

155 FERC ¶ 61,309
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 27, 2016

In Reply Refer To:
Duke Energy Indiana, Inc.
Docket No. ER16-200-000

Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036

Attn: Gary A. Morgans, Esq.

Dear Mr. Morgans:

1. On April 14, 2016, you filed, in the above-referenced proceeding, a Settlement Agreement (Settlement) among Duke Energy Indiana, LLC (Duke), Hoosier Energy Rural Electric Cooperative, Inc., Indiana Municipal Power Agency, and Wabash Valley Power Association, Inc. On May 4, 2016, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On May 18, 2016, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹

2. The Settlement addresses Duke's proposed annual revenue requirement for providing reactive service for generating units in the Midcontinent Independent System Operator, Inc. region.

3. Section 3.9 of the Settlement states that

[t]he standard of review for any modifications to this [Settlement] requested by a non-Party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. *See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165, at 174-75 (2010).

¹ *Duke Energy Ind., Inc.*, 155 FERC ¶ 63,017 (2016).

4. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement proposed by third parties and the Commission acting *sua sponte* is to be “the most stringent standard permissible under applicable law,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement by a third party or by the Commission acting *sua sponte*.

5. The *Mobile-Sierra* “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either: (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length; or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm’s-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Association v. FERC*,² however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

6. The Settlement resolves all issues in this proceeding.³ The Settlement appears to be 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.

² 707 F.3d 364, 370-371 (D.C. Cir. 2013).

³ Duke states in its filing that the Settlement does not resolve its petition for rehearing in Docket No. ER16-200-001, which challenges the Commission’s referral of Duke to the Commission’s Office of Enforcement; however, the Commission issued an order on April 25, 2016 denying Duke’s request for rehearing. *See Duke Energy Ind., Inc.*, 155 FERC ¶ 61,094 (2016).

7. Duke is directed to file revised tariff records in eTariff format,⁴ within 30 days of the date of this order. We note that Duke will need to file two revised records, to reflect the terms of the Settlement, which include two different proposed effective dates.

8. This letter order terminates Docket No. ER16-200-000.

By direction of the Commission

Kimberly D. Bose,
Secretary.

⁴ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).