

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

CalPeak Power, LLC

Docket Nos. ER05-304-000 and
ER05-304-001

ORDER ACCEPTING UNCONTESTED OFFER OF SETTLEMENT

(Issued June 27, 2005)

1. On March 31, 2005, CalPeak Power – Vaca Dixon, LLC (CalPeak-Vaca Dixon), the California Independent System Operator Corporation (CAISO), Pacific Gas & Electric Company and the California Electricity Oversight Board (collectively the parties) submitted an Offer of Settlement (Settlement) in the above-referenced proceeding. The Settlement resolves the heat rate value under the Reliability Must-Run Service Agreement (RMR Agreement) between CalPeak and CAISO and all other issues in the instant proceeding for Contract Year 2005. On April 20, 2005, Trial Staff of the Federal Energy Regulatory Commission filed comments in support of the settlement. No other comments were received. On May 25, 2005, the Chief Judge certified the settlement to the Commission as uncontested.¹
2. On December 6, 2004, as amended on December 22, 2004,² CalPeak filed an RMR Agreement with CAISO and related tariff sheets. On February 15, 2005, the Commission accepted and suspended the subject RMR Agreement to be effective January 1, 2005, and set the proposed revisions for hearing and settlement judge procedures.³ The parties have filed the Settlement in the instant docket.

¹ *CalPeak Power, LLC*, 111 FERC ¶ 63,044 (2005).

² Amended in Docket No. ER05-304-001.

³ *CalPeak Power, LLC* 110 FERC ¶ 61,145 (2005).

3. RMR Agreements provide the rates, terms, and conditions by which CalPeak and other power plant owners in California provide RMR service to the CAISO by dispatching designated units at certain power plants at the direction of the CAISO. Whenever the CAISO designates an RMR unit or extends the term of an RMR Agreement for an additional calendar year, the RMR Owner subject to Commission jurisdiction, is required to make a filing under section 205 of the Federal Power Act, establishing or updating certain rates and terms of service.⁴

4. 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.

5. The revised rate schedule sheets submitted as part of the settlement as Exhibits A and B are in compliance with Order No. 614, Designation of Electric Rate Schedule Sheets, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000), and are hereby accepted for filing as designated and are made effective as set forth in the settlement.

6. This order terminates Docket No. ER05-304-000 and ER05-304-001.

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

(S E A L)

Linda Mitry,
Deputy Secretary.

⁴ The *pro forma* RMR Agreement provides that an RMR Owner is required to file its annual Fixed Rate Revenue Requirement (AFRR) and Variable Cost Payment rates using the rate formula set forth in Schedule F of the RMR Agreement. The RMR Owner is also obligated to file certain rates based on the AFRR and Variable Cost Payment rates, along with other contractually required rates and terms of service.

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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 specifies that the public interest standard of review shall apply to any modifications to the settlement, including any investigation the Commission may initiate under section 206.

Sudeen G. Kelly