

130 FERC ¶ 61,006
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

National Grid Generation LLC

Docket Nos. ER09-628-000
ER09-628-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 5, 2010)

1. On October 23, 2009, National Grid Generation LLC (NGG) submitted a Stipulation and Settlement Agreement (Settlement) among NGG and the Long Island Power Authority (Authority) and its operating subsidiary, Long Island Lighting Company d/b/a LIPA (collectively, LIPA). On November 12, 2009, Commission Trial Staff filed comments in support of the Settlement. On November 24, 2009, the Settlement Judge certified the uncontested Settlement to the Commission.¹ The Settlement fully resolves all issues arising in Docket No. ER09-628. As discussed below, the Commission approves the uncontested Settlement.

I. Background

2. On January 30, 2009, pursuant to section 205 of the Federal Power Act (FPA),² NGG filed revised tariff sheets to amend its rates under the Power Supply Agreement (PSA) between it and LIPA.³ On February 20, 2009, LIPA filed a motion to intervene, protest, and motion for summary disposition. No other interventions were filed. On

¹ *National Grid Generation, LLC*, 129 FERC ¶ 63,016 (2009).

² 16 U.S.C § 824d (2006).

³ The PSA is on file with the Commission as National Grid Generation LLC FERC Electric Rate Schedule No. 1. The PSA sets forth the terms and conditions for the sale and delivery of electric capacity, energy conversion and ancillary services by NGG to LIPA.

March 31, 2009, the Commission issued an order accepting and suspending NGG's proposed tariff sheets, rejected LIPA's motion for summary disposition, and established hearing and Settlement Judge procedures.⁴ On April 30, 2009, LIPA filed a request for rehearing of the Commission's March 31 Order.

3. Following the Commission's March 31 Order, the parties and Commission Trial Staff engaged in substantive negotiations that resulted in the instant Settlement.

II. Summary of Settlement, Comments and Certification

4. Article I of the Settlement describes the settlement cost of service, including the annual revenue requirement for contract year twelve⁵ and the monthly capacity and variable energy charges that will be in effect from February 1, 2009 forward. It also provides that the annual revenue requirement for contract years thirteen through sixteen will be established by applying the annual revenue requirement and annual capacity charge for contract year twelve and the revised provisions of the PSA.

5. Article I of the Settlement also contains specific provisions addressing issues associated with: (i) pension and other post-employment benefits expenses; (ii) property taxes; (iii) the applicable returns underlying the settlement rates; (iv) income tax expenses associated with cost of removal; (v) incentive mechanisms that apply to heat rates, dependable maximum net capability, and equivalent forced outage rates demand; and (vi) depreciation expense. Exhibit 2 to the Settlement sets forth the revised tariff sheets to the PSA reflecting the rates and other contract provisions revised by the Settlement and the Settlement provides for a proposed effective date of February 1, 2009 for such tariff sheets.

6. Article II provides that, within thirty days after the Settlement becomes effective, NGG will make refunds to LIPA, with interest, of the amount collected since February 1, 2009 in excess of the Settlement rates. Article II also provides that NGG will be permitted to reduce these refunds by offsetting certain amounts that LIPA has agreed to pay to NGG under Article I of the Settlement.

7. Article III sets forth, among other things, the parties general reservations and the standard of review. Regarding the standard of review, Article III provides that the standard of review to be applied by the Commission in considering any change to the

⁴ *National Grid Generation, LLC*, 126 FERC ¶ 61,299 (2009) (March 31 Order).

⁵ Under the PSA, contract year twelve is the twelve months ending December 31, 2009.

Settlement, whether proposed by any party to the agreement, the Commission or any non-party, will be the most stringent standard permissible under applicable law.

8. Article IV provides that the Settlement shall become effective on the first day of the first month after a Commission order approving the Settlement becomes no longer subject to rehearing. Article IV also provides that within 30 days of the Settlement becoming effective, LIPA will withdraw its request for rehearing of the March 31 Order.

9. On November 12, 2009, Commission Trial Staff filed comments in support of the Settlement. On November 23, 2009, the Settlement Judge certified the uncontested Settlement to the Commission.

III. Request for Waivers

10. NGG and LIPA request such waivers of section 35.24 of the Commission's regulations as may be necessary to allow the Commission to approve the Settlement rates which reflect state and federal income tax expense associated with cost of removal determined on a "flow-through" basis. NGG states that since the inception of the PSA in 1998, NGG and its predecessors have accounted for and reflected in rates a level of income tax expense associated with cost of removal that is determined on a "flow-through" basis, including the last reset of the PSA rates in Docket No. ER04-112.⁶

11. NGG states that both the initial filed rates and the Settlement rates reflect the continuation of this rate treatment. Specifically, NGG states that the annual revenue requirement includes federal and state income tax expense that reflects a cost of removal deduction of \$5.7 million, which comprises removal cost spending of \$8.6 million net of an amortization add back of \$2.8 million reflected in depreciation expense. NGG states that the level of income tax reflected in the annual revenue requirement is significantly less than if the normalization of cost of removal-related tax expense were required. NGG states that, in view of the fact that the continuation of "flow-through" treatment of this expense will reduce rates to LIPA, continue a long-existing practice, and enable a settlement that provides for a full resolution of this proceeding to move forward, good cause exists to grant the requested waiver of Section 35.24 of the Commission's regulations.

IV. Commission Determination

12. The Commission finds that the Settlement is fair, reasonable, and in the public interest. The Settlement is therefore approved, to become effective as proposed. The

⁶ NGG Transmittal at 3 (citing *KeySpan Generation LLC*, 109 FERC ¶ 61,011 (2004)).

Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission also finds that good cause exists to grant the waivers requested herein. Finally, the tariff sheets submitted as part of the Settlement are properly designated, accepted for filing and made effective as specified in the Settlement.⁷

13. Given that the parties intend this Settlement to be a full and final settlement of the issues in this proceeding, this order terminates Docket Nos. ER09-628-000 and ER09-628-001.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁷ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).