

122 FERC ¶ 61,203  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 5, 2008

In Reply Refer To:  
Docket No. EL07-44-000

Foley & Lardner LLP  
Attn: Michael D. Hornstein  
Attorney for Tatanka Wind Power, LLC  
Washington Harbour  
3000 K Street, NW  
Suite 500  
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Dear Mr. Hornstein:

1. On November 2, 2007, you filed a Settlement Agreement and Explanatory Statement (Settlement) on behalf of Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Montana-Dakota Utilities Company, a division of MDU Resources, Inc. (MDU), United States Department of Energy, Western Area Power Administration (Western), and Tatanka Wind Power, LLC (Tatanka), as successor in interest to Dakota Wind Harvest, LLC (Dakota Wind) (collectively, Settling Parties). The Settlement resolves all of the issues raised by Dakota Wind's complaint against Midwest ISO, MDU, and Western, filed March 8, 2007, related to Dakota Wind's need for a Balancing Authority to commence operations of a 180 megawatt wind farm (Project) located in Dickey and McIntosh Counties, North Dakota and McPherson County, South Dakota (Complaint).

2. The Settlement specifies that Tatanka and Northern States Power Company (NSP) entered into a Market Interface Integration Services Agreement (MIISA) under which NSP agreed to serve as the Balancing Authority on behalf of Tatanka on an interim basis, and that the MIISA will terminate on the date on which Midwest ISO is capable of providing such services, or December 31, 2009, whichever occurs earlier.<sup>1</sup> The Settlement also specifies that NSP, Tatanka, MDU, and Western entered into a Data Sharing and Coordination Agreement under which these parties agreed to coordinate the

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<sup>1</sup> The Commission accepted the MIISA without modifications or conditions. *Excel Energy Services Inc.*, Docket No. ER08-37-000 (Nov. 9, 2007) (unpublished letter order).

exchange of all operational information concerning the Project and the status of each of the control areas affected by the operation of the Project. The Settlement provides that, upon Commission acceptance or approval of the MIISA and Settlement without modifications or conditions, the Complaint shall be deemed withdrawn.

3. On November 21, 2007, Commission Trial Staff filed comments supporting the Settlement. On November 28, 2007, the Presiding Administrative Law Judge certified the Settlement to the Commission as an uncontested settlement.
4. The Settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
5. Section 5 of the Settlement provides that the standard of review for any modifications to this Settlement shall be the "public interest" standard under the *Mobile-Sierra* doctrine.<sup>2</sup> As a general matter, parties may bind the Commission to a public interest standard of review. *Northeast Utilities Service Co. v. FERC*, 993 F.2d 937, 960-62 (1<sup>st</sup> 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.
6. This letter order terminates Docket No. EL07-44-000.

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

Kimberly D. Bose,  
Secretary.

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<sup>2</sup> *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) (*Mobile-Sierra*).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Dakota Wind Harvest, LLC

v.

Midwest Independent Transmission System

Operator Inc., Docket No. EL07-44-000

Montana-Dakota Utilities Company,

and

Western Area Power Administration

(Issued March 5, 2008)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any future changes to the settlement, whether proposed by a party, a non-party, or the Commission acting *sua sponte*. This settlement sets forth a Market Interface Integration Services Agreement (MIISA) between Tatanka Wind Power, LLC (Tatanka) and Northern States Power Company (NSP) and also includes a data sharing agreement between NSP, Tatanka, Montana-Dakota Utilities Company, and Western Area Power Administration.

As I explained in *Transcontinental Gas Pipe Line Corporation*,<sup>3</sup> I do not believe that the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of such a provision.

Accordingly, I dissent in part from this order.

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Suede G. Kelly

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<sup>3</sup> 117 FERC ¶ 61,232 (2006).

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Dakota Wind Harvest, LLC

Docket No. EL07-44-000

v.

Midwest Independent Transmission  
System Operator, Inc.,  
Montana-Dakota Utilities Company, and  
Western Area Power Administration

(Issued March 5, 2008)

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, 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.*,<sup>4</sup> 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.*,<sup>5</sup> 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.

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Jon Wellinghoff  
Commissioner

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<sup>4</sup> 117 FERC ¶ 61,055 (2006).

<sup>5</sup> 117 FERC ¶ 61,149 (2006).