

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Pacific Gas & Electric Company

Docket Nos. ER05-113-000  
ER05-125-000  
EL02-20-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 23, 2005)

1. On December 23, 2004, Pacific Gas and Electric Company (PG&E) filed an offer of settlement (settlement) in the above referenced dockets. The settlement resolves all issues pending in these proceedings, which concern changes to rates and terms of Must-Run Service Agreements between PG&E and the CAISO (RMR Agreements).
2. The settlement resolves the California Independent System Operator (CAISO) protest to PG&E's filing in Docket Nos. ER05-113-000 and ER05-125-000, in which CAISO argued that PG&E failed to provide adequate supporting data to allow the CAISO to determine whether the proposed increases to the Annual Fixed Revenue Requirement values for Year 2005 are just and reasonable and that PG&E proposed substantial and unjustified increases in operation and maintenance costs for the RMR units. The settlement also resolves the complaint of CAISO, the Public Utilities Commission of the State of California (CPUC), and the California Electricity Oversight Board (EOB) filed against PG&E in Docket No. EL02-20-000, seeking to revise the methodology used to determine the Fixed Option Payment for PG&E's RMR Units.
3. Comments in support of the Offer of Settlement were filed by the EOB and by the CPUC. No other comments were filed. On February 8, 2005, the Chief Judge certified the settlement to the Commission as uncontested.
4. The subject settlement 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. The Commission's approval of this settlement does not constitute approval of, or precedent regarding any principle or issue in this proceeding.

5. Any amounts collected in excess of the settlement rates shall be refunded together with interest computed under section 35.19a of the Commission's Regulations, 18 C.F.R. § 35.19a (2004), in accordance with the terms of the settlement. Within fifteen (15) days after PG&E credits the final refund to the CAISO, PG&E shall file with the Commission a compliance report documenting such refunds. PG&E shall furnish copies of the report to all parties in this proceeding.

6. This letter order terminates Docket Nos. ER05-113-000, ER05-125-000, and EL02-20-000. A new sub-docket will be assigned to Docket Nos. ER05-113 and ER05-125 upon receipt of the refund report.

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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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 “a public interest standard of review shall apply to any investigation of this Offer of Settlement the Commission may initiate under FPA Section 206.”

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Suedeen G. Kelly