

124 FERC ¶ 61,076
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Wisconsin Electric Power Company

Docket No. ER07-1192-000

ORDER CONDITIONALLY APPROVING
UNCONTESTED SETTLEMENT

(Issued July 21, 2008)

1. On April 9, 2008, Wisconsin Electric Power Company (Wisconsin Electric) filed a settlement on behalf of itself and Wisconsin Public Power Inc. (Wisconsin Power), Badger Power Marketing Authority (Badger), Great Lakes Utilities (Great Lakes), and the City of Geneva, Illinois (Geneva) (collectively, the Settling Parties). The settlement resolves distribution of decommissioning funds resulting from Wisconsin Electric's sale of its Point Beach Nuclear Plant.¹
2. Comments in support of the settlement were filed by Trial Staff, Wisconsin Power, Geneva, and Badger and Great Lakes. The settlement judge certified the settlement to the Commission as uncontested on April 24, 2008.²
3. The settlement is fair and reasonable and in the public interest, and is hereby approved. After the Commission has approved the settlement and Wisconsin Electric has substantially performed by paying the monetary amounts designated by the settlement,

¹ See *Wisconsin Elec. Power Co.*, 120 FERC ¶ 61,268 (2007) (the Commission accepted the proposed distribution methodology subject to refund and a paper hearing to resolve contested distribution amounts).

² *Wisconsin Elec. Power Co.*, 123 FERC ¶ 63,008 (2008).

the standard of review for any modification of the settlement not agreed to by all the Settling Parties shall be the “public interest” standard under the *Mobile-Sierra Doctrine*.³

4. In light of *Maine Pub. Util. Comm’n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review as currently written. As such, the settlement is approved conditioned on the Settling Parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the “most stringent standard permissible under applicable law.”

5. The rate schedule sheets submitted as part of the settlement are in compliance with Order No. 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000). The rate schedules are hereby accepted for filing and made effective as specified in the settlement.

6. Approval of this settlement, subject to the revision directed above, does not constitute approval of, or precedent regarding, any principle or issue in any other proceeding. Payments and adjustments shall be made pursuant to the settlement upon revision of the standard review provision.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with a separate joint statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 349 (1956). *See* explanatory statement at 9, settlement at 10-11.

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KELLY and WELLINGHOFF, Commissioners, dissenting in part:

The instant settlement states that the “public interest” standard of review will apply to any modification to the settlement that is proposed by a settling party, but not agreed to by all of the settling parties.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the standard of review set forth in the instant settlement. Therefore, the majority approves the settlement conditioned on the settling parties revising the standard of review applicable to non-settling third parties. The majority also states that language applying the “most stringent standard permissible under applicable law” to non-settling third parties would be “[a]n acceptable substitute provision.”

We continue to disagree with the majority’s characterization of the D.C. Circuit’s holding in *Maine PUC* as to the applicability of the “public interest” standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC*² and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Suede G. Kelly
Commissioner

Jon Wellinghoff
Commissioner

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).