

122 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Pacific Gas and Electric Company

Docket Nos. ER05-1190-000
ER05-1190-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 18, 2008)

1. On October 29, 2007, Pacific Gas and Electric Company (PG&E), and the City and County of San Francisco, California (CCSF) (collectively, Parties) filed a settlement agreement to resolve all issues in this proceeding, which concerns transmission and power sales arrangements between the Parties.
2. On November 19, 2007, Commission Trial Staff submitted comments in support of the settlement. No other comments were filed. On November 28, 2007, the settlement was certified to the Commission as uncontested.¹
3. On December 21, 2007, the Parties filed a joint motion for expedited consideration of the Agreement, or for a 60-day extension of the December 31, 2007 effective date of PG&E's proposed unexecuted Amended and Restated Interconnection Agreement (IA) and PG&E's proposed service agreement under its Wholesale Distribution Tariff (WDT). The settlement would supersede and resolve the unexecuted IA and WDT agreements by amending the original, unexecuted IA.
4. The settlement is fair and reasonable and 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. Extension of the original IA and WDT to February 29, 2008 is granted, to permit their resolution and withdrawal pursuant to the subject settlement.

¹ *Pacific Gas and Electric Co.*, 121 FERC ¶ 63,015 (2007).

5. The standard of review for any modifications to this settlement after approval shall be the “public interest” standard under the Mobile-Sierra doctrine.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 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.³

6. Refunds and adjustments shall be made pursuant to the settlement.

7. This order terminates Docket Nos. ER05-1190-000 and ER05-1191-001.⁴

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

Kimberly D. Bose,
Secretary.

cc: All Parties

² *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).

³ As to the standard of review for changes, modifications to, or termination of the Amended Interconnection Agreement (Amended IA), the specific provisions of the Amended IA are controlling, and the Commission shall retain commensurate review authority under the Federal Power Act (FPA) just and reasonable standard, for FPA section 205 and 206 matters as specified in the Amended IA.

⁴ Approval of the Settlement Agreement moots the request for rehearing filed in Docket No. ER05-1190-001.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Docket Nos. ER05-1190-000
ER05-1190-001

(Issued January 18, 2008)

KELLY, Commissioner, *concurring*:

The parties to this settlement 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 uncontested settlement resolves issues related to interconnection and service agreements entered into between Pacific Gas and Electric Company and the City and County of San Francisco, California. These agreements are bilateral contracts between the parties, similar to the contracts at issue in *Mobile*¹ and *Sierra*,² and they do not appear to affect non-settling parties. Therefore, while I do not agree with the order’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review, I concur with the order’s approval of this settlement agreement.

Suedeem G. Kelly

¹ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

² *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Docket Nos. ER05-1190-000
ER05-1190-001

(Issued January 18, 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 future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *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 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*. 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).