

120 FERC ¶ 61,116  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

American Electric Power Service  
Corporation

Docket Nos. ER05-6-087  
EL04-135-090  
EL02-111-107  
EL03-212-103

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 31, 2007)

1. On October 6, 2006, American Electric Power Service Corporation (AEP), on behalf of certain operating companies of the American Electric Power System,<sup>1</sup> and Exelon Corporation, on behalf of its subsidiaries,<sup>2</sup> filed a Stipulation and Agreement (Settlement). The Settlement fully resolves all the issues set for hearing<sup>3</sup> between AEP and Exelon related to Seams Elimination Charge/Cost Adjustment/Assignment (SECA) charges for the period December 1, 2004 through March 31, 2006.
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. Refunds and adjustments shall be made pursuant to the Settlement.

---

<sup>1</sup> Appalachian Power Co., Columbus Southern Power Co., Indiana Michigan Power Co., Kentucky Power Co., Kingsport Power Co., Ohio Power Co., and Wheeling Power Co.

<sup>2</sup> Commonwealth Edison Co., Commonwealth Edison Co. of Indiana, PECO Energy Co., Exelon Generating Co., and Exelon Energy Co.

<sup>3</sup> *Midwest Independent Transmission System Operator*, 110 FERC ¶ 61,107 (2005).

3. The applicable standard of review for any changes to the Settlement proposed by a settling party that are not agreed to by all settling parties shall be the *Mobile-Sierra* public interest standard.<sup>4</sup>

4. This order terminates Docket Nos. ER05-6-087, EL04-135-090, EL02-111-107, and EL03-212-103.

By the Commission. Commissioner Kelly concurring with a separate statement attached.

Commissioner Wellinghoff dissenting in part with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

---

<sup>4</sup> *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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Service Corporation

Docket Nos. ER05-6-087  
EL04-135-090  
EL02-111-107  
EL03-212-103

(Issued July 31, 2007)

KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the “most stringent standard permissible under applicable law” with respect to any future modifications to the settlement proposed by a non-settling party or the Commission acting *sua sponte*. This order finds that the *Mobile-Sierra* “public interest” standard of review shall apply to any such modifications. The settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for the period ending March 31, 2006. The 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 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 order’s reasoning regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 4), I concur with the order’s approval of this settlement agreement.

---

Suedeen G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

American Electric Power Service Corporation

Docket Nos. ER05-6-087  
EL04-135-090  
EL02-111-107  
EL03-212-103

(Issued July 31, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The parties have asked the Commission to apply the “public interest” standard of review when it considers future changes to their 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 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.

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

---

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

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