

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy Oakland, LLC

Docket No. ER05-115-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 23, 2006)

1. On November 30, 2005, Duke Energy Oakland, LLC (DEO) filed a settlement resolving all issues set for hearing. This proceeding involves a dispute concerning a Reliability Must-Run (RMR) Agreement between DEO and the California Independent System Operator (CAISO). The settlement documents were executed by the CAISO, the California Electricity Oversight Board (CEOB), Pacific Gas and Electric Company (PG&E), and DEO. The California Public Utilities Commission (CPUC), while not a signatory to the settlement, does not oppose the settlement. On December 20, 2005, the Commission Trial Staff filed comments not opposing the settlement. No other comments were filed. On January 6, 2006, the Chief Judge certified the settlement to the Commission as uncontested.
2. The settlement is in the public interest and is hereby approved. The tariff revisions 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 made effective as set forth in the settlement. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
3. Refunds shall be made and reported pursuant to the settlement.

4. This order terminates Docket No. ER05-115-000. A new sub-docket will be assigned to Docket No. ER05-115 upon receipt of the refund report.

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

( S E A L )

Magalie R. Salas,  
Secretary.

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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 approves a settlement that provides the standard of review for any modifications to this Settlement Agreement that are not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*, shall be the “public interest” standard under the *Mobile-Sierra* Doctrine.

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Suedeem G. Kelly