

148 FERC ¶ 61,012
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 7, 2014

In Reply Refer To:
Arizona Public Service Company
Docket Nos. ER13-2300-000
ER13-2300-001

Pinnacle West Capital Corporation
400 North Fifth Street
Mail Station 8695, PO Box 53999
Phoenix, Arizona 85072-3999

Attn: Jennifer L. Spina

Dear Ms. Spina:

1. On March 24, 2014, you filed a Stipulation and Agreement (Settlement) and a revised rate schedule with the Commission in the above-referenced dockets on behalf of Arizona Public Service Company (APS) and Yuma Cogeneration Associates (Yuma). The Settlement: (1) terminates a grandfathered, pre-Order No. 888 Open Access Transmission Tariff (OATT) Interruptible Transmission Service Agreement between APS and Yuma;¹ and (2) establishes firm transmission rates under a Firm Transmission Service Agreement between the parties and provides for the periodic rate adjustments and ultimately the payment of the then-applicable firm transmission service rate pursuant to APS' OATT no later than June 1, 2024.² The Settlement resolves all issues set for hearing in Docket Nos. ER13-2300-000 and ER13-2300-001. On April 14, 2014, the Commission Trial Staff filed initial comments in support of the Settlement. No other

¹ The notice of cancellation was accepted for filing, effective April 1, 2014, in an unpublished letter order dated May 1, 2014 in Docket No. ER13-2300-002.

² The Firm Transmission Service Agreement is designated as part of Rate Schedule No. 198.

comments were filed. On May 1, 2014, the Settlement Judge certified the Settlement to the Commission as uncontested.³

2. The Settlement establishes the rates that Yuma will pay APS for transmission services and associated losses until 2024. Article V of the Settlement provides for a moratorium precluding any modifications by either Yuma or APS to the terms of the Settlement through May 31, 2014. Article V of the Settlement states that, to the extent the Commission considers any change to the terms of the Settlement to be effective during the moratorium period, the standard of review for any such proposed change shall be the “public interest” standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*⁴ and *Federal Power Commission v. Sierra Pacific Power Co.*⁵ (*Mobile-Sierra Doctrine*) to the full extent legally permissible.⁶ Because the Settlement appears to invoke the *Mobile-Sierra Doctrine* “public interest” presumption with respect to third parties and the Commission acting *sua sponte*, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

3. The *Mobile-Sierra Doctrine* “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 Doctrine* 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 Doctrine* presumption. In *New England Power Generators Association v. FERC*,⁷ 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

³ *Arizona Public Service Co.*, 147 FERC ¶ 63,007 (2014).

⁴ 350 U.S. 332 (1956).

⁵ 350 U.S. 348 (1956).

⁶ *Morgan Stanley Capital Group Inc. v. Public Utility District No.1*, 128 S. Ct. 2733 (2008); *NRG Power Marketing LLC v. Maine Public Utilities Commission*, 130 S. Ct. 693 (2010); *Dominion Transmission Inc. v. FERC*, 533 F.3d 845 (2008).

⁷ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

review on future changes to agreements that fall within the second category described above.

4. The Commission finds that the Settlement involves contract rates to which, pursuant to the Settlement, the *Mobile-Sierra* Doctrine presumption applies with respect to modifications proposed by the Commission and third parties. The Settlement applies these rates only to the Settling Parties, and does not affect APS' generally applicable formula rate. These circumstances distinguish the Settlement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,⁸ 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 appears to be fair and reasonable and in the public interest, and is hereby approved, effective April 1, 2014, as proposed. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue involved in these proceedings.

6. To the extent that APS owes refunds pursuant to the Settlement, APS is hereby ordered to make such refunds, with interest, pursuant to section 35.19(a) of the Commission's regulations within thirty days of the date of this order.⁹ APS is directed to submit a refund report within fifteen days thereafter in eTariff, using the Type of Filing Code 1130 – Refund Report.

7. This letter order terminates Docket Nos. ER13-2300-000 and ER13-2300-001.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

cc: All Parties

⁸ 135 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).

⁹ 18 C.F.R. § 35.19a(a) (2013).