

154 FERC ¶ 61,061
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 29, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket Nos. ER14-2850-003
ER14-2851-003

Michael Best & Friedrich LLP
601 Pennsylvania Ave., NW
Suite 700
Washington, DC 20004

Attention: William D. Booth, Esq.
Attorney for Southwest Power Pool, Inc.

Dear Mr. Booth:

1. On October 16, 2015, Southwest Power Pool, Inc. (SPP) filed a partial settlement agreement (Partial Settlement) between itself and the Montana Consumer Counsel, to resolve all issues raised by the Montana Consumer Counsel in the above-referenced proceedings arising out of the integration of the Western Area Power Administration – Upper Great Plains Region, Basin Electric Power Cooperative, and Heartland Consumers Power District into SPP as transmission owning members. On November 5, 2015, Commission Trial Staff submitted initial comments in support of certification of the Partial Settlement to the Commission for its approval. No other comments were filed. On December 10, 2015, the Settlement Judge certified the Partial Settlement to the Commission as uncontested.¹

2. The Partial Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Partial Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

¹ *Southwest Power Pool, Inc.*, 153 FERC ¶ 63,020 (2015).

3. Because the Partial Settlement provides at Article 5.7 that the standard of review for changes to the Partial Settlement proposed by any non-party to the Partial Settlement, after it is approved by the Commission, including any modifications resulting from the Commission acting *sua sponte*, will be “the most stringent standard permitted by 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 Partial Settlement.

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 Ass’n, Inc. v. FERC*,² 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. This letter order terminates Docket Nos. ER14-2850-003 and ER14-2851-003.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: All Parties

² 707 F.3d 364, 370-371 (D.C. Cir. 2013).