

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Standard of Review for Proposed)
Changes to Market-Based Rate)
Contracts for Wholesale Sales of)
Electric Energy by Public Utilities)

Docket No. PL02-7-000

**MOTION TO INTERVENE OF THE
ELECTRICITY CONSUMERS RESOURCE COUNCIL**

Pursuant to Rule 214 of the Federal Energy Regulatory Commission’s (the “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), and the Commission’s August 8, 2002 Notice of Proposed Policy Statement, the Electricity Consumers Resource Council (“ELCON”) moves to intervene in the above-captioned docket.

The Commission proposes to adopt a policy statement that clarifies the standard of review that must be met to justify changes to market-based rate contracts for wholesale sales of electric energy by public utilities. In order to ensure contract certainty in the competitive wholesale power markets, the Commission proposes specific language that must be included in wholesale contracts in order to bind the parties and the Commission to a public interest standard of review. If the contracting parties do not adopt the language proposed by the Commission, the Commission will assume a just and reasonable standard of review.

Under the Mobile-Sierra doctrine, where private contracts set firm rates or establish a methodology for setting the rates of service, and deny either party the right to unilaterally change those rates, such contracts can be modified or abrogated by the Commission only if required by the public interest. See Texaco Inc. v. FERC, 148 F.3d 1091, 1095 (D.C. Cir.

1998). Rather than assuming a higher public interest standard of review for such contracts, the Commission intends to assume a just and reasonable standard of review unless otherwise stated by the parties. Standard of Review for Proposed Changes to Market-Based Rate Contracts for Wholesale Sales of Electric Energy by Public Utilities, 67 Fed. Reg. 51,516, 51,517 (Aug. 8, 2002) (to be codified at 18 C.F.R. pt. 2).

ELCON members are consumers of power purchased from entities with market-based rate authority, and therefore, have a direct interest in this proceeding. ELCON intends to file comments in this docket shortly.

NOTICES AND COMMUNICATIONS

Notices and communications should be addressed to:

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DESCRIPTION OF ELCON

ELCON is an association of industrial consumers of electricity organized to promote the development of coordinated and rational federal and state policies that will assure adequate, reliable and efficient electricity supply for all users at competitive rates. ELCON member companies represent virtually every segment of the manufacturing community. The

member companies of ELCON consume approximately five percent of all electricity in the United States.

CONCLUSION

For the foregoing reasons, ELCON's motion for intervention should be granted.

Respectfully submitted,

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