just and reasonable" standard.

5. The Settlement establishes rate decreases below those proposed by Mojave in its filing, and provides for refunds to shippers. The settlement provides Mojave's shippers with significant benefits while avoiding protracted litigation.

6. The Commission concludes that the Settlement is fair and reasonable and in the public interest. Therefore, the Commission hereby approves the Settlement without modification as uncontested, effective upon issuance of this order. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Finally, the Commission hereby grants all waivers, approvals or permissions necessary to implement all of the provisions of the Settlement, including without limitation the accounting requirements and the regulatory liability treatment specified in Article 2.6.

By Direction of the Commission. Commissioner Kelley dissenting in part with a separate statement.

Kimberly D. Bose,
Secretary.

cc: All Parties

² This standard is derived from two Supreme Court cases decided on the same day, *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Mojave Pipeline Company

Docket No. RP07-310-000

(Issued December 7, 2007)

KELLY, Commissioner, *dissenting in part*:

The settling parties request that the *Mobile-Sierra* “public interest” standard of review will apply to any future changes to the settlement that may be proposed by a party or a non-party to the settlement. They request that the “just and reasonable” standard of review apply to any changes that may be proposed by the Commission acting *sua sponte*. This settlement agreement sets forth rates, terms and conditions for service under Mojave Pipeline Company’s tariff.

I have explained in *Transcontinental Gas Pipe Line Corporation*¹ that 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, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of 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 all 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).