

135 FERC ¶ 61,066
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.

AEP Appalachian Transmission Company, Inc.	Docket Nos. ER10-355-000
AEP Indiana Michigan Transmission Company, Inc.	ER10-355-001
AEP Kentucky Transmission Company, Inc.	
AEP Ohio Transmission Company, Inc.	
AEP Oklahoma Transmission Company, Inc.	
AEP Southwestern Transmission Company, Inc.	
AEP West Virginia Transmission Company, Inc.	

ORDER APPROVING CONTESTED SETTLEMENT, SUBJECT TO CONDITION,
AND DISMISSING REQUEST FOR REHEARING

(Issued April 21, 2011)

1. In this order, the Commission approves the contested Settlement Agreement (Settlement) filed pursuant to Rule 602 of the Commission's Rules of Practice and Procedure¹ by American Electric Power Service Corporation (AEP ServiceCo) on behalf the new AEP Transmission Companies² and other parties³ (collectively, Settling Parties) regarding transmission formula rates. We find that the Settlement is just and reasonable,

¹ 18 C.F.R. § 385.602 (2010).

² AEP Appalachian Transmission Company, Inc.; AEP Indiana Michigan Transmission Company, Inc.; AEP Kentucky Transmission Company, Inc.; AEP Ohio Transmission Company, Inc.; AEP West Virginia Transmission Company, Inc.; AEP Southwestern Transmission Company, Inc.; and AEP Oklahoma Transmission Company, Inc. (collectively, AEP Transmission Companies).

³ Blue Ridge Power Agency; Craig-Botetourt Electric Cooperative, East Texas Electric Cooperative; Northeast Texas Electric Cooperative, Inc.; Tex-La Electric Cooperative of Texas, Inc.; Indiana Municipal Power Agency; Old Dominion Electric Cooperative; American Municipal Power, Inc.; AEP Intervenor Group; Buckeye Power, Inc.; Arkansas Electric Cooperative Corporation (AECC); Golden Spread Cooperative, Inc. (Golden Spread); and Indiana Michigan Municipal Distributors Association.

subject to AEP ServiceCo making a compliance filing. We also dismiss as moot Golden Spread and AECC's joint request for clarification, or in the alternative, rehearing of the January 28, 2010 order.⁴

I. Background

2. American Electric Power, Inc. controls a number of public utilities that own generation, transmission and distribution facilities. The AEP Operating Companies include seven utilities which are members of PJM Interconnection, L.L.C. (PJM)⁵ and two utilities which are members of Southwest Power Pool, Inc. (SPP).⁶ AEP Transmission Holding Company, L.L.C. is the parent of AEP ServiceCo and AEP Transmission Company, L.L.C., (AEP TransCo). AEP TransCo is a newly formed company that serves as a holding company for seven new AEP Transmission Companies which geographically align with the state or states in which they operate and which were formed to help the AEP Operating Companies strengthen their financial conditions and promote investment in the transmission-only AEP TransCo.⁷ AEP ServiceCo provides professional and business services for AEP TransCo and the new AEP Transmission Companies.

3. On December 1, 2009, AEP ServiceCo, on behalf of AEP TransCo, filed forward-looking formula rates for the seven new AEP Transmission Companies. Specifically, AEP ServiceCo filed revised tariff sheets to the open access transmission tariffs (OATT) of PJM and SPP to establish an annual transmission revenue requirement (ATRR) for each of the new AEP Transmission Companies. Because the filing raised issues of material fact that could not be resolved on the existing record, the Commission issued an order on January 28, 2010, accepting and suspending the formula rates for five months, subject to refund and subject to the outcome of hearing and settlement judge procedures.⁸

⁴ *AEP Appalachian Transmission Co., Inc., et. al.*, 130 FERC ¶ 61,075 (2010) (January 28 Order).

⁵ Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

⁶ Southwestern Electric Power Company and Public Service Company of Oklahoma.

⁷ AEP ServiceCo. December 2, 2009 Filing, Exhibit AEP-100 at 14.

⁸ January 28 Order, 130 FERC ¶ 61,075.

4. On March 1, 2010, Golden Spread and AECC filed a joint request for clarification, or in the alternative, request for rehearing of the Commission's January 28 Order.

5. On September 24, 2010, Settling Parties filed the Settlement summarized below. On November 9, 2010, the Settlement Judge filed a report to the Commission and the Chief Administrative Law Judge acknowledging that the proposed Settlement was a disputed matter to be addressed by the Commission.⁹ On November 10, 2010, the Chief Administrative Law Judge issued an order terminating settlement judge procedures and forwarding the Settlement to the Commission.¹⁰

II. Settlement

A. Settlement Terms

6. The Settlement package consists of six Articles and seven Attachments. Articles I and II of the Settlement provide the background of this proceeding and state that the Settlement is intended to resolve all matters in this proceeding between the parties. Article III references the Attachments to the Settlement, which provide the settlement terms and formula rates for the AEP Transmission Companies which will be incorporated into the OATTs of PJM and SPP. Article IV addresses implementation terms of the Settlement, including an effective date of July 1, 2010. Articles V and VI provide non-severability and reservation provisions. The substantive provisions of the Settlement are summarized below.

7. Attachment A-1 addresses the agreed-upon cost of service and formula rate principles for the new AEP Transmission Companies in PJM. Attachment B-1 addresses the agreed-upon cost of service and formula rate principles for new AEP Transmission Companies in SPP. Attachments A-1 and B-1 reflect the revised tariff language to be incorporated into Attachments H-20, H-20-A, and H-20-B of the PJM OATT and Attachment H of the SPP OATT. The treatment of formation costs; return on equity (ROE), capital structure, long-term debt cost, and interest rate derivative hedging on long-term debt; Post Retirement Benefits Other Than Pensions (PBOP) expenses; and transmission depreciation rates are specified in Attachments A-1 and B-1. Attachments A-1 and B-1 also provide that if any of the AEP Transmission Companies wishes to

⁹ *American Elec. Power Serv. Corp.*, 133 FERC ¶ 63,004 (2010).

¹⁰ *American Elec. Power Serv. Corp.*, Docket No. ER10-355-000, November 10, 2010 (unpublished report).

change either its stated depreciation rates or its PBOP expenses, it must make a Federal Power Act (FPA) section 205¹¹ filing to do so.

8. Sections 6.7 and 6.8 of the Settlement, along with Attachments A-1 and B-1, specify the standard of review for modifications to the formula rate after approval. Any modification to the Settlement sought by a Settling Party, regardless of whether the modification is agreed to by other Settling Parties, will be subject to the “just and reasonable” standard of review under FPA section 205 or 206.¹² A Settling Party or Parties seeking to modify the formula rate in any respect must do so as specified under the FPA.

9. The “public interest” standard of review will apply to Settling Parties seeking any modification of the following that is not agreed to by all Settling Parties: (1) the duration and amount of the Equity Ratio Caps, (2) the duration and amount of the limitation on the amount of any incentive return on common equity that AEP Transmission Companies may request, and (3) the methodology for determining whether the AEP Transmission Companies are required to file a change to the PBOP expense allowance.

10. Section 6.8 states that if the Commission acting *sua sponte*, or an intervenor or other interested entity that is not a Settling Party, seeks to modify the Settlement, the standard of review will be “the most stringent standard permissible under applicable law.” Notwithstanding the above, Attachments A-2, section 3.f. and B-2, section III. 7 to the Settlement specify that the protocols “in no way limit the rights of [the] AEP [Transmission Companies] or any Interested party to initiate a proceeding at the [Commission] at any time with respect to the Formula Rate or any Annual Update consistent with the party’s full rights under the FPA, including [s]ections 205, 206 and 306, and the [Commission’s] regulations.”

11. Section I.C.7 of Attachment A-1 and section I.C.8 of Attachment B-1 identify the formation costs¹³ to be included in the Settlement rates. Formation costs incurring after

¹¹ 16 U.S.C. § 824d (2006).

¹² 16 U.S.C. §§ 824d, 824e.

¹³ Formation Costs include, but are not limited to, all costs associated with obtaining any necessary federal, state, or local approvals for formation/operation of the AEP Transmission Companies, all costs associated with establishment of the AEP Transmission Companies and the evaluation of how to accomplish same, and any other category of cost that AEP treated as a Formation Cost for purposes of its request to recover pre-June 30, 2010 formation costs. Settlement at Attachment A-1, section I.C.7 at 25 and Attachment B-1, section I.C.8 at 52.

June 30, 2010, shall not be included in the transmission formula rates of the AEP Transmission Companies or the AEP Operating Companies. One half of the AEP Transmission Companies' formation costs which incur before June 30, 2010, will be included in the formula rate, with such amount to be allocated equally among the AEP Transmission Companies and amortized over four years.

12. Section I. D. of Attachments A-1 and B-1 specifies the agreed-upon cost of common equity used in the formula rates for the AEP Transmission Companies in PJM and SPP, respectively. Under Attachment A-1, the AEP Transmission Companies in PJM agree to a base ROE of 10.99 percent, plus a 50 basis point adder for the continued membership in a regional transmission organization (RTO), for a total ROE of 11.49 percent. Section I. D. of Attachment A-1 establishes a moratorium for 36 months from the effective date of the Settlement whereby the AEP Transmission Companies in PJM may only request ROE adders for transmission rate incentives pursuant to Order Nos. 679 and 679-A¹⁴ of up to 125 basis points, i.e., 12.74 percent. Moreover, section I. D. of Attachment A-1 specifies that the Settlement does not establish a lower or upper end of the zone of reasonableness for the AEP Transmission Companies in PJM. Under Attachment B-1, the AEP Transmission Companies in SPP agree to a base ROE of 10.7 percent, plus a 50 basis point adder for the continued membership in SPP, for a total ROE of 11.2 percent. Further, the AEP Transmission Companies in SPP agree to a moratorium which provides that they will not make a filing with the Commission pursuant to Order Nos. 679 and 679-A which would increase the ROE above an equity cap of 12.45 percent for 36 months from the period commencing July 1, 2010 through, and including, June 30, 2013.

13. Attachments A-2 and B-2 provide the formula rate implementation protocols governing the annual updates and the true-up mechanism for AEP Transmission Companies in PJM and SPP. Attachments C-1 and C-2 to the Settlement provide tariff language, formula rate implementation protocols, and formula rate templates for the PJM and SPP OATTs, respectively. Attachment D provides the agreed-upon populated Formula Rate Templates, which calculate the projected ATRR for the first rate year based on net plant projected to December 31, 2010, using historical 2009 cost data.

14. Article IV includes the AEP Transmission Companies' request that the Commission grant a July 1, 2010 effective date and allow the agreed-upon rates and charges to become effective without condition or modification. Article V specifies that the provisions of the Settlement are not severable. Article VI expressly conditions the

¹⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

Settlement on the Commission's acceptance of the terms and conditions without modifications or omission.

B. Comments on the Settlement

1. Initial Comments

15. On October 14, 2010, the Indiana Utility Regulatory Commission (Indiana Commission), Maryland Office of People's Counsel (People's Counsel), and Commission Trial Staff filed initial comments. The Indiana Commission argues that the Settlement does not provide benefits to the public, customers, or consumers. Specifically, the Indiana Commission argues that the Settlement will not result in: (1) construction of any transmission that otherwise will not be built under the PJM and SPP OATTs, (2) construction of any large-scale transmission project, (3) interconnection of any new renewable resources, (4) reduction of congestion, (5) improvement of deliverability and consequent reduction of energy prices, or (6) increased reliability. The Indiana Commission rejects AEP ServiceCo's suggestion that the Settlement will facilitate the AEP Operating Companies' acquisition of financing, arguing that AEP ServiceCo has failed to show that any of the companies have found it difficult to obtain financing. The Indiana Commission further contends that the AEP Transmission Companies will receive a higher ROE by switching regulatory jurisdictions. Finally, the Indiana Commission argues that AEP ServiceCo's proposal appears to provide AEP ServiceCo with higher revenues and potentially higher profits with substantially less regulatory oversight.

16. People's Counsel states that it supports the Indiana Commission's comments.

17. Although Trial Staff filed comments supporting approval of the Settlement, it notes that the formula rate template contains line items for production and distribution, even though the formulae apply solely to transmission-only entities. Notwithstanding that these line items are set at zero and are intended to act as placeholders, Trial Staff contends that they should not be included in the template at all. Trial Staff asserts that their inclusion is inconsistent with Settlement protocols requiring each new AEP Transmission Company to make an FPA section 205 filing before attempting to recover costs associated with production or distribution through the formula rate. Therefore, Trial Staff recommends that the Commission approve the Settlement, but require AEP ServiceCo to remove the line items for production and distribution costs.

2. Reply Comments

18. On October 25, 2010, Indicated Settling Parties,¹⁵ the Indiana Municipal Power Agency and Trial Staff filed reply comments in support the Settlement. They contend that neither the Indiana Commission nor People's Counsel allege genuine issues of material fact or include an affidavit as required by Rule 602(f)(4) of the Commission's Rules of Practice and Procedure. They therefore conclude that the Settlement should be treated as uncontested.

19. Indicated Settling Parties argue that the Indiana Commission and People's Counsel provide no evidence supporting their contention that the Settlement will increase rates. They also argue that the Settlement largely adopts formula rates for the AEP Transmission Companies that are nearly identical to formula rates in settlements recently approved for the AEP Operating Companies.¹⁶ In addition, Indicated Settling Parties point out that the types of benefits that the Indiana Commission highlights are usually offered as justification for incentive rates - however, neither AEP ServiceCo's original proposal nor the Settlement contain a request for incentive rate treatment according to Indicated Settling Parties. Indicated Settling Parties note that the 11.49 percent ROE reflected in the Settlement is the same ROE currently applicable under the formula rates for wholesale transmission service provided by existing AEP Operating Companies in PJM.

20. In response to Trial Staff's request that the Commission order AEP ServiceCo to remove the production and distribution lines from the formula rate, Indicated Settling Parties argue that including those unpopulated lines in the formula may benefit customers in the following ways: (1) the formula rate format is consistent with the formula rate formats currently used by the AEP Operating Companies; (2) customers can easily compare the inputs of AEP Transmission Companies with the AEP Operating Companies; (3) if a change in law or policy required some of AEP Transmission Companies' assets to be reclassified as distribution, the existing format provides a category for the costs of such assets to be allocated properly; (4) the formula rate

¹⁵ The Indicated Settling Parties are: AEP Transmission Companies; Blue Ridge Power Agency; Craig-Botetourt Electric Cooperative; Buckeye Power, Inc.; American Municipal Power, Inc.; AEP Intervenor Group; Old Dominion Electric Cooperative; East Texas Electric Cooperative; Northeast Texas Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

¹⁶ Indicated Settling Parties' Reply Comments at 2 (citing *see American Elec. Power Svc. Corp.*, 133 FERC ¶ 61,007 (2010); *American Elec. Power Svc. Corp.*, 127 FERC ¶ 61,292 (2009)).

template format has been accepted for other transmission-only companies; and (5) reflects customers' desire for transparency.¹⁷

21. Trial Staff further contends that the Settlement provides a weighted average cost of capital (WACC) for the AEP Transmission Companies that is lower than the WACC that the Commission approved for the AEP Operating Companies for both PJM and SPP in their most recent transmission rate proceedings. According to Trial Staff, the composite Settlement WACC for the AEP Transmission Companies—which comprise the bulk of the rates—for the July 1, 2010 to June 30, 2011 rate year is 8.29 percent, compared to the 8.49 percent composite WACC that the Commission approved in Docket No. ER08-1329-000 for the transmission AEP Operating Companies located in PJM.¹⁸

22. Trial Staff further argues that the Commission can approve the Settlement by making “an independent finding supported by ‘substantial evidence on the record as a whole’ that the proposal will establish ‘just and reasonable’ rates.”¹⁹ Trial Staff explains that in *Trailblazer Pipeline Co.*, the Commission articulated four standards under which it will approve contested settlements.²⁰ Trial Staff argues that in this proceeding, the Commission may approve the Settlement under the first or second *Trailblazer* standard.

C. Discussion

23. For the reasons discussed below, we find that this Settlement is just and reasonable and we approve the Settlement, subject to condition, as discussed below.

24. As noted by Trial Staff, *Trailblazer* provides guidance regarding the Commission's standards and procedures for ruling on contested settlements. Where there

¹⁷ Indicated Settling Parties' Reply Comments at 4-5 (citing, e.g., *Pioneer Transmission, LLC*, 129 FERC ¶ 61,065 (2009)).

¹⁸ Trial Staff's Reply Comments at 9-10 (citing *American Elec. Power Service Corp.*, 133 FERC ¶ 61,007).

¹⁹ Trial Staff's Reply Comments at 11 (citing *Mobil Oil Corp. v. FERC*, 417 U.S. 283, 314 (1974) (*Mobil v. FERC*)).

²⁰ *Id.* (citing *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998) (*Trailblazer*), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999) (providing for Commission approval of a contested settlement where: (1) there is a merits decision on each contested issue; (2) the settlement provides an overall just and reasonable approach; (3) the benefits of the settlement outweigh the nature of the objections and the contesting parties' interest is too attenuated; or (4) the Commission may sever the contesting parties and approve the settlement as uncontested for the consenting parties.)).

is an adequate record, the first prong of *Trailblazer* states that the Commission may examine the merits of each contested issue.²¹ In addition, if each of the contesting party's protests lack merit, the Commission can approve the Settlement.²² We address the merits of the arguments contesting approval of the Settlement below.

25. In order to approve the Settlement, the Commission must find that the Settlement establishes just and reasonable rates and terms and conditions of service. It does not necessarily need to limit its review to whether the Settlement provides regional benefits or improves financing, as the Indiana Commission suggests. Contrary to the Indiana Commission's assertion, we find that the Settlement provides benefits to consumers. For example, as discussed *infra*, the Settlement continues in effect the current ROE levels, imposes a cap of up to 125 basis points on possible ROE adders, and establishes a three-year moratorium on rate increases. These provisions of the Settlement provide rate stability to ratepayers.

26. Moreover, we find that the AEP ServiceCo has made a reasonable case that the restructuring will improve its ability to obtain financing. In its December 1, 2009 filing, AEP ServiceCo stated:

In the last two years, financing costs have been high and very volatile, and it has often been difficult to raise capital, especially in the large volumes needed by utility companies. Downgrades and defaults, especially among financial institutions, bond insurers and certain types of securities, have resulted in flight-to-quality investments in securities, companies and industries where the business drivers are less volatile and more clearly understood.²³

²¹ *Trailblazer*, 85 FERC ¶ 61,345 at P 24. See also *Mobil v. FERC*, 417 U.S. at 314.

²² *Trailblazer*, 85 FERC ¶ 61,345 at P 24. See also Rule 602(h)(1)(i) of the Commission's Rules of Practice and Procedure which provides that the Commission may decide the merits of contested settlement issues if the record contains substantial evidence upon which to base a reasoned decision or the Commission finds that there is no genuine issue of material fact. 18 C.F.R § 385.602(h)(1)(i).

²³ *Id.* Exhibit AEP-200 at 7.

AEP ServiceCo further explained that its re-alignment will provide greater access to capital for infrastructure investment.²⁴ In addition, AEP ServiceCo compares the benefits of AEP TransCos to the AEP Operating Companies:

AEP TransCo is going to have one line of business and associated costs, with its rates set by FERC and revenues collected by the RTOs. The cost recovery and revenue collection is very predictable and transparent. AEP's Operating Companies by comparison have more complex businesses involving generation, transmission and distribution and regulation by multiple entities.

...AEP TransCo investors will have an easier time understanding the risk profile they are financing. In addition, investors can see the benefits of and demand for additional transmission investment, including supporting renewables, increasing reliability, and reducing congestion. This business will be a straight-forward, transparent business and one that investors will be able to understand and assess for investment purposes.²⁵

Based on the above, we note that the Settlement, which addresses transmission-only businesses, will assist AEP TransCos in obtaining financing at better rates than the AEP Operating Companies received when operating as a more traditional vertically-integrated business.

27. With respect to whether the Settlement is just and reasonable, the Indiana Commission appears to argue that the Settlement raises the ROE and provides the AEP Transmission Companies with higher revenues and potentially higher profits with less regulatory oversight. However, the ROE reflected in the Settlement (and applicable to AEP Indiana Michigan Transmission Company, Inc.) is the same rate as approved for Indiana Michigan Power Company, an AEP Operating Company in PJM. The rate is

²⁴ AEP ServiceCo states that “[a]ccess to capital is relatively greater for businesses with stronger credit profiles and ratings and straight-forward risk profiles. AEP TransCo will need to establish itself as a stand-alone business with the necessary credit ratios and strong, stable cash flow. Over a period of time as a single-line business, it should develop a strong credit profile.... AEP TransCo will have the characteristics of companies which are able to raise capital in both open and difficult markets, as well as the flexibility to access more sources of debt and equity capital.” *Id.* at 7-8.

²⁵ *Id.* at 8.

11.49 percent and is inclusive of the ROE adder of 50 basis points for RTO membership. The re-alignment of the AEP Operating Companies has no effect on the ROE reflected for wholesale transmission rates in Indiana. If there are additional operating costs associated with the start-up, parties may challenge those costs during the Annual Update process or they may file a section 206 complaint with the Commission. However, based on the Indiana Commission's comments, we have no basis to determine that rates approved in the Settlement have increased and hence are unjust and unreasonable.

28. We disagree with the Indiana Commission that the Settlement will result in substantially less regulatory oversight. Under the FPA, the Commission is responsible for ensuring that the rates and charges for wholesale transmission services are just and reasonable and not unduly discriminatory. There is nothing contained in the Settlement that changes our level of regulatory oversight; any change in the level of regulatory oversight at the retail level is beyond the scope of this proceeding.

29. Trial Staff contends that the formula rate template should not contain line items for production and distribution and recommends that the Commission order AEP ServiceCo to remove these line items. Indicated Settling Parties argue that including these unpopulated lines in the formula may provide benefits and that this formula rate format is consistent with the formula rate formats currently used by other transmission-only companies. We find that keeping production and distribution items in the rate template may create unnecessary confusion and contradicts the purpose of creating transmission-only entities. Therefore, we will direct AEP ServiceCo to make a compliance filing within 30 days of the date of this order removing the production and distribution items from the formula rate template.

30. Based on our analysis, we find that the Settlement and the rates contained therein are just and reasonable. The Settlement provides an incentive to AEP ServiceCo and the AEP TransCos to minimize start-up or formation costs in three ways. First, the Settlement places a cap on formation costs to those costs incurred before June 30, 2010. Second, the Settlement amortizes, without interest, 50 percent of the formation costs over four years. Third, the Settlement provides that all formation costs incurred after June 30, 2010 will not be recoverable through Commission-regulated rates. We find that the provisions will help to reduce overall start-up costs to ratepayers and minimize any rate shock caused by such costs.

31. Further, the Settlement establishes ROEs of 11.49 percent and 11.2 percent, inclusive of the adder for RTO membership, for the AEP Transmission Companies in PJM and SPP, respectively. The Settlement also establishes a moratorium for 36 months from the effective date of the Settlement. Under the moratorium, the AEP Transmission Companies may only request ROE adders for transmission rate incentives of up to 125

basis points.²⁶ The Settlement ROEs of 11.49 percent and 11.2 percent are at the same level that was in effect for the AEP Operating Companies in PJM and SPP for three years prior to this Settlement. We find that a continuation of the current ROE levels, a cap on possible ROE adders, and a three-year moratorium provides rate stability to consumers. In addition, we find that greater access to cheaper financing will help the AEP Transmission Companies in constructing additional transmission assets.

32. We also note that the Settlement contains specific provisions relating to the standard of review for modification. Except as specifically provided for in section 6.7 of the Settlement Agreement,²⁷ the standard of review for any modification to the Settlement sought by a Settling Party regardless of whether the modification is agreed to by other Settling Parties shall be the “just and reasonable” standard. The Settlement Agreement further provides that the standard of review for any modifications to this Settlement Agreement requested by an intervenor or other interested entity that is not a Settling Party or that is sought in a proceeding initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. In this regard, we note that the Commission cannot be held to a higher standard of review than the parties.²⁸

²⁶ As Indicated Settling Parties point out in their reply comments, the Settlement does not include a request for incentive rate treatment, and with the exception of the adder for RTO membership (which is included in the ROEs established by the Settlement), the Commission is not approving any incentive rate adders in this order.

²⁷ Section 6.7 provides:

The “public interest” standard of review will apply to Settling Parties seeking any modification of the following that is not agreed to by all Settling Parties: (1) the duration and amount of the Equity Ratio Caps, (2) the duration and amount of the limitation on the amount of any incentive return on common equity that AEP Transmission Companies may request, and (3) the methodology for determining whether the AEP Transmission Companies are required to file a change to the PBOP expense allowance.

²⁸ *American Elec. Power Serv. Corp.*, 133 FERC ¶ 61,007 at P 2; see *Virginia Electric and Power Co.*, 119 FERC ¶ 61,004, at P 5 (2007).

III. Rehearing Request

33. Golden Spread and AECC ask the Commission to clarify that: (1) the approval of a 50 basis point ROE adder for RTO membership in the January 28 Order did not constitute approval of the requested ROE of 11.9 percent; (2) the approval of the 50 basis point ROE adder did not constitute a determination that AEP did not violate the settlement approved in Docket No. ER07-1069-000 by filing for an ROE in excess of 11.2 percent prior to January 31, 2011; (3) acceptance of AEP's proposal in the January 28 Order did not constitute a finding that the filing did not violate the filed rate; nor (4) a determination that no remedy would be appropriate if the filed rate were found to have been violated.

34. We dismiss the request for rehearing as moot.²⁹ The Settlement approved in Docket No. ER07-1069-000 provides for an ROE of 11.2 percent, which includes a 50 basis point adder for RTO membership. The Settlement in this proceeding provides for the same ROE for AEP Transmission Companies in SPP, as the AEP Operating Companies in SPP. Further, Golden Spread and AECC are signatories to the Settlement in this proceeding. As the Settlement does not increase the overall ROE above 11.2 percent, the request for clarification or rehearing is moot.

The Commission orders:

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

(B) AEP ServiceCo is hereby directed to submit a compliance filing removing the production and distribution items from the formula rate template, within 30 days of the date of this order, as discussed in the body of this order.

²⁹ Although Golden Spread and AECC filed a motion for clarification or, in the alternative, request for rehearing pursuant to FPA section 313, 16 U.S.C. § 8251(a) (2006), and Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2010), we will treat the motion as a request for rehearing of the Commission decision.

(C) Golden Spread and AECC's rehearing is dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.