

146 FERC 61,004  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 7, 2014

In Reply Refer To:  
Nevada Power Company  
Docket No. ER11-4215-000

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Dear Counsel:

1. On May 10, 2012, you filed, in the above-referenced proceeding, a Settlement Agreement (Settlement) on behalf of Nevada Power Company (Nevada Power) and Utah Associated Municipal Power Systems (UAMPS) (collectively, Settling Parties).<sup>1</sup> On May 30, 2012, Commission Trial Staff filed comments in support of the Settlement. On June 12, 2012, the Settlement Judge certified the Settlement to the Commission as uncontested.<sup>2</sup>

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<sup>1</sup> *Nevada Power Co.*, 137 FERC ¶ 61,129 (2011) (November 2011 Order).

<sup>2</sup> *Nevada Power Co.*, 139 FERC ¶ 63,019 (2013).

2. The Settlement addresses the parameters of the emergency service that Nevada Power would provide to UAMPS in the event of an outage of the Sigurd-Red Butte Line after cancellation by Nevada Power of the parties' Interconnection Agreement.

3. Pursuant to the Settlement, the standard of review for any modifications to this Settlement that are not agreed to by the parties, including any modifications resulting from the Commission acting *sua sponte*, will be the just and reasonable standard of review. The Settlement further provides that the standard of review for changes unilaterally proposed by a third party to the Settlement 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), *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008), and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010). Because the Settlement appears to invoke the *Mobile-Sierra* "public interest" presumption with respect to third parties, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

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*,<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.

5. The Commission finds that the Settlement involves contract rates to which, pursuant to the Settlement, the *Mobile-Sierra* presumption applies with respect to modifications proposed by third parties. The Settlement governs the emergency assistance that Nevada Power will provide to UAMPS and how requests for transmission service for emergency energy will be handled now that Nevada Power has terminated its interconnection agreement with UAMPS. The Settlement applies only to the Settling Parties. These circumstances distinguish the Settlement in this case from the settlements

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<sup>3</sup> *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

in other cases, such as *High Island Offshore System, LLC*,<sup>4</sup> which the Commission held did not involve contract rates to which the *Mobile-Sierra* presumption applied. The settlements in those cases involved the pipelines' generally applicable rate schedules for its open access transportation services.

6. The subject Settlement resolves all issues in dispute in this proceeding. 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 this proceeding.

7. The Settlement is conditionally approved subject to the Settling Parties submitting, within 30 days of the date of this order, a compliance filing in eTariff format to ensure that its electronic tariff data base reflects the Commission's actions in these proceedings.<sup>5</sup>

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>4</sup> 135 FERC ¶ 61,105 (2011); *see also Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041 (2013); *Southern LNG Co.*, 135 FERC ¶ 61,153 (2011); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011).

<sup>5</sup> *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).