

152 FERC ¶ 61,140
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 21, 2015

In Reply Refer To:
Pine Bluff Energy, LLC
Docket Nos. ER14-2762-000
ER14-2762-001

King & Spalding LLP
1700 Pennsylvania Ave., NW
Washington, DC 20006

Attention: Neil L. Levy, Esq.

Dear Mr. Levy:

1. On April 20, 2015, you filed, in the above-referenced proceedings, a Settlement Agreement (Settlement) between Pine Bluff Energy, LLC, (Pine Bluff) and Entergy Services, Inc., on behalf of itself and the Entergy Operating Companies.¹ On May 11, 2015, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On June 4, 2015, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.²
2. The Settlement addresses Pine Bluff's revenue requirement for reactive service.

¹ 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. The Settlement includes revised Rate Schedule FERC No. 1. On April 27, 2015, the Chief Judge granted Pine Bluff's motion for authorization to implement the settlement rate on an interim basis, accepted revised Rate Schedule FERC No. 1 effective November 1, 2014, and terminated Docket No. ER14-2762-002. *Pine Bluff Energy LLC*, 151 FERC ¶ 63,005 (2015).

² *Pine Bluff Energy, LLC*, 151 FERC ¶ 63,014 (2015).

3. The Settlement provides that:

[w]ith respect to this [Settlement], 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 [Settlement] requested by a non-party to the [Settlement] 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).³

4. Because the Settlement provides that the standard of review for changes to the Settlement by a third party or 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.

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. v. FERC*,⁴ 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.

³ Settlement, § 20.

⁴ *New England Power Generators Ass’n. 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. ER14-2762-000 and ER14-2762-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.