

121 FERC ¶ 61,080  
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. ER05-6-099
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL04-135-102
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	Docket No. EL02-111-119
Ameren Services Company, <i>et al.</i>	Docket No. EL03-212-115

ORDER APPROVING  
UNCONTESTED PARTIAL SETTLEMENT

(Issued October 23, 2007)

1. On July 2, 2007, three operating subsidiaries of FirstEnergy Corporation<sup>1</sup> (FirstEnergy Companies) and four PJM-area load-serving entities<sup>2</sup> (LSEs) (collectively, Settling Parties) filed a settlement agreement (Settlement) that resolves among them all

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<sup>1</sup> The FirstEnergy subsidiaries are Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company.

<sup>2</sup> The four PJM-area load-serving entities are Old Dominion Electric Cooperative, Blue Ridge Power Agency, Central Virginia Electric Cooperative, and Indiana Municipal Power Agency in its capacity as an entity supplying power to member load in the PJM region.

the issues related to the Seams Elimination Cost Adjustment (SECA) charges that were set for hearing in the above-captioned dockets.<sup>3</sup>

2. The Settling Parties agree that FirstEnergy Companies will make payments to the LSEs as set forth in Appendix A of the Settlement. Pursuant to the Settlement, each LSE accepts responsibility for the total monetary obligation to the FirstEnergy Companies that will result from subtraction of these payments from the amounts that each LSE has paid to any of the FirstEnergy Companies.

3. On July 2, 2007, the Settlement was filed with the Commission. No comments were filed. Accordingly, the Commission finds that the Settlement is uncontested.

4. The Settling Parties state that the standard of review for any modifications to the 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. They also state that the standard of review for any modifications requested by a non-Settling Party and the Commission shall be the most stringent standard permissible under applicable law.<sup>4</sup>

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 the settlement does not constitute approval of, or precedent regarding any principle or issue in this proceeding.

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<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 104 FERC ¶ 61,105 (2003); *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 105 FERC ¶ 61,212 (2003); *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 109 FERC ¶ 61,168 (2004) *Midwest Indep. Transmission Sys. Operator, Inc., et al.*, 110 FERC ¶ 61,107 (2005).

<sup>4</sup> Settling Parties’ July 2, 2007 Explanatory Statement at 5-7; Settlement at section 6.4; *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 (1<sup>st</sup> 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.

6. This order terminates Docket Nos. ER05-6-099, EL04-135-102, EL02-111-119, and EL03-212-115.

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.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER05-6-099

Midwest Independent Transmission  
System Operator, Inc. and PJM  
Interconnection, LLC

EL04-135-102

Midwest Independent Transmission  
System Operator, Inc. and PJM  
Interconnection, LLC

EL02-111-119

Ameren Services Company, *et al.*

EL03-212-115

(Issued October 23, 2007)

KELLY, Commissioner, *concurring*:

The settling parties request that the Commission apply the “most stringent standard permissible under applicable law” with respect to any future modifications to the settlement agreement that may be proposed by a non-party or the Commission acting *sua sponte*. With respect to such modifications, the order states that the *Mobile-Sierra* “public interest” standard of review should apply. 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 4), I concur with the order’s approval of this settlement agreement.

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Sudeen G. Kelly

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER05-6-099

Midwest Independent Transmission System  
Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. EL04-135-0102

Midwest Independent Transmission System  
Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. EL02-111-119

Ameren Services Company, *et al.*

Docket No. EL03-212-115

(Issued October 23, 2007)

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 their settlements 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.*,<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” 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.

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

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

For this reason, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner