

145 FERC ¶ 61,199
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 6, 2013

In Reply Refer To:
DeSoto County Generating Co., LLC
Docket Nos. ER13-332-000
ER13-332-001
ER13-332-002

King & Spalding LLP
Attn: Neil L. Levy, Esq.
Counsel for DeSoto County Generating Co., LLC
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Dear Mr. Levy:

1. On June 28, 2013, you filed a Settlement Agreement including a revised rate schedule, in the above-referenced proceeding, on behalf of DeSoto County Generating Company, LLC (DeSoto) and Florida Power & Light Company (Florida Power) (collectively, Settling Parties). The Settlement Agreement resolves all issues in dispute in this proceeding. On July 17, 2013, Commission Trial Staff filed comments in support of the Settlement Agreement. No other comments were filed. On July 22, 2013, the Settlement Judge certified the Settlement Agreement to the Commission.¹

2. The Settlement Agreement addresses DeSoto's proposed rate schedule for its 399 MW natural gas-fired generation facility near Arcadia, Florida, under which DeSoto will provide Reactive Supply and Voltage Control services to Florida Power for an annual revenue requirement of \$360,000.00. Pursuant to the Settlement Agreement, the standard of review for any modifications proposed by any of the Settling Parties will be the "public interest" standard of review. The Settlement Agreement also provides that the standard of review for any modifications requested by a non-party to the Settlement

¹ *DeSoto County Generating Co.*, 144 FERC ¶ 63,009 (2013). The Settlement Judge certified the Settlement in Docket Nos. ER13-332-000 and ER13-332-001. On August 12, 2013, the Settlement Judge issued an errata to include Docket No. ER13-332-002 in the certification.

Agreement or initiated by the Commission will be the “most stringent standard permissible under applicable law.”²

3. Because the Settlement Agreement provides that the standard of review for changes to the Settlement Agreement is “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 Agreement.

4. The *Mobile-Sierra*³ “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*,⁴ 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.

5. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission’s approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. The revised rate schedule submitted as part of the Settlement Agreement is accepted, effective January 1, 2013, as set forth in the Settlement Agreement.

² Settlement Agreement at 6.

³ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

⁴ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

7. This letter order terminates Docket Nos. ER13-332-000, ER13-332-001, and ER13-332-002.

By the direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.