

153 FERC ¶ 61,182  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

November 19, 2015

In Reply Refer To:  
Seminole Electric Cooperative, Inc. and  
Florida Municipal Power Agency v.  
Florida Power Corporation  
Docket Nos. EL12-39-000 and EL12-39-  
001

Seminole Electric Cooperative, Inc. and  
Florida Municipal Power Agency v.  
Duke Energy Florida, Inc.  
Docket Nos. EL13-63-000 and EL13-63-  
001

Seminole Electric Cooperative, Inc. and  
Florida Municipal Power Agency v.  
Duke Energy Florida, Inc.  
Docket No. EL14-90-000

Duke Energy Florida, Inc.  
Docket Nos. ER13-1356-000 and ER13-  
1356-001

Duke Energy Florida, Inc.  
Docket No. ER14-1832-000

Duke Energy Florida, Inc.  
Docket No. ER15-1618-000

Step toe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036

Attention: Gary A. Morgans  
Attorney for Duke Energy  
Florida, Inc.

Dear Mr. Morgans:

1. On July 21, 2015, you filed, in the above-referenced proceedings, a Settlement among Duke Energy Florida, Inc. (Duke Energy), Florida Municipal Power Agency, Seminole Electric Cooperative, Inc., and Reedy Creek Improvement District (collectively, Settling Parties). On August 10, 2015, Commission Trial Staff submitted comments in support of the Settlement. No other comments were filed. On August 12, 2015, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>1</sup>

2. The Settlement reduces the rate of return on equity (ROE) set forth in Schedule 10-A of the Duke Energy Carolinas LLC Joint Open Access Transmission Tariff (Formula Rate), modifies the ROE moratorium provisions in Schedule 10-A.3 of the Formula Rate, and contains other ministerial amendments to the Formula Rate.

3. Section 3.9 of the Settlement states that

[t]he standard of review for any modification 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. v. Maine Pub. Utils. Comm'n*, 130 S. Ct. 693, 700 (2010).

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*

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<sup>1</sup> *Seminole Elec. Coop. v. Fla. Power Corp.*, 152 FERC ¶ 63,015 (2015).

presumption.<sup>2</sup> In *New England Power Generators Association v. FERC*,<sup>3</sup> 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 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. Duke Energy is directed to file revised tariff sheets in eTariff format,<sup>4</sup> within 30 days of the date of issuance of this order, to reflect the Commission’s action in this order.

8. Refunds and adjustments shall be made pursuant to the Settlement.<sup>5</sup>

9. This letter order terminates Docket Nos. EL12-39-000, EL12-39-001, EL13-63-000, EL13-63-001, EL14-90-000, ER13-1356-000, ER13-1356-001, ER14-1832-000, and ER15-1618-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>2</sup> *Panhandle Eastern Pipe Line Co., LP*, 143 FERC ¶ 61,041, at P 84 (2013); *Energry Arkansas, Inc.*, 143 FERC ¶ 61,299, at P 92 (2013).

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

<sup>4</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

<sup>5</sup> Any refund report submitted in eTariff should use the following coding: Type of Filing Code 1130 – Refund Report.