

120 FERC ¶ 61, 236  
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.

Wisconsin Electric Power Company

Docket No. ER06-1320-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued September 14, 2007)

1. On July 29, 2007, Wisconsin Electric Power Company filed an offer of settlement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure resolving all issues in this case. On July 9, 2007, the Commission Trial Staff filed comments in support of the settlement agreement. No other comments were filed. On July 26, 2007, settlement was certified to the Commission as uncontested.
2. The settlement resolves all issues arising from a rate increase filing, which the Commission set for hearing and settlement judge procedures.<sup>1</sup> The settlement appears fair and reasonable and in the public interest, and is hereby approved.
3. The standard of review for any modifications to this settlement proposed by a party to the settlement shall be the "public interest" standard under the *Mobile-Sierra* doctrine.<sup>2</sup> The settlement is intended to subject the Commission, acting on its own

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<sup>1</sup> 117 FERC 61,244 (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). The settlement agreement allows for filings by participants (which the settlement agreement defines as the parties to the settlement and Commission staff) to change the rate formula to be evaluated under the "just and reasonable" standard of review.

motion, to the most restrictive standard of review allowed by applicable law for any modifications to this settlement or the rate formula.<sup>3</sup>

4. This order terminates Docket No. ER06-1320-000.

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

( S E A L )

Nathaniel J. Davis, Sr.,  
Acting Deputy Secretary.

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<sup>3</sup> At page 13 of the explanatory statement accompanying the settlement, the parties explain the intent of this language is to be neutral as to the issue whether settlements may bind the Commission to the *Mobile-Sierra* Standard. 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 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 for modifications to this settlement by the Commission acting on its own motion, except that the just and reasonable standard should apply for modifications to the rate formula by the Commission acting on its own motion.

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KELLY, Commissioner, *dissenting in part*:

The settling parties have requested that the Commission apply “the most restrictive standard of review allowed by applicable law” to most future changes to the settlement that may be proposed by the Commission acting *sua sponte*. The order concludes that the *Mobile-Sierra* “public interest” standard of review should apply to changes to the settlement proposed by the Commission acting *sua sponte*, except that the “just and reasonable” standard should apply for modifications to the rate formula.

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 the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision. Accordingly, I respectfully dissent in part from this order.

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Suedeen G. Kelly

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

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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 most future changes to the instant settlement that may be sought by any of the parties. With regard to most future changes that may be sought by the Commission acting *sua sponte*, the parties have asked the Commission to apply “the most restrictive standard of review allowed by applicable law.” In response to the latter request, the Commission states that the “public interest” standard should apply in this case to changes sought by the Commission acting *sua sponte*, except that the “just and reasonable” standard should apply for modifications to the rate formula.

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 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).