

109 FERC ¶ 61,237
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wayne-White Counties Electric Cooperative

Docket No. ER04-564-000

ORDER APPROVING UNCONTESTED SETTLEMENT AGREEMENT

(Issued November 26, 2004)

1. On September 13, 2004, Wayne-White Counties Electric Cooperative (Wayne-White) and the City of Fairfield, Illinois (Fairfield) filed a Settlement Agreement that resolves all issues in the above-referenced docket.
2. On October 4, 2004, Commission Trial Staff filed initial comments in support of the settlement agreement. No reply comments were received. On October 14, 2004, the presiding judge certified the Settlement Agreement to the Commission as uncontested.
3. The Settlement Agreement constitutes a reasonable resolution of these proceedings and will be approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue involved in these proceedings.
4. The rate schedule revisions submitted with the Settlement Agreement are in compliance with Order No. 614.¹ The rate schedule revisions are hereby accepted for filing and made effective as specified in the Settlement Agreement.

¹ *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221 (Apr. 7, 2000), FERC Stats. & Regs. ¶ 31,096 (2000).

5. This order terminates Docket No. ER04-564-000.

By the Commission.

(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 “[t]he standard of review for any modifications to this Settlement that are not agreed to by the Parties, including any modification resulting from the Commission acting *sua sponte*, shall be the ‘public interest’ standard under the *Mobile/Sierra* Doctrine...”, as set forth in *United Gas Pipe Line Co v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

Suedeem G. Kelly