

146 FERC ¶ 61,162
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 7, 2014

In Reply Refer To:
Puget Sound Energy, Inc. v.
All Jurisdictional Sellers of Energy
and/or Capacity at Wholesale into
Electric Energy and/or Capacity Markets
in the Pacific Northwest, Including
Parties to the Western Systems Power
Pool Agreement
Docket No. EL01-10-127

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Reference: Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or
Capacity at Wholesale into Electric Energy and/or Capacity Markets in the
Pacific Northwest, Including Parties to the Western System Power Pool
Agreement

Dear Counsel:

1. On October 10, 2013, you filed, in the above-referenced proceeding, a Settlement Agreement between Powerex Corp. (Powerex) and the City of Seattle, Washington (Seattle) (collectively, the Settling Parties). On October 21, 2013, Commission Trial

Staff filed comments in support of the Settlement Agreement. On October 25, 2013, the Settlement Judge certified the uncontested Settlement Agreement to the Commission.¹

2. The Settlement Agreement addresses claims arising from events and transactions in the Pacific Northwest and the remainder of the Western Markets as they may relate to transactions between Powerex and Seattle. Pursuant to the Settlement Agreement, the standard of review for any proposed modifications by the Settling Parties shall be the “public interest” application of the just and reasonable standard of review under the *Mobile-Sierra* doctrine. The Settlement Agreement further provides that the standard of review for any proposed modifications by the Commission acting *sua sponte* or by a non-settling party shall be the “public interest” application of the just and reasonable standard of review under the *Mobile-Sierra* doctrine or, if that presumption is held not to be applicable, then the most stringent standard permissible under applicable law. Because the Settlement Agreement appears to invoke the *Mobile-Sierra* “public interest” presumption or, alternatively, the most stringent standard permissible under applicable law with respect to the Commission acting *sua sponte* and third parties, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

3. 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.

4. The Commission finds that the Settlement Agreement involves contract rates to which the *Mobile-Sierra* presumption applies. The Settlement Agreement addresses litigation between the Settling Parties that included: (i) whether there were amounts paid

¹ *Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity*, 145 FERC ¶ 63,005 (2013).

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

for energy and/or capacity in the Pacific Northwest spot market during the time from December 25, 2000 to and including June 21, 2001, including energy purchased in the Pacific Northwest that ultimately was consumed in California, that the Commission might find to have been unjust and unreasonable; (ii) if so, whether any remedy should be awarded; and (iii) whether evidence of market manipulation, submitted after the Administrative Law Judge made factual findings would affect the Commission's award or denial of refunds in the proceeding. The Settlement Agreement applies to transactions between Powerex and Seattle only. These circumstances distinguish the Settlement Agreement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,³ 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.

5. The Settlement Agreement resolves all issues in dispute in this proceeding. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. This letter order terminates Docket No. EL01-10-127.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: To All Parties

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