

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mirant Kendall, LLC and
Mirant Americas Energy Marketing, LP

Docket No. ER05-26-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 11, 2006)

1. On October 7, 2005, Mirant Kendall, LLC, Mirant Americas Energy Marketing, LP, NSTAR Electric & Gas Corporation (on behalf of its affiliate Cambridge Electric Company) and ISO New England Inc. (Settlement Parties) filed an Offer of Settlement in the above-captioned proceeding consisting of a Settlement Agreement and a Revised Reliability Must-Run (RMR) Agreement among Mirant Kendall, LLC, Mirant Americas Energy Marketing, LP and ISO New England Inc. On October 27, 2005, Trial Staff submitted comments in support of the settlement. No other comments were received. On November 22, 2005, the Chief Judge certified the settlement to the Commission as uncontested.
2. The Settlement Parties state that the settlement is intended to resolve all issues among the parties concerning the operations of the various units comprising a generating facility owned by Mirant Kendall in Cambridge, Massachusetts, and the scheduling, bidding, and charges related to power generated by the units. 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. While Mirant has filed rate schedule sheets to implement the settlement, its proposed designations do not comport with Designation of Electric Rate Schedule Sheets, Order No. 614, FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000). Therefore, Mirant is directed to file rate schedule sheets, in conformance with Order No. 614, within 30 days of the date of the order approving the settlement.

4. Docket No. ER05-26-000 is terminated.

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 the standard of review for any modifications to this Settlement Agreement that are not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*, shall be the “public interest” standard under the *Mobile-Sierra* Doctrine.

Suedeem G. Kelly