

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.

Southwest Power Pool, Inc.

Docket No. ER06-448-000
ER06-767-000
ER05-526-000
ER05-799-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 21, 2007)

1. On September 29, 2006, Southwest Power Pool, Inc. (SPP), Western Farmers Electric Cooperative (WFEC), and Oklahoma Municipal Power Authority (OMPA) filed a Joint Offer of Settlement (Settlement) in the above referenced dockets. On October 19, 2006, the Commission Trial Staff filed comments in support of the Settlement. No other comments were received. On November 7, 2006, the presiding judge certified the Settlement to the Commission as uncontested.

2. The Settlement resolves certain matters raised in Docket Nos. ER06-448-000 and ER06-767-000 relating to SPP's provision of Network Integration Transmission Service (NITS) to OMPA concerning OMPA's load located in WFEC's control area. The Settlement resolves all of the issues set for hearing in the proceedings in these dockets. The Settlement also disposes entirely of the proceedings in Docket Nos. ER05-526-000 and ER05-799-000.¹ However, the Settlement does not resolve certain issues raised by

¹ These two dockets are not consolidated with each other or with Docket Nos. ER06-448 and ER06-767, and WFEC is not a party to Docket Nos. ER05-526-000 or ER05-799-000. The proceedings in these two dockets address SPP's provision of NITS to OMPA for OMPA's load in the control areas of American Electric Power Company (American Electric) and Oklahoma Gas & Electric Company (Oklahoma Gas). All of the
(continued)

WFEC in its request for rehearing in Docket No. ER06-448-001 of the Commission's March 3, 2006 Order.

3. The Settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's acceptance of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. Section 8.2 of the Settlement states that, "Absent agreement of all Parties to a proposed change, the standard of review for changes to this Agreement proposed by a party, non-party, or FERC acting *sua sponte* shall be the 'public interest' standard of review.... Nothing in this Agreement shall affect the right of WFEC to unilaterally amend its Ancillary Services Tariff, the services offered thereunder, and the rates, terms and conditions of such services, on a prospective, not unduly discriminatory basis" [sic]

5. As a general matter, parties may bind the Commission to a public interest standard.² Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound.³ In this case, we find the public interest standard should apply. However, as indicated above, notwithstanding this otherwise applicable standard of review, WFEC may unilaterally make certain filings.

issues in those proceedings were resolved on an interim basis by a Commission-approved settlement in those proceedings. The only remaining matter in those proceedings is the finalization and execution of the Network Integration Transmission Service Agreement (NITSA) between SPP and OMPA; because SPP provides NITS to OMPA for its load in all three control areas (WFEC, AEP and OG&E) under a single NITSA, finalization and execution of the NITSA in turn depends on the outcome of the consolidated proceedings in Docket Nos. ER06-448 and ER06-767. SPP and OMPA believe that upon acceptance by the Commission of the settlement in these dockets (and thus acceptance of the executed NITSA), the proceedings in Docket Nos. ER05-526-000 and ER05-799-000 may be terminated. As a non-party to those dockets, WFEC takes no position on the effect of the Settlement on those dockets.

² *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993).

³ *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006).

6. WFEC's request for rehearing will be addressed by the Commission in a separate order.

7. This order terminates Docket Nos. ER06-448-000, ER06-767-000, ER05-526-000 and ER05-799-000.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

(S E A L)

Philis J. Posey,
Acting Secretary.

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KELLY, Commissioner, *dissenting in part*:

The parties to this settlement 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 by the Commission acting *sua sponte*, I do not believe the Commission should approve such a contract provision.²

Accordingly, I must respectfully dissent in part from this order.

Suede G. Kelly

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

² Additionally, I note that even under the policies outlined in *Standard of Review for Modifications to Jurisdictional Agreements, Notice of Proposed Rulemaking*, 113 FERC ¶ 61,317 at P 6 (2005) (Comm’r Kelly, dissenting), which provides for a very liberal interpretation of when the “public interest” standard may apply, the provisions of the settlement that seek to apply the *Mobile-Sierra* “public interest” standard to this OATT Network Integration Transmission Service Agreement would be rejected.

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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 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).