

125 FERC ¶ 61,096
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.

Southern California Edison Company

Docket No. ER07-1034-001

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued October 27, 2008)

1. On July 31, 2008, Southern California Edison Company filed an Offer of Partial Settlement (Settlement) on behalf of itself, Green Borders Geothermal, LLC, and the California Independent System Operator Corporation (CAISO) resolving all but one of the issues related to the Large Generator Interconnection Agreement that is the subject of this docket. The remaining issue of cost allocation for certain telecommunications facilities is set for hearing in Docket No. ER07-1034-002.
2. On August 20, 2008, the CAISO filed comments in support of the Settlement and Commission Trial Staff filed comments stating that it does not oppose the Settlement. On August 27, 2008, the Settlement Judge certified the Settlement to the Commission as uncontested.¹
3. The Settlement is fair, 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 issue in these proceedings. The tariff sheets submitted as part of the Settlement are properly designated, accepted for filing, and made effective as specified in the Settlement.²
4. The Settlement provides the standard of review applicable to non-parties and the Commission acting *sua sponte* to modify the Settlement will be the most stringent standard permissible under applicable law as provided in *Duke Energy Carolinas, LLC*.³

¹ *Southern California Edison Co.*, 124 FERC ¶ 63,014 (2008).

² *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

³ 123 FERC ¶ 61,201, at P 10 & n.10 (2008).

5. This order terminates Docket No. ER07-1034-001.

By the Commission. Commissioners Kelly and Wellinghoff concurring in part with a joint statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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KELLY and WELLINGHOFF, Commissioners, *concurring in part*:

The proposed standard of review in the instant settlement would have the Commission apply the “most stringent standard permissible under applicable law” to any changes proposed by non-parties or the Commission acting *sua sponte*.

The U.S. Supreme Court has held that whenever the Commission reviews certain types of contracts, the Federal Power Act (FPA) requires it to apply the presumption that the contract meets the “just and reasonable” requirement imposed by the FPA.¹ The contracts that are accorded this special application of the “just and reasonable” standard are those “freely negotiated wholesale-energy contracts” that were given a unique role in the FPA.² In contrast, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that the proper standard of review for a different type of agreement, with regard to changes proposed by non-contracting third parties, was the “‘just and reasonable’ standard in section 206 of the Federal Power Act.”³ The agreement at issue in *Maine PUC* was a multilateral settlement negotiated in a Commission adjudication of a utility’s proposal to revise its tariff substantially to enable it to establish and operate a locational installed electricity capacity market. The D.C. Circuit’s rationale in *Maine PUC* applies with at least equal force to changes to an agreement sought by the Commission acting *sua sponte*.⁴

¹ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2737 (2008) (*Morgan Stanley*).

² *Id.*

³ *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, 478, *petition for reh’g denied*, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*).

⁴ *See Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201 (2008) (Comm’rs Wellinghoff and Kelly dissenting in part).

Our review of the agreement in question here indicates that it more closely resembles the *Maine PUC* adjudicatory settlement than the *Morgan Stanley* wholesale-energy sales contracts, which, for example, were freely negotiated outside the regulatory process. Therefore, the “most stringent standard permissible under applicable law” as applied here to changes proposed by either non-parties or the Commission acting *sua sponte* means the “just and reasonable” standard of review. In those instances, the Commission retains the right to investigate the rates, terms, and conditions of the settlement under the “just and reasonable” standard of review set forth under FPA section 206.

For these reasons, we concur in part.

Suedeem G. Kelly

Jon Wellinghoff