

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.

PJM Interconnection, L.L.C. and Allegheny Power Docket Nos. RT01-98-001
RT01-98-009

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 4, 2007)

1. On February 21, 2007, Allegheny Power filed an uncontested settlement agreement (Settlement) on behalf of itself and the executing parties (Parties).¹ This proceeding involves a dispute over the just and reasonable rate for PJM transmission service from the American Municipal Power-Ohio (AMP-Ohio) Richard Gorsuch Generation Station for the locked in period of April 1, 2002 through November 30, 2004,

¹ The Dayton Power & Light Company; Exelon Corporation, on behalf of Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc. and PECO Energy Company; PPL Electric Utilities Corporation; Pepco Holdings, Inc. on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Public Service Electric and Gas Company; Rockland Electric Company; UGI Utilities, Inc.; Baltimore Gas and Electric Company; Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (the FirstEnergy Companies); West Penn Power Company, Monongahela Power Company and the Potomac Edison Company (all doing business as Allegheny Power)(Allegheny Power); American Electric Power Corporation; Allegheny Electric Cooperative, Inc.; and American Municipal Power-Ohio, Inc. (AMP-Ohio).

which was set for hearing and settlement judge procedures.² The Parties state that the Settlement resolves all the issues set for hearing in this docket.³

2. On March 13, 2007, Commission Trial Staff and AMP-Ohio filed initial comments in support of the Settlement. On March 19, 2007, the Settlement Judge certified the Settlement to the Commission as uncontested.⁴ On March 23, 2007, Allegheny Power filed reply comments on behalf of the Parties to clarify that the correct amount of refunds due from certain load serving entities (LSEs) located in the Commonwealth Edison Company (ComEd) zone is \$16,885.00, which is the amount stated on Attachment 1 of the Settlement. No other comments were received.

3. AMP-Ohio is to receive a total of \$500,000 in refunds from the combination of the Parties and certain other LSEs within the ComEd zone. Attachment 1 to the Settlement is a spreadsheet showing the calculation of contributions making up the requisite \$500,000.

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

5. With respect to future modifications, section 4.4 of the Settlement provides:

The standard of review for modification to the charges established pursuant to this Agreement which are the subject of a written amendment executed by the Parties shall be the just and reasonable standard. The standard of review applicable to changes proposed by Parties, nonparties or by the Commission acting *sua sponte* that are not subject to a written amendment executed by the Parties shall be limited to the extent permissible by law in accordance with the *Mobile-Sierra* public interest standard applicable to fixed-rate agreements.

We interpret section 4.4 as imposing the *Mobile-Sierra* public interest standard of review on any proposed modification to the Settlement, including a modification proposed by the

² *PJM Interconnection, L.L.C. and Allegheny Power*, 116 FERC ¶ 61,253 (2006).

³ See Settlement at 3.

⁴ *PJM Interconnection, L.L.C. and Allegheny Power*, 118 FERC ¶ 63,029 (2007).

Commission, unless such modification is agreed to in a written amendment executed by all settling Parties.⁵

6. Refunds to AMP-Ohio shall be made by the appropriate parties in accordance with the terms of the Settlement. PJM, the party designated to remit the refunds, shall file with the Commission a refund report within thirty (30) days of the date on which refunds have been remitted. A new subdocket will be assigned to the refund report when it is submitted.

7. This order terminates Docket No. RT01-98-001 and the rehearing proceeding in Docket No. RT01-98-009.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

(S E A L) Commissioner Wellinghoff dissenting in part with a separate statement attached.

Kimberly D. Bose,
Secretary.

⁵ *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (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.

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KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the *Mobile-Sierra* “public interest” standard of review with respect to any future modifications not agreed to by all settling parties, including those by non-parties or the Commission acting sua sponte. With respect to such modifications, the order states that the *Mobile-Sierra* “public interest” standard of review should apply. This settlement resolves rate issues related to the locked-in period from April 1, 2002 to November 30, 2004. It is uncontested, does not affect non-settling parties, and does not contemplate ongoing performance under the settlement into the future, which would raise the issue of what standard the Commission should apply to review any possible future modifications sought by non-parties or the Commission. Indeed, in a sense, the standard of review for future modifications is irrelevant here. Therefore, while I do not agree with the order’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 5), I concur with the order’s approval of this settlement agreement.

Suedeen G. Kelly

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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.

Finally, it is worth noting that the standard of review is, in a sense, irrelevant here for the reasons set forth in Commissioner Kelly’s separate statement.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).