

151 FERC ¶ 61,185
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 29, 2015

In Reply Refer To:
Plum Point Energy Associates, LLC
Docket No. ER14-2046-001

VanNess Feldman LLP
1050 Thomas Jefferson Street, NW
Washington, DC 20007

Attention: Jessica C. Friedman, Esq.

Dear Ms. Friedman:

1. On January 20, 2015, you filed, in the above-referenced proceeding, a Settlement Agreement, including a revised rate schedule, between Plum Point Energy Associates, LLC (Plum Point) and Entergy Services, Inc. (Entergy) (together, the Settling Parties). On February 9, 2015, Commission Trial Staff filed comments in support of the Settlement Agreement. No other comments were filed. On February 20, 2015, the Settlement Judge certified the Settlement Agreement to the Commission as an uncontested settlement.¹

2. The Settlement Agreement addresses Plum Point's proposed rate schedule under which Plum Point will provide Reactive Supply and Voltage Control from Generation or Other Sources Service under Schedule 2 of the Midcontinent Independent System Operator, Inc. Open Access Transmission, Energy and Operating Reserve Markets Tariff for an annual revenue requirement of \$700,000 beginning on February 1, 2015.

3. The Settlement Agreement provides that "[t]he standard of review for any modifications to this [Settlement Agreement] requested by a non-party to the [Settlement 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)."² Because the Settlement Agreement provides that the standard of review for changes to the Settlement Agreement proposed by third parties and

¹ *Plum Point Energy Assocs.*, 150 FERC ¶ 63,005 (2015).

² Settlement Agreement, § 4.7.

the Commission acting *sua sponte* 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 Agreement by a third party or by the Commission acting *sua sponte*.

4. 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*,³ 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.

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 this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. The Settlement Agreement was not filed in the eTariff format required by Order No. 714.⁴ Therefore, Plum Point is directed to file in eTariff format, within 30 days of the date of issuance of this order, tariff revisions to reflect the Commission’s action in this order.

7. This letter order terminates Docket No. ER14-2046-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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

⁴ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).