



FEDERAL ENERGY REGULATORY COMMISSION

NEWS

January 15, 2009
Docket No. ER03-563-064

News Media Contact
Barbara A. Connors - 202.502.8680

FERC Addresses Standard of Review in Court Remand

The Federal Energy Regulatory Commission (FERC) today reversed an earlier decision and conditioned its approval of an ISO-New England settlement following a remand from the U.S. Court of Appeals for the District of Columbia. The issue centered on application of the *Mobile-Sierra* public interest standard of review included in the settlement agreement.

On review, the court upheld the Commission's approval of the settlement agreement implementing ISO-New England's Forward Capacity Market. However, the court disagreed that FERC can approve a settlement agreement that applies the "highly-deferential public interest" standard of review to future rate challenges brought by non-contracting third parties. The court found that when a non-contracting third party files a complaint against a settled rate or charge, FERC must adjudicate the challenge under the just and reasonable standard of review.

"This was a particularly difficult and protracted proceeding and FERC approved the settlement in 2006 that involved more than 100 parties and a voluminous record," FERC Chairman Joseph T. Kelliher said. "In light of the *Maine PUC v FERC*, we will approve the settlement and direct the settling parties to revise the standard of review consistent with the court's decision. Nonparties to this settlement and future settlements that seek modifications will have a high burden to meet even under the just and reasonable standard."

The settling parties have 30 days from the date of the order to submit revised language on the standard of review applicable to non-settling third parties.

(30)

R-09-2