UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

PPL Wallingford Energy LLC and PPL EnergyPlus, LLC	Docket Nos. ER03-421-000, ER03-421-001, ER03-421-002, ER03-421-004, ER03-421-005, ER03-421-006, ER03-421-007, ER03-421-008, ER03-421-009, ER03-421-010, and ER03-421- 011

ORDER CONDITIONALLY APPROVING UNCONTESTED SETTLEMENT

(Issued March 23, 2007)

1. On September 29, 2006, PPL Wallingford Energy LLC and PPL EnergyPlus, LLC (collectively, PPL) filed a Settlement Offer (Settlement) on behalf of itself; ISO New England Inc. (ISO-NE); the Connecticut Department of Public Utility Control; the Connecticut Office of Consumer Counsel; and Northeast Utilities Service Company on behalf of its operating company affiliate The Connecticut Light and Power Company (collectively, the Settling Parties). The Settlement resolves all matters set for hearing in the above-captioned dockets. All of the active parties in this proceeding either support or do not oppose the Settlement.[1]

2. Commission Trial Staff filed comments in support of the settlement agreement on October 19, 2006. No other comments were filed. The Deputy Chief Administrative Law Judge certified the settlement to the Commission as uncontested on October 20, 2006.[2]

[1] The Attorney General for the State of Connecticut and the Connecticut Municipal Electric Energy Cooperative state that they do not oppose the Settlement.

[2] PPL Wallingford Energy LLC and PPL EnergyPlus, LLC, 117 FERC ¶ 63,016 (2006); errata, 117 FERC ¶ 63,051 (2006).

3. On January 16, 2003, PPL filed with the Commission under Section 205 of the Federal Power Act (FPA)[3] a cost of service reliability must run (RMR) agreement between PPL and ISO-NE (Original RMR Contract).[4] On May 16, 2003, the Commission issued an order rejecting PPL's Original RMR Contract,[5] based on its announced preference for use, on a temporary basis, of a special high safe harbor bid option, announced by the Commission in *Devon Power LLC*,[6] called the Peaking Unit Safe Harbor Bid (PUSH). On December 22, 2003, the Commission denied rehearing of the May 16, 2003 Order.[7] PPL sought review in the U. S. Court of Appeals for the District of Columbia (D.C. Circuit). In a decision issued August 9, 2005, Court vacated the Commission's orders relating to PPL and remanded the case for further proceedings.[8] On April 6, 2006, the Commission issued an Order on Remand conditionally accepting the Original RMR Contract effective February 1, 2003, subject to refund, and setting the case for settlement judge proceedings,[9] the result of which is the instant Settlement.

4. The Settlement resolves all matters in the above captioned docket. The Settlement resolves all disputes regarding PPL's eligibility for the RMR Agreement as well as its predecessor agreement, the Original RMR Contract effective February 1, 2003. Among other things, the Settlement modifies certain provisions of the Original RMR Contract that was filed on January 16, 2003, including the provisions for termination of the agreement. In addition, the Settlement establishes the amounts due to PPL under the Original RMR Contract for the period from its February 1, 2003 effective date through May 31, 2006, and specifies a payment mechanism pursuant to which PPL will be paid these amounts over time. The Settlement also sets the annual fixed revenue requirement to be paid to PPL through a Monthly Fixed Cost Charge with respect to PPL's RMR units for the period commencing June 1, 2006.

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[3] 16 U.S.C. §824d (2000).

[4] The Commission sought additional information from PPL, and PPL submitted a response on March 31, 2003.

[5] *PPL Wallingford LLC*, 103 FERC ¶ 61,185 (2003).

[6] 103 FERC ¶ 61,082 (2003).

[7] PPL Wallingford Energy LLC, Devon Power LLC, et al., 105 FERC ¶ 61,324 (2003).

[8] *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194 (D.C. Cir. 2005).

[9] *PPL Wallingford Energy LLC, et al*., 115 FERC ¶ 61,015 (2006), *order on clarification*, 116 FERC ¶ 61, 089 (2006).

5. The Settlement, as revised as discussed below, is fair and reasonable and in the public interest and is hereby conditionally approved. The Commission's conditional approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. The Settlement Agreement provides that the standard of review the Commission shall apply when acting on proposed modifications to the Settlement shall be the "public interest" standard of review as set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956), but also provides that the "just and reasonable" standard of review shall apply to filings to terminate or modify the RMR Agreement or certain filings otherwise authorized by the RMR Agreement.[10]

7. 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.[11] RMR agreements are contracts between a generator and the ISO that commit a generator to provide reliability service in return for fixed monthly payments by load in the affected zone. The purpose of an RMR agreement is not simply to allow one party to buy electricity or capacity from

[10] Section B.8 of the Settlement states that the "public interest" standard of review shall apply to proposed modifications of the Settlement, provided, however, that, as also stipulated in section A.3 of the Settlement, if the RMR Agreement has not terminated due to PPL's ability to participate in ISO-NE's Locational Forward Reserves Market (LFRM) by July 1, 2007, as of that date the "just and reasonable" standard of review shall apply to complaints to terminate the RMR Agreement under conditions set forth in sections A.3 and B.8. Further, section B.8 provides that ISO-NE has the right to make section 206 filings to modify the RMR Agreement under the "just and reasonable" standard of review, provided that PPL has the right in any such proceeding to file pursuant to section 205 under the "just and reasonable" standard of review to seek to recover any additional costs associated with modifications required by changes sought by ISO-NE in such section 206 filing. Finally, section B.8 provides that nothing in the Settlement is intended to impose the "public interest" standard of review with respect to future section 205 or 206 filings made pursuant to certain specified provisions of the RMR Agreement.

[11] As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st 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).

another for resale but to ensure the reliable operation of the regional transmission grid for the benefit of users of the grid.[12] Given this reliability component, RMR agreements have wide applicability to the market and to market participants. For example, the market participants that pay for the reliability services provided under the RMR agreements are much broader in number than the single entity that executes the agreements (here, ISO-NE). RMR agreements suppress market-clearing prices and deter investment in new generation.[13] Moreover, the market participants that pay for the agreements pay out-of-market prices for the service provided under the RMR agreements, which broadly hinders market development and performance.[14] As a result of these factors, we have concluded that RMR agreements should be used as a last resort.[15] Because of the uniquely broad applicability of RMR agreements to markets and market participants alike, we find that it would be inconsistent with our duty under the Federal Power Act to be bound to the higher "public interest" standard when reviewing RMR agreements. Therefore, we find that the standard of review applicable to the Commission's review of the RMR agreement shall be the just and reasonable standard.

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[12] *Devon Power LLC*, 117 FERC ¶ 61,133, at P 99 (2006) (stating that "the increase in RMR agreements provides substantial evidence that signals a greater problem in the market, namely, its inability to compensate capacity resources needed to maintain the reliability of the system" and noting "substantial record evidence regarding the inability of generators to earn sufficient revenues in the current market, both to continue operating or to support new investment").

[13] *Devon Power LLC*, 103 FERC ¶ 61,082, at P 31, *order on reh'g*, 104 FERC ¶ 61,123 (2003) (finding that "the proliferation of these agreements is not in the best interest of the competitive market").

[14] *Id.* P 29 (stating that "extensive use of RMR contracts undermines effective market performance").

[15] The Commission has repeatedly expressed dissatisfaction with these "non-market" mechanisms and has adopted a "last resort" policy when considering RMR agreements. *See, e.g.*, *Berkshire Power Company*, 112 FERC ¶ 61,253, at P 22 (2005) (stating that "an RMR agreement should be viewed as a tool of last resort for a generator"); *Devon Power LLC*, 110 FERC ¶ 61,315, at P 40 (2005) (noting that "[t]he Commission has stated on several occasions that it shares the concerns . . . that RMR agreements not proliferate as an alternative pricing option for generators, and that they are used strictly as a last resort so that units needed for reliability receive reasonable compensation"); *Devon Power LLC*, 103 FERC ¶ 61,082 at P 31 (finding "that RMR agreements should be a last resort"). The Commission does not wish RMR agreements to represent a crutch for temporary shortfalls in generator cost recovery; these agreements address a specific, temporary reliability need necessary for all users of the regional grid.

8. Accordingly, acceptance of the Settlement Agreement is subject to the condition that, within 30 days of the issuance of this order, the parties file revisions to provide that that the Commission will be bound to the "just and reasonable" standard and not the "public interest" standard.

9. Further, for good cause shown a waiver of the Commission's 60-day notice requirement,[16] is granted and the Settlement is conditionally accepted to be effective on June 1, 2006, as proposed. Refunds with interest are to be made in accordance with the terms of the Settlement. Within fifteen (15) days after making such refunds, PPL shall file with the Commission a compliance refund report showing monthly billing determinants, revenue receipt dates, revenues under the 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. PPL shall furnish copies of the report to affected customers and to each state commission within whose jurisdiction the affected wholesale customers distribute and sell electric energy at retail.

10. This order terminates Docket Nos. ER03-421-000, ER03-421-001, ER03-421-002, ER03-421-004, ER03-421-005, ER03-421-006, ER03-421-007, ER03-421-008, ER03-421-009, ER03-421-010, and ER03-421-011.

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

(S E A L)

Philis J. Posey,
Acting Secretary.

[16] *See* 18 C.F.R. § 35.13 (2006).

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(Issued March 23, 2007)

KELLY, Commissioner, *concurring*:

This order approves a settlement agreement related to a Reliability Must Run (RMR) Agreement between PPL and ISO-NE, subject to condition. The parties to the settlement request that the Commission apply, with respect to proposed modifications to the settlement, the *Mobile-Sierra* "public interest" standard of review. This order rejects the proposed "public interest" standard provision and finds that the standard of review applicable to the Commission's review of the RMR agreement should be the "just and reasonable" standard. For the reasons noted in my separate statement in *Bridgeport Energy, LLC*, Docket No. ER05-611-005, *et al.*, I concur with this order's rejection of the proposed "public interest" standard provisions.

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Suedeen G. Kelly

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(Issued March 23, 2007)

WELLINGHOFF, Commissioner, concurring in part and dissenting in part:

The parties in this case have asked the Commission to apply the "public interest" standard of review when it considers most future changes to the instant settlement that may be sought by any of the parties, 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. Because the facts of this case do not satisfy the standards that I identified in *Entergy Services, Inc.*,[1] 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*.

For the reasons that I identified in *Southwestern Public Service Co.*,[2] 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

[1] 117 FERC ¶ 61,055 (2006).

[2] 117 FERC ¶ 61,149 (2006).