

170 FERC ¶ 61,090  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick and Bernard L. McNamee.

Hunlock Energy, LLC	Docket Nos.	ER18-649-002
Meldahl, LLC		EL18-184-000
American Municipal Power, Inc.		EL18-185-000
		(not consolidated)

ORDER APPROVING SETTLEMENTS

(Issued February 7, 2020)

1. On December 14, 2018, in Docket No. ER18-649-002, Hunlock Energy, LLC (Hunlock) filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,<sup>1</sup> an Offer of Settlement (Hunlock Settlement) regarding Hunlock's proposed annual revenue requirement for providing Reactive Supply and Voltage Control from Generation Sources Service (Reactive Service) under Schedule 2 of the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (Tariff) from the Hunlock Creek Power Station.
2. On February 13, 2019, in Docket No. EL18-185-000, American Municipal Power, Inc. (AMP) filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,<sup>2</sup> an Offer of Settlement (AMP Settlement) regarding AMP's proposed annual revenue requirement for providing Reactive Service under Schedule 2 of the PJM Tariff from the Willow Island Hydroelectric Facility.
3. On February 21, 2019, in Docket No. EL18-184-000, Meldahl, LLC (Meldahl) filed, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,<sup>3</sup> an Offer of Settlement (Meldahl Settlement) regarding Meldahl's proposed annual revenue

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<sup>1</sup> 18 C.F.R. § 385.602 (2019).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

requirement for providing Reactive Service under Schedule 2 of the PJM Tariff from the Meldahl Hydroelectric Facility.

4. In this order, we approve the Hunlock, AMP, and Meldahl Settlements.

**I. The Settlements**

**A. Hunlock Settlement**

5. Hunlock states that the Hunlock Settlement resolves all issues relating to Docket Nos. ER18-649 and EL18-121.<sup>4</sup> The revised Rate Schedule (Hunlock Revised Rate Schedule), included with the Settlement, reflects an annual revenue requirement of \$55,000.08. Hunlock requests that the Commission accept for filing the Hunlock Revised Rate Schedule effective March 20, 2018.

6. Paragraph 27 of the Hunlock Settlement provides that “[t]he standard of review the Commission shall apply when acting on proposed modifications to this Settlement under Section 205 or 206 of the Federal Power Act, including any modifications proposed by a third party or by the Commission *sua sponte*, shall be the ‘just and reasonable’ standard of review.”

**B. AMP Settlement**

7. AMP states that the AMP Settlement fully resolves the issue set for hearing in Docket No. EL18-185.<sup>5</sup> The revised Rate Schedule (AMP Revised Rate Schedule), included with the AMP Settlement, reflects an annual revenue requirement of \$700,142.15. AMP requests that the Commission accept for filing the AMP Revised Rate Schedule effective July 1, 2018.

8. Section 3.6 of the AMP Settlement provides that:

The Commission’s review of any modification to the Settlement proposed by AMP or a third party, or considered by the Commission acting *sua sponte*, will be governed by the ordinary “just and reasonable” standard of review rather than the “public interest” application of the just and reasonable

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<sup>4</sup> Hunlock Transmittal at 1. *See Hunlock Energy, LLC*, 162 FERC ¶ 61,212 (2018) (accepting notice of succession and rate schedule, instituting section 206 proceeding in Docket No. EL18-121-000, and establishing hearing and settlement judge procedures).

<sup>5</sup> AMP Transmittal at 1. *See American Municipal Power, Inc.*, 164 FERC ¶ 61,138 (2018) (accepting proposed rate schedule and establishing hearing and settlement judge procedures).

standard of review, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010).

### C. Meldahl Settlement

9. Meldahl states that the Meldahl Settlement fully resolves the issue set for hearing in Docket No. EL18-184.<sup>6</sup> The revised Rate Schedule (Meldahl Revised Rate Schedule), included with the Meldahl Settlement, reflects an annual revenue requirement of \$1,010,000.00. Meldahl requests that the Commission accept for filing the Meldahl Revised Rate Schedule effective July 1, 2018.

10. Section 3.6 of the Meldahl Settlement provides that:

The Commission's review of any modification to the Settlement proposed by Meldahl or a third party, or considered by the Commission acting *sua sponte*, will be governed by the ordinary "just and reasonable" standard of review rather than the "public interest" application of the just and reasonable standard of review, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008) and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010).

## II. Comments

### A. Hunlock Settlement

11. Commission Trial Staff (Trial Staff) filed comments in support of the Hunlock Settlement. Trial Staff states that the Hunlock Settlement reduces the annual revenue

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<sup>6</sup> Meldahl Transmittal at 1. See *Meldahl, LLC*, 164 FERC ¶ 61,127 (2018) (accepting proposed rate schedule and establishing hearing and settlement judge procedures).

requirement for Reactive Service from the Hunlock Facility by 63 percent, from the filed rate of \$150,488.00 to \$55,000.08. Trial Staff states that the Hunlock Settlement substantially reduces Hunlock's annual revenue requirement, avoids the expenditure of resources in litigation, and, in sum, represents a fair and reasonable resolution of the contested issues.<sup>7</sup>

12. Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (IMM), filed comments opposing the Hunlock Settlement. First, the IMM argues that nothing in the Hunlock Settlement indicates that the proposed rate is set at a just and reasonable level and that no customer who would pay the proposed rate has agreed to the rate. The IMM contends that “[a] settlement that has no counter party and is not agreed to by any customer cannot be reasonably characterized as or approved as a negotiated rate.”<sup>8</sup> Second, the IMM argues that the settlement is unacceptable because it “fails to include certain clarifications and conditions necessary to ensure the ability of the [IMM] to perform the market monitoring function and to ensure compliance with the PJM market rules.”<sup>9</sup>

13. In response to the IMM, Hunlock argues that the IMM does not provide any details or specific basis sufficient to raise a genuine issue of material fact. Hunlock contends that the IMM's comments fail to satisfy the requirement in Rule 602(f)(4) of the Commission's Rules of Practice and Procedure that any comment contesting an offer of settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit “detailing any genuine issue of material fact by specific reference to documents, testimony, or other items included in the offer of settlement, or items not included in the settlement, that are relevant to support the claim.”<sup>10</sup> Hunlock further argues that the IMM's criticism that “no party to this proceeding will execute the settlement agreement” is at odds with Commission practice. Hunlock contends that the Commission frequently accepts settlements resolving disputes over reactive power rate schedules without additional settlement signatories.<sup>11</sup>

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<sup>7</sup> Trial Staff, Initial Comments, Docket No. ER18-649-002, at 4-5.

<sup>8</sup> IMM, Initial Comments, Docket No. ER18-649-002, at 1.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> Hunlock, Reply Comments, Docket No. ER18-649-002, at 2 (quoting 18 C.F.R. § 385.602(f)(4)).

<sup>11</sup> *Id.* (citing *Meadow Lake Wind Farm II LLC*, 164 FERC ¶ 61,220 (2018); *Rockford Power, LLC*, 163 FERC ¶ 61,078 (2018)).

14. In response to the IMM's claim that the Hunlock Settlement is missing "certain clarifications and conditions," Hunlock argues that the IMM fails to explain what these clarifications and conditions are. Hunlock also claims that the IMM did not provide any basis for a finding that the Settlement, as proposed, fails to allow the IMM to carry out its duties.<sup>12</sup>

## **B. AMP Settlement**

15. Trial Staff filed comments in support of the AMP Settlement. Trial Staff states that the AMP Settlement reduces the annual revenue requirement for Reactive Service from Willow Island by 10 percent, from \$779,053.31 to \$700,142.15. Trial Staff states that the AMP Settlement represents a reasonable resolution of all issues set for hearing in this proceeding, avoids costly and protracted litigation, and provides savings to ratepayers.<sup>13</sup>

16. The IMM filed comments opposing the AMP Settlement. In its comments, the IMM raised arguments largely identical to those it raised with respect to the Hunlock Settlement. First, the IMM contends that the AMP Settlement does not indicate that the proposed rate is set at a just and reasonable level and "[a] settlement that has no counter party and is not agreed to by any customer cannot be reasonably characterized as, or approved as, a negotiated rate."<sup>14</sup> Second, the IMM argues that the AMP Settlement is unacceptable because it "fails to include certain clarifications and conditions necessary to ensure the ability of the [IMM] to perform the tariff required market monitoring function and to ensure compliance with the PJM market rules."<sup>15</sup>

17. In response to the IMM, Trial Staff argues that the IMM provides no supporting analysis or reasonable basis for its opposition to the AMP Settlement, and that pursuant to a *Trailblazer* analysis, the AMP Settlement should be approved by the Commission without any modifications or conditions.<sup>16</sup> Trial Staff states that, of the four approaches outlined in *Trailblazer* for approving a contested settlement over the objections of a contesting party, the Commission could approve the settlement under the first, second, or

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<sup>12</sup> *Id.* at 2-3.

<sup>13</sup> Trial Staff, Initial Comments, Docket No. EL18-185-000, at 4-5.

<sup>14</sup> IMM, Initial Comments, Docket No. EL18-185-000, at 1.

<sup>15</sup> *Id.* at 2.

<sup>16</sup> Trial Staff, Reply Comments, Docket No. EL18-185-000, at 1 (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998), *reh'g denied*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999)) (*Trailblazer*).

third *Trailblazer* approach. Trial Staff argues that the IMM “merely asserts” that the settlement rate is unjust and unreasonable without providing any evidence or explanation. Trial Staff notes, for example, that the IMM failed to submit an affidavit in support of its objection to the Settlement’s annual revenue requirement as required by the Commission’s regulations.<sup>17</sup> Trial Staff asserts that, contrary to the IMM’s assertion that the settlement is non-negotiated, Trial Staff performed its public interest function, including seeking informal discovery, evaluating the information received, and providing offers and counter-offers, and that Trial Staff’s involvement makes the AMP Settlement a negotiated settlement.<sup>18</sup> Finally, Trial Staff argues that the Commission should disregard the IMM’s non-rate objections to the settlement because the IMM failed to identify the conditions or clarifications it requires.<sup>19</sup>

18. In its reply comments, AMP argues that the IMM’s comments lack merit and are just a brief list of unsupported assertions that do not substantiate the existence of disputed issues of material fact. Specifically, AMP contends that the IMM fails to support its objection to the level of the settlement revenue requirement, as required by Rule 602(f)(4) of the Commission’s Rules of Practice and Procedure. Further, AMP argues the Commission routinely approves unilateral settlement offers where ratepayers are not signatories to the settlement, so long as the settlement is fair, reasonable, and in the public interest. AMP states that Trial Staff participated in the proceeding and that the revenue requirement is roughly 10 percent lower than the revenue requirement proposed in AMP’s original filing.<sup>20</sup>

19. AMP contends that the IMM’s argument that the settlement fails to include certain clarifications and conditions is beyond the scope of the proceeding. First, AMP argues that the IMM’s “nebulous objection to the settlement falls well short of satisfying the Commission’s requirements under Rule 602(f)(4) and does not raise an issue of material fact.” Second, AMP argues that, even if the IMM had provided support for its objection, the matter is beyond the scope of the proceeding. AMP states that the settlement resolves

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<sup>17</sup> Trial Staff, Reply Comments, Docket No. EL18-185-000, at 3-4 (citing 18 C.F.R. § 385.602(f)(4)).

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *Id.*

the issue set for hearing—the Reactive Service rate for the Willow Island Facility. AMP claims that anything beyond that issue is beyond the scope of the proceeding.<sup>21</sup>

20. Finally, AMP contends that the Commission should approve the AMP Settlement under a *Trailblazer* analysis. AMP argues that the IMM’s comments do not raise genuine issues of material fact regarding the Settlement and, in such circumstances, the Commission has approved contested settlements under the first *Trailblazer* approach on the basis that, in the absence of genuine issues of material fact, it has an adequate record to address the merits of the settlement.<sup>22</sup> AMP argues that, similarly, where a party contesting a settlement raised issues that were beyond the scope of a proceeding, the Commission has approved the settlement under the third *Trailblazer* approach, stating that those concerns were “too attenuated to outweigh the bargained-for benefits of the Settlement, which include rate certainty and reduced litigation costs.”<sup>23</sup> AMP argues that the Commission has an adequate record to address the merits of the AMP Settlement and to find that the IMM’s objections are outweighed by the bargained-for benefits of the AMP Settlement, which include rate certainty and avoiding litigation costs.<sup>24</sup>

### C. Meldahl Settlement

21. Trial Staff filed comments in support of the Meldahl Settlement. Trial Staff states that the Meldahl Settlement resolves all issues set for hearing and reduces the annual revenue requirement for reactive power from the Meldahl Facility from \$1,077,491.98 to \$1,010,000.00. Trial Staff believes that the Meldahl Settlement represents a reasonable resolution of all issues set for hearing in the Meldahl proceeding, avoids costly and protracted litigation, and provides savings to ratepayers.<sup>25</sup>

22. The IMM filed comments opposing the Meldahl Settlement. In its comments, the IMM raised arguments largely identical to those it raised with respect to the Hunlock and AMP Settlements. The IMM contends that the Meldahl Settlement does not indicate that the proposed rate is set at a just and reasonable level and “[a] settlement that has no counter party and is not agreed to by any customer cannot be reasonably characterized as,

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<sup>21</sup> *Id.* at 8 (citing *Va. Elec. & Power Co.*, 162 FERC ¶ 61,029, at P 15 (2018) (*Vepco*) (rejecting as “outside the scope of [the] proceeding” clarifications and conditions sought by the IMM that were not related to the reactive revenue requirement)).

<sup>22</sup> *Id.* at 9 n.15 (citing *Vepco*, 162 FERC ¶ 61,029 at P 15).

<sup>23</sup> *Id.* at 9 n.16 (citing *Vepco*, 162 FERC ¶ 61,029 at P 16).

<sup>24</sup> *Id.* at 10.

<sup>25</sup> Trial Staff, Initial Comments, Docket No. EL18-184-000, at 4-5.

or approved as, a negotiated rate.”<sup>26</sup> Second, the IMM argues that the Meldahl Settlement is unacceptable because it “fails to include certain clarifications and conditions necessary to ensure the ability of the [IMM] to perform the tariff required market monitoring function and to ensure compliance with the PJM market rules.”<sup>27</sup>

23. In response to the IMM, Trial Staff makes generally identical arguments to those made in response to the IMM’s comments in Docket No. EL18-185. Trial Staff argues that the IMM provides no supporting analysis or reasonable basis for its opposition to the Meldahl Settlement. Thus, consistent with *Trailblazer*, Trial Staff argues that the Meldahl Settlement should be approved by the Commission without any modifications or conditions.

### **III. The Administrative Law Judges’ Certifications**

24. On April 4, 2019, the AMP Settlement Judge reported the AMP Settlement as contested. In the report, the AMP Settlement Judge stated the “fact that IMM is a party to this proceeding, coupled with the opposition reflected in IMM’s March 5 letter, comprise the exclusive bases for the undersigned to report the Offer of Settlement to the Commission as a contested settlement rather than certifying it to the Commission as an uncontested one.”<sup>28</sup>

25. On January 24, 2019, the Hunlock Settlement Judge certified the Hunlock Settlement as uncontested. Relying on *Enron Power Marketing, Inc.*,<sup>29</sup> the Hunlock Settlement Judge rejected the IMM’s comments opposing the Settlement.

26. On May 31, 2019, the Meldahl Settlement Judge certified the Meldahl Settlement as uncontested. The Meldahl Settlement Judge rejected the IMM’s comments. The Meldahl Settlement Judge found that the IMM’s comments “lacked the allegation of a genuine issue of material fact and the required affidavit supporting such allegation” and, as a result, pursuant to Rule 602(f)(4), were “insufficient to make this a contested settlement.”<sup>30</sup>

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<sup>26</sup> IMM, Initial Comment, Docket No. EL18-184-000, at 1.

<sup>27</sup> *Id.* at 2.

<sup>28</sup> *American Municipal Power, Inc.*, 167 FERC ¶ 63,004, at P 31 (2019).

<sup>29</sup> *Hunlock Energy, LLC*, 166 FERC ¶ 63,008, at P 38 (2019) (citing *Enron Power Marketing, Inc.*, 122 FERC ¶ 61,015, at P 63 (2008) (*Enron Power*)).

<sup>30</sup> *Meldahl, LLC*, 167 FERC ¶ 63,032, at P 2 n.1 (2019) (citing *Enron Power*, 122 FERC ¶ 61,015 at PP 62-64, and 18 C.F.R. § 385.602(f)(2)).

#### IV. Determination

27. Rule 602(h)(1)(i) of the Commission's Rules of Practice and Procedure permits the Commission to decide the merits of contested settlement issues, if the record contains substantial evidence on which to base a reasoned decision or the Commission determines there is no genuine issue of material fact.<sup>31</sup> As discussed below, we find that the IMM has not raised any genuine issues of material fact regarding the merits of the Settlements, and accordingly, we approve the Settlements.

28. Rule 602(f)(4) of the Commission's Rules of Practice and Procedure requires that, "any comment that contests a settlement by alleging a dispute as to a genuine issue of material fact must include an affidavit detailing any issue of material fact by specific reference to documents, testimony, or other items ... that are relevant to support the claim." The IMM failed to file an affidavit or any supporting evidence regarding its challenges to the revenue requirements established in the Settlements or any other aspect of the Settlements. Thus, we cannot find that the IMM's comments raise a genuine issue of material fact with respect to the Settlements.<sup>32</sup>

29. The IMM's primary objection to the Settlements appears to raise a policy issue, rather than a disputed issue of material fact. Namely, the IMM asserts that Commission approval of a settlement should require the participation and agreement of ratepayers. As an initial matter, contrary to the IMM's claim, the absence of ratepayers from settlement negotiations is not a bar to the Commission's approval of a settlement. In any case, in settlement judge procedures and hearings, Trial Staff represents the public interest, including representing the ultimate consumer.<sup>33</sup> Here, Trial Staff actively participated in

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<sup>31</sup> 18 C.F.R. § 385.602(h)(1)(i). *See Trailblazer*, 85 FERC ¶ 61,345 at 62,342-45.

<sup>32</sup> *See, e.g., Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062, at P 28 (2013) (finding that, because the Maryland PSC did not file any affidavit with its comments demonstrating an issue of fact, the Maryland PSC's protest did not raise a genuine issue of fact); *San Diego Gas & Elec. Co.*, 128 FERC ¶ 61,004, at P 16 (2009) ("Because SMUD did not submit an affidavit raising this issue as a genuine issue of material fact, as required by Rule 602(f)(4), we find that it is not a disputed issue of material fact.") (internal citations omitted). *See also Pennsylvania Pub. Utility Comm'n v. FERC*, 881 F.2d 1123, 1126 (D.C. Cir. 1989) ("mere allegations of disputed fact are insufficient to mandate a hearing; a petitioner must make an adequate proffer of evidence to support them."); *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 128-29 (D.C. Cir. 1982).

<sup>33</sup> *See, e.g., Sw. Power Pool, Inc.*, 160 FERC ¶ 61,026, at P 8 (2017) ("In evaluating a proposed settlement, the Commission recognizes the importance of comments submitted by its Trial Staff, which represents the public interest in settlement and hearing proceedings."); *PJM Interconnection, L.L.C.*, 157 FERC ¶ 61,181, at P 6 (2016) ("In evaluating a proposed settlement, the Commission recognizes the importance

each settlement proceeding and filed comments in support of each settlement. Furthermore, the IMM fails to identify any ratepayer or other party or participant who was not provided with a reasonable opportunity to represent its financial interests in the settlement proceedings, and we note that no party with a direct financial stake in the outcome of these proceedings has objected to any of the Settlements.<sup>34</sup>

30. Moreover, the revenue requirements agreed to in the Settlements reflect significant reductions in the rates at issue. For example, the Hunlock Settlement represents a savings of over 63 percent. The AMP Settlement and Meldahl Settlement, both governing service provided from municipally-owned facilities, represent reductions of 10 percent and 6.3 percent, respectively. In addition to reduced rates, the Settlements provide rate certainty and avoid the costs and risks of continued litigation.

31. We also reject as beyond the scope of these proceedings the IMM's generalized claim that the settlements fail to include "certain clarifications and conditions" to allow it to perform its market monitoring functions. The sole issue set for hearing in each of these proceedings was the justness and reasonableness of the proposed revenue requirements—not the IMM's market monitoring function.

32. In light of the foregoing, we find that the overall results of the Settlements are just and reasonable, and therefore we approve the Settlements. We accept Hunlock's proposed tariff records, effective March 20, 2018, as requested. AMP and Meldahl are each directed to make a compliance filing with revised tariff records in eTariff format, within 30 days of the date of this order, to reflect the Commission's action in this order.

The Commission orders:

(A) The Hunlock Settlement is hereby approved, as discussed in the body of this order.

(B) The AMP Settlement is hereby approved, as discussed in the body of this order.

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of comments submitted by our Trial Staff, which represents the public interest in settlement and hearing proceedings."); *Statement of Administrative Policy on Separation of Functions*, 101 FERC ¶ 61,340, at P 17 (2002) ("The litigation function is staffed primarily by the Office of Administrative Litigation (OAL). OAL, which is composed of technical and legal staff members, participates in trial-type evidentiary hearings and settlement judge proceedings, representing the public interest in proceedings related to all areas of the Commission's jurisdiction.").

<sup>34</sup> See *DC Energy, LLC*, 148 FERC ¶ 61,241, at P 23 (2014) (accepting a settlement under the second *Trailblazer* approach).

(C) The Meldahl Settlement is hereby approved, as discussed in the body of this order.

(D) AMP and Meldahl are hereby directed to make compliance filings with revised tariff records in eTariff format, within 30 days of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.