

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Jon Wellingshoff.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-6-083
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, <i>et al.</i>	EL04-135-086
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, <i>et al.</i>	EL02-111-103
Ameren Services Company, <i>et al.</i>	EL03-212-099

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued November 2, 2006)

1. On September 19, 2006, Duquesne Light Company (Duquesne) and Dominion Retail, Inc. (Dominion) (collectively, Settling Parties) filed an Uncontested Partial Settlement (Settlement) resolving all Seams Elimination Cost Adjustment (SECA) issues between these parties set for hearing in the above-captioned dockets. Specifically, Duquesne shall pay to Dominion \$650,000 (Settlement Amount), which shall comprise full and complete settlement of all issues as between Duquesne and Dominion related to the reallocation and recovery of lost transmission revenues in the Duquesne Light zone of PJM Interconnection, LLC. The Settlement provisions dictate that Duquesne shall pay the Settlement Amount to Dominion within forty-five (45) days of the Commission's approval of the Settlement.
2. The Settlement was filed directly with the Commission. Notice of the Settlement was issued September 28, 2006, providing for initial and reply comments on October 2, 2006 and October 5, 2006, respectively. No comments were filed. Accordingly, the Commission is treating the Settlement as uncontested.

3. The subject Settlement is fair and reasonable and in the public interest; it is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The standard of review for any modifications to this Settlement that are not agreed to by both of the Settling Parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine.<sup>1</sup>

4. This order terminates Docket Nos. ER05-6-083, EL04-135-086, EL02-111-103 and EL03-212-099.

By the Commission. Commissioner Kelly concurring with a separate statement attached.  
Commissioner Wellinghoff dissent in part with a separate statement attached.  
Commissioner Moeller not participating.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>1</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). 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). In this case we find that the public interest standard should apply.

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KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the *Mobile-Sierra* “public interest” standard of review for any future modifications to this settlement agreement that are not agreed to by the settling parties. The settlement resolves all Seams Elimination Cost Adjustment (SECA) issues between the parties arising from the reallocation and recovery of lost transmission revenues for the period ending March 31, 2006 in the Duquesne Light zone of PJM Interconnection, LLC. This settlement is uncontested, does not affect non-settling parties, resolves the amount of the claimed SECA obligation between these parties for the relevant prior period, and does not contemplate ongoing performance under the settlement into the future, which would raise the issue of what standard the Commission should apply in reviewing any possible future modifications. Indeed, in a sense, the standard of review is irrelevant here. Therefore, while I do not agree with the reasoning of the majority regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 1), I concur with the order’s approval of this settlement agreement.

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Suedeem G. Kelly

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EL03-212-099

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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 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*. In addition, for the reasons that I identified in *Southwestern Public Service Co.*,<sup>2</sup> I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, 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).