

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cabrillo Power I LLC. and
Cabrillo Power II LLC.

Docket No. ER04-308-000

ORDER ON UNCONTESTED SETTLEMENT

(Issued February 14, 2005)

1. On December 14, 2004, on behalf of Cabrillo Power I LLC (“Cabrillo I”) and Cabrillo Power II LLC (“Cabrillo II”) (jointly, “Cabrillo”), the California Independent System Operator Corporation (the “ISO”) and San Diego Gas & Electric Company (“SDG&E”) (collectively, the “Sponsoring Parties”), filed a settlement agreement in this docket. The settlement resolves all issues set for hearing in the above referenced proceeding. Staff filed comments in support of the settlement. No other comments were filed. On January 24, 2005, the Settlement Judge certified the settlement to the Commission as uncontested.
2. The settlement resolves issues related to Cabrillo’s revised rates schedules for Reliability Must Run Agreements (RMR) and revisions to its Annual Fixed Revenue Requirement (ARFF). Cabrillo I rates for the years 2004, 2005, and 2006, respectively, will be calculated using an AFRR of \$44,500,000, \$43,500,000, and \$41,500,000. Cabrillo II rates for the years 2004, 2005, and 2006, will be calculated using an AFRR of \$5,500,000 for each year.
3. The subject settlement agreement is fair and reasonable and in the public interest and is hereby accepted. The Commission’s acceptance of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
4. The rate schedules submitted as part of the settlement 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.

5. This order terminates Docket No. ER04-308-000.

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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Cabrillo Power I., L.L.C. and
Cabrillo Power II., L.L.C.

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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 that 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