

186 FERC ¶ 61,066
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 25, 2024

In Reply Refer To:
Delmarva Power & Light Company
PJM Interconnection, L.L.C.
Docket Nos. ER22-2201-001
ER22-2201-000

Exelon Corporation
701 Ninth Street, NW
Washington, DC 20068

Attention: Lisa B. Luftig, Esq.
Assistant General Counsel for Exelon Corporation

Dear Mrs. Luftig:

1. On October 16, 2023, Delmarva Power & Light Company (Delmarva) filed a Settlement Agreement (Settlement) addressing proposed revisions to the transmission depreciation rates contained in its formula transmission rate (Formula Rate) in Attachment H-3D of the PJM Open Access Transmission Tariff (PJM OATT), to be effective September 1, 2022. On November 6, 2023, Commission Trial Staff filed comments supporting the Settlement. On December 5, 2023, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹

2. Section 4.7 of the Settlement provides that:

Unless the Parties otherwise agree in writing, any modification to this Settlement Agreement proposed by one of the parties after the Settlement Agreement has become effective in accordance with Section 3.1 shall, as between them, 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

¹ *Delmarva Power & Light Co.*, 185 FERC ¶ 63,013 (2023).

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 Agreement 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., LLC v. Maine Pub. Utils. Comm’n*, 558 U.S. at 174-75. Any filings under FPA Section 205 or 206 to change the depreciation rates shall not be considered modifications of the Settlement Agreement.

3. 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 “the most stringent standard permissible under applicable law.” Although we do not decide in this order what standard of review applies to the Settlement or any component of it, 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. ER22-2201.³ The Settlement appears to be fair and reasonable and 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 these proceedings.

² 707 F.3d 364, 370-371 (D.C. Cir. 2013).

³ *Delmarva Power & Light Co.*, 180 FERC ¶ 61,146 (2022).

6. Delmarva, in conjunction with PJM, is directed to make a compliance filing with revised tariff records in eTariff format,⁴ within 30 days of this order, to reflect the Commission's action in this order.

By direction of the Commission.

Debbie-Anne A. Reese,
Acting Secretary.

⁴ See *Elec. Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).