

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Berkshire Power Company, LLC

Docket Nos. ER05-1179-000
ER05-1179-001

ORDER APPROVING UNCONTESTED SETTLEMENT AGREEMENT

(Issued September 29, 2006)

1. On July 14, 2006, Berkshire Power Company, LLC (Berkshire) filed a settlement with the Commission in the above captioned docket. Initial comments in support of the settlement were filed on July 21, 2006 by the Commission's Trial Staff and the Commonwealth of Massachusetts Office of the Attorney General. No other comments were filed. On July 24, 2006 the Chief Administrative Law Judge certified the settlement to the Commission as uncontested.
2. The settlement is in the public interest and is hereby accepted. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
3. This order terminates Docket Nos. ER05-1179-000 and ER05-1179-001.

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

(S E A L) Commissioner Wellinghoff dissenting in part with a separate statement attached.

Magalie R. Salas,
Secretary.

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KELLY, Commissioner, *dissenting in part*:

As 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 specifying that Commission review of proposed changes to the Annual Fixed Revenue Requirement under FPA section 206 shall be subject to the *Mobile-Sierra* “public interest” standard.

Suedeen G. Kelly

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WELLINGHOFF, Commissioner, dissenting in part:

This settlement seeks to bind the Commission to the “public interest” standard of review with regard to proposed changes to the subject facility’s Annual Fixed Revenue Requirement. I would not approve binding the Commission, acting *sua sponte* or in response to a complaint, to the public interest standard in this case.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner