

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Duke Energy Corporation  
(Duke Electric Transmission)

Docket No. ER01-1763-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued January 23, 2004)

1. On October 30, 2003, Duke Energy Corporation and Duke Electric Transmission filed an offer of settlement in the above proceeding. On November 19, 2003, the Commission's Trial Staff filed comments expressing no opposition to the offer. Reply comments were not filed. On December 3, 2003, the presiding administrative law judge certified the offer to the Commission as an uncontested settlement. The settlement resolves all issues concerning the necessity of, and payment for, certain network upgrades under an Interconnection Operating Agreement (IOA) with Broad River Energy LLC.

2. Section 17.10A of the revised and restated IOA submitted with the settlement states that, absent the agreement of both parties, neither party shall propose to the Commission any changes to the revised and restated IOA relating to (i) the level of costs that Duke has charged the customer for the design, construction, installation, operation or maintenance of any facilities needed to interconnect the customer's facility as it exists as of the effective date to the Duke transmission system, or (ii) the level of transmission credits that Duke has made available to the customer in connection with such costs.

3. Section 17.10A also provides that any such changes proposed by the Commission, except when acting on behalf of a non-party, shall be subject to the "public interest" standard of review set forth in United Gas Pipeline Co. v. Mobile Gas Service Corp., 350 U.S. 348 (1956) and FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956) (the Mobile-Sierra doctrine). The revised and restated IOA also provides that the parties' intent to bind themselves and the Commission to the "public interest" standard of review under the Mobile-Sierra doctrine shall not be affected by any subsequent revisions to the Commission's general policy on the language required to bind contracting parties and the Commission to such standard.

4. The subject settlement is 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. Other than as expressly provided in Section 17.10A of the revised and restated IOA, the Commission retains the right to investigate the rates, terms, and conditions under the just and reasonable and not unduly discriminatory or preferential standard of Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000).

5. This order terminates Docket No. ER01-1763-000.

By the Commission. Commissioner Brownell dissenting in part with a separate statement.

( S E A L )

Linda Mitry,  
Acting Secretary.

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Nora Mead BROWNELL, Commissioner *dissenting in part*:

1. As I explained in my separate statement in Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,073 (2003), I can no longer support making our acceptance of settlement agreements subject to a Commission reservation of authority to make future revisions under the just and reasonable standard, as opposed to the Mobile-Sierra public interest standard--unless, of course, the agreement itself includes language requesting such a reservation. If the Commission has objections to a settlement, we should articulate them when we first review it, instead of approving the settlement with the cloud of uncertainty that we might make subsequent changes under a lower-than-public-interest standard after market participants have come to rely on it. Therefore, I would have accepted this agreement without making any reservation of revisiting it under a just and reasonable standard.

Nora Mead Brownell