

108 FERC ¶ 61,131  
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 & Electric Co.

Docket Nos. ER04-13-000  
ER04-13-001

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 3, 2004)

1. On June 1, 2004, Pacific Gas and Electric Company (PG&E) and Duke Energy Moss Landing LLC (Duke) filed a Settlement Agreement. The Settlement Agreement resolves all issues concerning PG&E and Duke in the above-referenced dockets.
2. Initial comments in support of the Settlement Agreement were filed by Commission Trial Staff on June 17, 2004. No other comments were filed. The Settlement Judge certified the settlement to the Commission on June 25, 2004.
3. The subject Settlement Agreement is in the public interest and is hereby approved. The rate schedule revisions are hereby accepted for filing as designated and are made effective as specified in the Settlement Agreement. The Commission's approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

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, in relevant part, that “[i]t is the Parties’ intent that the Commission’s right to change any provision of this Agreement shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements.”

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Sudeen G. Kelly