

134 FERC ¶ 61,162
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Pinnacle West Capital Corp.

Docket Nos. TX02-1-002
TX02-1-003

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 3, 2011)

1. In this order, the Commission approves an uncontested Settlement Agreement (Settlement) between Electrical District No. 3 of the County of Pinal, Arizona (ED3) and Arizona Public Service Company (APS) (collectively, the Parties), filed by ED3 on January 18, 2011. The Settlement resolves all issues in the above-captioned proceedings relating to the transmission rate APS will pay ED3 for service provided over certain ED3 facilities.

I. Background

2. ED3 provides transmission service to APS pursuant to Commission orders¹ under section 211 of the FPA.² In the 2002 Final Order, the Commission noted that ED3 and APS were able to reach agreement on the rates, terms, and conditions for providing service, and accepted a transmission service agreement between the Parties which specified that ED3 would provide transmission service to APS at a stated rate of 15 mills per kWh.³

3. On July 15, 2008, ED3 filed an application with the Commission asserting that the stated rate of 15 mills per kWh no longer recovers ED3's cost of service and requesting a change from the stated rate to a formula rate.

¹ *Pinnacle West Capital Corp.*, 98 FERC ¶ 61,039 (2002 Proposed Order), *final order*, 100 FERC ¶ 61,146 (2002) (2002 Final Order).

² 16 U.S.C. § 824j (2006).

³ 2002 Final Order, 100 FERC ¶ 61,146 at P 9-10.

4. In an order issued May 17, 2010,⁴ the Commission accepted, with modification, ED3's proposed formula rate.

II. Procedural Matters

5. On January 18, 2011, ED3 submitted the Settlement. ED3 asserts that the Settlement is the result of negotiations among the parties and represents a balancing of competing interests through compromises made in a good faith effort to resolve all issues in dispute between the Parties. Pursuant to ED3's request, the Commission issued a notice shortening the comment period up to and including January 28, 2011 for initial comments and February 2, 2011 for reply comments.⁵ No comments were filed.

III. The Terms of the Settlement

6. The Settlement amends Exhibit D to the Parties' transmission service agreement from a stated rate of 15 mills per kWh for transmission service to a two-component formula, based on ED3's costs of: (1) transmission facilities rated 69 kV or above; and (2) overhead or underground secondary distribution facilities used to serve APS customers. The Settlement establishes that, with respect to service provided on and after August 13, 2008, ED3 will use the two-component formula to determine its annual revenue requirements for the transmission service it provides to APS.⁶

7. Additionally, the Settlement resolves the issue of ED3's refund obligation to APS from the date of its implementation of its proposed formula-based transmission rate (July 16, 2008) through the date of its implementation of the two-component formula rate, as set forth in the Settlement, and provides for the payment of refunds with interest.⁷

8. The Settlement establishes the protocols under which ED3 will update the formula in future years, how ED3 will address preliminary challenges or formal challenges, and explains how such challenges will be resolved.⁸

⁴ *Pinnacle West Capital Corp.*, 131 FERC ¶ 61,143 (2010) (May 17, 2010 Order).

⁵ January 25, 2011 Notice Shortening Comment Period in Docket Nos. TX02-1-002 and TX02-1-003.

⁶ Settlement Section 1.

⁷ Settlement Section 5.

⁸ Settlement Section 3.

9. Section 8 of the Settlement provides that the standard of review for any modifications that are not agreed to by the parties, including any modifications resulting from the Commission acting *sua sponte* and for proposed modifications by non-parties to the Settlement, will be the standard set forth in section 212(a) of the FPA.⁹

IV. Commission Determination

10. The Settlement appears to be 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.

11. Given that the Parties intend this Settlement to be a full and final settlement of the issues in this proceeding, this order terminates Docket Nos. TX02-1-002 and TX02-1-003.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁹ 16 U.S.C. § 824k(a) (2006).