

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Duke Energy South Bay, LLC

Docket No. ER06-115-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued June 22, 2006)

1. On April 25, 2006, Duke Energy South Bay, LLC (DESB), the California Independent System Operator Corporation, the California Electricity Oversight Board, and San Diego Gas & Electric Company filed a joint offer of settlement. The settlement resolves all issues in the above-captioned proceeding concerning the revenue requirement for DESB's "reliability must run" generation capacity. The Commission Trial Staff filed comments on May 15, 2006. No other comments were received. On June 1, 2006, the Chief Administrative Law Judge certified the settlement to the Commission as uncontested.
2. The subject settlement is in the public interest and is hereby approved. The Commission's approval of the settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The rate schedule sheets submitted as part of the settlement are in compliance with Order 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, (FERC Statutes & Regulations, Regulations Preambles July 1996-December 2000, ¶ 31,096 (2000)). The rate schedule sheets are hereby accepted for filing and made effective as specified in the settlement.
4. DESB will make the refunds as specified in the settlement to reflect the rates provided in the settlement. DESB will file with the Commission a refund report within fifteen days of the date on which DESB has credited the final refunds to all customers, as described in the settlement. DESB shall furnish copies of the report to the affected customers and to each state Commissioner within whose jurisdiction the affected wholesale customers distribute and sell electric energy at retail.

5. A new sub-docket will be assigned in Docket No. ER06-115 upon receipt of the required refund report.

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 accepts for filing a settlement that provides, in relevant part, that a public interest standard of review shall apply to any investigation of this Settlement that the Commission may initiate under FPA Section 206.

Suedeem G. Kelly