

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeem G. Kelly.

Pacific Gas and Electric Company

Docket Nos. ER00-565-018
ER04-1233-006
ER05-480-005

ORDER APPROVING UNCONTESTED PARTIAL SETTLEMENT

(Issued July 19, 2005)

1. On May 23, 2005, an Offer of Partial Settlement (Partial Settlement) between Pacific Gas & Electric Company (PG&E) and the City and County of San Francisco, California (CCSF) was filed. The Partial Settlement resolves all issues between PG&E and CCSF in the above-referenced proceedings with regard to PG&E's Scheduling Coordinator Services Tariff (SCS Tariff). No comments were filed on the Partial Settlement. On July 6, 2005, the Presiding Administrative Law Judge certified the Partial Settlement to the Commission as uncontested.¹
2. The subject settlement is in the public interest and is hereby accepted. The Commission's acceptance of the Partial Settlement does not constitute acceptance of, or precedent regarding any principle or issue in this proceeding.
3. CCSF is a Scheduling Coordinator (SC) Customer under PG&E's Scheduling Services Tariff. Under section II.B of the Partial Settlement, CCSF agrees to pay PG&E eight million four hundred thousand dollars (\$8,400,000). To date CCSF has paid PG&E \$3,527,580.75. Thus, CCSF agrees to pay PG&E \$4,105,526.50 by wire transfer within ten (10) business days of the effective date of this settlement, as a final and complete payment for purposes of this settlement

¹ *Pacific Gas and Electric Co.*, 112 FERC ¶ 63,004 (2005).

and not subject to change except as provided in section II.C and D of the settlement.

4. Section II.C provides that, in the event that: (1) the D.C. Circuit vacates, reverses and/or remands the Commission's determinations in Opinions Nos. 458 and 458-A,² in whole or in part; and (2) as a result of the remand, the Commission issues a final order confirming that the TRBA is the appropriate mechanism for recovering costs incurred by PG&E as the SC for Existing Contracts (including costs not sought by PG&E in the SCS Tariff Proceeding, but excluding Grid Management Charge costs), then PG&E will refund to CCSF the 8.4 million dollar (\$8,400,000) payment specified in Section II.B, with interest calculated in accordance with the Commission's regulations, within ten (10) business days of a Commission order becoming final.

5. Section II.D provides that CCSF will assume all SC responsibilities that PG&E currently performs on CCSF's behalf under the SCS Tariff by no later than December 31, 2005 (the CCSF SC Date). On that date, CCSF will assume all SC responsibilities that PG&E currently performs on CCSF's behalf under the SCS Tariff and, pursuant to sections 4.2 and 4.3 of the SCS Tariff will no longer take service under the SCS Tariff. PG&E will cease serving as CCSF's SC and will cease providing SC services to CCSF. CCSF will continue to remain responsible for SC Charges pursuant to section 9 of the SCS Tariff, including all SC Charges incurred by PG&E, but only for transactions that occurred prior to the CCSF SC Date.

² *Pacific Gas and Electric Company*, Opinion No. 458, 100 FERC ¶ 61,156 (2002), *reh'g denied*, Opinion No. 458-A, 101 FERC ¶ 61,151 (2002), *vacated and remanded sub nom. Southern California Edison Co. v. FERC*, 2005 U.S. App. LEXIS 13,938 (D.C. Cir. 2005). In Opinion Nos. 458 and 458-A, the Commission denied PG&E's request to recover the costs it incurred as the SC for Existing Contracts through PG&E's Transmission Owner Tariff (TO Tariff) as a Transmission Revenue Credit adjustment in the Transmission Revenue Balance Account (TRBA). As a result, PG&E was required to remove the TRBA and refund to the TO Tariff customers an amount of principal and interest that was greater than the amount PG&E currently is proposing to recover from the SC Customers in the SCS Tariff Proceeding.

6. This order terminates Docket Nos. ER00-565-018, ER04-1233-006, and ER05-480-005.

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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ER05-480-005

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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 the standard of review for any modifications to this Settlement Agreement, including any modifications resulting from the Commission acting *sua sponte*, shall be the “public interest” standard under the *Mobile-Sierra* Doctrine.

Sudeen G. Kelly