

157 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Midwest Independent Transmission System Operator, Inc.	Docket No. ER05-6-118
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC	EL04-135-120
Midwest Independent Transmission System Operator, Inc. PJM Interconnection, LLC	EL02-111-139
Ameren Services Company	EL03-212-134
Midwest Independent Transmission System Operator, Inc.	ER10-2283-000 ER10-2283-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued December 21, 2016)

1. In this order the Commission approves an uncontested settlement (Settlement Agreement) filed on June 17, 2016, by American Electric Power Service Corporation (AEP) on behalf of the Settling Parties.¹ The Settlement Agreement resolves all issues

¹ The Settling Parties include: American Electric Power Service Corporation, on behalf of itself and Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company (collectively, AEP); Direct Energy Business, LLC (Direct Energy); Constellation Energy Services, Inc. (as successor to Quest Energy, LLC and Integrys Energy Services, Inc.) and Constellation Energy Commodities Group, Inc. and Constellation New Energy, Inc. (Constellation); DTE Electric Company (f/k/a The Detroit Edison Company) (DTE); FirstEnergy Corp.

(continued ...)

in the above referenced proceedings between AEP and the Settling Parties relating to the Seams Elimination Cost/Charge Adjustment/Assignment (SECA) charges.

I. Settlement

2. This Settlement resolves all matters at issue in this proceeding between the Settling Parties as to the identity and SECA obligations of the suppliers of the North Star Steel load and other load at the MECS.DECO.CMSZ sink, and represents a final settlement of all SECA obligations at issue between AEP and the Settling Parties.

3. Section 2.2 of the Settlement Agreement provides, however, that the Settlement Agreement does not limit the right of any replacement supplier to argue that it is not obligated to pay any SECA amount specified in Exhibit A to the Settlement due to, among other things, one or more pre-existing settlement agreements. Likewise, the Settlement Agreement does not limit the right of any party to argue that a replacement supplier has a SECA obligation and must pay the SECA amount specified in Exhibit A to the Settlement Agreement. Section 6.4 of the Settlement Agreement states that

on behalf of FirstEnergy Solutions Corp. (First Energy); MidAmerican Energy Company now doing business as MidAmerican Energy Services, LLC (MidAmerican); and the MISO Transmission Owners, which for purposes of these proceedings consist of Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company; Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois; American Transmission Company LLC; City Water, Light & Power (Springfield, IL); Duke Energy Shared Business Services, LLC for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Louisville Gas and Electric Company and Kentucky Utilities Company (formerly affiliated with E.ON U.S. LLC); Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.).

[i]t is the intent of the Parties that, to the maximum extent permitted by law, the provisions of this Settlement Agreement shall not be subject to change under Sections 205 and 206 of the Federal Power Act absent the written agreement of the Parties, and that the standard of review for changes unilaterally proposed by a Party or the Commission, acting *sua sponte* or at the request of a third party, shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S.Ct. 2733 (2008), and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 130 S.Ct. 693 (2010).

II. Comments

4. Commission Trial Staff submitted initial comments in support of the Settlement Agreement. DTE filed initial comments asking the Commission to accept the Settlement Agreement without further modification. However, DTE also argues that the Settlement Agreement resolved only the identity of the replacement shippers and their former payment obligations. DTE asserts that the Settlement also provides that replacement shippers, such as DTE, reserve the right to contest any further obligation to actually pay SECA charges, noting that, in November 2006, the Commission approved a settlement resolving all SECA charges between DTE and AEP.² Accordingly, DTE asserts that, under that earlier settlement, no party can bill or recover any additional SECA charges from DTE, and DTE seeks further clarification on this matter.

5. AEP responded, arguing that DTE agreed to and supports the Settlement Agreement. AEP argues that any guidance sought by DTE as to earlier settlements is beyond the limited scope of this proceeding, and that any concerns that DTE has with any refund obligation can be addressed once AEP's refund report is completed.

6. Commission Trial Staff also responded, arguing that the Settlement Agreement has no impact on any previous settlements and that DTE's comments are beyond the scope of this proceeding. Further, trial staff reiterates that, even with DTE's comments, the Settlement Agreement is uncontested.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,157 (2006).

III. Certification

7. On September 8, 2016, the Settlement Judge certified the Settlement Agreement to the Commission as an uncontested settlement.³

IV. Discussion

8. DTE states that it supports the Settlement Agreement and asks that the Settlement Agreement be approved. DTE does note, however, that the obligation to pay any refunds may be affected by an earlier settlement, and DTE claims that here that is the case. DTE's concern is beyond the scope of these proceeding, and, in fact, the Settlement Agreement expressly reserves in section 2.2 the right of a party to argue that it does not owe and has no obligation to pay any SECA amounts in light of prior settlements. Accordingly, we may approve the Settlement Agreement as it is uncontested, and DTE may assert in a more appropriate proceeding its right to not pay further SECA amounts.

9. The Settlement Agreement resolves all issues in dispute in these proceedings. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

10. This order terminates Docket Nos. EL02-111-139; EL03-212-134, EL04-135-120, ER05-6-118, ER10-2283-000 and ER10-2283-001.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 156 FERC ¶ 63,042 (2016).