

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Williams Power Company, Inc.

Docket No. ER05-406-002

ORDER CONDITIONALLY APPROVING UNCONTESTED AMENDMENT TO  
SETTLEMENT

(Issued December 22, 2006)

1. On October 27, 2006, Williams Power Company, Inc. (Williams) filed an Explanatory Statement and an Amended Offer of Settlement (Amendment to Settlement) on behalf of all of the Parties<sup>1</sup> to the Offer of Settlement approved by the Commission on March 21, 2006, in Docket No. ER05-406-000 (Settlement).<sup>2</sup> In the Amendment to Settlement, the Parties seek to reduce the Fixed Option Payment Factor (FOPF) to zero percent for the term May 1, 2006 through December 31, 2006. The Parties also request that the Commission apply the *Mobile-Sierra* “public interest” standard of review<sup>3</sup> to both the Settlement and the FOPF reduction proposed herein.<sup>4</sup>

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<sup>1</sup> The Parties are Williams, Southern California Edison Company, California Independent System Operator Corporation, California Public Utilities Commission, and the California Electricity Oversight Board.

<sup>2</sup> *Williams Power Co., Inc.*, 114 FERC ¶ 61,291 (2006) (*Williams*). The Settlement resolved all remaining issues in Docket No. ER05-406-000 concerning the rates and charges for energy and services provided pursuant to the Reliability Must Run (RMR) Agreements effective January 1, 2005, to and including, December 31, 2006.

<sup>3</sup> *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

<sup>4</sup> In *Williams*, the Commission applied the “just and reasonable” standard of review of section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000), as indicated in the Settlement terms. The Parties now seek to change the standard of review.

2. Williams states that the FOPF reduction proposed in the Amendment to Settlement is the result of a tolling agreement entered into by Williams whereby the other party to the tolling agreement has the right to market all output generated by Alamitos Generating Unit No. 3 for the period from May 1, 2006 through December 31, 2006 and beyond. At the request of Williams' tolling agreement counterparty, Williams has agreed that, by virtue of the payment provisions included in the tolling agreement – which provide for the offset of any RMR revenues – the RMR Fixed Option Payment for Alamitos Generating Unit No. 3 is not necessary for the period from May 1, 2006 through December 31, 2006.<sup>5</sup> Williams states that all Parties support the elimination of the Fixed Option Payment for the period May 1, 2006 through December 31, 2006, and it requests that the Commission make the proposed tariff revisions attached to the Amendment to Settlement effective May 1, 2006.<sup>6</sup>

3. Williams also states that the Parties agree that the *Mobile-Sierra* “public interest” standard is the appropriate standard of review for the RMR Agreement. Specifically, Williams states that, in view of the Parties' desire to preserve their agreements reflected in the provisions of the Settlement and the need for certainty and stability, the *Mobile-Sierra* “public interest” standard should be the standard of review with respect to the Settlement and the Amendment to Settlement proposed here.

4. Notice of the Amendment to Settlement was filed on November 2, 2006, *Federal Register*, 71 Fed. Reg. 65,486 (2006), with comments due by November 17, 2006. No interventions, comments or protests were filed.

5. Pursuant to section 385.602 (Rule 602) of the Commission's regulations,<sup>7</sup> the uncontested Amendment to Settlement, as revised as discussed below, appears to be fair and reasonable and in the public interest and is hereby conditionally approved. Because the Amendment to Settlement has been agreed to by all Parties, waiver of the prior notice requirements of sections 35.3 and 35.11 of the Commission's regulations<sup>8</sup> is granted, and

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<sup>5</sup> In Article II.C.3 of the Settlement, the Parties agreed that the FOPF for Alamitos Generating Unit No. 3 would be forty-five percent for the applicable term of the Settlement (*i.e.*, January 1, 2005 through December 31, 2006).

<sup>6</sup> Fifth Revised Sheet Nos. 130 and 133 under Williams' Second Revised Rate Schedule FERC No. 17.

<sup>7</sup> 18 C.F.R. § 385.602 (2006).

<sup>8</sup> 18 C.F.R. §§35.3 and §35.11 (2006).

the Amendment to Settlement and revised tariff sheets are conditionally accepted, effective May 1, 2006, as proposed. The Commission's conditional approval of this Amendment to Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. While the parties agreed to a Mobile-Sierra "public interest" standard, we believe that RMR agreements like the one at issue here are the kinds of agreements that warrant the Commission declining to be so bound to such a standard.<sup>9</sup> Accordingly, we will conditionally approve the Amendment to Settlement on the parties filing revisions, within 30 days, to provide that the Commission will be bound to the "just and reasonable" standard and not the "public interest" standard.

6. This order terminates Docket No. ER05-406-002.

By the Commission. Commissioner Kelly concurring with a separate statement attached.  
Commissioner Wellinghoff dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>9</sup> As a general matter, parties may bind the Commission to the public interest standard. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> Cir. 1993). Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound. *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir 2006).

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KELLY, Commissioner, *concurring*:

The settling parties have requested that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future changes to the settlement amendment. As I have previously explained,<sup>1</sup> I do not believe the Commission should approve a provision that would apply the “public interest” standard of review to future changes that may be sought by a non-party or the Commission acting *sua sponte*, absent an affirmative showing by the parties and reasoned analysis by the Commission. In this case, there is no affirmative showing or reasoned analysis. Therefore, I think the order’s rejection of the “public interest” standard of review provision is appropriate.

The majority concludes that the proposed provision should be rejected because “RMR agreements like the one at issue here are the kinds of agreements that warrant the Commission declining to be so bound to such a standard.” I am puzzled by this conclusion because the order offers no analysis or rationale for it. Nevertheless, I agree with the order’s rejection of the proposed provision.

For these reasons, I respectfully concur.

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Suedeem G. Kelly

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<sup>1</sup> See, e.g., *Transcontinental Gas Pipe Line Corporation*, 117 FERC ¶ 61,232 (2006).

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WELLINGHOFF, Commissioner, dissenting in part:

The parties in this case have asked the Commission to apply the “public interest” standard of review when it considers future changes to the instant settlement (including the instant amendment to the settlement) that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,<sup>1</sup> I believe that it is inappropriate for the Commission to grant the parties’ request and agree to apply the “public interest” standard to future changes to the settlement sought by a non-party or the Commission acting *sua sponte*. As the majority finds that the Commission should not be bound to the “public interest” standard in this case, my conclusion on that issue is the same as that reached in this order.

For the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> however, I disagree with the majority’s characterization of case law on the applicability of the “public interest” standard. Therefore, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>1</sup> 117 FERC ¶ 61,055 (2006).

<sup>2</sup> 117 FERC ¶ 61,149 (2006).