

125 FERC ¶ 61,207
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER05-6-089 ER05-6-034 ER05-6-102 ER05-6-105 ER05-6-106
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	EL04-135-092 EL04-135-110 EL04-135-105 EL04-135-108 EL04-135-109
Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C.	EL02-111-109 EL02-111-127 EL02-111-122 EL02-111-125 EL02-111-126
Ameren Services Company	EL03-212-105 EL03-212-123 EL03-212-118 EL03-212-121 EL03-212-122

ORDER APPROVING UNCONTESTED SETTLEMENT AGREEMENTS

(Issued November 20, 2008)

1. This order approves five separate uncontested settlement agreements that resolve among the respective parties all the issues related to the Seams Elimination Cost/Charge Adjustment/Assignment (SECA) charges that had been set for hearing in the above-captioned dockets.

Dayton Settlement

2. On November 9, 2006, Dayton Power & Light Company (Dayton), on behalf of itself and the Midwest ISO Settling Parties¹ filed a Settlement Agreement (Dayton Settlement). Specifically, under section 3.1 of this settlement, Dayton accepts responsibility with respect to a total monetary obligation to each of the Midwest ISO Settling Parties in the amounts shown in Appendix A of this settlement for Dayton, and each of the Midwest ISO Settling Parties accepts responsibility with respect to a total monetary obligation to Dayton in the amounts shown in Appendix A of this settlement for each Midwest ISO Settling Party.
3. Under section 6.4 of the Dayton Settlement, the standard of review for any modifications to this settlement requested by a non-Party will be the most stringent standard permissible under applicable law.
4. No comments were filed. Accordingly, the Commission finds that the Dayton Settlement is uncontested.
5. The Dayton 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.
6. This order terminates Docket Nos. ER05-6-089, EL04-135-092, EL02-111-109, and EL03-212-105.

¹ The Midwest ISO Settling Parties for purposes of this settlement are: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliates Interstate Power and Light Company and Wisconsin Power and Light Company; Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; American Transmission Company LLC; City Water, Light & Power (Springfield, IL); Duke Energy Shared Services, Inc. for the Cincinnati Gas & Electric Company, PSI Energy, Inc., and the Union, Light, Heat and Power Company; 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; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power and its subsidiary Superior Water, L&P; Montana-Dakota Utilities Company; 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; and Wabash Valley Power Association, Inc.

Duquesne Settlement

7. On July 13, 2007, Duquesne Entities² and the Midwest ISO Settling Parties³ filed a Settlement Agreement (Duquesne Settlement). Specifically, under section 3.1 of this settlement, each Duquesne Entity that is a load serving entity accepts responsibility with respect to a total monetary obligation to the Midwest ISO Settling Parties that are transmission owners in the amounts shown in Appendix A, section I of this settlement for the Duquesne Entities. In addition, each of the Midwest ISO Settling Parties that is a load serving entity accepts responsibility with respect to a total monetary obligation to the Duquesne Entities that are transmission owners in the amounts shown in Appendix A, Section III of this settlement for each Midwest ISO Settling Party.
8. Under section 6.4 of the Duquesne Settlement, the standard of review for any modifications to this settlement requested by a non-Party will be the most stringent standard permissible under applicable law.
9. No comments were filed. Accordingly, the Commission finds that the Duquesne Settlement is uncontested.
10. The Duquesne 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.

² The Duquesne Entities are: Duquesne Light Company and Duquesne Light Energy.

³ The Midwest ISO Settling Parties for purposes of this settlement are: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliates Interstate Power and Light Company and Wisconsin Power and Light Company; Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and 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.; Indianapolis Power & Light Company; International Transmission Company; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power and its subsidiary Superior Water L&P; Montana-Dakota Utilities Company; 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, and Wabash Valley Power Association, Inc.

11. This order terminates Docket Nos. ER05-6-034, EL04-135-110, EL02-111-127, and EL03-212-123.

FirstEnergy Settlement

12. On January 17, 2008, FirstEnergy Entities⁴ and Duquesne Entities filed a Settlement Agreement (FirstEnergy Settlement). Specifically, under section 3.1 of this settlement, the Duquesne Entities accept responsibility with respect to a total monetary obligation to each of the FirstEnergy Entities in the amounts shown in Appendix A of this settlement, and each of the FirstEnergy Entities accepts responsibility with respect to a total monetary obligation to the Duquesne Entities in the amounts shown in Appendix A of this settlement.

13. Under section 6.4 of the FirstEnergy Settlement, the standard of review for any modifications to this settlement requested by a non-Party will be the most stringent standard permissible under applicable law.

14. No comments were filed. Accordingly, the Commission finds that the FirstEnergy Settlement is uncontested.

15. The FirstEnergy 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.

16. This order terminates Docket Nos. ER05-6-102, EL04-135-105, EL02-111-122, and EL03-212-118.

AEP Settlement

17. On March 21, 2008, AEP entities⁵ and FirstEnergy Service Entities⁶ filed a Settlement Agreement (AEP Settlement). Specifically, under section 3.1 of this

⁴ The First Energy Entities are: American Transmission Systems, Inc. and FirstEnergy Solutions Corp.

⁵ AEP Entities are: American Electric Power Service Corporation, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, and Wheeling Power Company.

⁶ FirstEnergy Service Entities are: FirstEnergy Service Company, American Transmission Systems, Inc., the Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company, the Toledo Edison Company, Jersey Central

(continued...)

settlement, the AEP Entities accept responsibility with respect to a total monetary obligation to the FirstEnergy Service Entities in the amount of \$3,415,569, and the FirstEnergy Service Entities accept responsibility with respect to a total monetary obligation to the AEP Entities in the amount of \$14,144,211.⁷

18. Under section 6.4 of the AEP Settlement, the standard of review for any modifications to this settlement requested by a non-Party will be the most stringent standard permissible under applicable law.

19. No comments were filed. Accordingly, the Commission finds that the AEP Settlement is uncontested.

20. The AEP 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.

21. This order terminates Docket Nos. ER05-6-105, EL04-135-108, EL02-111-125, and EL03-212-121.

Midwest ISO Settlement

22. On May 21, 2008, Midwest ISO Settling Parties⁸ and FirstEnergy Settling

Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and FirstEnergy Solutions Corp.

⁷ The settlement, in section 3.7, spells out one exception, to address a shift or assessment to any FirstEnergy Service Entity of all or a portion of the SECA obligation that was owed to the AEP Entities by Green Mountain Energy Company or Quest Energy, LLC.

⁸ The Midwest ISO Settling Parties for purposes of this settlement are: Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliates Interstate Power and Light Company and Wisconsin Power and Light Company; Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, and Illinois Power Company; American Transmission Systems, Inc.; City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and 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; Manitoba Hydro; Michigan Electric Transmission Company, LLC; Minnesota Power and its subsidiary Superior Water L&P;

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Parties⁹ filed a Settlement Agreement (Midwest ISO Settlement). Specifically, under section 3.1 of this settlement each of the FirstEnergy Settling Parties accepts responsibility with respect to a total monetary refund obligation to each of the Midwest ISO Settling Parties in the amounts shown in Appendix A of this settlement, and each of the Midwest ISO Settling Parties accepts responsibility with respect to a total refund monetary obligation to each of the FirstEnergy Settling Parties in the amounts shown in Appendix A of this settlement.

23. Under section 6.4 of the Midwest ISO Settlement, the standard of review for any modifications to the settlement requested by a non-Party will be the most stringent standard permissible under applicable law.

24. No comments were filed. Accordingly, the Commission finds that the Midwest ISO Settlement is uncontested.

25. The Midwest ISO 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.

26. This order terminates Docket Nos. ER05-6-106, EL04-135-109, EL02-111-126, and EL03-212-122.

By the Commission. Commissioners Kelly and Wellinghoff concurring in part with a separate joint statement attached.
Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Montana-Dakota Utilities Company; 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, and Wabash Valley Power Association.

⁹ FirstEnergy Settling Parties are: Jersey Central Power and Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, and FirstEnergy Solutions Corp.

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(Issued November 20, 2008)

KELLY and WELLINGHOFF, Commissioners, *concurring in part*:

The proposed standard of review in the settlements would have the Commission apply the “most stringent standard permissible under applicable law” to any changes proposed by non-parties or the Commission acting *sua sponte*. The settlements also state that the Commission’s rights under Federal Power Act (FPA) section 206¹ are not abridged except as indicated herein with respect to the standard that would be used in such a proceeding.

The U.S. Supreme Court has held that whenever the Commission reviews

¹ 16 U.S.C. § 824e (2006).

certain types of contracts, the FPA requires it to apply the presumption that the contract meets the “just and reasonable” requirement imposed by the FPA.² The contracts that are accorded this special application of the “just and reasonable” standard are those “freely negotiated wholesale-energy contracts” that were given a unique role in the FPA.³ In contrast, the U.S. Court of Appeal for the District of Columbia Circuit (D.C. Circuit) determined that the proper standard of review for a different type of agreement, with regard to changes proposed by non-contracting third parties, was the “‘just and reasonable’ standard in section 206 of the Federal Power Act.”⁴ The agreement at issue in *Maine PUC* was a multilateral settlement negotiated in a Commission adjudication of a utility’s proposal to revise its tariff substantially to enable it to establish and operate a locational installed electricity capacity market. The D.C. Circuit’s rationale in *Maine PUC* applies with at least equal force to changes to an agreement sought by the Commission acting *sua sponte*.⁵

Our review of the agreements in question here indicates that they more closely resemble the *Maine PUC* adjudicatory settlement than the *Morgan Stanley* wholesale-energy sales contracts, which, for example, were freely negotiated outside the regulatory process. Therefore, the “most stringent standard permissible under applicable law” as applied here to changes proposed by either non-parties or the Commission acting *sua sponte* means the “just and reasonable” standard of review. The Commission retains the right to investigate the rates, terms, and conditions of the settlement under the “just and reasonable” standard of review set forth under FPA section 206.

For these reasons, we concur in part.

Suedeem G. Kelly
Commissioner

Jon Wellinghoff
Commissioner

² *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 128 S. Ct. 2733, 2737 (2008) (*Morgan Stanley*).

³ *Id.*

⁴ *Maine Pub. Utils. Comm’n*, 520 F.3d 464, 478, *petition for reh’g denied*, No. 06-1403, slip op. (D.C. Cir. Oct. 6, 2008) (*Maine PUC*).

⁵ *See Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201 (2008) (Comm’rs Wellinghoff and Kelly dissenting in part).