

UNITED STATES OF AMERICA 118 FERC ¶ 61,075
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 No. ER06-902-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued February 2, 2007)

1. On November 21, 2006, Pacific Gas and Electric Company (PG&E), San Francisco Bay Area Rapid Transit District (BART), and California Independent System Operator Corporation (CAISO) filed a settlement in the above referenced docket. The settlement describes modifications to the previously filed and accepted BART-PG&E Network Integration Transmission Service Agreement (NITS Agreement). On December 11, 2006, the Commission Trial Staff filed comments in support of the settlement. No other comments were received. On January 4, 2007, the settlement was certified to the Commission as uncontested.

2. The Commission finds the proposed settlement to be fair and reasonable and in the public interest. Accordingly, the Commission approves the proposed settlement. As agreed to by the parties, the applicable standard of review for any changes to the resolution of the specific issues treated in the settlement is the *Mobile-Sierra* public interest standard.¹ The settlement, however, preserves the rights of BART, PG&E or CAISO, or any other affected party or intervenors with standing to make a filing under sections 205 and 206 of the Federal Power Act to make any necessary changes in the

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). As a general matter, parties may bind the Commission to a public interest standard. *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.

transmission arrangements between BART and PG&E. The Commission's approval of this settlement does not constitute approval of or precedent regarding any principle or issue in this proceeding.

3. The rate schedule designations submitted as a part of the settlement are in compliance with Order No. 614² and are hereby accepted for filing as designated and made effective as specified in the settlement.

4. This order terminates Docket No. ER06-902-000.

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

Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

² See *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000).

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KELLY, Commissioner, *dissenting in part*:

The parties in this proceeding have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future changes to the settlement agreement that may be proposed by a party, a non-party or the Commission acting *sua sponte*. 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 must respectfully dissent in part from this order.

Suedeem G. Kelly

¹ *Transcontinental Gas Pipe Line Corp.*, 117 FERC ¶ 61,232 (2006).

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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 certain 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).