

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Virginia Electric and Power Company

Docket Nos. ER06-554-000
ER06-554-001

ORDER CONDITIONALLY APPROVING UNCONTESTED SETTLEMENT

(Issued April 3, 2007)

1. On August 11, 2006, Virginia Electric and Power Company (Dominion Virginia Power) filed a Settlement Agreement between Dominion Virginia Power, Old Dominion Electric Cooperative (ODEC) and North Carolina Electric Membership Corporation (NCEMC) (collectively, the Settling Parties) resolving all disputes in the captioned proceeding related to Dominion Virginia Power's filing revising the revenue requirement for its provision of Reactive Supply and Voltage Control From Generation Sources Service (Reactive Power) under the PJM Interconnection, L.L.C. (PJM) open access transmission tariff (OATT), Schedule 2. The Settling Parties are all of the parties that raised substantive issues in this proceeding. On August 31, 2006, Commission Trial Staff (Staff) submitted comments in support of the Settlement Agreement. No other comments were received. On September 6, 2006, the Settlement Judge certified the Settlement Agreement to the Commission as uncontested.¹

2. With respect to future changes to the Settlement itself, section 2.4 of the Settlement Agreement provides:

The standard of review for any modifications to this Settlement set forth in a written amendment executed by the Settling Parties shall be the just and reasonable standard. The standard of review for any modifications to this Settlement requested by (i) a Party other than those set forth in a written amendment executed by the Settling Parties, (ii) a non-party, or (iii) the

¹ *Virginia Electric and Power Co.*, 116 FERC ¶ 63,049 (2006).

Commission, shall be the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

3. Furthermore, section 2.5 of the Settlement Agreement provides:

Notwithstanding Section 2.4, Dominion Virginia Power and ODEC retain their rights to file revisions to their Reactive Power revenue requirements pursuant to the just and reasonable standard under Section 205 of the Federal Power Act, and the Parties reserve their rights to protest such revisions and otherwise to challenge the justness and reasonableness of the Reactive Power revenue requirements of Dominion Virginia Power and ODEC pursuant to Section 206 of the Federal Power Act.

4. We accept the provision at section 2.4 that imposes the *Mobile-Sierra* public interest standard of review² on any proposed modification to the Settlement Agreement, unless such modification is agreed to in a written amendment executed by all Settling Parties. A modification that is agreed to in a written amendment by all Settling Parties would be subject to the Commission’s review under the just and reasonable standard of section 205. Such a modification is consistent with the notion of settlement, whereby the Settling Parties should be permitted to revise their agreement where there is unanimous consent and such agreement is found to be fair and reasonable and in the public interest.

5. With respect to revisions to the Reactive Power revenue requirements established pursuant to the Settlement Agreement, we approve the provision at section 2.5 of the Settlement Agreement as modified below. As a general matter, for unilateral modifications, the Settling Parties may not impose a higher burden on the Commission while leaving the signatory parties subject to the “just and reasonable” standard.³ Accordingly, approval of the Settlement Agreement is subject to the condition that,

² See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

³ See *Southern Company Services*, 67 FERC ¶ 61,080 (1994) (citing *Papago Tribal Utility Authority v. FERC*, 723 F.2d 950 (D.C. Cir. 1983) (concluding that parties may not seek to bind themselves to the “just and reasonable” standard for future contract changes while at the same time binding the Commission to the “public interest” standard for such future changes)).

within 15 days of the issuance of this order, the parties file a revised Settlement Agreement adopting the same standard of review for future modifications to the Reactive Power revenue requirements (whether “just and reasonable” or “public interest”) for the Commission as for the Settling Parties.

6. The Settlement Agreement appears to be fair and reasonable and in the public interest and is hereby approved, subject to the condition of this order. The Commission’s conditional approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

7. The rate schedule sheets submitted as part of the Settlement Agreement are in compliance with Order 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000). The rate schedules are hereby accepted for filing and made effective as specified in the Settlement Agreement.

8. Within thirty (30) days from the date of this order, any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission’s regulations, 18 C.F.R. § 35.19a (2006). Within fifteen (15) days after making such refunds, a refund report shall be filed with the Commission.

9. This order terminates Docket Nos. ER06-554-000 and ER06-554-001.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

(S E A L)

Philis J. Posey,
Acting Secretary.

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KELLY, Commissioner, *dissenting in part*:

The parties to the settlement request that the Commission apply the *Mobile-Sierra* “public interest” standard of review with respect to any future changes to the Settlement Agreement itself, whether proposed by a party, a non-party, or the Commission acting *sua sponte*. This order accepts that settlement provision. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and a reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

In addition, the parties request that they retain their rights to file revisions to the Reactive Power revenue requirement established in the settlement under the “just and reasonable” standard pursuant to Federal Power Act sections 205 and 206. The order requires the parties to revise the Settlement Agreement to adopt the same standard of review for future modifications (whether “just and reasonable” or “public interest”) for the Commission as for the settling parties. To the extent the parties revise the Settlement Agreement to request that the “public interest” standard of review apply to future changes that may be proposed by a non-party or the Commission acting *sua sponte*, as noted above, I do not believe the Commission should approve such a provision unless there is an affirmative showing by the parties and a reasoned analysis by the Commission.

Accordingly, I respectfully dissent in part from this order.

Suede G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers certain future changes to the instant settlement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,¹ I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).