

121 FERC ¶ 61,081  
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.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER05-6-084
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL04-135-087
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL02-111-104
Ameren Services Company, <i>et al.</i>	Docket No. EL03-212-100

ORDER APPROVING  
UNCONTESTED PARTIAL SETTLEMENT

(Issued October 23, 2007)

1. On August 11, 2006, Dayton Power & Light Company (Dayton), Nordic Marketing, L.L.C. (Nordic), and a number of transmission-dependent utilities (Settling TDUs)<sup>1</sup> (collectively, Settling Parties) filed a settlement agreement (Settlement) that resolves among them all the issues related to the Seams Elimination Cost Adjustment (SECA) charges that had been set for hearing in the above-captioned dockets.
2. The Settlement resolves all lost revenue claims payable by Dayton to Nordic and to each of the Settling TDUs as well as all lost revenue claims payable by the Settling

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<sup>1</sup> The Settling TDUs consist of: Indiana Municipal Power Agency; Old Dominion Electric Cooperative; Sturgis, Michigan; Blue Ridge Power Agency (as agent for Bedford, Danville, Martinsville, Richlands and Salem, Virginia); Central Virginia Electric Cooperative; Michigan Public Power Rate Payers Association (Cities of Chelsea, Eaton Rapids, Hart, Portland, and St. Louis, Michigan); Wayne-White Counties Electric Cooperative; and Bay City, Michigan.

TDUs or Nordic to Dayton. Each of the Settling TDUs agrees to pay Dayton 60 percent of revenues claimed by Dayton pursuant to SECA charges applicable to each Settling TDU. Each of the Settling TDUs will also be entitled to a refund of any amount paid to Dayton in SECA charges that exceeds its obligation to Dayton under the Settlement. The Settling Parties agree that Nordic's total SECA-related monetary obligation to Dayton shall equal the amount Nordic has paid in past SECA charges that is attributable to Dayton. The Settling Parties also agree to abstain from imposing SECA or similar alternative charges on one another prior to February 1, 2008.

3. On August 11, 2007, the Settlement was filed with the Commission. No comments were submitted. Accordingly, the Commission finds that the Settlement is uncontested.
4. The Commission finds that 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.
5. The Settlement states, at section 6.4, that the standard of review for any modifications requested by a party that are not agreed to by all parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine.<sup>2</sup> The Settlement also states that the standard of review for any modifications requested by a non-party and the Commission shall be the most stringent standard permissible under applicable law.
6. This order terminates Docket Nos. ER05-6-084, EL04-135-087, EL03-212-100, and EL02-111-104.

By the Commission. Commissioner Kelly concurring with  
a separate statement attached.  
( S E A L ) Commissioner Wellinghoff dissenting in part with  
a separate statement attached.

Kimberly D. Bose,  
Secretary.

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<sup>2</sup> Settling Parties' August 11, 2006 Settlement Agreement at 9; *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956). As a general matter, parties may bind the Commission to a public interest standard. *Ne. Util. Serv. 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 Pub. Util. Comm'n 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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Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER05-6-084

Midwest Independent Transmission  
System Operator, Inc. and PJM  
Interconnection, LLC

EL04-135-087

Midwest Independent Transmission  
System Operator, Inc. and PJM  
Interconnection, LLC

EL02-111-104

Ameren Services Company, *et al.*

EL03-212-100

(Issued October 23, 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 agreement that may be proposed by a non-party or the Commission acting *sua sponte*. With respect to such modifications, the order states that the *Mobile-Sierra* “public interest” standard of review should apply. This settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for the period ending March 31, 2006. It 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 statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 2), I concur with the order’s approval of this settlement agreement.

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Suedeen G. Kelly

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Docket No. EL03-212-100

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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 their settlements 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.

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

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

For this reason, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner