

120 FERC ¶ 61,194  
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.

Michigan Electric Transmission Company, LLC and           Docket Nos. ER06-56-000  
Midwest Independent Transmission Operator, Inc.           ER06-56-002

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 29, 2007)

1. On January 19, 2007, Michigan Electric Transmission Company, LLC (METC), on behalf of itself and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Consumers Energy Company, Michigan Public Power Agency and Michigan South Central Power Agency, Wolverine Power Supply Cooperative, Inc., and International Transmission Company (collectively, Settling Parties) filed a Settlement Agreement to resolve all issues in the captioned dockets.
2. On October 20, 2005, METC and the Midwest ISO filed pursuant to section 205 of the Federal Power Act (October 20 Filing) for approval of METC's (i) adoption of the formula rate in Attachment O of the Midwest ISO Transmission and Energy Markets Tariff (TEMT) to establish rates for the METC pricing zone in the Midwest ISO, effective January 1, 2006 and (ii) adoption of the Midwest ISO Schedule 1 Service formula rate in the TEMT. On December 30, 2005, the Commission conditionally accepted METC's October 20 Filing, effective January 1, 2006, subject to refund.<sup>1</sup> The Commission also set certain issues relating to the calculation of METC's Attachment O formula rate for hearing and established settlement judge procedures.
3. Comments in support of the Settlement Agreement were filed by the Commission's Trial Staff. No reply comments were filed. On February 27, 2007, the administrative law judge certified the instant settlement to the Commission as uncontested.<sup>2</sup>

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<sup>1</sup> See *Michigan Electric Transmission Co., LLC and Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,343 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006).

<sup>2</sup> *Michigan Electric Transmission Company, LLC and Midwest Independent Transmission Operator, Inc.*, 118 FERC ¶ 63,034 (2007).

4. The subject settlement is 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. Section 10.7 of the Settlement Agreement states that the Settlement Agreement may only be amended by the agreement in writing of all the Settling Parties hereto. Section 10.7 further states that the standard of review for any modifications not agreed to by all the Settling Parties, including any modifications resulting from Commission action *sua sponte*, shall be the "public interest" standard under the *Mobile-Sierra*<sup>3</sup> doctrine, and that the "just and reasonable" standard shall apply to all changes to the Settlement Agreement that are agreed to by all of the Settling Parties. As a general matter, parties may bind the Commission to a public interest standard.<sup>4</sup> Under limited circumstances, such as when the agreement has broad applicability, the Commission has the discretion to decline to be so bound.<sup>5</sup> In this case, we find that the public interest standard should apply for any modifications not agreed to by all the Settling Parties, including any modifications resulting from Commission action *sua sponte*, as provided in the Settlement Agreement.<sup>6</sup>

5. This order terminates Docket Nos. ER06-56-000 and ER06-56-002.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part with separate statements attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

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<sup>3</sup> *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

<sup>4</sup> *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1st Cir. 1993).

<sup>5</sup> *Maine Public Utilities Commission v. FERC*, 454 F.3d 278, 286-87 (D.C. Cir. 2006).

<sup>6</sup> As noted above, the just and reasonable standard shall apply to all changes to the Settlement Agreement that are agreed to by all the Settling Parties.

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ER06-56-002

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KELLY, Commissioner, *dissenting in part*:

The parties to this settlement have requested that the standard of review for any future modifications to the settlement not agreed to by the parties, including any modifications resulting from the Commission acting *sua sponte*, shall be the *Mobile-Sierra* “public interest” standard. This settlement resolves certain issues related to the calculation of Michigan Electric Transmission Company’s formula rate, which is incorporated into the Midwest ISO’s Transmission and Energy Markets Tariff.

As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,<sup>1</sup> in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision. In addition, as I have previously noted,<sup>2</sup> this is particularly the case where, as here, the settlement agreement will impact generally applicable tariff rates, terms and conditions of service for all customers, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I must respectfully dissent in part from this order.

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Suedeen G. Kelly

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<sup>1</sup> 117 FERC ¶ 61,232 (2006).

<sup>2</sup> *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).

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WELLINGHOFF, Commissioner, dissenting in part:

The order approving the settlement provides no particulars explaining the resolution of some issues that were set for hearing. In its comments, the Commission Trial Staff pointed out that, as noted in the Explanatory Statement, at 8, n.8, METC repaid in full all amounts previously advanced to METC by interconnecting generators for network upgrades. The Commission Trial Staff further explains that the settlement is silent as to how METC will treat any future advance payments. Thus, it is important to clarify that the settlement does not resolve how METC will treat any future advance payments.

By contrast, the specific issues that were resolved by the settlement included fixing the deferral balances, the amortization expense amounts, and the amortization periods for the Commission-approved deferrals for ratemaking purposes. In addition, the settlement establishes certain inputs that will be used on a going forward basis in METC's Attachment O formula rate and the reporting of certain data in METC's Form 1. Finally, the settling parties have agreed not to oppose METC's section 204 filing in Docket No. ES07-15, in which METC seeks approval to issue debt.

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>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"

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

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

standard.

For this reason, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner