

109 FERC ¶ 61,029  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wolverine Power Supply Cooperative, Inc.

Docket Nos. ER04-132-000  
EL04-38-000

ORDER DIRECTING PRESIDING JUDGE TO CONDUCT FURTHER  
PROCEEDINGS

(Issued October 7, 2004)

1. On June 7, 2004, Wolverine Power Supply Cooperative, Inc. (Wolverine), on behalf of itself and on behalf of Michigan Public Service Commission, filed an offer of settlement (Settlement Agreement) in the above referenced dockets. Because the Settlement Agreement and the explanatory statement (Explanatory Statement) attached to the Settlement Agreement were silent as to the standard of review to which the Commission would be held, we direct the presiding judge to conduct further proceedings to clarify the intent of the settlement parties. This order benefits customers because it requires parties to provide clarity to settlement agreements filed with the Commission.

**Background**

2. On June 7, 2004, Wolverine, on behalf of itself and on behalf of Michigan Public Service Commission, filed an offer of settlement which included a Settlement Agreement and Explanatory Statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.<sup>1</sup> The Settlement Agreement was intended to resolve all the outstanding issues in Docket Nos. ER04-132-000 and EL04-38-000.

3. On June 28, 2004, the Commission's Trial Staff submitted comments in support of the settlement. No other comments were filed. On July 15, 2004, the Presiding Administrative Law Judge certified the settlement to the Commission as uncontested.

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<sup>1</sup> 18 C.F.R. § 385.602 (2004).

4. The Explanatory Statement provides:

The Settlement Agreement does not include language establishing a Mobile-Sierra<sup>2</sup> “public interest” standard of review, but any change to the Settlement Agreement requested by a Settlement Party would be pursuant to the Mobile-Sierra “public interest” standard of review.<sup>3</sup>

The Settlement Agreement itself defines the term “Settlement Parties” as Wolverine Power Supply Cooperative, Inc. and the Michigan Public Service Commission. However, neither the Settlement Agreement nor the Explanatory Statement sets forth the intent of the Settlement Parties as to the standard of review to which the Commission will be held.

**Discussion**

5. Because the Settlement Parties are silent as to the standard of review to which they intend the Commission to be held, we direct the presiding judge to conduct further proceedings to obtain clarification from the parties as to the standard of review they intend to apply to the Commission.

**The Commission orders:**

The presiding judge shall conduct further proceedings as he deems appropriate to determine the standard of review to which the Settlement Parties intend the Commission to be held.

By the Commission. Commissioners Brownell and Kelliher concurring with a joint separate statement attached.  
( S E A L ) Commissioner Kelly dissenting with a separate statement attached.

Linda Mitry,  
Acting Secretary.

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<sup>2</sup> See *United Gas Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (Mobile-Sierra).

<sup>3</sup> Explanatory Statement at 5.

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Nora Mead BROWNELL, Commissioner, and Joseph T. KELLIHER, Commissioner  
*concurring:*

We would have been comfortable interpreting the parties' silence as warranting application of the Mobile-Sierra standard to any future changes sought by the Commission itself. However, we do not object to soliciting additional clarification of the parties' intent.

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Nora Mead Brownell

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Joseph T. Kelliher

