

146 FERC ¶ 61,168  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

March 10, 2014

In Reply Refer To:  
Entergy Services, Inc.  
Docket No. ER08-767-000

Entergy Services, Inc.  
Attn: Andrea J. Weinstein, Esq.  
101 Constitution Ave, NW  
Suite 200 East  
Washington, DC 20001

Dear Ms. Weinstein:

1. On December 2, 2008, you filed, in the above-referenced proceeding, a Settlement Agreement among Entergy Services, Inc. (Entergy Services) as agent for Entergy Arkansas, Inc. (Entergy Arkansas); the City of Osceola, Arkansas; the Hope Water and Light Commission; and the Arkansas Electric Cooperative Corporation (collectively, the Settling Parties). On December 22, 2008, Commission Trial Staff submitted comments supporting the Settlement Agreement. No other comments were filed. On January 15, 2009, the Settlement Judge certified the Settlement Agreement to the Commission as uncontested.<sup>1</sup>

2. The Settlement Agreement addresses all of the issues between the Settling Parties in setting the level of recovery from Entergy Arkansas's grandfathered customers under existing formula rates for deferred start-up costs that Entergy Services incurred developing a Regional Transmission Organization or Independent Coordinator of Transmission. Pursuant to the Settlement Agreement, the standard of review for any modifications to the Settlement Agreement that are not agreed to by all the Settling Parties, including modifications resulting from the Commission acting *sua sponte*, shall be reviewed under the *Mobile-Sierra* "public interest" standard and the standard of review for any proposed modification by non-parties will be "the most stringent standard permissible under applicable law." Because the Settlement Agreement appears to invoke

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<sup>1</sup> *Entergy Services, Inc.*, 126 FERC ¶ 63,003 (2009).

the *Mobile-Sierra* “public interest” presumption with respect to the Commission acting *sua sponte*, we will analyze the applicability here of that more rigorous application of the just and reasonable standard. Moreover, because the Settlement Agreement provides that modifications proposed by non-parties to the Settlement Agreement are to be “the most stringent standard permissible under applicable law,” we note that our analysis is also relevant to the standard of review in a later challenge to the Settlement Agreement by a non-party.

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*,<sup>2</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.

4. The Commission finds that the Settlement Agreement involves contract rates to which the *Mobile-Sierra* presumption applies. The rate provisions of the Settlement Agreement apply only to the Arkansas Electric Cooperative Corporation; the Hope Water and Light Commission; the City of Osceola, Arkansas; and the City of Thayer, Missouri. In addition, the Power Coordination Interchange and Transmission Service Agreements addressed in the Settlement Agreement are carved-out grandfathered agreements. These circumstances distinguish the Settlement Agreement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,<sup>3</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.

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

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

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

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 order terminates Docket No. ER08-767-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.