151 FERC ¶ 61,260
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 26, 2015

In Reply Refer To:
Sea Robin Pipeline, LLC
Docket Nos. RP14-247-000
RP14-247-001
RP14-247-002
RP14-247-003
RP14-247-004
RP13-968-000
RP13-968-001
RP13-968-002
RP13-968-003
RP13-968-004

Sea Robin Pipeline Company, LLC
5051 Westheimer Road
Houston, TX 77056

Attention: Michael T. Langston,
Vice President, Chief Regulatory Officer

Dear Mr. Langston:

1. On January 16, 2015, Sea Robin Pipeline Company, LLC (Sea Robin) submitted a modified Stipulation and Agreement (Modified Settlement) in compliance with a Commission order issued on December 18, 2014.[1] In its December 18 Order, the Commission conditionally approved Sea Robin's Offer of Settlement filed on July 23, 2014 (Initial Settlement), subject to Sea Robin filing a revised settlement agreement reflecting a revision to the standard of review provision that applies to third parties who did not intervene in these proceedings and the Commission's Trial Staff. As discussed below, the Commission approves the Modified Settlement.

[1] *Sea Robin Pipeline Co., LLC*, 149 FERC ¶ 61,240 (2015) (December 18 Order).

2. The Initial Settlement addressed, among other things, a Natural Gas Act section 4 general rate case filed by Sea Robin seeking an increase in its firm and interruptible transportation and gathering rates. Sea Robin stated that the Initial Settlement was supported by Sea Robin, Commission Trial Staff and the intervenors to the above-captioned proceedings. On August 4, 2014, the Producer Coalition,[2] Sea Robin, and Commission Trial Staff each filed comments in support of the Initial Settlement. No other comments were filed. On October 7, 2014, the Settlement Judge certified the Initial Settlement to the Commission as an uncontested settlement.[3]

3. Article VII of the Initial Settlement set forth reservations and miscellaneous provisions, including the standard of review. With respect to the standard of review, Article VII, section D provided that

> [a]fter the Effective Date, the standard for review of proposed changes to the terms and conditions of this Settlement by a Subject Party or Sea Robin is the "public interest" standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), rather than the just and reasonable standard of review. For changes to this Settlement initiated by the Commission *sua sponte* after the Effective Date, however, the standard of review shall be the "just and reasonable" standard. Furthermore, the "just and reasonable" standard of review shall govern any action brought by a Non-Consenting Party.[4] (Footnotes omitted.)

4. The Initial Settlement defined "Subject Party" as "any party in this proceeding, or other person affected by this Settlement, including Commission Trial Staff, but other than Sea Robin, who: (1) files initial comments supporting or not opposing Commission approval of the Settlement without condition or modification; or (2) does not file initial comments or any comments respecting this Settlement, as specified by the Commission's

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[2] The Producer Coalition includes Arena Energy, LP, Castex Energy Inc., Century Exploration New Orleans, LLC, Deep Gulf Energy LP, Deep Gulf Energy II, LLC, Energy XXI (Bermuda) Ltd., Enven Energy Ventures, LLC, McMoRan Oil & Gas, LLC, Superior Natural Gas Corporation, Walter Oil & Gas Corporation, and W&T Offshore, Inc.

[3] *See Sea Robin Pipeline Co., LLC*, 149 FERC ¶ 63,006 (2014).

[4] Initial Settlement, Article VII, section D.

Rules of Practice and Procedure."[5] The Initial Settlement defined "Non-Consenting Party" as "[a]ny person who opposes approval of this Settlement, supports this Settlement only in part or subject to condition, qualification or modification or who requests clarification that is inconsistent with this Settlement."[6] A Non-Consenting Party was not bound by the Initial Settlement, nor could a Non-Consenting Party obtain or share in any benefit afforded by the Initial Settlement.[7]

5. The December 18 Order found that the Initial Settlement's definition of Subject Party appeared to include third parties who have not intervened in this proceeding but who may be considered to be affected by the Initial Settlement and the Commission's Trial Staff.[8] As a result, the Initial Settlement appeared to invoke the *Mobile-Sierra* "public interest" presumption with respect to third parties who had no opportunity to participate in the negotiation of the Initial Settlement, as well as the Commission through its Trial Staff.[9] The December 18 Order found that it was unjust and unreasonable to impose the more rigorous application of the statutory "just and reasonable" standard of review with respect to future changes to the Initial Settlement sought by a non-settling third party or the Commission.[10] Therefore, December 18 Order conditionally approved the Initial Settlement, subject to Sea Robin submitting a revised settlement agreement reflecting a revision to the standard of review provision that applies to third parties who did not intervene in these proceedings and the Commission's Trial Staff.[11]

6. In the Modified Settlement, Sea Robin proposes to revise Article VII, section D as follows:

> After the Effective Date, the standard for review of proposed changes to the terms and conditions of this Settlement ~~by a Subject Party or Sea Robin is~~shall be the "public interest"

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[5] *See* Initial Settlement, Article III, section C.

[6] *See* Initial Settlement, Article III, section D.

[7] *See* Initial Settlement, Article III, sections D and F.

[8] December 18 Order, 149 FERC ¶ 61,240 at P 18.

[9] *Id.*

[10] *Id.* P 21.

[11] *Id.* P 22.

> standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), ~~rather than the just and reasonable standard of review. For changes to this Settlement initiated by the Commission *sua sponte* after the Effective Date, however, the standard of review shall be the "just and reasonable" standard. Furthermore, the "just and reasonable" standard of review shall govern any action brought by a Non-Consenting Party~~provided, however, that the standard that shall apply to future changes sought either by the Commission or non-settling third parties (i.e., entities that are not parties to this Settlement and did not have notice of the settlement discussions that led to this Settlement, such as entities that are not shippers on the Sea Robin system as of July 23, 2014) shall be the highest standard that the Commission would apply to itself at the time such changes are sought.

7. Sea Robin states the modified standard of review provision follows the same language that the Commission approved in a Northern Border Pipeline Company settlement that addressed a similar issue.[12] Sea Robin states that this modification is supported by the Commission's Trial Staff and all parties to these proceedings. Sea Robin notes that this compliance filing proposes no other changes to the Initial Settlement or its tariff.

8. Because the Modified Settlement provides that the standard of review for changes to the Modified Settlement proposed by third parties and the Commission acting *sua sponte* "shall be the highest standard that the Commission would apply to itself at the time such changes are sought," we clarify the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Modified Settlement by a third party or by the Commission acting *sua sponte*.

9. 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

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[12] Modified Settlement January 16, 2015 Transmittal Letter, Docket Nos. RP14-247-000, *et al.*, at 1 (citing *Northern Border Pipeline Co.*, Docket No. RP13-403-000 (Jan. 17, 2013) (delegated letter order)).

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*,[13] 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.

10. The Modified Settlement resolves all issues in dispute in these proceedings. The Commission finds that the Modified Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Modified Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

11. This letter order terminates the above-captioned proceedings.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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