

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

Docket Nos. ER05-6-075
EL04-135-078
EL02-111-095
EL03-212-091

ORDER APPROVING UNCONTESTED SETTLEMENT AGREEMENT

(Issued April 26, 2007)

1. On July 27, 2006, Duquesne Light Company (Duquesne) and Strategic Energy, LLC (Strategic) filed a Stipulation and Settlement Agreement. The Settlement resolves all of the issues set for hearing¹ between the Duquesne and Strategic addressing the seams elimination charge/cost adjustments/assignments proceedings related to the reallocation and recovery of lost transmission revenues in the Duquesne zone of PJM Interconnection, LLC. On August 1, 2006, Staff filed comments in support of the Settlement. On August 30, 2006, the Presiding Administrative Law Judge certified the Agreement to the Commission as an uncontested settlement.²

2. The settlement is fair and reasonable and in the public interest and 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 applicable standard of review for any changes to the settlement not agreed to by the parties, whether proposed by a party, a non-party, or the Commission acting *sua sponte*, is the *Mobile-Sierra* public interest standard.³

¹ *Midwest Independent Transmission Operator*, 110 FERC ¶ 61,107 (2005).

² *Midwest Independent Transmission Operator*, 116 FERC ¶ 63,044 (2006).

³ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard. *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). In this case we find that the public interest standard should apply.

3. This order terminates Docket Nos. ER05-6-075, EL04-135-078, EL02-111-095 and EL03-212-091.

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

(S E A L)

Kimberly D. Bose,
Secretary.

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KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future modifications to this settlement agreement not proposed by the parties. The 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 not opposed, does not affect non-settling parties, and resolves the amount of the claimed SECA obligation 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 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 statements 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.

Suedeen G. Kelly

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

Finally, it is worth noting that the standard of review is, in a sense, irrelevant here for the reasons set forth in Commissioner Kelly’s separate statement.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).