

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator

Docket Nos. ER05-6-077
EL04-135-080
EL02-111-097
EL03-212-093

ORDER APPROVING UNCONTESTED SETTLEMENT AGREEMENT

(Issued May 11, 2007)

1. On July 28, 2006, Strategic Energy L.L.C (Strategic) and the settling Midwest ISO Transmission Owners (Settling Midwest ISO TOs)¹ filed a Stipulation and Agreement. The Settlement resolves all of the issues set for hearing between Strategic and the Settling

¹ The settling Midwest ISO Transmission Owners consist of: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP, American Transmission Company LLC; City Water, Light & Power (Springfield, IL); Duke Energy Shared Services, Inc. f/k/a Cinergy Services, Inc. for The Cincinnati Gas & Electric Co. d/b/a Duke Energy Ohio, Inc., PSI Energy Inc. d/b/a Duke Energy Indiana, Inc. and The Union, Light, Heat and Power Company d/b/a Duke Energy Kentucky, Inc.; E.ON U.S. LLC (for Louisville Gas and Electric Company and Kentucky Utilities Company); Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a *ITCTransmission*; 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 and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy Inc.; Otter Tail Power Company; Southern Illinois Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.

Midwest ISO TOs.² Specifically, the Settlement represents a settlement of all of Strategic's obligations to the Settling Midwest ISO TOs under the transitional rate mechanism at issue in these proceedings, including any and all lost revenue claims payable by Strategic for the benefit of the Settling Midwest ISO TOs. On August 1, 2006, Staff filed comments in support of the Settlement. On August 30, 2006, the Presiding Administrative Law Judge certified the Agreement to the Commission as an uncontested settlement.³

2. 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 applicable standard of review for any changes to the settlement proposed by a settling party that are not agreed to by all settling parties shall be the *Mobile-Sierra* public interest standard. Requests for modifications by non-settling parties and the Commission shall be reviewed under the most stringent standard permissible under applicable law.⁴

3. This order terminates Docket Nos. ER05-6-077, EL04-135-080, EL02-111-097 and EL03-212-093.

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)

Kimberly D. Bose,
Secretary.

² *Midwest Independent Transmission System Operator*, 111 FERC ¶ 61,409 (2005).

³ *Midwest Independent Transmission System Operator*, 116 FERC 63,045 (2006).

⁴ *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. *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.

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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 modifications proposed by a non-settling party or the Commission acting *sua sponte*. This settlement resolves issues related to the Seams Elimination Cost Adjustment (SECA) monetary obligations between the parties for the period ending March 31, 2006. The 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 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 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 acting *sua sponte*, 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.

Suedeen 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 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.*,² 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.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).