

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.

Pittsfield Generating Company, L.P.

Docket Nos. ER06-262-000  
ER06-262-001  
ER06-262-002

ORDER ON UNCONTESTED SETTLEMENT AND REHEARING

(Issued April 2, 2007)

1. On November 30, 2005, Pittsfield Generating Company, L.P. (Pittsfield) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> an unexecuted Reliability Must Run Agreement (RMR Agreement) among itself, Sempra Energy Trading Corp. (Sempra), as agent for Pittsfield, and ISO New England Inc. (ISO-NE) for a 160 MW natural gas-fired, combined-cycle power generation facility leased and operated by Pittsfield in Pittsfield, Massachusetts. In an order issued on April 17, 2006, the Commission conditionally accepted the RMR Agreement for filing, suspended it for a nominal period, and set it for hearing and settlement judge procedures.<sup>2</sup>

2. In this order, the Commission conditionally accepts an offer of settlement resolving all matters in the above-captioned dockets with the exception of ISO-NE's request for rehearing of the April 17 Order. In this order, the Commission also denies ISO-NE's request for rehearing of the April 17 Order.

**I. Background**

3. Under Pittsfield's RMR Agreement, Pittsfield proposed to collect a cost of service rate in exchange for operating the 160 MW natural gas-fired, combined-cycle power

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<sup>1</sup> 16 U.S.C. § 824d (2000).

<sup>2</sup> *Pittsfield Generating Company, L.P.*, 115 FERC ¶ 61,059 (2006) (April 17 Order).

generation facility (Facility) leased and operated by Pittsfield in Pittsfield, Massachusetts to provide services specified in the RMR Agreement; Pittsfield and ISO-NE negotiated the RMR Agreement under section 3.3 of Exhibit 2, Appendix A of Market Rule 1.<sup>3</sup>

4. Pittsfield argued that the RMR Agreement is necessary to ensure that the Facility remains available to support system reliability. It also noted that ISO-NE made the determination that the Facility is needed for reliable system operation. Pittsfield and ISO-NE submitted supplemental filings in response to a deficiency letter that provided additional information about the termination of certain power purchasing agreements under which Pittsfield operated.

5. Under the proposed RMR Agreement, which Pittsfield described as substantially similar to the *pro forma* Cost of Service Agreement contained in Market Rule 1, Pittsfield, through Sempra acting as its agent, will submit bids for energy and ancillary services at the Stipulated Bid Costs of the Facility, which are based on its characteristics and operating parameters identified in Schedule 3 of the RMR Agreement.<sup>4</sup> The RMR Agreement provides that Pittsfield will be paid a Monthly Fixed Cost Charge that will be determined in accordance with the formulae set forth in Schedule 4 of the RMR Agreement and the Annual Fixed Revenue Requirement (AFRR) for the Facility as determined by the Commission.

6. In the April 17 Order, the Commission conditionally accepted and suspended the RMR Agreement, and set the RMR Agreement for hearing and settlement judge procedures. The Commission accepted ISO-NE's finding that the Facility is necessary to support reliability in New England (although rejecting ISO-NE's argument that its reliability determination is not required to be reviewed under section 205). The Commission set for hearing and settlement judge procedures, however, the issue of whether the proposed RMR Agreement is necessary for Pittsfield to recover its facility

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<sup>3</sup> ISO New England Inc., FERC Electric Tariff No. 3, Market Rule 1, section III, Appendix A, at III.A.6.2, First Revised Sheet No. 7434 and section III, Appendix A, Exhibit 2 at 3.3, Second Revised Sheet No. 7461. Market Rule 1 was approved by the Commission in *New England Power Pool and ISO New England, Inc.*, 100 FERC ¶ 61,287, *order on reh'g*, 101 FERC ¶ 61,344 (2002), *order on reh'g*, 103 FERC ¶ 61,304, *order on reh'g*, 105 FERC ¶ 61,211 (2003).

<sup>4</sup> The Stipulated Bid Costs are self-adjusting formulary rates that reflect agreed-upon formulae and marginal costs for fuel, variable operating and maintenance (O&M), and environmental allowances, as defined in the RMR Agreement and as reported to ISO-NE.

costs, and whether the payments it received from the termination of certain power purchase agreements (Termination Payments) should be included as a revenue item in determining whether Pittsfield can recover its facility costs.<sup>5</sup> Further, the April 17 Order determined that, if the hearing finds that the RMR Agreement is necessary to prevent the deactivation of the facility, the hearing and settlement judge procedures should determine a just and reasonable rate under the RMR Agreement. In determining the just and reasonable rate, the April 17 Order explained that the Commission would consider Pittsfield's full cost of service, including the accounting treatment of Pittsfield's Termination Payments and whether the Termination Payments should be excluded from the cost of service for ratemaking purposes. The April 17 Order also required Pittsfield to support the inclusion of its leasing fee (and provide details of this arrangement). Finally, the April 17 Order required that the hearing and settlement proceedings should determine the appropriate debt/equity ratio.

7. On May 17, 2006, Massachusetts Municipal Wholesale Electric Company, Chicopee Municipal Lighting Plant and South Hadley Electric Light Department (jointly); and ISO-NE submitted timely requests for rehearing.

8. Following negotiations among the active parties and Commission Trial Staff, on November 22, 2006, Pittsfield filed with the Commission the Offer of Settlement. The Offer of Settlement resolves all matters set for hearing in the above-captioned docket with the exception of ISO-NE's request for rehearing.

9. On December 1, 2006, Commission Trial Staff filed comments in support of the Offer of Settlement. No other comments were filed.

10. On December 13, 2006, the Presiding Administrative Law Judge certified the Offer of Settlement to the Commission as uncontested.<sup>6</sup>

11. On March 2, 2007, Pittsfield filed a unopposed motion for expedited consideration of the Offer of Settlement.

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<sup>5</sup> Facility costs, as defined by the April 17 Order, are the costs necessary to keep a facility available, such as fixed O&M, administrative and general (A&G), and taxes. April 17 Order, 115 FERC ¶ 61,059 at P 32.

<sup>6</sup> *Pittsfield Generating Company, L.P.*, 117 FERC ¶ 63,048 (2006) (Certification of Settlement).

## II. Discussion

### A. Uncontested Settlement

12. The Offer of Settlement resolves all matters in the above-captioned dockets with the exception of ISO-NE's request for rehearing.<sup>7</sup> Among other things, the Offer of Settlement modifies certain provisions of the RMR Agreement that was filed on November 30, 2005, including the provisions for termination of the agreement. In addition, the Offer of Settlement revises the RMR Agreement to identify more clearly the revenues that will be offset against the Monthly Fixed Charges under the RMR Agreement. The Offer of Settlement also reduces the AFRR under the RMR Agreement from approximately \$36 million to approximately \$13 million.

13. The Offer of Settlement requires that, within 30 days after Commission approval without conditions or modification unacceptable to any Party, Pittsfield must refund to ISO-NE with interest calculated in accordance with 18 C.F.R. § 35.19a (2006) the difference between: (1) the amounts collected by Pittsfield under the RMR Agreement from the effective date to the date of Commission approval of the Offer of Settlement; and (2) the amounts that would have been collected by Pittsfield during the same period under the rates and charges established pursuant to the Offer of Settlement. The Offer of Settlement also requires that, within 45 days of receipt, ISO-NE will pass through the refunds with interest to those entities that are paying monthly charges under the RMR Agreement. Further, the Offer of Settlement requires that, within 30 days of Commission approval without conditions or modifications unacceptable to any party, Pittsfield will make a compliance filing with the Commission that includes: (a) a modified and restated RMR Agreement, in the form prescribed by Order No. 614, containing all of the modifications adopted by the Offer of Settlement, and (b) a report showing the calculation of refunds pursuant to the Offer of Settlement.<sup>8</sup>

14. The Offer of Settlement provides that the just and reasonable standard of review will apply to all complaints or in a proceeding initiated by the Commission *sua sponte* pursuant to FPA section 206<sup>9</sup> seeking termination or modification of the RMR Agreement, except those complaints relating to the modification of the AFRR contained in the RMR Agreement. The Offer of Settlement provides that the standard of review

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<sup>7</sup> Offer of Settlement at P 24. This issue is discussed, *infra*, at section II.B.

<sup>8</sup> Offer of Settlement at P 23, 25.

<sup>9</sup> 16 U.S.C. § 824e (2000).

that the Commission shall apply when addressing proposed changes to the AFRR is the “public interest” standard except in the two cases of certain rate changes proposed by Pittsfield (to recover (a) Additional Expenses that may be incurred pursuant to the RMR Agreement’s section 5.2.2(e) and (b) costs incurred to comply with new reliability requirements required by ISO-NE through a FPA section 205 or section 206 filing) where the just and reasonable standard shall be applied.<sup>10</sup>

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

16. While the parties agreed to a *Mobile-Sierra* “public interest” standard for most proposed changes to the AFRR, 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>11</sup> 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 another for resale but to ensure the reliable operation of the regional transmission grid for the benefit of users of the grid.<sup>12</sup> 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-

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<sup>10</sup> Offer of Settlement at P 19.

<sup>11</sup> 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).

<sup>12</sup> *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”).

clearing prices and deter investment in new generation.<sup>13</sup> 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.<sup>14</sup> As a result of these factors, we have concluded that RMR agreements should be used as a last resort.<sup>15</sup> 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 all parts of the RMR agreement shall be the just and reasonable standard.

17. This order terminates Docket Nos. ER06-262-000, ER06-262-001 and ER06-262-002. A new subdocket will be assigned upon receipt of the required compliance report.

## **B. ISO-NE’s Reliability Determination**

### **1. Requests for Rehearing**

18. In its request for rehearing, ISO-NE argues that the Commission’s finding, in the April 17 Order and other RMR proceedings, that ISO-NE’s reliability determination is

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<sup>13</sup> *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”).

<sup>14</sup> *Id.* P 29 (stating that “extensive use of RMR contracts undermines effective market performance”).

<sup>15</sup> 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*, 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.

subject to section 205 conflicts with prior Commission precedent and practice.<sup>16</sup> ISO-NE specifically cites *Sithe* for the proposition that ISO-NE's reliability determination is "not subject to section 205 review, even though that agreement required the generator to file pursuant to [s]ection 205 in the same manner as Market Rule 1 does."<sup>17</sup> ISO-NE also argues that this approach is nothing more than a collateral attack on the procedures established in Commission-approved Market Rule 1. ISO-NE notes that nothing in Market Rule 1 requires ISO-NE to file with the Commission its reliability analysis, and absent a section 205 filing by ISO-NE, the determinations cannot be subject to section 205 review.

19. ISO-NE further argues that the Commission's statements in *Bridgeport III*, relied upon in the April 17 Order, "regarding the lack of a specific method or process for determining reliability and that the methodology actually applied by ISO-NE was not approved by the Commission"<sup>18</sup> is inconsistent with the Commission's approach to RMR Agreements approved under the California Independent System Operator, Inc.'s (CAISO) tariff. ISO-NE maintains that "numerous" RMR agreement have been approved under that tariff with little information about the CAISO's underlying reliability analysis.<sup>19</sup>

20. ISO-NE also argues that the Commission's position ignores the approach endorsed in Order No. 2000. ISO-NE maintains that Market Rule 1 establishes an "Order No. 2000 type relationship" in that the determination of reliability-based need is part of the transmission service provided by ISO-NE, and therefore, under its section 205 rights (by contrast, the generator retains its section 205 right to seek an appropriate revenue requirement by filing its cost of service with the Commission).<sup>20</sup>

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<sup>16</sup> ISO-NE Request for Rehearing at 9-13 (citing, *inter alia*, *PSEG Power Connecticut, LLC*, 110 FERC ¶ 61,020 at P 19, *order on reh'g*, 111 FERC ¶ 61,411 (2005) (*PSEG*); *Devon Power, LLC*, 103 FERC ¶ 61,082 (2003); *ISO New England Inc.*, 105 FERC ¶ 61,263 (2003); *Sithe New Boston, LLC*, 100 FERC ¶ 61,106 (2002) (*Sithe*)).

<sup>17</sup> *Id.* at 10.

<sup>18</sup> *Id.* at 11 (citing *Bridgeport Energy, LLC*, 114 FERC ¶ 61,265, at P 11 (2006) (*Bridgeport III*)).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 14.

21. Moreover, ISO-NE argues that the Commission erred in finding that section 205 review must apply to ISO-NE's reliability determinations, regardless of what Market Rule 1 provides, noting that once terms of service have been approved under section 205, as has been done with Market Rule 1, it may only be changed through section 206. ISO-NE notes that the Commission does not possess the statutory authority to cause a public utility to involuntarily cede its section 205 rights. ISO-NE further argues that the Commission's position deviates from how the courts have interpreted FPA section 205 filing rights.<sup>21</sup>

22. Finally, ISO-NE argues that the Commission's responsibility to ensure that ISO-NE has completed its reliability determination as part of a generator's cost of service filing is fundamentally different than a *de novo* challenge to the efficacy of that reliability determination. ISO-NE asserts that a review by the Commission of how it conducted its reliability review is not permissible under section 205 and is only appropriate if conducted pursuant to FPA section 206.

## 2. Commission Determination

23. We deny ISO-NE's request for rehearing. We are not persuaded that our finding that ISO-NE's reliability determination is subject to Commission review conflicts with prior Commission precedent and practice or is otherwise unlawful.

24. Initially, as we have previously indicated,<sup>22</sup> Market Rule 1 is devoid of any requirement that any review or challenge to an ISO-NE reliability determination, an essential prerequisite to an RMR agreement, must be made under section 206. To the contrary, section 3.3.1(c)(iii) of Exhibit 2 to Appendix A to Market Rule 1 specifies that

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<sup>21</sup> *Id.* at 14-16 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

<sup>22</sup> *Berkshire Power Company*, 115 FERC ¶ 61,253, at P 10-12 (2006) (*Berkshire III*); *Bridgeport III*, 114 FERC ¶ 61,265 at P 11-13.

RMR agreements must be filed under section 205.<sup>23</sup> In addition, we note that ISO-NE's reliability determination for the Pittsfield Facility, or the methodology ISO-NE applied to reach its determination, was not previously approved by the Commission.

25. The Commission does not challenge ISO-NE's authority under Market Rule 1 to make a reliability need determination. However, the Commission has the right to review the support for an RMR agreement, including that ISO-NE reliability determination, filed under section 205; designation of a reliability need by ISO-NE does not guarantee approval of an RMR agreement.<sup>24</sup> By reviewing a reliability determination, which is a prerequisite for an RMR agreement, the Commission is not requiring any party to cede its rights under section 205. Rather, the Commission is reviewing here Pittsfield's proposed RMR Agreement and its supporting documents, filed pursuant to section 205, as it reviews any other proposed rate schedule and its accompanying cost support.<sup>25</sup> Just as the Commission has the obligation to review the cost support accompanying a proposed rate schedule, it has the same obligation to review the support, including ISO-NE's reliability determination, accompanying a proposed RMR agreement. The Commission must determine if the evidence supporting a reliability need, just as it must determine if the evidence supporting financial need, warrants the out-of-market contract that the Commission has consistently held is a tool of last resort.<sup>26</sup> Therefore, filings of RMR

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<sup>23</sup> Section 3.3.1(c) states that “[i]f the ISO has made such [a reliability] determination and the Reliability Seller is not satisfied with the Reference Level or a Reliability Mitigation Agreement, . . . (iii) the Reliability Seller shall file for cost-based rates *under section 205* with each party to take any position it determines appropriate regarding recovery of return of and on investment.” (emphasis added).

<sup>24</sup> *Bridgeport Energy, LLC*, 112 FERC ¶ 61,077 at P 32, *order on reh’g*, 113 FERC ¶ 61,311 (2005), *order rejecting reh’g*, 114 FERC ¶ 61,265 (2006) (finding that “we must examine the facts in each instance against the standard of section 205(a) of the FPA that all rates and charges demanded by any public utility for the sale of electric energy subject to the Commission’s jurisdiction shall be just and reasonable.”).

<sup>25</sup> The Commission reviews each proposed RMR agreement and the support for each RMR agreement, including the RMR agreement at issue here, individually, *i.e.*, on a case-by-case basis.

<sup>26</sup> *Berkshire Power Company, LLC*, 112 FERC ¶ 61,253 at P 22 (2005), *order on reh’g*, 114 FERC ¶ 61,099, *order rejecting reh’g*, 115 FERC ¶ 61,253 (2006).

agreements must include evidence of ISO-NE's reliability determination and supporting documents so that the Commission can determine whether there is a reliability need for that specific generator.

26. This approach is consistent with our precedent. For instance, in *Devon Power, LLC*,<sup>27</sup> the Commission stated that the filing of proposed RMR agreements under section 205 "gives market participants an opportunity to provide input and present evidence contradicting ISO-NE's determinations."<sup>28</sup> Likewise, in *Milford Power Co., LLC*,<sup>29</sup> the Commission explained that Market Rule 1 permits ISO-NE to enter into reliability agreements "subject to Commission approval."<sup>30</sup>

27. ISO-NE is correct that any modifications to Market Rule 1 can only be changed through a section 206 proceeding. However, here the Commission is not challenging Market Rule 1. The Commission is reviewing a proposed RMR agreement filed pursuant to section 205. Accordingly, in the context of reviewing a proposed RMR agreement, the Commission's review of ISO-NE's reliability determination, an essential prerequisite to an RMR Agreement and thus support for the RMR Agreement, is appropriate.

28. The Commission disagrees with ISO-NE that the Commission's review of its reliability determination is not only a collateral attack on Market Rule 1 (which, as just noted, it is not) but also contrary to *Sithe*. In *Sithe*, the Commission ruled that protestors' requests to set the reliability determination for hearing were a collateral attack on then-

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<sup>27</sup> 110 FERC ¶ 61,315 (2005).

<sup>28</sup> *Id.* P 41.

<sup>29</sup> 112 FERC ¶ 61,154 (2005) (*Milford*).

<sup>30</sup> *Id.* P 15. See also *PPL Wallingford Energy, LLC v. FERC*, 419 F.3d 1194, 1196 (D.C. Cir. 2005) (While Market Rule 1 gives ISO-NE "the authority to negotiate individual RMR agreements as are required to maintain and/or improve system reliability[,] [it also requires that] 'such agreements are to be filed with the Commission in accordance with the Commission's rules and regulations, and, as such, may be subject to the review of the Commission.'" (quoting *New England Power Pool*, 100 FERC ¶ 61,287, at 62,268 (2002)).

current “Market Rule 17 and *Mirant IV*.”<sup>31</sup> However, the Commission did not rule that it cannot or should not review the support for an RMR application filed under section 205, including the reliability determination.

29. ISO-NE also notes that, in *Sithe*, the Commission did not review ISO-NE’s conclusion that the unit was needed. ISO-NE is wrong; the Commission did review that determination. Although the generator in that proceeding did not file ISO-NE’s actual reliability determination as part of its original filing, it did file ISO-NE’s letter stating that the disputed units were needed for reliability and the Commission, in fact, did not challenge ISO-NE’s determination.<sup>32</sup> At the time, the RMR agreement was proposed as a temporary measure with an original term of one year. With the risk of grid reliability at stake, the Commission agreed with ISO-NE that the disputed units would be temporarily needed for reliability.<sup>33</sup> As explained above, the Commission takes into account the supporting materials when determining if an RMR Agreement is necessary, and it did so in *Sithe*.

30. Furthermore, although the Commission accords considerable weight to ISO-NE’s reliability determinations, we have consistently reviewed them in the context of reviewing proposed RMR agreements. Indeed, recently, the Commission has had to

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<sup>31</sup> *Sithe*, 100 FERC ¶ 61,106 at P 16. *Mirant Americas Energy Marketing, L.P.* (*Mirant IV*), 99 FERC ¶ 61,003, at 61,019 (2002), found that ISO-NE has “blanket authority” to enter into reliability-related mitigation agreements under Market Rule 17 and the Commission “need not make a separate determination as to the justness and reasonableness of mitigation agreements filed under Market Rule 17 . . .” *Sithe*, 100 FERC ¶ 61,106 at P 15, 17.

Then-applicable Market Rule 17 has been superceded in its entirety by current Market Rule 1. Market Rule 1 amendments were accepted by the Commission in Docket No. ER02-2330-000 on September 20, 2002. *New England Power Pool*, 100 FERC ¶ 61,287, *order on reh’g*, 101 FERC ¶ 61,344 (2002), *order on reh’g*, 103 FERC ¶ 61,304, *order on reh’g*, 105 FERC ¶ 61,211 (2003).

<sup>32</sup> *Sithe New Boston LLC, Reliability Must Run Agreement Among Sithe New Boston LLC, Sithe New England Holdings, LLC, and ISO New England Inc.*, Docket No. ER02-648-000, at Att. 1 (Dec. 28, 2001).

<sup>33</sup> *Sithe*, 100 FERC ¶ 61,106 at P 17.

increasingly scrutinize materials supporting claimed reliability needs.<sup>34</sup> And the Commission has never stated that an ISO-NE reliability determination is conclusive in itself. To the contrary, the Commission has consistently held that ISO-NE's reliability determinations would be subject to Commission review.<sup>35</sup>

31. We also reject ISO-NE's arguments that the Commission's findings herein are inconsistent with its treatment of RMR agreements in other Regional Transmission Organizations (RTOs). RTOs operate with market rules specific to each respective RTO, and we take action in this proceeding in the context of Market Rule 1 applicable to the New England markets and based on our review of Pittsfield's proposed RMR Agreement (as revised by the Offer of Settlement).<sup>36</sup> Other RTOs with different market rules are simply not relevant.

The Commission orders:

(A) The Offer of Settlement is hereby conditionally approved as fair and reasonable and in the public interest, as discussed in the body of this order.

(B) ISO-NE's request for rehearing is hereby denied, as discussed in the body of this order. Other requests for rehearing are hereby dismissed as moot.

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<sup>34</sup> For example, in other cases involving proposed RMR agreements, the Commission had sent deficiency letters to ISO-NE, and ISO-NE subsequently informed the Commission that it had incorrectly identified certain generators as needed for reliability purposes in New England. *Fore River Development, LLC*, 116 FERC ¶ 61,122 (2006); *Braintree Electric Light Department*, 116 FERC ¶ 61,121 (2006).

<sup>35</sup> *Bridgeport III*, 114 FERC ¶ 61,265 at P 13; *Berkshire III*, 115 FERC ¶ 61,253 at P 12; *Milford*, 112 FERC ¶ 61,154 at P 18; *Mystic Development, LLC*, 114 FERC ¶ 61,200, at P 22, *order on reh'g*, 116 FERC ¶ 61,168 (2006).

<sup>36</sup> We reiterate that we review individually each proposed RMR agreement, and its supporting materials, *i.e.*, we review them case-by-case.

(C) Docket Nos. ER06-262-000, ER06-262-001 and ER06-262-002 are hereby terminated.

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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pittsfield Generating Company, L.P.

Docket Nos. ER06-262-000  
ER06-262-001  
ER06-262-002

(Issued April 2, 2007)

KELLY, Commissioner, *concurring*:

This order approves, subject to conditions, a settlement related to a Reliability Must Run (RMR) Agreement between ISO-New England, Pittsfield Generating Company, L.P., and Sempra Energy Trading Energy Corp. The parties to the settlement request that the Commission apply the *Mobile-Sierra* “public interest” standard of review with respect to certain changes to the RMR Agreement, whether proposed by a non-party or the Commission acting *sua sponte*.

As I have stated previously, in the absence of an affirmative showing by the parties and a reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such provisions.<sup>1</sup> Under the facts of this case, I do not think the parties have made an affirmative showing. This order rejects the proposed “public interest” standard provision based on the wide applicability of RMR agreements to markets and market participants. I agree that RMR agreements broadly impact market participants and the operation of the market as a whole and, therefore, allowing the “public interest” standard of review to apply to future modifications that may be sought by a non-party or the Commission acting *sua sponte* would be inappropriate. I think the same reasoning applies when the Commission considers whether to approve proposed “public interest” standard of review provisions in other types of agreements that impact non-party market participants and the operation of the market.<sup>2</sup>

Although I disagree with the characterization of the applicability of the *Mobile-*

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

<sup>2</sup> See, e.g., *Southwest Power Pool, Inc.*, 117 FERC ¶ 61,207 (2006) (Comm’r Kelly, dissenting in part; Comm’r Wellinghoff, dissenting in part) (order approving “public interest” standard provisions in a contested settlement between SPP and its balancing authorities related to the implementation of SPP’s energy imbalance service market).

*Sierra* “public interest” standard in footnote 11 of the order, I agree with the order’s rejection of the proposed “public interest” standard provision. Accordingly, I concur with this order.

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Suedeem G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pittsfield Generating Company, L.P.

Docket Nos. ER06-262-000  
ER06-262-001  
ER06-262-002

(Issued April 2, 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 certain 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.*,<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*.

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).