

154 FERC ¶ 61,143  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

February 26, 2016

In Reply Refer To:  
Occidental Power Services, Inc.  
Docket No. ER15-878-000

White & Case LLP  
701 Thirteenth Street, NW  
Washington, DC 20005

Attention: Daniel A. Hagan, Esq.

Dear Mr. Hagan:

1. On October 26, 2015, you filed, in the above-referenced proceeding, a Settlement between Occidental Power Services, Inc. (Occidental) and Entergy Services, Inc., on behalf of itself and the Entergy Operating Companies (collectively, Settling Parties). On November 16, 2015, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On December 10, 2015, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>1</sup>

2. The Settlement addresses Occidental's proposed annual revenue requirement for providing reactive supply and voltage control from generation or other sources service from the Taft Cogeneration Facility located in the Entergy Louisiana transmission pricing zone in Midcontinent Independent System Operator, Inc. (MISO) to be recovered under Schedule 2 of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff.

3. Section 10 of the Settlement states that:

it is intended that the Settling 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)

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<sup>1</sup>*Occidental Power Servs., Inc.*, 153 FERC ¶ 63,023 (2015).

(“Mobile-Sierra” doctrine). The standard of review for any modification 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).

4. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement proposed by third parties and the Commission acting *sua sponte* is to be “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*.

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 Association v. FERC*,<sup>2</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.

6. The Settlement resolves all issues in dispute in this proceeding. The Settlement appears to be fair and 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 this proceeding.

7. Occidental is directed to file revised tariff records in eTariff format,<sup>3</sup> within 30 days of this order, to reflect the Commission’s action in this order.

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<sup>2</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

<sup>3</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

8. This letter order terminates Docket No. ER15-878-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.