

Voltage to the Midwest Independent Transmission Operator, Inc. (Midwest ISO) from four specified generating resources. The subject 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 these proceedings.

3. The Settlement provides:

With respect to this Agreement, it is intended that the Parties be subject to 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). This Agreement is intended to subject the Commission, in acting on its own motion with respect to these proceedings or to WPPI Rate Schedules Nos. 1, 2, and 3 to the most restrictive standard of review allowed by applicable law.

As a general matter, parties may bind the Commission to a public interest standard.² Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound.³ In this case, we find that the public interest standard should apply for any modifications not agreed to by all the Settling Parties, including any modifications resulting from Commission action *sua sponte*, as provided in the Settlement.

4. Docket Nos. EL07-8-000, EL07-8-001, EL07-9-000, EL07-9-001, EL07-10-000 and EL07-10-001 are terminated.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

Kimberly D. Bose,
Secretary.

² *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993).

³ *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Wisconsin Public Power Inc.	Docket Nos. EL07-8-000 EL07-8-001
Wisconsin Public Power Inc.	EL07-9-000 EL07-9-001
Wisconsin Public Power Inc.	EL07-10-000 EL07-10-001

(Issued August 7, 2007)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement have requested that the Commission apply “the most restrictive standard of review allowed by applicable law” with respect to any future changes to the settlement agreement that may be sought by the Commission acting *sua sponte*. This order finds that the *Mobile-Sierra* “public interest” standard of review shall apply to any such modifications. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

Accordingly, I respectfully dissent in part from this order.

Sudeen G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

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Wisconsin Public Power Inc. Docket Nos. EL07-8-000
EL07-8-001

Wisconsin Public Power Inc. Docket Nos. EL07-9-000
EL07-9-001

Wisconsin Public Power Inc. Docket Nos. EL07-10-000
EL07-10-001

(Issued August 7, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement that may be sought by any of the parties. With regard to such changes sought by the Commission acting *sua sponte*, the parties have asked the Commission to apply “the most restrictive standard of review allowed by applicable law.” In response to the latter request, the Commission states that the “public interest” standard should apply to “any modifications not agreed to by all the Settling Parties, including any modifications resulting from Commission action *sua sponte* ...”

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 agree to apply the “public interest” standard to future changes to 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).