

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southwest Power Pool, Inc.

Docket Nos. ER05-526-001
ER05-799-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 19, 2006)

1. On November 14, 2005, Southwest Power Pool, Inc. (SPP), Oklahoma Municipal Power Authority (OMPA), Public Service Company of Oklahoma (PSO) and Oklahoma Gas & Electric Company (OG&E) (collectively, the Settling Parties) filed an offer of settlement which included a settlement agreement and explanatory statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure. The settling parties indicated that the settlement agreement provides for the interim resolution of all issues between them. On December 5, 2005, FERC Trial Staff submitted comments in full support of the Settlement Agreement. No other comments were received. On December 13, 2005, the settlement judge certified the settlement agreement to the Commission as uncontested.¹

2. These proceedings arise from the filing of two service agreements for the provision of network integration transmission service (NITSA) under the SPP Open Access Transmission Tariff (OATT) with SPP as Transmission Provider and OMPA as Network Customer. On January 31, 2005, SPP filed in Docket No. ER05-526-000 a partially executed NITSA and a partially executed Network Operating Agreement (NOA) (collectively designated as SPP Service Agreement No. 1068) between SPP, OMPA, and AEP, the SPP transmission owner and pricing zone host in which OMPA's load under the agreements is located. SPP Service Agreement No. 1068 is for a 10-year term that commenced January 1, 2005. By order issued March 23, 2005, the Commission accepted and suspended the agreements, effective January 1, 2005, and set the proceedings for

¹ *Southwest Power Pool, Inc.*, 113 FERC ¶ 63, 034 (2005).

hearing and settlement judge procedures.² The primary issue in this proceeding is whether, based on an existing grandfathered agreement with AEP, OMPA is entitled to rollover 78 MW of firm transmission capacity, or only entitled to rollover 46 MW of firm transmission capacity in connection with a sale of power from Southwestern Power Administration into the AEP control area.

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

4. This Order terminates Docket Nos. ER05-526-001 and ER05-799-001.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

² *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,304 (2005).

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KELLY, Commissioner, *dissenting in part*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it accepts for filing an agreement with an Explanatory Statement that provides, in relevant part: “The standard for review for any future changes to this Settlement Agreement by the Settling Parties or the Commission shall be the public interest standard set forth in *United Gas Pipeline Co. v. Mobile Gas Service Corp...*”

Suedeem G. Kelly