

124 FERC ¶ 61,081
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 23, 2008

In Reply Refer To:
Docket Nos. ER07-1402-000
ER07-1402-001

Skadden, Arps, Slate, Meagher & Flom, LLP
Attn: Matthew W.S. Estes, Esq.
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Dear Mr. Estes:

1. On February 1, 2008, you filed an Offer of Settlement on behalf of Allegheny Generating Company (Allegheny) in the above-referenced dockets. You subsequently filed a revised Offer of Settlement on February 15, 2008 (Settlement) to correct an inadvertent error. The Settlement reflects the parties' agreement to resolve all issues pending in these dockets, which concern the allocation of generating capacity from Allegheny's share of the Bath County Pumped Storage Generation Station. On February 21, 2008, Commission Trial Staff submitted comments in support of the Settlement. No other comments were filed in response to the Settlement. On March 7, 2008, the presiding administrative law judge certified the Settlement to the Commission as uncontested.

2. The Settlement resolves all of the issues set for hearing by the Commission in the above referenced dockets. The Settlement is fair and reasonable and in the public interest and is hereby approved, subject to the condition stated below. The tariff sheets contained in the Settlement are in compliance with Order No. 614 and are made effective as set forth in the Settlement.¹ At the same time, Allegheny Generating Company First Revised Rate Schedule No. 1 is withdrawn and terminated.

¹ See *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000, ¶ 31,096 (2000).

3. Allegheny is hereby authorized under section 204 of the Federal Power Act to make all issuances of stock in 2008 and 2009 provided for in section 4 of the Settlement. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. Section 10 of the Settlement provides that the standard of review for any modifications to this Settlement that are not agreed to by the settling parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine.² In light of *Maine Pub. Util. Comm'n v. FERC*, 520 F.3d 464, 477-78 (D.C. Cir. 2008), the Commission may not accept the standard of review as currently written. As such, the settlement 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."

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

Kimberly D. Bose,
Secretary.

cc: All parties of record

² *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Allegheny Generating Company

ER07-1402-000

ER07-1402-001

(Issued July 23, 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. The settlement further states that, with the exception of certain limited circumstances in section 6, the “public interest” standard will apply to modifications to the power sales agreement that will alter the substantive terms of the settlement.

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 Wellinghoff
Commissioner

Suede 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).