

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 Company

Docket Nos. ER04-377-004  
ER04-743-002

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued December 22, 2004)

1. On October 1, 2004, Pacific Gas and Electric Company (PG&E) filed an offer of settlement in Docket No. ER04-377-000 on behalf of Pacific Gas and Electric Company (PG&E) and La Paloma Generating Company, LLC (La Paloma). This offer of settlement resolves all issues in Docket No. ER04-377-000 as to PG&E's Generator Special Facilities Agreement (GSFA) with La Paloma. It does not relate to any issues regarding any third party GSFA's also filed in that docket. Commission Trial Staff submitted initial comments in support of the offer of settlement on October 20, 2004. The Administrative Law Judge certified the offer of settlement to the Commission on November 5, 2004.

2. The subject Settlement Agreement is in the public interest and is hereby approved. The rate schedule revisions submitted with the settlement are in compliance with Order No. 614. *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, (FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000, ¶ 31,096 (2000)). The rate schedule revisions are hereby accepted for filing and made effective as specified in the Settlement Agreement.

3. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. PG&E and La Paloma are hereby directed to carry out the refunds provided for in the Settlement Agreement in accordance with the procedures specified therein. Within thirty (30) days after making such refunds, PG&E shall file with this Commission a compliance report showing monthly billing determinants, revenue receipt dates, revenues under the prior, present, and settlement rates, and the revenue refund, together with a summary of such information for the total refund period. PG&E shall furnish copies of the report to the affected wholesale customers and to each state Commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

5. This order terminates the above-referenced dockets. New subdockets will be assigned upon receipt of the request of the required compliance refund report. Requests for rehearing of the Commission's March 8, 2004 Order in Docket No. ER04-377-000 were filed and are pending before the Commission in Docket Nos. ER04-377-000 and ER04-377-002. Consistent with the Settlement Agreement, such pending rehearing requests are deemed withdrawn to the extent that they pertain to issues between PG&E and La Paloma.

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

( S E A L )

Linda Mitry,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Docket Nos. ER04-377-004  
ER04-743-002

(Issued December 22, 2004)

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 Commission’s right to change any provision of the agreement shall be in accordance with the *Mobile-Sierra* public interest standard.

	_____ Suede G. Kelly
--	-------------------------