

149 FERC ¶ 61,201
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 4, 2014

In Reply Refer To:
NorthWestern Corporation
Docket Nos. ER14-1616-002
ER14-1616-001

Gaelectric, LLC and Jawbone
Wind Farm, LLC v.
NorthWestern Corporation
Docket No. EL14-41-001

Skadden, Arps, Slate, Meagher & Flom LLP
Attn: Mike Naeve, Esq.
1440 New York Avenue, N.W.
Washington, DC 20005

Dear Mr. Naeve:

1. On September 23, 2014, you submitted a Joint Offer of Settlement and Settlement Agreement (Settlement Agreement) on behalf of NorthWestern Corporation (NorthWestern), Gaelectric, LLC and Jawbone Wind Farm, LLC (collectively, Gaelectric) (all, collectively, Settling Parties) to resolve all claims and issues between the Settling Parties in the above-captioned proceedings.
2. Notice of the Settling Parties' September 23, 2014 filing was published in the *Federal Register*, 79 Fed. Reg. 59,260 (2014), with interventions and protests due on or before October 14, 2014. None were filed. The Settlement Agreement is therefore uncontested.
3. The claims and issues in the above-captioned proceedings arise from a dispute between the Settling Parties over the terms and conditions for firm point-to-point transmission service on NorthWestern's transmission system. Article III of the Settlement Agreement provides that the Settling Parties mutually consent to terminate transmission service agreements (TSA) for 130 MW pursuant to section 4.0 of those TSAs. In addition, pursuant to Article III, Gaelectric confirms that it has withdrawn and removed from NorthWestern's transmission service queue, certain transmission service requests. Article III of the Settlement Agreement further provides that Gaelectric agrees

to withdraw or terminate its Request for Rehearing, or in the Alternative, Clarification in Docket No. ER14-1616-001 and that Gaelectric agrees to forfeit a specified sum to NorthWestern.

4. Pursuant to Article IV of the Settlement Agreement, unless the Settling Parties otherwise agree in writing, any attempt to modify or abrogate the Settlement Agreement after it has been filed with the Commission will be subject to the “public interest” application of the just and reasonable standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra Doctrine*), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm’n*, 130 S. Ct. 693, 700 (2010). Because the Settlement Agreement 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.

5. 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*,¹ 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.

6. The Commission finds that the Settlement Agreement involves contract rates to which, pursuant to the Settlement Agreement, the *Mobile-Sierra Doctrine* presumption applies with respect to modifications proposed by the Settling Parties, the Commission, and third parties, unless the Settling Parties otherwise agree in writing. The Settlement Agreement addresses individualized TSAs between Gaelectric and NorthWestern that were negotiated at arm’s-length and individualized transmission service requests submitted by Gaelectric to NorthWestern. The rate provisions of the Settlement Agreement apply only to the Settling Parties. These circumstances distinguish the

¹ 707 F.3d 364, 370-71 (D.C. Cir. 2013).

Settlement Agreement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,² which the Commission held did not involve contract rates to which the *Mobile-Sierra* Doctrine presumption applied. The settlements in those cases involved the pipelines' generally applicable rate schedules for its open access transportation services.

7. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved, effective September 14, 2014, as requested. The Commission's approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue involved in these proceedings.

8. This letter order terminates Docket Nos. ER14-1616-002, ER14-1616-001, and EL14-41-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

² 135 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).