

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Arkansas Electric Cooperative Corporation
v.
Entergy Arkansas, Inc.

Docket No. EL05-15-004

East Texas Electric Cooperative, Inc.
v.
Entergy Arkansas, Inc.

Docket No. EL04-134-001
and Docket No. EL04-134-003

ORDER APPROVING UNCONTESTED OFFER OF PARTIAL SETTLEMENT

(Issued November 7, 2005)

1. On August 24, 2005, Entergy Arkansas, Inc. (EAI) and East Texas Electric Cooperative, Inc. (ETEC), submitted an offer of settlement (Settlement) to dispose of all the outstanding issues between them in these proceedings.
2. By a complaint filed September 14, 2004, in Docket No. EL04-134-000, ETEC alleged that the announcement by EAI that it would charge co-owners of the Independence Steam Electric Station (ISES) the Entergy System's incremental cost plus 10 percent for substitute energy violated both the filed rate doctrine and the express terms of the operating agreement in effect between EAI and the co-owners of the ISES. In response to that complaint, the Commission issued an order on complaint, which established hearing and settlement judge procedures.¹
3. By a complaint filed October 25, 2004, in Docket No. EL05-15-000, Arkansas Electric Cooperative Corporation alleged that EAI had unilaterally changed the method of classifying and pricing energy (from four co-owned coal-fired units) under the Interchange Agreement in effect between those two parties. The complaint further alleged that those actions were anticompetitive and violated

¹ *Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.*, 109 FERC ¶ 61,207 (2004).

both the terms of the agreement and the filed rate doctrine. On December 22, 2004, in response to that complaint, the Commission issued an order which established hearing and settlement judge procedures, and consolidated Docket Nos. EL04-134-000 and EL05-15-000.²

3. On September 22, 2005, the Presiding Administrative Law Judge (ALJ) certified the settlement as uncontested.³ The ALJ states that the settlement involves limited issues outstanding between only two parties,⁴ and that other participants are not parties to the offer and their interests are not affected by it.⁵

The Commission orders:

(A) The subject settlement is in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

(B) Within 30 days from the date of this order, any amount collected in excess of the settlement rates must be refunded with interest computed under section 35.19a of the Commission's regulations, 18 CFR 35.19a (2005). Within 15 days after making such refunds, EAI must file with this Commission a compliance report showing monthly billing determinants; revenue receipt dates; revenues under the prior, present, and settlement rates; the monthly revenue refund; and the monthly interest computed, together with a summary of such information for the total refund period. EAI must furnish copies of the report to all participants of record.

² *East Texas Electric Cooperative v. Entergy Arkansas, Inc.*, 109 FERC ¶ 61,327 (2004).

³ *Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc., East Texas Electric Cooperative, Inc. v. Entergy Arkansas, Inc.*, 112 FERC ¶ 63,031 (2005).

⁴ Certification at 5.

⁵ *Id.* at 1, note 1.

(C) This order terminates Docket Nos. EL05-15-004, EL04-134-001, and EL04-134-003 as to the settling parties.

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

(S E A L)

Magalie R. Salas,
Secretary.

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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: “Subject to Section 13 of the Settlement Agreement, the *Mobile-Sierra* public interest standard of review applies to Commission review of this Settlement Agreement.”

Suedeen G. Kelly