

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-691-005
ER04-106-002

Public Utilities with Grandfathered
Agreements in the Midwest ISO Region

Docket No. EL04-104-004

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENTS

(Issued June 27, 2005)

1. On April 1, 2005, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed an explanatory statement and four settlement agreements resolving all issues outstanding in these proceedings between the Midwest ISO and (1) Otter Tail Corporation, d/b/a Otter Tail Power Company (Otter Tail), and Central Power Electric Cooperative, Inc. (CPEC); (2) Otter Tail and Minnkota Power Cooperative, Inc. (Minnkota); (3) Otter Tail, Montana-Dakota Utilities Co. (MDU), and Minnkota, as agent for North Municipal Power Agency and Northwestern Corporation, d/b/a NorthWestern Energy; and (4) Minnesota Power and Minnkota.¹ The settlement agreements contain four separate sets of terms, with differing alignments of settling parties, and stipulate individualized treatment of each party's associated load, generation and/or transmission rights under particular existing grandfathered agreements in the Midwest ISO region. Essentially, the settlement agreements resolve, with respect to the settling parties, how certain grandfathered agreements currently effective in the Midwest ISO region will be treated in the financial transmission rights (FTR) market, after the effectiveness of the Midwest ISO's open access Transmission and Energy Markets Tariff.

¹ See *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 at P 196-98 and Ordering Paragraphs (M) through (P) (2004).

2. Neither comments nor reply comments were filed on the settlement agreements. On June 1, 2005, the settlement judge certified the settlement agreements to the Commission as uncontested offers of partial settlement.²
3. The settlement agreements are in the public interest and are hereby approved. The Commission's approval of the settlement agreements does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
4. Within thirty (30) days from the date of this order approving the settlement agreements, the Midwest ISO must file revised rate schedule sheets in conformance with Order No. 614, *FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000* ¶ 31,096 (2000).
5. Refunds and charges shall be made pursuant to the terms of the settlement agreements.
6. This order terminates Docket Nos. ER04-691-005, ER04-106-002, and EL04-104-004.

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

(S E A L)

Magalie R. Salas,
Secretary.

² *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 63,052 (2005).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-691-005
ER04-106-002

Public Utilities with Grandfathered
Agreements in the Midwest ISO Region

Docket No. EL04-106-004

(Issued June 27, 2005)

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 settlements that specify the standard of review for changes proposed by a non-party or the Commission acting *sua sponte* shall be the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Suedeem G. Kelly