

121 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Ontelaunee Power Operating Company, LLC

Docket Nos. EL07-15-000
EL07-15-001

v.

Metropolitan Edison Company

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued October 4, 2007)

1. On August 17, 2007, Ontelaunee Power Operating Company, LLC (Ontelaunee) and Metropolitan Edison Company (MetEd, and together with Ontelaunee, the Settling Parties) filed a Joint Offer of Settlement (Settlement). On August 27, 2007, the Chief Administrative Law Judge granted a motion filed by the Settling Parties for interim rate relief. Also on August 27, 2007, Commission Trial Staff submitted comments in support of the Settlement. No other comments were received. On August 28, 2007, the Settlement Judge certified the Settlement to the Commission as uncontested.¹

2. The Settling Parties state that the Settlement is intended to resolve all issues in these proceedings, which concern a complaint filed by Ontelaunee against MetEd which sought, *inter alia*, modification of the charges for interconnection service under an Interconnection Agreement between MetEd and Ontelaunee's predecessor-in-interest, Calpine Construction Finance Company, L.P. (Interconnection Agreement).² The Settlement provides, among other things, that Ontelaunee will make reduced monthly payments of \$89,000 to MetEd for the remainder of the first 25 years following the In-

¹ *Ontelaunee Power Operating Co., LLC*, 120 FERC ¶ 63,012 (2007).

² *Ontelaunee Power Operating Co., LLC*, 119 FERC ¶ 61,181 (2007).

Service Date³ in lieu of current monthly charges of \$113,685.09 under the Interconnection Agreement.

3. The Commission finds that the proposed Settlement is fair and reasonable and 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.

4. Further, the Settlement provides:

Once this Settlement is approved, the Parties shall waive their rights to challenge the Settlement or the Amendatory Agreement under section 205 or 206 of the Federal Power Act, 16 U.S.C. §§ 824d, 824e (2000) (as amended by Pub. L. No. 109-58, 119 Stat. 594 (2005)). Nothing herein shall be construed as preventing the Commission from acting on its own motion with respect to the proceeding in Docket Nos. EL07-15-000, *et al.*, the Settlement, or the Amendatory Agreement. However, the standard of review applicable to any such Commission review shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956), and *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).⁴

5. As a general matter, parties may bind the Commission to a public interest standard.⁵ Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound.⁶ In this case, we find that the public interest standard should apply for any modification resulting from the Commission acting *sua sponte*, as provided in the Settlement.

³ In-Service Date is defined as, "[t]he date upon which the construction of the Company Interconnection Facilities is complete, successfully tested and ready for service, as referenced in Appendix E, Attachment II." Interconnection Agreement, § 1.1(x).

⁴ Settlement at 6.

⁵ *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993).

⁶ *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006).

6. Further, the Commission's review of the service agreements included in the Settlement finds that they do not comply with Order No. 614,⁷ which mandates that utilities prospectively include proposed designations for all rate schedule sheets filed with the Commission. Section 35.9(a) of the Commission's regulations⁸ requires that, if a service agreement is revised or modified, the utility must file a complete revised service agreement with a new designation comporting with Commission guidelines. MetEd is directed to file rate schedule sheets in conformance with Order No. 614 and section 35.9(a) of the Commission's regulations within 30 days of the date of this order.

7. Docket Nos. EL07-15-000 and EL07-15-001 are terminated.

By the Commission. Commissioner Kelly concurring with a
separate statement attached.

(S E A L) Commissioner Wellinghoff dissenting in part with a
separate statement attached.

Kimberly D. Bose,
Secretary.

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

⁸ 18 C.F.R. § 35.9(a) (2007).

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KELLY, Commissioner, *concurring*:

The settling parties request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any future changes to the settlement, whether proposed by a party, a non-party or the Commission acting *sua sponte*. This uncontested settlement resolves issues related to the charges for generator interconnection service under an Interconnection Agreement between the parties. The Interconnection Agreement is a bilateral contract similar to the contracts at issue in *Mobile*¹ and *Sierra*² and, as recognized in the parties’ Explanatory Statement, it does not affect non-settling parties. Therefore, while I do not agree with the order’s statements as to the applicability of the “public interest” standard of review, I concur with the order’s approval of the settlement.

Suedeen G. Kelly

¹ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*).

² *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case waive their rights to challenge the instant settlement if it is approved by the Commission. The parties also have asked the Commission to apply the “public interest” standard of review when it considers future changes to the settlement that may be sought by a non-party or the Commission acting *sua sponte*.¹

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,² 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*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,³ I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ In his certification of this settlement, the Settlement Judge discussed the parties’ intent as to the standard of review applicable to future changes to the settlement sought by a non-party. *Ontelaunee Power Operating Co.*, 120 FERC ¶ 63,012 at P 34 (2007).

² 117 FERC ¶ 61,055 (2006).

³ 117 FERC ¶ 61,149 (2006).