

2. Initial comments were filed by Trial Staff; they support the settlement, but recommend that the Commission condition the settlement to require the parties to submit a FPA section 205 filing to implement the new rate scheduled to take effect January 1, 2005. Trial Staff recommends such a filing because the 2005 rate is higher than the 2004 rate, the 2005 rate is based on generating units not at issue in MWGen's original 2004 rate filing; and MWGen filed the settlement more than 120 days before the 2005 rate is to take effect.

3. Reply comments were filed by MWGen, asking that Trial Staff's condition not be adopted for several reasons: (1) one of the bargained-for objectives of the settlement was to relieve MWGen from the need to make a 2005 rate filing to adjust its rates to reflect the release of additional units from its power-purchase agreements; (2) MWGen has already filed the rates for reactive power produced by units that were sold to it by ComEd and notes that such rates and a complete list of the generating units involved, together with the reactive power revenue requirement for each, are included in Attachment B to the settlement; (3) the Commission has never required rates filed as the result of a settlement to be refiled if they are higher or involve additional generating units; (4) all customers potentially affected by the settlement rates had a full and fair opportunity to participate in this case and to take part in the negotiations; and (5) the Commission's regulations on notice of rate changes specifically provide for the Commission to waive the requirement for waiver of the 120-day requirement.

4. The Presiding Administrative Law Judge certified the settlement as uncontested, and stated he offered no views on the merits of the contending positions of Trial Staff and MWGen as the issue in dispute involves questions of Commission policy that can be decided without the necessity of an evidentiary hearing.

5. The settlement is in the public interest and is hereby approved. The Commission's acceptance of this settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. The Commission retains the right to investigate, either at the request of non-parties to the settlement or *sua sponte*, the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the FPA, 16 U.S.C. § 24e (2000).

6. We will not adopt the recommendation for a new rate filing. Trial Staff acknowledges that the 2004 rate and the 2005 rate are both reasonable. In addition, interested parties have had an opportunity to comment on the settlement, and on the reasonableness of the 2005 rate, and no party commented in opposition. Further, it is not at all uncommon for parties in a proceeding to settle a broader range of issues than those originally presented, and we typically have not required a new rate filing in such circumstances; we see no reason to do so here.

7. Section 3.2 of the settlement provides:

For the period of time beginning when ComEd is integrated into PJM, MWGen shall make and/or request that PJM make, any necessary filing(s) with FERC to include MWGen's Capability Charge in Schedule 2 of the PJM Oatt for the ComEd Zone, and for any changes in such Capability Charge due to Units being placed into or take out of Suspended Operation. Neither ComEd, nor any ComEd affiliate, shall challenge any such implemenational filing(s) by MWGen and/or PJM to incorporate MWGen's Capability Charge in Schedule 2 of the PJM OATT.

By accepting the settlement, we wish to make clear that we do not prejudge how we would rule on any such filing that may be made.

8. This order terminates Docket Nos. ER04-190-000, ER04-190-002 and EL04-22-001.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.