

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 Zeeland, L.L.C.

Docket No. ER04-1110-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 23, 2005)

1. On January 14, 2005, Mirant Zeeland, L.L.C. (Mirant Zeeland), Consumers Energy Company (Consumers), and the Michigan Public Power Agency (MPPA)(collectively, the Settling Parties) jointly filed an uncontested settlement with Commission which effectively resolves all of the issues in the above-referenced docket.
2. The settlement incorporates by reference Mirant Zeeland's FERC Electric Tariff Volume No. 2 (Revised Mirant Zeeland Tariff) and establishes Mirant Zeeland's annual revenue requirement for reactive supply service at \$1,110,000. The Settling Parties agree to a "Two-year Rate Freeze," wherein for a period of two (2) years from the Revised Mirant Zeeland Tariff effective date, none of the Settling Parties will challenge or seek to modify the Revised Mirant Zeeland Tariff or Mirant Zeeland's revenue requirement for reactive power. However, nothing in the settlement constitutes a waiver of the Settling Parties' rights under sections 205 and 206 of the FPA following the expiration of this two-year rate freeze.
3. On February 3, 2005, Commission Staff filed comments in support of the settlement. On February 18, 2005, the Administrative Law Judge certified the settlement as uncontested.
4. The subject settlement is in the public interest and is hereby approved.

5. The tariff sheets submitted as part of the settlement are in compliance with Order No. 614, *Designation of Electric Rate Schedule Sheets*, FERC Stats. & Regs., Regulations Preambles July 1996 – December 2000 ¶ 31,096 (2000), and are hereby accepted.

6. This order terminates Docket No. ER04-1110-000.

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 that the standard of review for any modifications to this Settlement Agreement that are not agreed to by all the Parties, which would include any modifications resulting from the Commission acting *sua sponte*, shall be the “public interest” standard under the Mobile Sierra Doctrine.

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Suedeem G. Kelly