

125 FERC ¶ 61,012
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 3, 2008

In Reply Refer To:
Southern California Edison Company
Docket No. ER08-567-001

Southern California Edison Company
Attn: James Cuillier, Director of FERC Rates and Regulation
Rebecca Austin Furman, Esquire
P.O. Box 800
2244 Walnut Grove Avenue
Rosemead, California 91770

Reference: Settlement Agreement and Termination of the
1975 Fringe Agreement

Dear Mr. Cuillier and Ms. Furman:

1. On August 4, 2008, Southern California Edison Company (SoCal Edison) filed a Settlement Agreement between itself and the City of Anaheim, California (City of Anaheim), and, pursuant to 18 C.F.R. § 35.15 (2008) of the Commission's regulations, a Notice of Cancellation of the 1975 Fringe Agreement (Notice of Cancellation).¹ SoCal Edison states that the Settlement Agreement is being filed in response to the Commission's April 10, 2008 letter order,² which required SoCal Edison to file the Settlement Agreement in a separate proceeding for approval.
2. SoCal Edison states that the Settlement Agreement resolves amounts owed to SoCal Edison by City of Anaheim for service under the 1975 Fringe

¹ SoCal Edison states that this Notice of Cancellation cancels Rate Schedule FERC No. 297.

² This letter order was issued in Docket No. ER08-567-000.

Agreement, and breaks the settled amounts into three time periods.³ Further, SoCal Edison asserts that the New Fringe Agreement that was accepted by the Commission on April 10, 2008⁴ replaces the 1975 Fringe Agreement and took effect on January 1, 2006. Therefore, SoCal Edison requests waiver of the Commission's prior notice requirements in order to make the Notice of Cancellation effective December 31, 2005.

3. Notice of SoCal Edison's filing was published in the *Federal Register*, 73 Fed. Reg. 49,178 (Aug. 20, 2008), with interventions and protests due on or before August 25, 2008. City of Anaheim filed a timely motion to intervene. No other comments were received. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

4. The Commission conditionally approves the Settlement Agreement, finding it to be fair and reasonable and in the public interest. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

5. Under the Settlement Agreement, the standard of review applicable to the Settling Parties, non-parties and the Commission acting *sua sponte* for any modifications to this Settlement after approval is the public interest standard under the *Mobile-Sierra* doctrine. In light of *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), *reh'g pending*, the Commission may not accept the standard of review as currently written. As such, the Settlement Agreement is approved conditioned on the settling parties revising the standard of review applicable to non-settling third parties. An acceptable substitute provision applicable to non-settling third parties would be the "most stringent standard permissible under applicable law." Accordingly, the Settling Parties must file a

³ SoCal Edison states that the Settlement Agreement provides for the City of Anaheim to pay SoCal Edison (1) \$775,000.00 for net energy provided by SoCal Edison to the City of Anaheim for borderline service from July 1987 through December 2003 (Period 1), (2) \$128,179.00 for net energy provided by SoCal Edison to the City of Anaheim for borderline service from January 1, 2004 through December 31, 2004 (Period 2), and (3) \$142,898.00 for net energy provided by SoCal Edison to the City of Anaheim for borderline service from January 1, 2005 through December 31, 2005 (Period 3).

⁴ The new Master Fringe Service Agreement was filed in Docket No. ER08-567-000, and was designated by SoCal Edison as Rate Schedule FERC No. 476.

revised standard of review provision consistent with this precedent within 30 days of the date of this order.

6. The Commission also accepts the Notice of Cancellation for filing and grants waiver to permit it to be effective December 31, 2005, as requested. As noted above, the Commission has already accepted the New Fringe Agreement to be effective January 1, 2006.

By Direction of the Commission. Commissioners Wellinghoff and Kelly dissenting in part with a separate joint statement attached.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket No. ER08-567-001

(Issued October 3, 2008)

WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The instant settlement states that the “public interest” standard of review will apply to any modification to the settlement not agreed to by all parties whether proposed by a party, non-party, or the Commission acting *sua sponte*.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit’s (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the standard of review set forth in the instant settlement. Therefore, the majority approves the settlement conditioned on the settling parties revising the standard of review applicable to non-settling third parties. The majority also states that language applying the “most stringent standard permissible under applicable law” to non-settling third parties would be “[a]n acceptable substitute provision.”

We continue to disagree with the majority’s characterization of the D.C. Circuit’s holding in *Maine PUC* as to the applicability of the “public interest” standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC*² and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Jon Wellingshoff
Commissioner

Suedeen G. Kelly
Commissioner

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).