

150 FERC ¶ 61,134  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 24, 2015

In Reply Refer To:  
Cottonwood Energy Company LP  
Docket Nos. ER14-1619-000  
ER14-1619-001  
ER14-1619-002

King & Spalding LLP  
Attention: Neil L. Levy, Esq.  
1700 Pennsylvania Avenue, NW  
Washington, DC 20006

Dear Mr. Levy:

1. On October 17, 2014, you filed, in the above referenced proceedings, a Settlement Agreement (Settlement) between Cottonwood Energy Company LP (Cottonwood) and Entergy Services, Inc. (Entergy), on behalf of itself and the Entergy Operating Companies.<sup>1</sup> On November 6, 2014, Commission Trial Staff filed comments supporting the Settlement. No other comments were filed. On November 24, 2014, the Settlement Judge certified the Settlement to the Commission as uncontested.<sup>2</sup>
2. The Settlement addresses proposed Rate Schedule FERC No. 1 that Cottonwood filed in Docket No. ER14-1619-000 to set forth the cost-based revenue requirement for Reactive Supply and Voltage Control from Generation Sources Service.<sup>3</sup>

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<sup>1</sup> Entergy states that the Entergy Operating Companies are Entergy Arkansas, Inc.; Entergy Gulf States Louisiana, L.L.C.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy Texas, Inc.; and Entergy New Orleans, Inc.

<sup>2</sup> *Cottonwood Energy Co.*, 149 FERC ¶ 63,015 (2014).

<sup>3</sup> *Cottonwood Energy Co.*, 147 FERC ¶ 61,170 (2014).

3. The Settlement provides that:

it is intended that the Parties be subject to the “public interest” standard of review set forth in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956) (“Mobile-Sierra” doctrine). The standard of review for any modifications to this Agreement requested by a non-party to the Agreement or initiated by the Commission will be the most stringent standard permissible under applicable law. *See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm’n*, 558 U.S. 165 (2010).<sup>4</sup>

4. Because the Settlement provides that the standard of review for changes to the Settlement by the Commission or a third party is “the most stringent standard permissible under applicable law,” we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement.

5. 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 Ass’n, Inc. v. FERC*,<sup>5</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.

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<sup>4</sup> Settlement, § 20.

<sup>5</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

6. The Settlement resolves all issues in dispute in these proceedings. The Settlement appears to be fair, 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 these proceedings.

7. This letter order terminates Docket Nos. ER14-1619-000, ER14-1619-001, and ER14-1619-002.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.