

157 FERC ¶ 61,004
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 4, 2016

In Reply Refer To:
Duke Energy Indiana, Inc.
Docket No. ER16-201-000

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

Attn: Gary A. Morgans, Esq.

Dear Mr. Morgans:

1. On June 17, 2016, you filed, in the above-referenced proceeding, an Offer of Settlement (Settlement) on behalf of Duke Energy Indiana, Inc. (Duke). On July 6, 2016, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On September 8, 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 PJM Interconnection, L.L.C. region.
3. Section 3.9 of the Settlement states that

[u]nless the Parties otherwise agree in writing, any modification to this Settlement proposed by one of the Parties after the Settlement has become effective in accordance with Section 3.3 shall be subject to the "public interest" application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the *Mobile-Sierra* doctrine), as clarified in *Morgan*

¹ *Duke Energy Ind., Inc.*, 156 FERC ¶ 63,043 (2016).

Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Wash., 554 U.S. 527 (2008) and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010). The 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. at 174-75.

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

7. Duke is directed to file revised tariff records in eTariff format,³ within 30 days of the date of this order, to reflect the Commission's action in this order.
8. This letter order terminates Docket No. ER16-201-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).