

156 FERC ¶ 61,089
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

August 2, 2016

In Reply Refer To:
National Grid Generation LLC
Docket No. ER13-1159-001

David Lodemore, Esq.
National Grid USA
40 Sylvan Road
Waltham, MA 02451

Dear Mr. Lodemore:

1. On June 17, 2016, in the above-referenced proceeding, National Grid Generation LLC (NGG) filed an Offer of Settlement (Settlement). The Settlement provides for a new Amended and Restated Power Supply Agreement between NGG and Long Island Lighting Company d/b/a LIPA, which would resolve all outstanding issues in this proceeding. On July 7 and 18, 2016, respectively, Commission Trial Staff and NGG each filed comments in support of the Settlement. No other comments were filed. On July 21, 2016, the Settlement Judge certified the Settlement to the Commission as uncontested.¹

2. Section 10.5 of the Settlement states:

After this Agreement becomes effective as provided under Article VII, the standard of review to be applied by the Commission in considering any change to any then-effective provision of this Agreement shall be the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), except that with respect to any such change sought by a non-settling third party, or the Commission acting *sua sponte*, the standard of review to be applied by the Commission shall be the most stringent standard permissible under applicable law.

Because the Settlement provides that the standard of review for changes to the Settlement is “the most stringent standard permissible under applicable law,” we clarify the

¹ *National Grid Generation LLC*, 156 FERC ¶ 63,009 (2016).

framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

3. 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.³

4. 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.

5. NGG filed a *pro forma* Amended and Restated Power Supply Agreement, to be implemented upon approval of the Settlement. Pursuant to the requirements of Order No. 714,⁴ we direct NGG to file an actual tariff record in eTariff replacing its *pro forma* agreement, to be effective January 1, 2016, as per the terms of the Settlement. This letter order terminates Docket No. ER13-1159-001.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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

³ *E.g.*, *Wyoming Interstate Co.*, 145 FERC ¶ 61,005, at P 15 (2013).

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