

154 FERC ¶ 61,199
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

March 17, 2016

In Reply Refer To:
Duke Energy Carolinas, LLC
Docket Nos. ER15-234-000
ER15-689-000
ER15-689-001

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

Attention: Steven J. Ross, Esq.

Dear Mr. Ross:

1. On December 31, 2015, you filed, in Docket No. ER15-689-001, a Settlement among Duke Energy Carolinas, LLC (DEC), DEC's affiliate Duke Energy Florida, LLC (DEF, formerly Duke Energy Florida, Inc.), Seminole Electric Cooperative, Inc., the Florida Municipal Power Agency, and the Reedy Creek Improvement District (collectively, Parties). The Settlement resolves all issues in dispute in Docket Nos. ER15-234-000, ER15-689-000, and ER15-689-001. On January 20, 2016, the Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On February 8, 2016, the Presiding Judge certified the Settlement to the Commission as an uncontested settlement.¹

2. The Settlement addresses the proposal made by DEC, on behalf of DEF, to recover 50 percent of DEF's construction work in progress costs associated with 23 additional transmission expansion projects in DEF's rate base.

3. Section 5 of Article III of the Settlement provides as follows:

¹ *Duke Energy Carolinas, LLC*, 154 FERC ¶ 63,012 (2016).

To the maximum extent permitted by law, the provisions of this Settlement Agreement shall not be subject to change under Sections 205 and 206 and the standard of review for changes to this [Settlement] unilaterally proposed by a Party shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008). The standard of review for any modification to this [Settlement] requested by a non-settling party or the Commission acting *sua sponte* shall be the most stringent standard of review permissible under applicable law.

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 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.

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

7. The Commission also accepts the revised tariff provisions filed with the Settlement.³
8. This letter order terminates Docket Nos. ER15-234-000, ER15-689-000, and ER15-689-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ Duke Energy Carolinas, LLC, Tariffs, Rate Schedules and Service Agreements, [Schedule 10-A, Network Integration Transmission Service – DEF Zone, 17.0.0](#); [Schedule 10-A, Network Integration Transmission Service – DEF Zone, 18.0.0](#); and [Schedule 10-A, Network Integration Transmission Service – DEF Zone, 19.0.0](#).