

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 and Electric Company

Docket No. ER04-414-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued March 3, 2005)

1. On December 30, 2004, Pacific Gas and Electric Company (PG&E) and Calpine Gilroy Cogen, L.P. (Gilroy) filed a settlement agreement in the above-referenced docket. The subject settlement resolves all issues set for hearing and settlement judge procedures in Docket No. ER04-414-000 concerning the rates, terms and conditions for the interconnection service PG&E provides to Gilroy.
2. The settlement resolves the classification of certain cost-of-ownership charges between network upgrade and direct assignment special facilities. The settlement establishes \$1,047,714.78 as the total cost of direct assignment facilities to be used in calculating the applicable monthly cost-of-ownership charges that Gilroy will pay.
3. With the exception of the established principal amount which is not subject to change pursuant to paragraph 2 of the settlement, the Commission retains the right to investigate the rates, terms and conditions under the just and reasonable and not unduly discriminatory or preferential standard of section 206 of the Federal Power Act, 16 U.S.C. § 824(e) (2000).
4. Commission Trial Staff filed initial comments in support of the settlement on January 18, 2005, and an errata notice concerning those comments on February 2, 2005. The Administrative Law Judge certified the offer of settlement to the Commission on February 3, 2005 as uncontested.

5. The subject settlement agreement is in the public interest and is hereby approved. The rate schedule revisions submitted with the settlement are in compliance with Order No. 614, *Designation of Electric Rate Schedule Sheets*, 65 Fed. Reg. 18,221, (FERC Statutes and Regulations, Regulations Preambles July 1996 – December 2000, ¶ 31,096 (2000)). The rate schedule revisions are hereby accepted for filing and made effective as specified in the settlement agreement.

6. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

7. PG&E and Gilroy are hereby directed to carry out the refunds provided for in the settlement agreement in accordance with the procedures specified therein.

8. This order terminates Docket No. ER04-414-000.

By the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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Pacific Gas and Electric Company

Docket No. ER04-414-000

(Issued March 3, 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 interprets certain provisions of this settlement to prohibit the Commission, acting *sua sponte* on behalf of a non-party or pursuant to a complaint by a non-party, from reviewing the principal amount on which the Cost of Ownership charge is calculated, under the just and reasonable standard.

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Sudeen G. Kelly