

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Wisconsin Power & Light Company

Docket No. ER03-684-000

ORDER APPROVING SETTLEMENT

(Issued February 11, 2004)

1. On November 13, 2003, Wisconsin Power & Light Company (WPL) filed an offer of settlement in the above proceeding. Commission Staff filed comments in support of the settlement. On January 20, 2004, the settlement judge certified the offer to the Commission as an uncontested settlement.
2. The settlement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
3. Within 30 days from the date of this letter, any amount collected in excess of the settlement rates shall be refunded with interest computed under Section 35.19a of the Commission's regulations, 18 CFR § 35.19a (2003). Within 15 days after making such refunds, WPL shall file with this Commission a compliance refund report showing monthly billing determinants; revenue receipt dates; revenues under the prior, present, and settlement rates; the monthly revenue refund; and the monthly interest computed, together with a summary of such information for the total refund period. WPL shall furnish copies of that report to the affected customers and to each state commission within whose jurisdiction the affected wholesale customers distribute and sell electric energy at retail.

4. This order terminates Docket No. ER03-684-000. A new sub-docket will be assigned upon receipt of the required compliance refund report.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

( S E A L )

Linda Mitry,  
Acting Secretary.

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KELLY, Commissioner, dissenting in part:

I do not believe that the Commission should depart from its precedent of not approving settlements that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate. See, e.g., Westar Generating, Inc., 100 FERC ¶ 61,255 at 61,917 (2002); Niagara Mohawk Power Corporation, 97 FERC ¶ 61,018 at 61,060 (2001); Turlock Irrigation District, 88 FERC ¶ 61,322 at 61,978 (1999); Montana Power Company, 88 FERC ¶ 61,019 at 61,051 (1999); Carolina Power & Light Co., 67 FERC ¶ 61,077 at 61,205 (1994).

Therefore, I disagree with this order to the extent it approves a settlement that restricts future Commission review of changes to the settlement rates to the Mobile-Sierra “public interest” standard even with respect to non-parties. Specifically, Section I.2. of the settlement provides:

The Parties agree that neither WPL nor the Cooperatives will request to the Commission that any changes to the settlement rates reflected in Attachment C be effective prior to January 1, 2005. The Parties further agree that the standard of review for changes to the settlement rates reflected in Attachment C proposed by a non-party or the Commission, acting *sua sponte*, to be effective prior to January 1, 2005, shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the “Mobile-Sierra Doctrine”).

I agree that the Commission may approve a settlement agreement insofar as it binds the parties to the settlement and the Commission, acting *sua sponte* on behalf of those parties, to a “public interest” standard of review as to their future attempts to change the rates, terms and conditions of the settlement. However,

consistent with the precedent cited above, I think that retaining the Commission's right to future review under the "just and reasonable" standard would enable the Commission to more effectively fulfill its statutory mandate under the Federal Power Act to protect the public interest, particularly the interests of non-parties to an agreement.

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Suedeen G. Kelly