

157 FERC ¶ 61,217
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 16, 2016

In Reply Refer To:
Wabash Valley Power Association, Inc.
Docket No. ER16-444-001

Parr Richey Obremskey Frandsen & Patterson LLP
251 North Illinois Street
Suite 1800
Indianapolis, IN 46204

Attention: Jeremy L. Fetty, Esq.

Dear Mr. Fetty:

1. On September 20, 2016, you filed, in the above-referenced proceedings, a Settlement on behalf of Wabash Valley Power Association, Inc. (WVPA). On September 30, 2016, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On October 18, 2016, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹
2. The Settlement addresses WVPA's proposed annual revenue requirement for providing reactive service for generating units in the PJM Interconnection, LLC region.
3. Section 3.9 of the Settlement provides that:

[u]nless otherwise agreed by the Parties 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 *Wabash Valley Power Ass'n*, 157 FERC ¶ 63,008 (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 to this Settlement or initiated by the Commission acting *sua sponte* is dependent upon whether the Commission determines the Settlement 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. If the Commission determines the Settlement falls under the former description, then it will apply the *Mobile-Sierra* "public interest" standard of review. If the Commission determines the Settlement embodies the latter description, then challenges will be subject to the "just and reasonable" standard of review, unless the Commission exercises its discretion to apply the *Mobile-Sierra* "public interest" standard of review.

4. Because the Settlement does not fully characterize the framework that the Commission would apply if the Commission were required to determine the standard of review that applies to a non-settling party or the Commission acting *sua sponte* in a later challenge to the Settlement, we clarify that here.

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.

² *New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

6. The Settlement resolves all issues in dispute in these proceedings. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

7. This letter order terminates Docket No. ER16-444-001.

By direction of the Commission.

Kimberly D. Bose,
Secretary.