

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Arkansas Electric Cooperative Corporation

v.

Entergy Arkansas, Inc.

Docket No. EL05-15-005

East Texas Electric Cooperative, Inc.

v.

Entergy Arkansas, Inc.

Docket No. EL04-134-000
and Docket No. EL04-134-001

ORDER APPROVING UNCONTESTED OFFER OF PARTIAL SETTLEMENT

(Issued November 30, 2005)

1. On August 25, 2005, Arkansas Cities¹ and Entergy Arkansas, Inc. (EAI) submitted an offer of settlement, proposing to resolve all outstanding issues between the enumerated parties the above referenced proceeding.
2. By a complaint filed September 14, 2004, in Docket No. EL04-134-000, East Texas Electric Cooperative Inc. (ETEC) alleged that the announcement by EAI that it would charge co-owners of the Independence Steam Electric Station (ISES) the Entergy System's incremental cost plus 10 percent for substitute energy violated both the filed rate doctrine and the express terms of the operating agreement in effect between EAI and the co-owners of the ISES. In response to that complaint, the Commission issued an order on complaint, which established hearing and settlement judge procedures.²

¹ Conway Corporation (Conway), West Memphis Utilities Commission (West Memphis), and the City of Osceola, Arkansas (Osceola).

² *East Texas Electric Cooperative Inc. v. Entergy Arkansas, Inc.*, 109 FERC ¶ 61,207 (2004).

3. By a separate complaint filed October 25, 2004, in Docket No. ER05-15-000, Arkansas Electric Cooperative Corporation alleged that EAI had unilaterally changed the method of classifying and pricing energy (from four co-owned coal-fired units) under the Interchange Agreement in effect between those two parties. The complaint further alleged that those actions were anticompetitive and violated both the terms of the agreement and the filed rate doctrine. On December 22, 2004, in response to that complaint, the Commission issued an order which established hearing and settlement judge procedures, and consolidated Docket Nos. EL04-134-000 and EL05-15-000.³

3. On October 12, 2005, the Chief Judge, in the absence of the Presiding Administrative Law Judge (ALJ), certified the settlement as uncontested.⁴ The ALJ states that the settlement involves limited issues outstanding between only two sets of parties,⁵ and that other participants are not parties to the offer and their interests are not affected by it.⁶

4. The subject settlement is 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.

5. Within 30 days from the date of this letter, any amount collected in excess of the settlement rates must be refunded with interest computed under section 35.19a of the Commission's regulations, 18 C.F.R. §35.19a (2005). Within 15 days after making such refunds, EAI must file with this Commission a compliance report showing monthly billing determinants; revenue receipt dates; revenues under the prior, present, and settlement rates; the monthly revenue refund; and the monthly interest computed, together with a summary of such information for the total refund period. EAI must furnish copies of the report to all participants of record.

³ *Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.*, 109 FERC ¶ 61,327 (2004).

⁴ *Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc., East Texas Electric Cooperative, Inc. v. Entergy Arkansas, Inc.*, 113 FERC ¶ 63,004 (2005).

⁵ Certification at 4.

⁶ *Id.*

6. This letter terminates Docket Nos. EL05-15-005, EL04-134-000, and EL04-134-001 as to the settling parties. A new subdocket will be attached to the compliance report.

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

(S E A L)

Magalie R. Salas,
Secretary.

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KELLY, Commissioner, *concurring*:

For the reasons I have previously set forth in *Wisconsin Power & Light Co.*, 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

The order accepts for filing a statement that provides, in relevant part: “Review of future revision of the settlement would have to conform to the *Mobile-Sierra* standard...” I agree with this order, to the extent that this statement means that the *Mobile-Sierra* standard applies only to review of future revisions of the settlement requested by parties to the settlement.

Suedeen G. Kelly