

110 FERC ¶61,294
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Energy Corporation Operating
Companies

Docket No. ER04-607-000

ORDER APPROVING UNCONTESTED OFFER OF SETTLEMENT

(Issued March 21, 2005)

1. On July 12, 2004, Wisconsin Electric Power Company (Wisconsin Electric), on behalf of the Wisconsin Energy Corporation Operating Companies (WEC Operating Companies), filed a settlement which resolves all of the issues that were set for hearing; these issues involve generator imbalances. The settlement is between Wisconsin Electric, on behalf of the WEC Operating Companies, Constellation Generation Group, LLC, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Calpine Corporation, and Wisconsin Public Power, Inc. The Commission's Trial Staff filed comments in support of the settlement on August 2, 2004. On August 4, 2004, the presiding administrative law judge certified the settlement as an uncontested settlement.
2. The 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. This order terminates Docket No. ER04-607-000.

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

(S E A L)

Linda Mitry,
Deputy 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 an agreement that provides, in relevant part: “The Settlement Parties agree that the right to change any provision of this Settlement Agreement shall be limited to the maximum extent permissible by law and that any such change shall be in accordance with the *Mobile-Sierra* public interest standard.”

Suedeem G. Kelly