

116 FERC ¶61,031
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Sudeen G. Kelly.

H.Q. Energy Services (U.S.), Inc.	Docket Nos. EL01-19-004
	EL01-19-005
v.	EL01-19-006

New York Independent System
Operator, Inc.

PSEG Energy Resources & Trade LLC	EL02-16-004
	EL02-16-005
v.	EL02-16-006

New York Independent System
Operator, Inc.

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued July 12, 2006)

1. On May 25, 2006, Consolidated Edison Company of New York, Inc. (Con Edison), Long Island Lighting Company d/b/a LIPA, New York Power Authority, New York State Electric & Gas Corporation (NYSEG), Niagara Mohawk Power Corporation d/b/a National Grid (Niagara Mohawk), Orange and Rockland Utilities, Inc. (Orange and Rockland) and Rochester Gas and Electric Corporation (RG&E) (these seven entities are referred to collectively as the New York Transmission Owners), the New York Independent System Operator, Inc. (NYISO), Consolidated Edison Solutions, Inc., Central Hudson Gas & Electric Corporation, AES Somerset, LLC, AES Westover, L.L.C., AES NY, L.L.C., AES Eastern Energy L.P., PSEG Energy Resources & Trade LLC, H.Q. Energy Services (U.S.), Inc., the Mirant Parties,¹ NRG Power Marketing, Inc.,

¹ The Mirant Parties include Mirant Energy Trading, LLC (MET), Mirant New York, Inc., Mirant Bowline, LLC, Mirant Lovett, LLC, and Mirant NY-Gen, LLC. On February 1, 2006, Mirant Americas Energy Marketing, LP (MAEM) transferred its assets related to its participation in the NYISO-administered markets to MET, including all potential refund claims relating to MAEM's sales in the NYISO-administered market during the period May 8-9, 2000. Accordingly, MET is currently the real party in interest for purposed of these proceedings.

Reliant Energy, Inc.,² Indeck Energy Services, Inc., Indeck-Olean, L.P., Indeck-Ilion, L.P., Indeck-Oswego L.P. and Indeck-Yerkes LP (Indeck Companies), PPL EnergyPlus, LLC, KeySpan-Ravenswood, LLC, Independent Power Producers of New York, Inc., and Aquila Merchant Services, Inc. (collectively, Parties), filed a Stipulation and Agreement of Settlement (Settlement) in the above-captioned proceedings. The Settlement resolves all issues that were raised or could have been raised by all Parties with respect to the May 8, 2000 and May 9, 2000 Temporary Extraordinary Procedures (TEP) price adjustments in Docket Nos. EL01-19-000, *et seq.* and EL02-16-000, *et seq.* and in connection with the petitions for review filed in the U.S. Court of Appeals for the D.C. Circuit in Case Nos. 06-1029 and 06-1030.

2. On June 14, 2006, FERC Trial Staff filed comments in support of the Settlement. No other comments were received. On June 15, 2006, the Settlement Judge certified the Settlement to the Commission as uncontested.³

3. The subject Settlement is fair and reasonable and in the public interest and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

4. Con Edison, Orange and Rockland, Niagara Mohawk, RG&E and NYSEG (Refunding Parties) shall make the refunds necessary to reflect the terms of the Settlement. Refunding Parties shall file a refund report within thirty days of the date on which Refunding Parties have provided refunds, as provided in the Settlement.

5. This order terminates Docket Nos. EL01-19-004, EL01-19-005, EL01-19-006, EL02-16-004, EL02-16-005, and EL02-16-006.

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

(S E A L)

Magalie R. Salas,
Secretary.

² Reliant Energy, Inc. (f/k/a Reliant Resources, Inc.) sold its interest in its New York City power generation facilities in 2006. Reliant Energy, Inc. retained the rights to certain claims and refunds, including certain amounts to be paid under the Settlement, which will be paid to Orion Power Holdings, Inc. in accordance with Attachment A to the Settlement.

³ *H.Q. Energy Services (U.S.), Inc.*, 115 FERC ¶ 63,068 (2006).

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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 a settlement with an explanatory statement that provides, in relevant part, that the standard of review for any modification resulting from the Commission acting *sua sponte* shall be the “public interest” standard under the *Mobile-Sierra* doctrine.

Suede G. Kelly