

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

|  |                         |
|--|-------------------------|
| Midwest Independent Transmission System<br>Operator, Inc.  | Docket No. ER05-6-081   |
| Midwest Independent Transmission System<br>Operator, Inc.<br>PJM Interconnection, LLC, <i>et al.</i> | Docket No. EL04-135-084 |
| Midwest Independent Transmission System<br>Operator, Inc.<br>PJM Interconnection, LLC, <i>et al.</i> | Docket No. EL02-111-101 |
| Ameren Services Company, <i>et al.</i>   | Docket No. EL03-212-097 |

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued November 8, 2006)

1. On August 1, 2006, the Settling Midwest ISO Transmission Owners, the Settling PJM Transmission Owners (collectively, Settling Transmission Owners),<sup>1</sup> and Duke Energy North America LLC (Duke Energy) filed a Settlement Agreement (Settlement) that resolves all issues related to Seams Elimination Cost/Charge Adjustment/Assignment (SECA) charges among Duke Energy and the Settling Transmission Owners in the captioned dockets.
2. On August 7, 2006, Trial Staff filed comments in support of the Settlement. The presiding administrative law judge certified the Settlement to the Commission as

---

<sup>1</sup> The entities comprising Settling Transmission Owners are listed at Footnote Nos. 2 and 3 of the Settlement.

uncontested on September 5, 2006.<sup>2</sup> The Settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of the 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 requested by a Settling Party that are not agreed to by all Settling Parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine. The standard of review for any modifications to this Settlement requested by a non-Settling Party to the Settlement Agreement and the Commission will be the most stringent standard permissible under applicable law. <sup>3</sup>

3. As a result of any refunds pursuant to the Settlement, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and PJM Interconnection, LLC (PJM) shall file a compliance report with this Commission, within fifteen (15) days after such refunds are made. The report shall show monthly billing determinants, revenue receipt dates, revenues under the prior, present and settlement rates, and the revenue refund, together with a summary of such information for the total refund period. Midwest ISO and PJM shall furnish copies of the report to the affected wholesale customers and to each state Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

---

<sup>2</sup> *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 63,048 (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). 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.

4. This order terminates Docket Nos. ER05-6-081, EL04-135-084, EL02-111-101, and EL03-212-097. New sub-dockets in these proceedings will be opened for the required compliance filings.

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

( S E A L )

Magalie R. Salas,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

|   |             |              |
|---|-------------|--------------|
| Midwest Independent Transmission System Operator, Inc.  | Docket Nos. | ER05-6-081   |
| Midwest Independent Transmission System Operator, Inc.<br>PJM Interconnection, LLC, <i>et al.</i> |             | EL04-135-084 |
| Midwest Independent Transmission System Operator, Inc.<br>PJM Interconnection, LLC, <i>et al.</i> |             | EL02-111-101 |
| Ameren Services Company, <i>et al.</i>  |             | EL03-212-097 |

(Issued November 8, 2006)

KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply “the most stringent standard permissible under applicable law” with respect to any future changes proposed by a non-settling party or the Commission. This settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for the period ending March 31, 2006. This settlement is uncontested, does not affect non-settling parties, and resolves the amount of the claimed SECA obligations between the parties for the relevant prior period. The settlement does not contemplate ongoing performance under the settlement into the future, which would raise the issue of what standard the Commission should apply to review any possible future modifications sought by non-parties or the Commission. Indeed, in a sense, the standard of review is irrelevant here. Therefore, while I do not agree with the order’s unexplained inference that the *Mobile-Sierra* “public interest” standard of review applies with respect to any future modifications sought by a non-party or the Commission, or the reasoning regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 3), I concur with the order’s approval of this settlement agreement.

---

Suedeem G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

|  |                        |
|--|------------------------|
| Midwest Independent Transmission<br>System Operator, Inc.  | Docket Nos. ER05-6-081 |
| Midwest Independent Transmission<br>System Operator, Inc.<br>PJM Interconnection, LLC, <i>et al.</i> | EL04-135-084           |
| Midwest Independent Transmission<br>System Operator, Inc.<br>PJM Interconnection, LLC, <i>et al.</i> | EL02-111-101           |
| Ameren Services Company, <i>et al.</i>   | EL03-212-097           |

(Issued November 8, 2006)

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. With regard to such changes sought by either a non-party or the Commission acting *sua sponte*, the parties have asked the Commission to apply the most stringent standard permissible under applicable law. In response to the latter request, the Commission states that the “public interest” standard should apply to future changes sought by 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 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.

---

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

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

For these reasons, I respectfully dissent in part.

---

Jon Wellinghoff  
Commissioner