

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Ameren Services Company

Docket Nos. ER02-929-000
ER02-929-001

ORDER APPROVING SETTLEMENT

(Issued December 22, 2004)

1. On July 9, 2004, Ameren Services Company (Ameren) filed an offer of settlement on behalf of itself and Citizens Electric Corporation which included a settlement and explanatory statement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.
2. On August 12, 2004, the Commission's Trial Staff (Staff) submitted comments. Staff states that while it believes that the settlement is fair, reasonable, and in the public interest, one provision requires clarification. Section 12.0 (g) of the revised executed Network Integration Transmission Service Agreement (NITS) provides:

The return-on-equity component of Citizens' fixed-charge rate shall remain fixed at 10.89% until the earlier of: (a) implementation of new retail rates for services by AmerenUE and AmerenCIPS following explanation of the current rate moratoria applicable to these operating companies, or (b) January 1, 2008. Effective as of such earlier date, Citizens' fixed-charge rate shall be revised to reflect the then-effective return on equity established by the Commission for use by MISO transmission owners or, if different, the allowed return on equity used in establishing the Ameren and/or GridAmerica transmission rates.¹

Staff asserts that use of the phrase "if different" is ambiguous, and could refer to a time, a rate, or something else entirely. Staff also argues that this paragraph does not explain how the parties will determine whether to use the MISO, Ameren, or GridAmerica return on equity. Nor does the language explain how the parties will resolve any issues that may arise.

¹ This same language appears in the settlement agreement at page 3, item number 8.

3. We disagree with Staff that the phrase “if different” is ambiguous. We read that phrase as referring to different returns on equity. Further, while Staff raises a question as to which return on equity will be used, it explains that it contacted counsel for one of the parties to point out the ostensible ambiguity and was told that the parties intend to use the Ameren return on equity. Thus, any remaining ambiguity has been removed and, if the issue should arise, the applicable return on equity would be that used in establishing Ameren’s transmission rates. We also note that no other issues have been raised by Staff or any party that would require further resolution.

4. We find that the 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.

5. This order terminates Docket Nos. ER02-929-000 and ER02-929-001.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

(S E A L)

Linda Mitry,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Ameren Operating Companies

Docket No. ER02-929-000
ER02-929-001

(Issued December 22, 2004)

KELLY, Commissioner, dissenting in part:

For the reasons I have previously set forth in Wisconsin Power & Light Co., 106 FERC ¶ 61,112 (2004), I do not believe that the Commission should depart from its precedent of not approving settlement provisions that preclude the Commission, acting *sua sponte* on behalf of a non-party, or pursuant to a complaint by a non-party, from investigating rates, terms and conditions under the “just and reasonable” standard of section 206 of the Federal Power Act at such times and under such circumstances as the Commission deems appropriate.

Therefore, I disagree with this order to the extent it approves a settlement that provides, in relevant part, that “[t]he standard of review for any modifications not agreed to by both Parties, including any future modifications resulting from the Commission acting *sua sponte*, shall be the ‘public interest’ standard under the *Mobile/Sierra Doctrine*”, as set forth in *United Gas Pipe Line Co v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

	<hr/> <p>Suede G. Kelly</p>
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