

156 FERC ¶ 61,071
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 28, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER15-1499-001

Spiegel & McDiarmid LLP
1875 Eye Street, NW
Suite 700
Washington, DC 20006

Attention: Margaret A. McGoldrick, Esq.
Attorney for the City of Independence, Missouri

Dear Ms. McGoldrick:

1. On April 27, 2016, you filed an Offer of Settlement (Settlement) in the above-referenced proceeding on behalf of the City of Independence, Missouri, acting on behalf of its Power & Light Department, a municipal electric system (Independence), and Kansas City Power & Light Company (KCP&L). The Settlement resolves all issues that the Commission set for hearing and settlement judge procedures in its June 12, 2015 Order Accepting Tariff Revisions and Establishing Hearing and Settlement Judge Procedures.¹

2. On May 17, 2016, Commission Trial Staff filed comments supporting the Settlement. On June 9, 2016, the Presiding Judge certified the Settlement to the Commission as uncontested.²

3. The Settlement addresses revisions to the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff that implement Independence's stated transmission service rate to accommodate recovery of its annual transmission revenue requirement (ATRR). The Settlement provides that Independence's ATRR will be included in SPP

¹ *Sw. Power Pool, Inc.*, 151 FERC ¶ 61,211 (2015).

² *Sw. Power Pool, Inc.*, 155 FERC ¶ 63,024 (2016).

pricing Zone 6, and will be combined with the KCP&L ATRR for purposes of determining Network Integration Transmission Service and Point-to-Point charges for Zone 6 transmission customers. Pursuant to the Settlement, Independence's ATRR will be phased in over the following three periods: (1) from June 1, 2015 through December 31, 2016, the Independence ATRR will be \$3,000,000; (2) from January 1, 2017 through December 31, 2017, the Independence ATRR will be \$3,750,000; and (3) from January 1, 2018 through May 31, 2019, and thereafter until changed, the Independence ATRR will be \$5,000,000.

4. With respect to the standard of review for modifications to the Settlement, Article V of the Settlement provides that

[t]he standard of review for any proposed changes to the terms of this [Settlement] unilaterally sought by any Settling Party shall be the "public interest" standard of review commonly referred to as the "*Mobile Sierra*" standard of review. See *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008). The standard of review for any modifications to the [Settlement] proposed by any other person or entity, including any modifications resulting from the Commission acting *sua sponte*, will be the most stringent standard permitted by law.

5. Because the Settlement provides that the standard of review for modifications to the Settlement proposed by third parties and 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 Settlement by a third party or by the Commission acting *sua sponte*.

6. 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*,³ however, the D.C. Circuit determined that the Commission is legally authorized to impose a more

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

rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.

7. 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.

8. SPP is directed to file revised tariff records in eTariff format,⁴ to implement the Settlement’s initial ATRR for the currently effective and past periods, within 30 days of the date of this order, to reflect the Commission’s action in this order. SPP is further directed to file eTariff records to appropriately implement the ATRRs for each of the later periods commencing January 1, 2017 and January 1, 2018, respectively, consistent with the Settlement.

9. This letter order terminates Docket No. ER15-1499-001.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).