



**Federal Energy Regulatory Commission
January 17, 2008
Open Commission Meeting
Statement of
Commissioner Philip D. Moeller**

**Statement of Commissioner Moeller concerning an order issued on January 16, 2008
in Docket No. ER07-583**

"We have been concerned for some time now about the filing of settlement agreements that are inconsistent with the explanatory statements that are intended to describe those settlement agreements. In fact, on a few occasions, we've noticed settlement agreements that failed to be explicit about the standard of review. So instead, some parties have described the standard of review in their explanatory statement.

On those occasions, I've drafted concurring opinions which say that the standard of review they intend to apply to changes to the settlement agreement must match the standard set forth in the explanatory statement. An explanatory statement does not control the terms of a settlement agreement and in the event of a conflict, I will rely on the terms of the settlement agreement, not the explanatory statement, in determining the applicable standard of review.

I asked for some time today, because just yesterday, the Commission issued an [Order](http://www.ferc.gov/EventCalendar/Files/20080116153135-ER07-583-000.pdf) <link to <http://www.ferc.gov/EventCalendar/Files/20080116153135-ER07-583-000.pdf>> where the standard of review in the settlement agreement was actually in conflict with the standard described in the explanatory statement. In fact, the explanatory statement reflected a "public interest" standard of review, but the settlement agreement reflected the "just and reasonable" standard. We addressed this relative obvious drafting error correctly, by holding the parties to the terms of the settlement agreement, but the error shouldn't have happened in the first place.

So I have asked for some time to publicly point this out, so that we don't have these inconsistencies, and, frankly, so that we do not waste the time of the Staff."

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January 17, 2008
Chairman Philip D. Moeller