

124 FERC ¶ 61,234
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.

Pacific Gas and Electric Company

Docket No. ER07-568-000

ORDER APPROVING UNCONTESTED SETTLEMENT AGREEMENT

(Issued September 10, 2008)

1. On August 13, 2007, Pacific Gas and Electric Company (PG&E) filed a Settlement Agreement to resolve all issues in this proceeding, which concerns PG&E's service to the Hunters Point Shipyard, in the City and County of San Francisco (CCSF). The Settlement Agreement includes an executed wholesale distribution service agreement and an interconnection agreement between PG&E and CCSF.
2. On September 4, 2007, Commission Trial Staff submitted comments in support of the Settlement Agreement. No other comments were filed. On September 5, 2007, the Settlement Agreement was certified to the Commission as uncontested.¹
3. The Settlement Agreement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
4. Under Article 3 of the Settlement Agreement, PG&E retains its rights under section 205 of the Federal Power Act, 16 U.S.C. § 824d (2006), to propose changes to rates, terms and conditions of service should regulatory or market changes necessitate such action. Article 13 of the Settlement Agreement provides, however, that:

It is the Parties' intent that the Commission's right to change any provision of this Settlement Agreement shall be limited to the maximum extent permissible by law and that any such change, if permissible, shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements.²

¹ *Pacific Gas and Electric Co.*, 120 FERC ¶ 63,015 (2007).

² *Citing 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 explanatory statement to the Settlement Agreement describes Article 13, stating "as specified in Article 13 of the Settlement, the Settlement Parties intend that this proceeding is subject to the 'public interest' standard of review"

Pursuant to *Southern Company Services, Inc.*,³ notwithstanding Article 13, the Commission retains the right to investigate the rates, terms and conditions of the wholesale distribution service agreement and the interconnection agreement under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2006). The Commission interprets Articles 3 and 13 of the Settlement Agreement together as providing that the just and reasonable standard will apply to PG&E's proposed changes to the wholesale distribution service agreement and the interconnection agreement, and thus, pursuant to *Southern*, also to the Commission's changes to such agreements, except where the Settlement Agreement explicitly provides otherwise.

5. The rate schedule sheets submitted as part of the Settlement Agreement are in compliance with Order No. 614.⁴ The rate schedules are hereby accepted for filing and made effective as specified in the Settlement Agreement.

6. This order terminates Docket No. ER07-568-000.

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

(S E A L)

Kimberly D. Bose,
Secretary.

cc: All Parties

³ 67 FERC ¶ 61,080, at 61,227-28 (1994) (*Southern*) (Commission will not be bound to a higher standard of review than the parties); *accord, e.g., Virginia Electric and Power Co.*, 119 FERC ¶ 61,004, at P 5 (2007).

⁴ *See Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

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FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Docket No. ER07-568-000

(Issued September 10, 2008)

KELLY and WELLINGHOFF, Commissioners, dissenting in part:

The Settlement Agreement resolves all issues related to Pacific Gas and Electric Company (PG&E) providing wholesale distribution service to the City and County of San Francisco (CCSF) at the Hunters Point Naval Shipyard. The Settlement Agreement includes an executed wholesale distribution service agreement and an interconnection agreement.

Under Article 3 of the Settlement Agreement, PG&E retains the right to propose changes to the rates, terms and conditions of this service under section 205 of the Federal Power Act,¹ apparently subject to the just and reasonable standard of review. At the same time, Article 13 of the Settlement Agreement seeks to apply the “public interest” standard of review to changes sought by the Commission acting *sua sponte*. We agree with the majority that, notwithstanding Article 13, the Commission retains the right to investigate the rates, terms and conditions of the wholesale distribution service agreement and the interconnection agreement under the just and reasonable standard. As the majority states, pursuant to *Southern Company Services, Inc.*,² the Commission cannot be bound to a higher standard of review than the parties.

However, the majority qualifies its above-noted statements regarding the standard applicable to the Commission with the ambiguous caveat, “except where the Settlement Agreement explicitly provides otherwise.” The intent and application of this exception is unclear both in the parties’ filing and in today’s order. Further, particularly given that lack of clarity, it is important to note that this exception is likely to conflict with the U.S. Court of Appeals for the District of Columbia Circuit’s decision in *Maine Public Utilities Commission v. FERC*.³

¹ 16 U.S.C. § 824d (2006).

² 67 FERC ¶ 61,080 at 227-28 (1994); *accord*, e.g. *Virginia Electric and Power Co.*, 119 FERC ¶ 61,004, at P5 (2007).

³ 520 F.3d 464 (D.C. Cir. 2008)(*Maine PUC*). We have previously

For these reasons, we respectfully dissent in part.

Suedeem G. Kelly
Commissioner

Jon Wellinghoff
Commissioner

discussed our view of the *Maine PUC* decision with regard to the applicability of the “public interest” standard. *See, e.g., Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,252 (2008).