

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

USGen New England, Inc.

Docket No. ER04-841-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued June 22, 2005)

1. On May 26, 2005, Dominion Energy Salem Harbor, LLC (Dominion Salem) filed an offer of settlement,¹ in the above-captioned proceeding, resolving all issues set for hearing in the Commission's July 7, 2004 Order Accepting Reliability Agreement and Establishing Hearing and Settlement Judge Procedures.² That order addressed a May 14, 2004 unexecuted Reliability Agreement filing by USGen New England, Inc. (USGen) between USGen and Independent System Operator New England, Inc. (ISO-NE) concerning USGen's 745 megawatt Salem Harbor generating station located in Salem, Massachusetts (Salem Harbor).

2. In sum, the Settlement provides that ISO-NE shall collect a total of \$6,750,000.00 from designated market participants and pay that sum to Salem Harbor's agent or designee in twenty-four (24) equal monthly installments commencing not later than forty-five (45) days after the effective date specified in the Offer of Settlement. In exchange, Dominion Salem obligates itself not to submit a request to deactivate, retire or otherwise

¹ Dominion Salem filed the proposed settlement, on behalf of itself, ISO New England Inc. ("ISO-NE"), the City of Salem, Massachusetts; Concord Municipal Light Plant; Conservation Law Foundation (on its own behalf and on behalf of Clean Water Action, Healthlink, MASSPIRG, and Wenham Lake Watershed Association); the International Brotherhood of Electrical Workers - Local 326; Massachusetts Department of Environmental Protection; Massachusetts Department of Telecommunications and Energy; Massachusetts Division of Energy Resources; National Grid USA; NSTAR Electric & Gas Corporation; Reading Municipal Light Department; and Wellesley Municipal Light Plant.

² *USGen New England, Inc.*, 108 FERC ¶ 61,012 (2004).

shut down any of the four (4) Salem Harbor generating units pursuant to Section I.3.9 of the ISO-NE Tariff with an effective date prior to September 30, 2008.

3. Commission Staff filed initial comments in support of the offer of settlement on June 2, 2005. No other comments were filed within the shortened comment period. On June 14, 2005, the settlement judge certified the offer of settlement to the Commission as uncontested.

4. The subject settlement is in the public interest and is hereby approved. Commission approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue involved in this proceeding. The Settlement provides that the standard of review for any changes to this Settlement Agreement, whether proposed by a Party, a non-party, or the Commission acting *sua sponte*, shall be the "public interest" standard set forth in *United Gas Pipeline Co. v. Mobile Gas Service Corporation.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956). Further, the designations on the tariff sheets accompanying the Settlement are not in compliance with Designation of Electric Rate Schedule Sheets, Order No. 614, *FERC Statutes and Regulations, Regulations Preambles July 1996 - December 2000* ¶ 31,096 (2000). The Commission will accept the proposed tariff sheets for filing, to be effective on the date specified in the Settlement subject to the filing of revised tariff sheets consistent with the dictates of Order No. 614.

5. Docket No. ER04-841-000 is terminated. A new subdocket will be assigned upon the receipt of the revised tariff sheets.

By the Commission. Commission 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

USGen New England, Inc.

Docket No. ER04-841-000

(Issued June 21, 2005)

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 changes to this Settlement Agreement, whether proposed by a Party, a non-party, or the Commission acting *sua sponte*, shall be the ‘public interest’ standard...” under the *Mobile-Sierra* Doctrine.

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