

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

New Dominion Energy Cooperative	Docket Nos. ER05-309-003
Old Dominion Electric Cooperative	ER05-18-003
	ER05-360-000
	ES05-5-000
	ES05-7-000
Old Dominion Electric Cooperative	EC05-001-002
New Dominion Energy Cooperative	

ORDER APPROVING PARTIAL CONTESTED SETTLEMENT

(Issued April 7, 2006)

1. In this order we approve a contested settlement filed on October 13, 2005 by Old Dominion Electric Cooperative (Old Dominion) and New Dominion Energy Cooperative (New Dominion) (collectively, Applicants). The settlement agreement is between the Applicants, Bear Island Paper Co., L.P. (Bear Island), and the Virginia State Corporation Commission (VSCC) (collectively, Settling Parties). The settlement resolves all issues regarding the reorganization of Old Dominion/New Dominion in Docket Nos. ER05-18-002 and ER05-309-002. The settlement also resolves among the Settling Parties issues arising in related Docket Nos. EC05-1-000, ER05-20-000, ER05-360-000, ES05-5-000, and ES05-7-000.¹

2. Old Dominion, a public utility, is a not-for-profit electric generation and transmission cooperative, and provides its services to twelve member electric distribution cooperatives (Member Cooperatives), who collectively own Old Dominion. The Member Cooperatives purchase substantially all their power requirements from Old Dominion under full requirements wholesale power contracts (WPCs) and provide electric service to retail customers. New Dominion is a new entity that Old Dominion has created

¹ The proceedings in Docket Nos. ER05-18, ER05-309, EC05-1, ER05-20, ER05-360, ES05-5, and ES05-7 will be referred to herein collectively as the Reorganization Dockets.

pursuant to a proposed corporate reorganization. Under the reorganization, Old Dominion would assign its contractual rights to New Dominion, and the Member Cooperatives would become members of New Dominion. New Dominion would become the sole member of Old Dominion and would purchase all of Old Dominion's output and services to sell to retail customers. Additionally, Northern Virginia Electric Cooperative (NOVEC) is an intervenor in these proceedings, and a Member Cooperative of Old Dominion. Bear Island is customer of Old Dominion. These proceedings involve the Applicants' filings under sections 203 and 205 of the Federal Power Act (FPA), 16 U.S.C. §§ 824b and 824d (2000), to carry out the proposed reorganization.

3. In sum, the settlement resolves all disputed issues between the Applicants and Bear Island and VSCC, and provides for Bear Island and VSCC to remain parties to the ongoing proceedings. The settlement revises the rate formulas that will be implemented and remain in effect for all sales from New Dominion to its member cooperatives and for all sales from Old Dominion to New Dominion. Applicants and Bear Island agree to put into effect an agreement for demand side management services similar to the previous agreement between Bear Island and Old Dominion. Bear Island and VSCC agree to withdraw all filed protests, but may remain as intervenors.

4. On November 3, 2005, NOVEC, concerned the settlement was discriminatory, filed Initial Comments opposing the settlement, and Bear Island and Trial Staff timely filed Initial Comments in support of the settlement.² On November 14, 2005, Trial Staff, the Applicants, the VSCC, and Bear Island filed Reply Comments in response to NOVEC. The issues between the Applicants and NOVEC are still unresolved.

5. NOVEC protests the settlement, arguing that it contains changes to the Old Dominion and New Dominion rate formulas that will harm NOVEC because the settlement enables Bear Island to avoid certain cost responsibilities for which NOVEC would be largely responsible. NOVEC argues that the combination of the rate formula revisions and the proposed demand side management agreement provides substantial benefits to Bear Island and little or no apparent benefit to Old Dominion and its members, and will cause the members to bear the cost of the benefits being bestowed upon Bear Island. NOVEC asserts that the Presiding Judge should have concluded that NOVEC has established genuine issues of material fact and should not have certified the settlement to the Commission.

6. Bear Island responds, commenting that the only party not joining in or supporting the settlement is NOVEC. Bear Island states that the settlement will assure that, after Old Dominion's reorganization is complete, Bear Island's supplier, Rappahannock Electric Cooperative, will continue to obtain power under a cost-of-service based wholesale tariff.

² On November 9, 2005, NOVEC filed supplemental comments.

This is important to Bear Island because the wholesale rates are passed through in the retail rates that Bear Island pays, and those rates enable Bear Island to operate its facilities with effective demand side management. Bear Island contends that demand side management provides significant benefits not only to Bear Island in the form of lower electric bills, but also to Old Dominion and its Member Cooperatives by contributing to management of the system load to lower overall costs.

7. VSCC disputes NOVEC's allegation that allowing Bear Island to classify certain costs as demand-related discriminates against the Member Cooperatives. The VSCC argues that Virginia law confers upon retail customers, such as Bear Island, the right to obtain power supply from alternative suppliers or to self-supply. The Member Cooperatives do not have a similar right and are subject to full-requirements contracts with Old Dominion. Thus, the Member Cooperatives are not similarly situated to Bear Island. All the Member Cooperatives' customers, not just Bear Island, will receive the benefit of the cost classifications.

8. Trial Staff filed reply comments supporting the settlement and stating that the settlement does not discriminate against NOVEC, because unlike NOVEC, Bear Island is not a member cooperative, and therefore is not similarly situated to NOVEC. Staff concludes that NOVEC has failed to demonstrate how the settlement hurts NOVEC and raises no genuine issue of material fact.

9. On December 23, 2005, the presiding judge found that the comments raised no issues of material fact and certified the partial settlement to the Commission for approval. The presiding judge stated that while NOVEC filed extensive comments and raised a number of issues concerning the alleged adverse impact of the settlement terms upon the Member Cooperatives and the discriminatory favoritism shown to Bear Island, none of these criticisms raise genuine issues of material fact.

10. The Commission agrees with Trial Staff and the Presiding Judge, and under Rule 602 of the Commission's Rules of Practice and Procedure,³ finds that there is no genuine issue of material fact. Furthermore, with respect to NOVEC's allegations of discrimination, Bear Island and NOVEC are not in the same position with respect to their rights and duties. Bear Island is a customer of Old Dominion and NOVEC is a Member Cooperative which is a signatory to a full service wholesale power contract. Accordingly, the Applicants are under no obligation to treat such disparate entities alike.

³ 18 C.F.R. §385.602(h)(1)(i) (2005).

11. Consequently, we find the settlement to be fair and reasonable and in the public interest and hereby approve it. The rate schedule sheets submitted as part of the settlement comply with Order No. 614⁴ and are hereby accepted for filing to be effective as specified in the settlement.

12. Furthermore, although we are accepting the settlement as to the settling parties, since NOVEC is not one of the settling parties, it is not bound by the settlement. A hearing with respect to NOVEC's rate issues will still be held in this docket.

13. This order terminates, as to the Settling Parties, Docket Nos. ER05-309-003, ER05-18-003, ER05-360-000, ES05-5-000, ES05-7-000, and EC05-001-002.

The Commission orders:

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

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

(S E A L)

Magalie R. Salas,
Secretary.

⁴ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

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EC05-001-002

(Issued April 7, 2006)

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 approves a settlement with an Explanatory Statement that provides: “[i]t is the Applicants’ intent, with respect to the specific issues resolved in the Settlement, that the *Mobile-Sierra* standard apply; therefore, the Settlement cannot be changed unless a showing is made that the public interest requires it.”

	_____ Suede G. Kelly
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