

145 FERC ¶ 61,017
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 4, 2013

In Reply Refer To:
New York Independent System
Operator, Inc.
Docket No. ER12-2317-000

New York Power Authority
Attn: Gary D. Levenson, Esq.
123 Main Street
White Plains, New York 10601-3170

Dear Mr. Levenson:

1. On May 10, 2013, you filed an Offer of Settlement (Settlement) on behalf of the New York Power Authority (NYPA), a member transmission owner of the bulk power system operated by the New York Independent System Operator, Inc. (NYISO) in the above-referenced docket. The Settlement reflects a comprehensive settlement of all issues set for hearing in this docket.¹
2. Comments on the Settlement were due on May 30, 2013, and reply comments were due on June 10, 2013. On May 30, 2013, Commission Trial Staff submitted comments in support of the Settlement. No other comments were received. The Settlement Judge certified the Settlement as uncontested on June 11, 2013.²
3. The Settlement resolves all issues set for hearing in the above-captioned proceeding. The Settlement appears to be fair, 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, except to the limited extent expressly provided in the Settlement.

¹ *New York Independent System Operator, Inc.*, 140 FERC ¶ 61,240 (2012).

² *New York Independent System Operator, Inc.*, 143 FERC ¶ 63,015 (2013).

4. Because the Settlement provides that the standard of review for changes to the Settlement by the Commission or a non-party is “the most stringent standard permitted by 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.

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*,³ 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 includes proposed revisions to Section 14.2.2.4.1 of Attachment H of NYISO’s Open Access Transmission Tariff (OATT). The Commission directs NYPA to work with the NYISO to file, within 30 days of the date of this order, identical revised tariff records in eTariff format to be effective August 1, 2012.⁴

7. Pursuant to the requirements of Order No. 714, a compliance filing in e-Tariff format is required to reflect the Commission’s action in approving settlement orders. Such a compliance filing also is necessary for any settlement filing containing *pro forma* tariff sheets, but is not necessary if the settlement was filed in eTariff format with actual tariff records (as opposed to *pro forma* records.).

³ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

⁴ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).

8. This order terminates the proceeding in Docket No. ER12-2317-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties of Record