

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Mirant Delta, LLC and Mirant Potrero, LLC

Docket No. ER03-215-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 23, 2005)

1. On February 2, 2005, Mirant Delta, LLC and Mirant Potrero, LLC (Mirant) filed an offer of settlement addressing Reliability Must-Run rates and charges in the above-referenced proceeding. No comments were filed.
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.

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 accepts for filing an agreement with an Explanatory Statement that provides, in relevant part: “The Parties intend that the standard of review for changes to any section of the Settlement proposed by a Party, a non-party or the Commission acting *sua sponte* shall be 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) (the “*Mobile-Sierra*” doctrine).”

Suedeen G. Kelly