

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas and Electric Company

Docket Nos. ER04-377-000
ER04-377-001
ER04-377-002
ER04-377-003
ER04-377-004
ER04-377-005
ER04-377-006
ER04-743-000
ER04-743-001
ER04-743-002
ER04-743-003
ER04-743-004

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued April 15, 2005)

1. On January 28, 2005, Pacific Gas and Electric Company (PG&E) filed on behalf of itself and Sunrise Power Company, LLC (Sunrise) an offer of settlement in the above referenced dockets, and on February 25, 2005, PG&E filed a clarifying errata. The subject settlement resolves all issues set for hearing and settlement judge procedures in Docket Nos. ER04-377-000 and ER04-743-000 concerning the rates, terms and conditions for the interconnection service PG&E provides to Sunrise. This settlement also resolves PG&E's rehearing request of the Commission's March 8, 2004 Order.

2. The settlement resolves the classification of certain cost-ownership charges between network upgrade and direct assignment special facilities for Sunrise I and Sunrise II special facilities and the relocation of Sunrise II facilities. The settlement establishes \$241,699 as the total cost of direct assignment facilities for Sunrise I and \$207,510 as the total cost of direct assignment facilities for Sunrise II which will be used in calculating the applicable monthly cost-of-ownership charges that Sunrise will pay. The settlement also provides for PG&E to credit Sunrise \$942,256, plus interest, for

Sunrise I network upgrade special facilities and \$1,125,696, plus interest, for Sunrise II network upgrade special facilities.

3. Initial comments regarding the offer of settlement were filed by Commission Trial Staff on February 17, 2005. The Administrative Law Judge certified the settlement to the Commission on March 16, 2005.

4. The subject settlement is in the public interest and is hereby approved. The rate schedule revisions submitted with the settlement are in compliance with Order No. 614. *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 *Fed. Reg.* 18,221, (FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000, ¶ 31,096 (2000)). The rate schedule revisions are hereby accepted for filing and made effective as specified in the settlement.

5. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. PG&E and Sunrise are hereby directed to carry out the refunds provided for in the settlement.

7. This order terminates the above-referenced dockets.

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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ER04-743-003
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(Issued April 15, 2005)

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: “It is the Parties intent that the Commission’s right to change any provision of this Agreement, upon its own motion or otherwise, shall be limited to the maximum extent permissible by law and that any such change, if permissible, shall be in accordance with the *Mobile-Sierra* public interest standard applicable to fixed rate agreements. *United Gas Pipe Line Co v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).”

	_____ Suede G. Kelly
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