

121 FERC ¶ 61,086
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. ER05-6-097
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL04-135-100
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL02-111-117
Ameren Services Company, <i>et al.</i>	Docket No. EL03-212-113

ORDER APPROVING UNCONTESTED
PARTIAL SETTLEMENT

(Issued October 25, 2007)

1. On October 12, 2006, Allegheny Power, on behalf of several PJM transmission owners (PJM TOs)¹ and PJM load-serving entities (PJM LSEs)² (collectively, Settling

¹ The PJM TOs are: The Dayton Power & Light Company; Exelon Corporation, on behalf of Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc. and PECO Energy Company; PPL Electric Utilities Corporation; Pepco Holdings, Inc. on behalf of its affiliates Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Public Service Electric and Gas Company; Rockland Electric Company; UGI Utilities, Inc.; Virginia Electric and Power Company d/b/a Dominion Virginia Power; and West Penn Power Company, Monongahela Power Company and The Potomac Edison Company (all doing business as Allegheny Power).

² The PJM LSEs are: Old Dominion Electric Cooperative; Blue Ridge Power Agency; Central Virginia Electric Cooperative; Indiana Municipal Power Agency;
(continued...)

Parties), filed a settlement agreement (Settlement) that resolves among them issues related to Seams Elimination Cost Adjustment (SECA) monetary obligations that were set for hearing in the above-captioned dockets.

2. Pursuant to the Settlement, the PJM TOs agree to reduce their lost revenue claims against the PJM LSEs in the SECA compliance filings by 20 percent. The Settling Parties agree on errors that were made in the lost revenue claims, and the Settlement provides corrections to those errors. The Settling Parties also agree on a mechanism for determining SECA charge payments that are shifted to or from a Settling Party as a result of sub-zonal reallocation. The Settlement provides that no further rulings in this proceeding may increase or decrease the PJM LSEs' SECA-related monetary obligations to the PJM TOs, except as specified in the Settlement.

3. On October 12, 2006, the Settlement was filed with the Commission. No comments were submitted. Accordingly, the Commission finds that the Settlement is uncontested.

4. The Settlement states, at section 8.4, that the charges subject to the Settlement shall be subject to change solely by written amendment executed by the settling parties. In addition, by section 8.4 of the Settlement, the settling parties state their intent that the Commission's right to change any charges subject to this Settlement shall be limited to the extent permissible by law in accordance with the *Mobile Sierra* public interest standard applicable to fixed rate contracts.³

Allegheny Electric Cooperative, Inc.; Southern Maryland Electric Cooperative; The Pennsylvania Boroughs of Lansdale, Blakely, Catawissa, Duncannon, Hatfield, Kutztown, Lehighton, Middleton, Mifflinburg, Olyphant, Quakertown, Royalton, St. Clair, Schuylkill Haven, Watsonstown, and Weatherly; American Municipal Power-Ohio, Inc.; and Exelon Energy Company.

³ Settling Parties' October 2, 2006 Explanatory Statement at 6; Settlement at section 8.4; *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 (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 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.

5. The Commission finds that 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.

6. This order terminates Docket Nos. ER05-6-097, EL04-135-100, EL02-111-117 and EL03-212-113.

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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KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the *Mobile-Sierra* “public interest” standard of review with respect to any future modifications to the settlement agreement that may be proposed by a non-party or the Commission acting *sua sponte*. 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 3), I concur with the order’s approval of this settlement agreement.

Suedeem 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 charges subject to this settlement.

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).