

153 FERC ¶ 61,011  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 2, 2015

In Reply Refer To:  
East Texas Electric Cooperative, Inc.  
Sam Rayburn Electric Cooperative, Inc.  
Tex-La Electric Cooperative of Texas, Inc.

v.

Entergy Texas, Inc.  
Docket No. EL14-43-000

Entergy Texas, Inc.

v.

East Texas Electric Cooperative, Inc.  
Sam Rayburn Electric Cooperative, Inc.  
Tex-La Electric Cooperative of Texas, Inc.  
Docket No. EL14-69-000

Entergy Services, Inc.  
101 Constitution Ave., NW  
Suite 200-East  
Washington, DC 20001

Attn: Megan E. Vetula, Esq.  
Attorney for Entergy Services, Inc.

Dear Ms. Vetula:

1. On February 4, 2015, Entergy Services, Inc. (Entergy) filed an Offer of Settlement Agreement (Settlement) in the above-referenced dockets on behalf of Entergy Texas, Inc. (Entergy Texas) and East Texas Electric Cooperative, Inc., Sam Rayburn Electric Cooperative, Inc., and Tex-La Electric Cooperative of Texas, Inc. (collectively, Settling Parties). Trial Staff filed comments in support of the Settlement on February 24, 2015. The Settlement Judge certified the Settlement to the Commission as an uncontested settlement on February 24, 2015.<sup>1</sup>

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<sup>1</sup> *East Texas Electric Cooperative, Inc.*, 150 FERC ¶ 63,007 (2015).

2. The Settlement provides that:

[t]he standard of review for any modifications to this Settlement Agreement that are not agreed to by all the Parties, including any modifications resulting from the Commission acting *sua sponte*, will be the just and reasonable standard of review. Notwithstanding the foregoing, any modification proposed by a non-settling party shall not be made unless such entity proposing the modification demonstrates that the modification is required by the public interest in accordance with *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) (the *Mobile-Sierra* doctrine), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No.1 of Snohomish County, Washington*, 128 S. Ct. 2733, 171 L. Ed. 2d 607 (2008) and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 130 S. Ct. 693, 700 (2010).<sup>2</sup>

3. Because the Settlement appears to invoke the *Mobile-Sierra* “public interest” presumption with respect to third parties, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

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*,<sup>3</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.

5. The Commission finds that the Settlement involves contract rates to which, pursuant to the Settlement, the *Mobile-Sierra* presumption applies with respect to modifications proposed by third parties. The Settlement concerns a dispute regarding a

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<sup>2</sup> Settlement, § II(8).

<sup>3</sup> 707 F.3d 364, 370-71 (D.C. Cir. 2013).

partial requirements agreement between the Settling Parties that expired on December 18, 2013.<sup>4</sup> The Settlement applies only to the Settling Parties. These circumstances distinguish the Settlement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,<sup>5</sup> which the Commission held did not establish contract rates to which the *Mobile-Sierra* presumption applied. The settlements in those cases involved the pipelines' generally applicable rate schedules for its open access transportation services.

6. The Settlement resolves all issues in dispute in this proceeding. The Settlement appears to be fair, reasonable, and in the public interest, and it is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

7. Pursuant to the Settlement, within 30 days from the date of this letter, Entergy Texas will refund the "black box" settlement amounts as described in the Settlement. Within 15 days after making such refunds, Entergy shall provide a refund report to the Commission concerning such refunds.

8. This letter terminates Docket Nos. EL14-43-000 and EL14-69-000.

By direction of the Commission. Commissioner Honorable is not participating.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>4</sup> See *Entergy Arkansas, Inc.*, 145 FERC ¶ 61,245 (2013) (accepting Wholesale Distribution Service Tariff and Agreements).

<sup>5</sup> 135 FERC ¶ 61,105 (2011); see also *Panhandle Eastern Pipe Line Co. LP*, 143 FERC ¶ 61,041 (2013); *Southern LNG Co.*, 135 FERC ¶ 61,153 (2011); *Carolina Gas Transmission Corp. LLC*, 136 FERC ¶ 61,014 (2011).