

127 FERC ¶ 61,211
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 2, 2009

In Reply Refer To:
Southern California Edison Company
Docket No. ER08-1231-000

Southern California Edison Company
Attn: Rebecca Furman, Esq.
2244 Walnut Grove Avenue
P.O. Box 800
Rosemead, CA 91770

Dear Ms. Furman:

1. On March 16, 2009, you filed a Settlement Agreement, including an Amended Interconnection Facilities Agreement (IFA) between the City of Riverside, California and Southern California Edison Company (jointly, Settlement), in the above-referenced docket, on behalf of Southern California Edison Company and the City of Riverside, California. On April 15, 2009, you filed an amendment to the Settlement correcting paragraph 9.4 of the IFA. Commission Trial Staff filed comments supporting the Settlement on April 2, 2009. No further comments were filed. On April 21, 2009, the Settlement was certified to the Commission as uncontested.¹

2. The Settlement resolves all issues set for hearing in the Commission's September 4, 2008 Order Accepting and Suspending Proposed Interconnection Facilities Agreement and Establishing Hearing and Settlement Judge Procedures.² The 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 involved in this proceeding.

¹ *Southern California Edison Co.*, 127 FERC ¶ 63,005 (2009).

² *Southern California Edison Co.*, 124 FERC ¶ 61,222 (2008).

3. Paragraph 6 of the Settlement provides that no party may unilaterally request revisions to the Settlement Agreement absent consent of the other parties, such consent not to be unreasonably withheld. The standard of review for non-parties and the Commission acting *sua sponte* to modify the Settlement Agreement will be the most stringent standard permissible under applicable law.

4. The rate schedule submitted as part of the Settlement is properly designated, is accepted for filing, and is made effective, as set forth in the Settlement. See *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000).

5. This letter terminates Docket No. ER08-1231-000.

By direction of the Commission. Commissioner Kelly and Chairman Wellinghoff concurring in part with a separate joint statement attached.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket No. ER08-1231-000

(Issued June 2, 2009)

KELLY, Commissioner, and WELLINGHOFF, Chairman, *concurring in part*:

The proposed standard of review in the settlement would have the Commission apply the “most stringent standard permissible under applicable law” to any changes proposed by non-parties or the Commission acting *sua sponte*.

The U.S. Supreme Court has held that whenever the Commission reviews certain types of contracts, the Federal Power Act (FPA) requires it to apply the presumption that the contract meets the “just and reasonable” requirement imposed by the FPA.¹ The contracts that are accorded this special application of the “just and reasonable” standard are those “freely negotiated wholesale-energy contract[s]” that were given a unique role in the FPA.² In contrast, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) determined that the proper standard of review for a different type of agreement, with regard to changes proposed by non-contracting third parties, was the “‘just and reasonable’ standard in section 206 of the Federal Power Act.”³ The agreement at issue in *Maine PUC* was a multilateral settlement negotiated in a Commission adjudication of a utility’s proposal to revise its tariff substantially to enable it to establish and operate a locational installed electricity capacity market. The D.C. Circuit’s rationale in *Maine PUC* applies with at least equal force to changes to an agreement sought by the Commission acting *sua sponte*.⁴

Our review of the agreement in question here indicates that it more closely resembles the *Maine PUC* adjudicatory settlement than the *Morgan Stanley* wholesale-energy sales contracts, which, for example, were freely negotiated

¹ *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2737 (2008) (*Morgan Stanley*).

² *Id.*

³ *Maine Public Utilities Commission v. FERC*, 520 F.3d 464, 478, *petition for reh’g denied*, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*).

⁴ *See Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201 (2008) (Comm’rs Wellinghoff and Kelly dissenting in part).

outside the regulatory process. Therefore, the “most stringent standard permissible under applicable law” as applied here to changes proposed by either non-parties or the Commission acting *sua sponte* means the “just and reasonable” standard of review. In those instances, the Commission retains the right to investigate the rates, terms, and conditions of the settlement under the “just and reasonable” standard of review set forth under FPA section 206.⁵

For these reasons, we concur in part.

Suedeem G. Kelly

Jon Wellinghoff

⁵ 16 U.S.C. § 824e (2006).