

169 FERC ¶ 61,186
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 5, 2019

In Reply Refer To:
PJM Interconnection, L.L.C.
Docket No. ER17-1519-002

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

Attn: Richard L. Roberts, Esq.

Dear Mr. Roberts:

1. On July 22, 2019, in the above-referenced proceeding, PECO Energy Company (PECO) filed a Settlement Agreement (Settlement) and related documents on behalf of itself, Pennsylvania Office of Consumer Advocate (PA Consumer Advocate), and Philadelphia Area Industrial Energy Users Group (collectively, Settling Parties). On August 12, 2019, Commission Trial Staff and PA Consumer Advocate filed comments supporting the Settlement. On September 18, 2019, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹

2. Section 3.10 of the Settlement provides that:

[u]nless the Settling Parties otherwise agree in writing, any modification to the [Settlement] proposed by one of the Settling 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 Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and refined in *NRG Power Marketing, LLC v. Maine Public*

¹ *PJM Interconnection, L.L.C.*, 168 FERC ¶ 63,038 (2019).

Utilities Commission, 558 U.S. 165, 174–75 (2010). The standard of review for any modifications to the Settlement Agreement requested by a non-Settling Party or non-party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. See *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174–75 (2010).

3. 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 the Commission acting *sua sponte*.

4. 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.

5. The Settlement resolves all issues set for hearing in Docket No. ER17-1519.³ The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. We accept tariff records Attachment H-7 (Version 4.0.0), Attachment H-7A (Version 2.0.0), and Attachment H-7B (Version 1.0.0), effective as of December 1, 2017, as requested. We accept tariff record Attachment H-7A (Version 3.0.0), effective as of

² *New England Power Generators Ass’n v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

³ *PJM Interconnection, L.L.C.*, 159 FERC ¶ 62,339 (2017) (delegated order).

January 1, 2018, as requested. We accept tariff record Attachment H-7C (Version 1.0.0), effective as of the date of “the effectiveness of the Settlement Agreement as set forth ... in the Settlement Agreement,” as requested, subject to PECO making a compliance filing with a revised tariff record, in eTariff format,⁴ indicating the effective date, within 30 days of the effective date of this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).