

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Xcel Energy Services, Inc.

Docket Nos. ER01-2905-000,
ER01-2905-001 and
ER01-2905-002

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 27, 2004)

1. On March 12, 2004, Xcel Energy Services, Inc. (Xcel) filed an offer of settlement on behalf Public Service Company of Colorado and Plains End, LLC (Plains End) in the above proceedings. The settlement resolves all issues in dispute in these proceedings. Commission Trial Staff and Plains End filed comments in support of the settlement. No other comments were filed. On April 15, 2004, the Settlement Judge certified the settlement to the Commission as uncontested.
2. The subject 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. In addition, the rate schedules submitted as part of the settlement are in compliance with Designation of Electric Rate Schedule Sheets, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000), and are accepted for filing as designated.
4. This order terminates Docket Nos. ER01-2905-000, ER01-2905-001, and ER01-2905-002.

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

(S E A L)

Linda Mitry,
Acting 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, in relevant part, that “[t]he standard of review for changes to the rates or charges related to these facilities, whether proposed by 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