

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

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

Duke Energy South Bay, LLC

Docket No. ER05-128-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued May 6, 2005)

1. On January 24, 2005, Duke Energy South Bay, LLC (DESB) filed an Offer of Settlement (settlement) in the above referenced docket. The settlement resolves all issues pending in this proceeding, which concern the joint protest filed by San Diego Gas and Electric Company (SDG&E) and California Independent System Operator Corporation (CAISO) against Duke Energy South Bay, LLC's (DESB) proposed revisions to its Reliability Must-Run Agreement (RMR Agreement) with the CAISO.
2. SDG&E and CAISO claimed that DESB's filing was an unwarranted unilateral change to the applicable allocation methodology for distributing the total Annual Fixed Revenue Requirements (AFRR) between DESB units and that allocating total plant AFRR by expected unit service hours per year was inconsistent with cost causation principles. The settlement resolves the total and unit-specific AFRR for contract year 2005 and revises the RMR rate schedule as agreed by the parties.
3. No comments on the settlement were filed. On March 31, 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 sheets submitted as part of the settlement are in compliance with Order No. 614, *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs. ¶ 31,096 (2000). 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 DESB credits the final refund to the CAISO, DESB shall file with the Commission a compliance report documenting such refunds. DESB shall furnish copies of the report to all parties in this proceeding.

6. This order terminates Docket No. ER05-128-000. A new sub-docket will be assigned to Docket No. ER05-128-000 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.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Duke Energy South Bay, LLC

Docket Nos. ER05-128-000

(Issued May 6, 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 with an Explanatory Statement that provides, in relevant part: “The Settlement is subject to the “public interest” standard of review set forth in *United Gas Pipe Line Co v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).”

Suedeem G. Kelly