

128 FERC ¶ 61,112  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

MATL LLP

Docket Nos. ER08-1106-000  
ER08-1106-001  
ER08-1106-002  
ER08-1106-003

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 31, 2009)

1. On June 3, 2009, MATL LLP (MATL) submitted an uncontested Settlement Agreement (Settlement) to resolve all outstanding issues between MATL and NaturEner USA, LLC (NaturEner) in this proceeding. MATL also filed a new Attachment L to its Open Access Transmission Tariff (OATT) containing revised creditworthiness provisions, to be effective on the date the Commission accepts the Settlement without modification or condition. MATL also filed pro forma revised transmission service agreements (TSR Agreements) with NaturEner, which MATL will replace with actual tariff sheets, upon approval of the Settlement by the Commission.
2. On June 13, 2008, MATL filed to amend Attachment L of its OATT in order to modify its creditworthiness provisions. On July 11, 2008, NaturEner filed a protest requesting that the Commission reject MATL's filing, or, in the alternative suspend the filing for the full five month statutory period
3. On July 23, 2008, MATL filed in Docket No. ER08-1106-001 a motion for leave to answer and answer. MATL requested that the Commission deny NaturEner's requests set forth in its July 11, 2008 protest. On July 25, 2008 the Commission issued a deficiency letter in this proceeding requesting further information that would support MATL's proposed creditworthiness requirements. On August 1, 2008, MATL filed in Docket No. ER08-1106-002 its response to the Commission's July 25, 2008 deficiency letter.
4. MATL and NaturEner then entered into negotiations, with the assistance from the Commission's Dispute Resolution Service, to resolve their dispute on mutually

acceptable terms. While negotiations were under way, the proceedings were held in abeyance until the subject Settlement was filed on June 3, 2009, which resolves all outstanding issues between MATL and NaturEner in this proceeding.

5. The Settlement incorporates a new revised Attachment L of MATL's OATT that modifies the creditworthiness provisions first proposed in the June 13, 2008 filing by reducing the security required by non-investment grade shippers from 15 years to a maximum of no more than 10 years.

6. The Settlement also provides that the credit arrangements specified in the TSR Agreements as amended by the Settlement shall be the sole security and credit support arrangements for which NaturEner is obligated under MATL's OATT. Article 3.3 of the Settlement provides that the Settlement may be modified only if in writing and signed by each of the parties, and that no modification will be effective absent the approval of the Commission, which shall apply the just and reasonable standard to modifications agreed to by the parties, who waive their rights to seek any unilateral changes. The standard of review applicable to the Commission acting on its own motion or to a third-party's request for review of any provision of the Settlement shall be the most stringent standard permissible under applicable law.

7. Notice of the Settlement was published in the *Federal Register*, 74 Fed. Reg. 27,784 (2008), with initial comments due June 15, 2009, and reply comments due June 18, 2009. No protests or adverse comments were filed.

8. The Commission finds the Settlement is fair, reasonable, and in the public interest, and is hereby approved. Approval of the Settlement also constitutes approval of the amended TSR Agreements, and the revised Attachment L to MATL's OATT, which shall become effective the date this order issues, superseding the tariff sheets filed June 13, 2008, which are now moot.

This order terminates Docket No. ER08-1106-000, *et al.*

By the Commission. Commissioner Kelly and Chairman Wellinghoff concurring in part with a separate joint statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

MATL LLP

Docket Nos. ER08-1106-000  
ER08-1106-001  
ER08-1106-002  
ER08-1106-003

(Issued July 31, 2009)

KELLY, Commissioner, and WELLINGHOFF, Chairman, *concurring in part*:

The proposed standard of review in the settlement would have the Commission apply the “most stringent standard permissible under applicable law” to any changes proposed by third-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.<sup>1</sup> The contracts that are accorded this special application of the “just and reasonable” standard are those “freely negotiated wholesale-energy contract[s]” that were given a unique role in the FPA.<sup>2</sup> 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.”<sup>3</sup> 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*.<sup>4</sup>

---

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

<sup>2</sup> *Id.*

<sup>3</sup> *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*).

<sup>4</sup> *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 standard of review that the Commission must apply to changes proposed by either third-parties or the Commission acting *sua sponte* is 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.<sup>5</sup>

For these reasons, we concur in part.

---

Suedeem G. Kelly

---

Jon Wellinghoff

---

<sup>5</sup> 16 U.S.C. § 824e (2006).