

122 FERC ¶ 61,109
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 6, 2008

In Reply Refer To:

Docket Nos. ER07-628-000
ER07-629-000
ER07-630-000

Erin M. Murphy, Esq.
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101 Constitution Avenue, NW
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Dear Ms. Murphy:

1. On November 2, 2007, an Offer of Settlement, Explanatory Statement and Revised Tariff Sheets in Docket Nos. ER07-628-000, ER07-629-000 and ER07-630-000 (Settlement) were filed by Entergy Services, Inc. as agent for Entergy Arkansas, Inc. (EAI). An Errata to the Settlement was filed on November 15, 2007. Commission Trial Staff (Staff) filed comments on November 21, 2007. No other comments were filed. On December 20, 2007, the Settlement Judge certified the Settlement to the Commission as uncontested.

2. The Settlement resolves all of the issues between the Settling Parties in the above referenced dockets concerning EAI's 2007 Wholesale Formula Rate update. The Settlement is fair and reasonable and in the public interest, and is hereby approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

3. The standard of review for any modifications to this Settlement after approval shall be the "public interest" standard under the *Mobile-Sierra* doctrine.¹ 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.

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).

1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the 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, we find that the public interest standard should apply for changes to the Settlement after approval.²

4. The tariff designations do not comply with Designation of Electric Rate Schedule Sheets, Order No. 614, *FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000* ¶ 31,096 (2000). Entergy Services, Inc. is required to file rate schedule sheets in conformance with Order No. 614 within 30 days of this order approving the Settlement.

5. EAI is directed to make refunds, with interest calculated pursuant to 18 C.F.R. § 35.19a, consistent with the Settlement, to any Party from which EAI has collected amounts in excess of the Settlement rates. Pursuant to Section II.13 of the Settlement, EAI shall submit a Compliance Refund Report to the Commission within 15 days of the date the refunds are made.

6. This order terminates Docket Nos. ER07-628-000, ER07-629-000, and ER07-630-000.

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

Kimberly D. Bose,
Secretary.

cc: All parties of record

² The public interest standard of review applies only to modifications to the subject Settlement, and does not extend to any future EAI Wholesale Rate Update filings, which shall be reviewed under the just and reasonable standard of the Federal Power Act.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, Inc.

Docket Nos. ER07-628-000
ER07-629-000
ER07-630-000

(Issued February 6, 2008)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any future changes to the settlement, whether proposed by a party, a non-party, or the Commission acting *sua sponte*. This settlement agreement resolves issues related to Entergy Arkansas, Inc.’s 2007 Wholesale Formula Rate update, in which parties agree on rates that will remain fixed until the next rate determination.

As I explained in *Transcontinental Gas Pipe Line Corporation*,¹ I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of such a provision. As I have previously noted,² this is particularly the case where, as here, the settlement agreement will impact a generally applicable tariff under which all customers take service, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

Suedeem G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

² San Diego Gas & Electric Co., 119 FERC ¶ 61,169 (2007).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Arkansas, Inc.	Docket No. ER07-628-000
Entergy Arkansas, Inc.	Docket No. ER07-629-000
Entergy Arkansas, Inc.	Docket No. ER07-630-000 (Consolidated)

(Issued February 6, 2008)

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 any proposals to modify the Settlement Agreement not agreed to by the parties.

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 settlement sought by a non-party or the Commission acting *sua sponte*.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).