

122 FERC ¶ 61,292  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

March 28, 2008

In Reply Refer To:  
Docket No. ER07-770-000

Bear, Stearns & Co. Inc.  
Attn: Jason A. Lewis, Esq.  
Attorney for BE KJ LLC  
383 Madison Avenue  
6<sup>th</sup> Floor  
New York, NY 10179

Dear Mr. Lewis:

1. On January 14, 2008, you filed a Settlement Agreement and Explanatory Statement (Settlement) on behalf of BE KJ LLC (BE KJ), Williams Gas Marketing, Inc. (f/k/a Williams Power Company, Inc.) (Williams), Consumers Energy Company (Consumers), the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Michigan Electric Transmission Company, LLC (METC), and Michigan Public Power Agency (MPPA) (collectively, Settling Parties). The Settlement resolves all of the issues set for hearing in this proceeding<sup>1</sup> concerning Williams' proposed rate schedule<sup>2</sup> that specified its revenue requirement for providing reactive power from a 653 MW natural gas-fired combined cycle electric generating facility located in Jackson, Michigan (Facility). The Settlement provides that BE KJ's annual revenue requirement for reactive supply service from the Facility, effective as of July 1, 2007, will be \$1,175,000 (a reduction of \$681,562 from the initially proposed revenue requirement).

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<sup>1</sup> *Williams Power Company, Inc.*, 119 FERC ¶ 61,283 (2007) (June Order).

<sup>2</sup> On November 8, 2007, BE KJ succeeded to the rate schedule as part of a transaction in which Bear Energy LP and certain of its wholly owned subsidiaries, including BE KJ, acquired substantially all the electric power assets of Williams. On December 8, 2007, in Docket No. ER08-328-000, BE KJ filed a notice of succession with regard to the rate schedule. On February 7, 2008, the Commission accepted for filing the notice of succession and rate schedule effective February 8, 2008, subject to the outcome of continuing proceedings. *BE KJ LLC*, Docket No. ER08-328-000, (Feb. 7, 2008) (unpublished letter order).

2. On February 4, 2008, Commission Trial Staff filed comments supporting the Settlement. On February 22, 2008, the Settlement Judge certified the Settlement to the Commission as uncontested, and on February 27, 2008, the Settlement Judge issued an errata to the Certification.

3. Under the Settlement, the standard of review applicable to the Settling Parties for any modifications to this Settlement after approval shall be the public interest standard under the *Mobile-Sierra* doctrine.<sup>3</sup> The Settlement is intended to subject the Commission, acting on its own motion with respect to the Settlement, to the most stringent standard of review allowed by applicable law. 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 (1<sup>st</sup> Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has 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. The Settlement is fair and reasonable and in the public interest and is hereby approved. The tariff sheets contained in the Settlement are in compliance with Order No. 614 and are made effective as set forth in 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 the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

5. This letter order terminates Docket No. ER07-770-000.

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

Kimberly D. Bose,  
Secretary.

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<sup>3</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) (*Mobile-Sierra*).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Williams Power Company, Inc.

Docket Nos. ER07-770-000

(Issued March 28, 2008)

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 modifications to the settlement proposed by a party, a non-party, or the Commission acting *sua sponte*. This settlement involves Williams Power Company Inc.’s proposed rate schedule that specifies its revenue requirement for providing reactive power from a natural gas-fired combined cycle electric generating facility.

As I explained in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> I do not believe that 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 such a provision. As I have previously noted,<sup>2</sup> this is particularly the case, as here, where 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.

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Suedeem G. Kelly

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<sup>1</sup> 117 FERC ¶ 61,232 (2006).

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

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Williams Power Company, Inc.

Docket No. ER07-770-000

(Issued March 28, 2008)

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 any change to the Settlement that may be sought by 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).