

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

November 22, 2006

In Reply Refer To:

Docket Nos. ER05-6-047  
EL04-135-049  
EL02-111-067  
EL03-212-063

Baker Botts L.L.P.

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Dear Ms. Barrowes and Mr. Bernstein:

1. On March 20, 2006, you filed a Settlement Agreement (Settlement) on behalf of Reliant Energy, Inc., acting on behalf of itself and its subsidiary, Orion Power Midwest, L.P. (collectively, Reliant) and Duquesne Light Company (Duquesne). The Settlement fully resolves Duquesne's shift-to-shipper claim against Reliant, which would have transferred seams elimination cost adjustment charges (SECA) to Reliant.
2. On April 10, 2006, Strategic Energy, L.L.C. (Strategic) filed comments in opposition to the Settlement, asking that Duquesne clarify that payments received from Reliant will be flowed through to load serving entities. On April 19, 2006, Reliant and Duquesne filed reply comments stating that neither Duquesne nor Reliant will assert that Strategic does not have a right to pursue its claim to a portion of the Settlement amounts. With that commitment Reliant and Duquesne represent that Strategic has authorized Reliant and Duquesne to state that Strategic's concerns have been sufficiently addressed, and that Strategic does not oppose the Settlement. No further comments were filed. On May 11, 2006, the Presiding Administrative Law Judge certified the Settlement to the Commission.

3. The Settlement is fair and reasonable and in the public interest and is hereby approved. Under the Settlement, the standard of review for any modifications to this Settlement that are not agreed to by all parties shall be the public interest standard under the *Mobile-Sierra* doctrine.<sup>1</sup> The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding

4. This letter order terminates Docket Nos. ER05-6-047, EL04-135-049, EL02-111-067, and EL03-212-063.

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

Magalie R. Salas,  
Secretary.

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<sup>1</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 of review. *Northeast Utilities Service 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 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

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER05-6-047

Midwest Independent Transmission  
System Operator, Inc.  
PJM Interconnection, LLC, *et al.*

EL04-135-049

Midwest Independent Transmission  
System Operator, Inc.  
PJM Interconnection, LLC, *et al.*

EL02-111-067

Ameren Services Company, *et al.*

EL03-212-063

(Issued November 22, 2006)

KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the *Mobile-Sierra* “public interest” standard of review to any future modifications to this settlement. The 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 not opposed, does not affect non-settling parties, and resolves the amount of the claimed SECA obligation 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 majority’s statements regarding the applicability of the *Mobile-Sierra* “public interest” standard of review (*see* footnote 1), I concur with the order’s approval of this settlement agreement.

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Suedeem G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Reliant Energy, Inc., acting on behalf  
of itself and its subsidiary, Orion Power  
Midwest, L.P. and Duquesne Light Company

Docket Nos. ER05-6-047,  
ER04-135-049,  
EL02-111-067,  
and EL03-212-063

(Issued November 22, 2006)

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, 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>2</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>3</sup> I disagree with the Commission’s characterization in this order of case law on the applicability of the “public interest” standard.

For these reasons, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>2</sup> 117 FERC ¶ 61,055 (2006).

<sup>3</sup> 117 FERC ¶ 61,149 (2006).