

108 FERC ¶ 61,133
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 & Electric Company

Docket No. ER04-13-003

Pacific Gas & Electric Company

Docket Nos. ER04-743-001
ER04-377-003
(Not Consolidated)

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued August 3, 2004)

1. On June 1, 2004, Pacific Gas and Electric Company (PG&E) and GWF Energy LLC (GWF) filed a Settlement Agreement in the above-referenced dockets. The Settlement Agreement resolves all issues in the above-referenced dockets that concern PG&E's Generator Special Facilities Agreements (GSFA) with GWF Henrietta, GWF Tracy, and GWF Hanford. It does not relate to issues regarding any third party GSFA's filed in these dockets.
2. Commission Trial Staff submitted comments in support of the Settlement Agreement on June 17, 2004. No other comments were filed. The Settlement Judge certified the Settlement Agreement to the Commission on June 24, 2004.
3. The subject Settlement Agreement is in the public interest and is hereby approved. The rate schedule revisions are hereby accepted for filing and made effective as specified in the Settlement Agreement. The Commission's approval of this Settlement Agreement

does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

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 approves a settlement that provides, in relevant part, that “[i]t is the Parties’ intent that the Commission’s right to change any provision of this Agreement shall be limited to the extent permissible by law and that any such change shall be in accordance with the Mobile-Sierra public interest standard applicable to fixed rate agreements.”

	_____ Sudeen G. Kelly
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