

opposes the Settling Parties' request¹ in the Settlement Agreement that the initial decision² in this proceeding be vacated. The NYISO filed a response arguing that the initial decision should be vacated because it includes statements that the NYISO was unable to reply to at hearing and that the NYISO could only address in its brief on exceptions. It notes that all participants but Staff support the Settlement.

Discussion

4. On July 26, 2004, the Settlement Judge issued an order certifying the two settlements at issue here to the Commission. Regarding the vacatur issue now before the Commission, the Settlement Judge concluded that Commission policy favors granting the request to vacate the initial decision, but did not provide any further analysis beyond her conclusion. We disagree. In reaching a decision, the Commission expends valuable time and resources by conducting hearings, compiling evidentiary records, and engaging in extensive deliberations. It does not serve the public interest to vacate such decisions simply because the parties have settled.³ In addition, an initial decision pending before the Commission on exceptions is not a final Commission decision, and as such, does not create binding precedent. Moreover, the issues addressed in the briefs on exceptions will become moot once the proposed settlement is approved. Contrary to the Settling Parties' claim, it is not sufficient that all participants except Staff support vacating the initial decision, even if the initial decision causes one of the parties discomfort. Accordingly, the Settling Parties have failed to carry their burden to demonstrate that vacatur is appropriate in this instance, and the request for vacatur is denied.

5. The Settlement Agreement is in the public interest and is approved, however, the request for vacatur of the initial decision is denied.

6. The Financial Settlement is in the public interest and is hereby approved. The Commission's approval of both settlements does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

¹ Settlement Agreement at p. 20.

² KeySpan Energy Development Corporation *et al.*, v. New York Independent System Operator, Inc., 103 FERC ¶ 63,016 (2003).

³ See Panhandle Eastern Pipe Line Company, 83 FERC ¶ 61,008 at 61,030 (1998).

The Commission orders:

(A) The Commission hereby accepts the settlements, as modified in the body of this order.

(B) The Commission denies the request in the Settlement Agreement to vacate the initial decision

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.