

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 30, 2007

In Reply Refer To:
Wisconsin Public Service Corporation
Docket Nos. ER05-164-000
ER05-164-002

Bruder, Gentile & Marcoux, L.L.P.
Attn: Carmen L. Gentile, Esq.
Attorney for Wisconsin Public Service Corporation
1701 Pennsylvania Avenue, N.W.
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Dear Mr. Gentile:

1. On November 9, 2006, you filed a Settlement Agreement (Settlement) on behalf of Wisconsin Public Service Corporation (WPSC) and each of the following Wisconsin municipal utilities: Badger Power Marketing Authority, Great Lakes Utilities, the City of Manitowoc, and the City of Marshfield (collectively, the Algoma Group) that fully resolves all disputes in the above-captioned proceeding.
2. With regard to the standard of review, section 6.7 of the Settlement states that it is subject to initial review and modification by the Commission under the just and reasonable standard. However, section 3.2(a) of the Settlement states that neither party may apply under the provisions of sections 205 and 206 of the Federal Power Act to amend the multiplier provisions set forth in section 3.2(a) and as contained in WPSC's W-2A Tariff, and any change by the Commission acting on its own is subject to the *Mobile-Sierra*¹ public interest standard of review.
3. On November 29, 2006, Commission Trial Staff filed comments in support of the Settlement. On November 30, 2006, the Presiding Administrative Law Judge (Presiding Judge) certified the Settlement to the Commission as an uncontested settlement, stating

¹ *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).

that the Settlement is subject to the just and reasonable standard of review. On December 11, 2006, the Algoma Group and WPSC filed certain clarifications; they clarify that paragraph 12 of the Presiding Judge's Certification and section 3.2(a) of the Settlement state that the "multiplier" provisions of WPSC's W-2A Tariff, as added by the Settlement, are subject to the *Mobile-Sierra* public interest standard.

4. On December 12, 2006, the Presiding Judge issued an errata amending the Certification. The errata states that Commission review of any future changes to the Settlement in this proceeding initiated by the parties, or by the Commission acting *sua sponte*, is subject to the just and reasonable standard of review, except for changes to the multiplier provisions of the Settlement noted in paragraph 12 of Presiding Judge's Certification, which are subject to the *Mobile-Sierra* public interest standard.

5. The Settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. Under the Settlement, the standard of review for any modifications to the multiplier provisions in section 3.2 of the Settlement, including by the Commission acting *sua sponte*, shall be the public interest standard under the *Mobile-Sierra* doctrine.² With the exception of the multiplier provisions, Commission review of any future changes to the Settlement initiated by the parties, or by the Commission acting *sua sponte*, is subject to the just and reasonable standard of review.

7. This letter order terminates Docket Nos. ER05-164-000 and ER05-164-002.

By direction of the Commission. Commissioner Kelly concurring with a separate statement attached.
Commissioner Wellinghoff dissenting in part with a separate statement attached.

Philis J. Posey,
Deputy Secretary.

² As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006). In this case, with respect to the multiplier provisions, we find that the public interest standard should apply.

UNITED STATES OF AMERICA
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Wisconsin Public Service Corporation

Docket Nos. ER05-164-000
ER05-164-002

(Issued April 30, 2007)

KELLY, Commissioner, *concurring*:

The settling parties request that any future modifications to the multiplier provisions in section 3.2 of the settlement, including by the Commission acting *sua sponte*, be subject to the *Mobile-Sierra* “public interest” standard of review. The letter order accepts this proposal. This uncontested settlement resolves rate issues related to bilateral contracts between the parties. These bilateral contracts do not appear to affect non-settling parties. Accordingly, this situation appears to fit the original mold within which the *Mobile-Sierra* doctrine was formed. Therefore, while I do not agree with the order’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 2), I concur with the order’s approval of this settlement agreement.

Suedeem G. Kelly

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Docket Nos. ER05-164-000
ER05-164-002

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WELLINGHOFF, Commissioner, dissenting in part:

The Commission states that under the instant settlement, the standard of review for any modifications to the Manitowoc demand multiplier provisions in section 3.2 of the settlement, including changes sought by the Commission acting *sua sponte*, shall be the “public interest” standard of review. The Commission then finds that it is appropriate for the “public interest” standard to apply with respect to those provisions.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the specified provisions of the settlement sought by a non-party or the Commission acting *sua sponte*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,² I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).