

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 Nos. ER05-560-001
ER05-560-002

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 17, 2007)

1. On February 23, 2007, Manitoba Hydro, Minnkota Power Cooperative, Inc. (Minnkota), MAPPCOR, and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (collectively, Settling Parties) filed a Settlement Agreement in the above-captioned docket. This proceeding involves a dispute among the Settling Parties over the Seams Operating Agreement between the Midwest ISO and Manitoba Hydro (Midwest ISO-Manitoba SOA). The Settlement Agreement resolves all matters in the above-captioned docket concerning the Midwest ISO-Manitoba SOA.¹
2. On March 15, 2007, Commission Trial Staff filed initial comments in support of the Settlement Agreement. No other comments were filed. On April 4, 2007, the Settlement Judge certified the Settlement Agreement to the Commission as uncontested.²
3. The Settlement Agreement is 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 this proceeding.

¹ The Settling Parties have agreed that, upon the date the Settlement Agreement becomes effective, the Settling Parties shall withdraw any requests for rehearing filed in this proceeding, and shall take action to clarify with the Commission that such pleadings have been withdrawn.

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 63,002 (2007).

The Settlement Agreement provides that the standard of review for any modifications to the Settlement Agreement 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. The standard of review for any non-Settling Party to the Settlement Agreement and the Commission will be the “most stringent standard permissible under applicable law.”³

4. This order terminates Docket Nos. ER05-560-001 and ER05-560-002.

By the Commission. Commissioners Kelly and Wellinghoff dissenting in part
with separate statements attached.

(S E A L)

Kimberly D. Bose,
Secretary.

³ Settlement Agreement section 5.5; *see Fed. Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956); *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956). As a general matter, parties may bind the Commission to the public interest standard. *Ne. Utilities Serv. 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. *Me. Public Utilities 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. *See Pub. Serv. Co. of N.M.*, 118 FERC ¶ 61,152 at P 9, 11, 14 (2007).

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Midwest Independent Transmission System Operator, Docket Nos. ER05-560-001
Inc. ER05-560-002

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KELLY, Commissioner, *dissenting in part*:

The settling parties request that the Commission apply the “most stringent standard permissible under applicable law” to any possible future changes to the settlement agreement sought by a non-party or the Commission acting on its own motion. This order interprets this language to mean that the *Mobile-Sierra* “public interest” standard shall apply to any such changes. As I explained in my separate statement in *Transcontinental Gas Pipe Line Corporation*,¹ in the absence of an affirmative showing by the parties and reasoned analysis by the Commission regarding the appropriateness of approving the “public interest” standard of review to the extent future changes are sought by a non-party or by the Commission acting *sua sponte*, I do not believe the Commission should approve such a provision.

Accordingly, I respectfully dissent in part from this order.

Suedeen G. Kelly

¹ 117 FERC ¶ 61, 232 (2006).

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Docket Nos. ER05-560-001
ER05-560-002

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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 non-parties 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 in this case.

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 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.

For these reasons, I respectfully dissent in part.

Jon Wellinghoff
Commissioner

¹ 117 FERC ¶ 61,055 (2006).

² 117 FERC ¶ 61,149 (2006).