

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

El Segundo Power, LLC

Docket Nos. ER05-363-000 and
ER05-617-000
(Not Consolidated)

ORDER ACCEPTING UNCONTESTED OFFER OF SETTLEMENT

(Issued October 24, 2005)

1. On August 22, 2005, El Segundo Power, LLC (El Segundo) on behalf of itself, the California Independent System Operator Corporation (CAISO), and Southern California Edison (SCE)(collectively the Sponsoring Parties) submitted an Offer of Settlement (Settlement) in the above-referenced proceeding. The Settlement resolves all issues related to El Segundo's proposed Reliability Must-Run (RMR) Agreement setting forth the terms and conditions under which El Segundo will provide RMR service to the CAISO. The Sponsoring Parties represent that, although the California Public Utilities Commission (CPUC) and the California Electricity Oversight Board (EOB) are not signatories to the Settlement, the CPUC and the EOB support the Settlement. The acceptance of the Settlement will dispose of all matters set for hearing in Docket No. ER05-363-000 and will also conclude the proceedings in Docket No. ER05-617-000.¹

¹ In Docket No. ER05-617-000, the Commission accepted and suspended an amendment to Sheet Nos. 132 and 134 filed by El Segundo to specify a Condition 1 Fixed Option Payment Factor for the remainder of contract year 2005, but did not set the issue for hearing or consolidate it with Docket No. ER05-363-000. Under Condition 1, the owner of the RMR unit is paid a certain percentage of its annual fixed costs. The Commission made the amendment in Docket No. ER05-617-000 subject to the outcome of the proceeding in Docket No. ER05-363-000. *See El Segundo Power, LLC*, 111 FERC ¶ 61,046 (2005).

2. The Settlement is 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.

3. The revised rate schedule sheets submitted as part of the Settlement are in compliance with Order No. 614, Designation of Electric Rate Schedule Sheets, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000), and are hereby accepted for filing as designated, and are made effective as set forth in the Settlement.

4. This order terminates Docket Nos. ER05-363-000 and ER05-617-000.

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

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

El Segundo Power, LLC

Docket Nos. ER05-363-000 and
ER05-617-000
(Not consolidated)

(Issued October 24, 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 a settlement that provides, in relevant part, “the standard of review for changes to any section of the Settlement proposed by a Party, a non-party or the Commission acting *sua sponte*, shall be the ‘public interest’ standard of review 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) (the ‘*Mobile-Sierra*’ doctrine).”

Suedeem G. Kelly