

121 FERC ¶ 61,023
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 5, 2007

In Reply Refer To:
Viking Gas Transmission
Company
Docket No. RP07-319-000

Jeanne M. Dennis, Esq.
Attorney for Viking Gas Transmission Company
Winson & Strawn L.L.P.
1700 K Street, N.W.
Washington, DC 20006

Dear Ms. Dennis:

1. On July 18, 2007, Viking Gas Transmission Company (Viking) filed a Settlement Agreement and Offer of Settlement (Settlement) intended to resolve all issues in this proceeding. On July 30, 2007, Commission Trial Staff filed comments in support of the Settlement, and on August 13, 2007, the settlement judge certified the Settlement to the Commission.
2. This proceeding arose on February 28, 2007, when Viking filed its annual Load Management Cost Reconciliation Adjustment (LMCRA). Under the LMCRA mechanism, load management costs are to be reconciled annually, with surcharges or credits to be applied, as appropriate, to reconcile the differences between the cost to Viking to maintain its line pack gas and the amounts Viking receives or pays for such gas arising out of the purchase and sale of such gas. In its LMCRA filing, Viking proposed a Load Management Service (LMS) surcharge of \$0.3252 for the annual period commencing April 1, 2007. The filing was protested because of the substantial increase in the adjustments calculated under the LMCRA mechanism in past years. On March 30,

2007, the Commission issued its order accepting the tariff sheets, subject to refund, and establishing Settlement Judge proceedings and a hearing. Settlement conferences were convened on April 24 and June 12, 2007. On July 18, 2007, the Settlement was filed.

3. The Settlement provides, in pertinent part, that LMS customers that are Consenting Parties to the Settlement shall pay the LMCRA set forth in Attachment 1 of the Settlement for the Load Management Period (as defined in section 27 of Viking's tariff) that commenced on April 1, 2007 and ends March 31, 2008 (2007 Annual Period). The parties agree not to challenge or benefit from a challenge to the LMCRA's that were in effect for the Load Management Periods preceding the 2007 Annual Period, and that the Settlement resolves any and all claims that could be or could have been brought concerning the LMCRA's during such periods. The standard of review that the Commission shall apply when acting on any proposed modifications to this provision (paragraph 1 of Article II) of the Settlement shall be the "public interest" standard.¹

4. Article VII of the Settlement states that, except as expressly provided with respect to the calculations and procedures respecting the LMCRA in paragraph 1, Article II of the Settlement, the standard of review that the Commission shall apply when acting on any other proposed modification of the Settlement shall be the "just and reasonable" standard of review.

5. Viking shall provide refunds calculated in accordance with the Settlement. Viking shall refund, with interest, for the period between April 1, 2007 through the date that Viking begins invoicing the Settlement LMCRA, the difference between the total LMCRA payments actually made to Viking by each LMS customer for the 2007 Annual Period and the total payments that would have been made by each LMS customer under the Settlement LMCRA for the 2007 Annual Period. Viking shall file a report of refunds within 30 days of the date the refunds are made in accordance with section 154.501(e) of the Commission's regulations (18 C.F.R. § 154.501(e)), and there shall be no refunds or surcharges associated with the LMCRA payments that were made for Load Management Periods preceding the 2007 Annual Period.

¹ 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 (1st 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 to any proposed modifications to paragraph 1, Article II of the Settlement.

6. The Commission finds that the Settlement is fair and reasonable and in the public interest. The Commission therefore approves the Settlement, to become effective by its terms. Approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

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

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

cc: All Parties

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Viking Gas Transmission Company

Docket No. RP07-319-000

(Issued October 5, 2007)

KELLY, Commissioner, *dissenting in part*:

The settling parties have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any modifications that may be proposed by a party, a non-party or the Commission acting *sua sponte* to the Load Management Cost Reconciliation Adjustment provision in Article II, paragraph 1 of the settlement. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ 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.

Suede G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

UNITED STATES OF AMERICA
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Docket No. RP07-319-000

(Issued October 5, 2007)

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 proposed modifications to the LMCRA that were in effect for the Load Management Annual Periods preceding the 2007 Annual Period (paragraph 1 of Article II of the Settlement).

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ 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.*,² 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.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).