

143 FERC ¶ 61,107
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 8, 2013

In Reply Refer To:
PacifiCorp
Docket Nos. ER12-2094-000;
ER12-336-000 and
EL12-13-000
(consolidated)

PacifiCorp
Attention: Patrick C. Cannon, Esq.
825 N.E. Multnomah, Suite 1800
Portland, OR 97232

Dear Mr. Cannon:

1. On June 22, 2012, on behalf of PacifiCorp, you filed a proposed Offer of Settlement, including a Settlement Agreement and Explanatory Statement, in Docket No. ER12-2094-000 concerning the issues set for hearing in Docket Nos. ER12-336-000 and EL12-13-000.¹
2. On July 12, 2012, Commission Trial Staff filed comments in support of the Settlement. No comments opposing the Settlement were filed and, on July 27, 2012, the settlement judge certified the Settlement to the Commission as uncontested.²
3. The Settlement resolves all issues between the Settling Parties in the above-captioned proceedings. The Settlement appears to be fair, reasonable, and in the public interest and it 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.

¹ Because the settlement was e-filed using TOFC10 (new docket and statutory) rather than TOFC80 (compliance) the item was assigned a new docket number.

² *PacifiCorp*, 140 FERC ¶ 63,006 (2012).

4. Article VII of the Settlement Agreement provides that:

[a]bsent the written agreement of both Settling Parties to a proposed change, the “public interest” presumption shall apply to challenges or proposed changes to the Settlement Agreement whether the change is proposed by a Settling Party, a non-party or the Commission acting *sua sponte*, as set forth in *United Gas Pipe Line 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 interpreted and applied by the Supreme Court in subsequent cases.

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. The former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption; the latter constitute tariff rates, terms, or conditions to which the *Mobile-Sierra* presumption does not apply, although the Commission may exercise its discretion to apply the heightened *Mobile-Sierra* standard.³ Under this framework, we find that the agreement at issue here is properly classified as establishing contract rates, terms, and conditions.

6. The subject Settlement resolves disputed revisions to a pre-open access transmission tariff (OATT) 1991 vintage Transmission Service and Operating Agreement (TSOA) between PacifiCorp and Utah Associated Municipal Power Systems (UAMPS). The TSOA is being revised to conform more closely to the network transmission service provisions in the PacifiCorp OATT. The Commission has previously approved settlements resolving disputed changes to vintage agreements that predated an OATT, where the settlement included a standard of review provision similar to that presented here.⁴ Therefore, we agree that the “public interest” presumption applies as described in

³ See *New England Power Generators Ass’n, Inc. v. FERC*, No. 11-1422, at 10-12 (D.C. Cir. Feb. 15, 2013).

⁴ See, e.g., *Xcel Energy Services, Inc.*, 137 FERC ¶ 61,014 (2011) (approving settlement where rates under eight pre-OATT service agreements were revised as part of a transition to Midwest Independent System Transmission Operator, Inc.’s OATT); see also *El Paso Electric Co. and Tucson Electric Power Co.*, 136 FERC ¶ 61,150 (2011) (resolving parties’ dispute over revisions to a 1982 pre-OATT Tucson-El Paso Power Exchange and Transmission Agreement).

Article VII of the Settlement. The Settlement should not be understood as establishing the standard of review for changes to the rates, terms, and conditions in PacifiCorp's OATT.

7. This letter terminates the proceedings in the above-captioned Dockets.

By direction of the Commission.

Kimberly D. Bose,
Secretary.