

111 FERC ¶ 61,508
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket Nos. ER00-565-015
ER04-1233-004
ER05-480-002

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued June 30, 2005)

1. On May 23, 2005, Pacific Gas and Electric Company (PG&E) filed an offer of partial settlement in the above referenced dockets. The partial settlement resolves all issues between PG&E and the Northern California Power Agency (NCPA) pending in this proceeding, which concerns PG&E's Scheduling Coordinator Services Tariff (SCS Tariff), and the extent of NCPA's cost obligation thereunder.
2. On May 31, 2005, comments were filed by the Commission Trial Staff. On June 2, 2005, reply comments were filed by PG&E and NCPA. On June 3, 2005, the presiding Administrative Law Judge certified the uncontested partial settlement to the Commission.¹
3. The subject settlement is in the public interest and is hereby approved. The Commission's approval of the partial settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding.
4. NCPA is a Scheduling Coordinator (SC) Customer under PG&E's SCS Tariff. Under the terms of section II B of the partial settlement, NCPA agrees to pay PG&E 12.9 million dollars (\$12,900,000) by wire transfer within ten (10) business days of the effective date of this settlement, as a final and complete payment for purposes of this settlement, and not subject to change except as provided in section II C of the settlement.

¹ *Pacific Gas and Electric Co.*, 111 FERC ¶ 63,055 (2005).

5. Section II C provides that, in the event that: (1) the D.C. Circuit vacates, reverses and/or remands the Commission's determinations in Opinion Nos. 458 and 458-A,² in whole or in part; and (2) as a result of the remand, the Commission issues a final order confirming that the Transmission Revenue Balancing Account (TRBA) is the appropriate mechanism for recovering costs incurred by PG&E as the SC for existing contracts (including costs not sought by PG&E in the SCS Tariff proceeding, but excluding grid management charge costs), then PG&E will refund to NCPA the 12.9 million dollar (\$12,900,000) payment specified in section II B, with interest calculated in accordance with the Commission's regulations, within ten (10) business days of a Commission order becoming final. The partial settlement does not conclude this proceeding as to other SC customers, who are continuing to litigate the case.

6. This order terminates Docket Nos. ER00-565-015, ER04-1233-004, and ER05-480-002.

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

(S E A L)

Linda Mitry,
Deputy Secretary.

² In Opinion Nos. 458 and 458-A, the Commission denied PG&E's request to recover the costs it incurred as the SC for existing contracts through PG&E's Transmission Owner Tariff (TO Tariff) as a Transmission Revenue Credit adjustment in the Transmission Revenue Balancing Account (TRBA). As a result, PG&E was required to remove the TRBA and refund to the TO Tariff customers an amount of principal and interest that was greater than the amount PG&E currently is proposing to recover from the SC customers in the SCS Tariff proceeding.

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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 accepts for filing an agreement with an Explanatory Statement that provides, in relevant part: “It is PG&E’s and NCPA’s intent, with respect to the specific issues resolved in the Settlement, that the Settlement cannot be changed unless a showing is made that the public interest requires it.”

	_____ Sudeen G. Kelly
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