



Federal Energy Regulatory Commission
October 19, 2006
Open Commission Meeting
Statement of
Commissioner Marc Spitzer

Mobile-Sierra Doctrine Statement

"I thank Commissioners Wellinghoff and Kelly for their thoughtful statements regarding the Mobile Sierra doctrine. This is an opportunity for me to express my own views.

The competing interests to be balanced are certainty and sanctity of contracts versus a governmental obligation to ensure just and reasonable rates. I am sensitive to the interpretation of the Federal Power Act and the Natural Gas Act by the appellate courts as well as the specific facts of each case. In general terms, however, the reasonable expectations of parties to a contract should be respected.

In circumstances of stipulated settlements and bi-lateral executory contracts, a public interest standard is appropriate between the contracting parties, and appellate precedent informs us that the Commission should also be bound to that standard. However, that precedent also indicates the public interest standard, although clearly more rigorous than "just and reasonable", is not "practically insurmountable." In the alternative, in instances where there are generic concerns, such as when the agreement broadly implicates interests of non-parties, a just and reasonable standard for this Commission is appropriate.

I view the Mobile Sierra doctrine as an important tool to induce lower and less volatile energy prices. For example, federal and state regulators often advocate that market participants enter into long-term contracts as a means to reduce exposure to price fluctuations. However, we cannot expect parties to enter into such contracts if they believe the Commission will easily disrupt their arrangements. Parties entering into voluntary contracts, and those who finance such undertakings, have a reasonable expectation such agreements will not lightly be disturbed, by *post hoc* buyer's remorse or otherwise.

The fact that we apply the "public interest" standard, even to the Commission, does not mean that consumers are left unprotected. In fact, the Mobile Sierra cases themselves involved attempts by utilities to raise their rates in a manner that was inconsistent with the parties' contracts. The application of the public interest standard in those cases precluded those rate increases. Further, my own experience is evidence that the public interest standard may advance consumer interests. The Arizona Commission asserted the public interest standard in a FERC proceeding on a proposed modification to the so called "East of California contract" between shippers and El Paso Natural Gas. Although the FERC ultimately "surmounted" the public interest standard in that case, the point is that the public interest standard is not simply a tool for sellers to use to protect their contractual expectations.

In sum, I believe that, in appropriate cases contract certainty and sanctity brought about by the application of the "public interest standard" works to the benefit of consumers.

For these reasons, I support the standard of review enunciated in the Entergy ICT order."