

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Entergy Services, Inc.

Docket No. ER04-638-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 25, 2005)

1. On October 22, 2004, Entergy Services, Inc. filed an offer of settlement and settlement agreement with an explanatory statement in the above-referenced proceeding. On November 10, 2004, Commission Trial Staff filed comments in support of the settlement agreement. No other comments were filed. On November 24, 2004, the Settlement Judge certified the settlement to the Commission as an uncontested settlement.
2. The subject settlement is in the public interest and is hereby approved. The rate schedules submitted as part of the settlement are accepted for filing. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.
3. This order terminates Docket No. ER04-638-000.

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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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 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.”

Sudeen G. Kelly