

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinohoff.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER05-6-063
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, <i>et al.</i>	Docket No. EL04-135-065
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC, <i>et al.</i>	Docket No. EL02-111-083
Ameren Services Company, <i>et al.</i>	Docket No. EL03-212-079

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued November 2, 2006)

1. On May 2, 2006, the Detroit Edison Company and DTE Energy Trading, Inc. (collectively, DTE Parties) on behalf of the Settling Parties¹ filed a Settlement Agreement (Settlement) that resolves all issues among the DTE Parties, which concern Seams Elimination Cost Adjustment (SECA) monetary obligations arising from the transitional rate mechanism at issue in these proceedings.
2. The Commission found the regional through-and-out rates between PJM Interconnection, L.L.C. (PJM) and the Midwest Independent System Operator (MISO)

¹ The "Settling Parties" include the DTE Parties, Nordic Marketing, LLC (Nordic) and American Electric Power Service Corporation (AEP) (on behalf of certain operating companies of the American Electric Power system, including Appalachian Power Company, Columbus Southern Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company).

unjust and unreasonable, and, accordingly directed the elimination of those rates.² On November 18, 2004, the Commission ordered MISO, PJM, and their transmission owners to submit revised tariff sheets eliminating through-and-out rates and to implement the SECA methodology.³

3. On May, 8 2006 Trial Staff filed initial comments in support of the Settlement. On May 10, 2006, the DTE parties filed reply comments in support of the Settlement. On May 22, 2006 the DTE Parties filed supplemental comments in support of the Settlement. On June 7, 2006 the presiding judge certified the Settlement to the Commission as uncontested.

4. The proposed Settlement establishes the total SECA liability from the DTE Parties and Nordic to AEP. The Settlement explains that the DTE Parties have already paid their SECA charges as billed. Therefore the DTE Parties will be paid a refund amount as set forth by the Settlement. The Settlement also explains that Nordic has also paid SECA amounts as billed in accord with the Commission's determination in *Midwest Independent Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,387 (2005), and that AEP is entitled to retain its allocable portion of those amounts. AEP will make refunds as provided in the Settlement within thirty 30 days of the Commission's approval of the proposed Settlement agreement.

5. The subject of 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 standard of review for any modifications to this Settlement requested by a Settling Party that are not agreed to by all Settling Parties shall be the "public interest" standard under the *Mobile-Sierra* doctrine. The standard of review for any modifications to this Settlement requested by a non-Settling Party to the Settlement Agreement and the Commission will be the most stringent standard permissible under applicable law.⁴

² *Midwest Independent Transmission System Operator, Inc.*, 104 FERC ¶ 61,105 (2003).

³ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,168 (2004).

⁴ *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956). As a general matter, parties may bind the Commission to the 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.

6. This letter terminates Docket Nos. ER05-6-063, EL04-135-065, EL02-111-083, and EL03-212-079.

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

(S E A L)

Magalie R. Salas,
Secretary.

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KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply “the most stringent standard permissible under applicable law” with respect to any future changes proposed by a non-settling party or the Commission. This 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 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 unexplained inference that the *Mobile-Sierra* “public interest” standard of review applies with respect to any future modifications sought by a non-party or the Commission, or the 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.

Suede 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. 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.*,¹ I believe that it is inappropriate for the Commission to 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.

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).

Docket Nos. ER05-6-063, *et al.*

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner