

157 FERC ¶ 61,010  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 4, 2016

In Reply Refer To:  
Southwest Power Pool, Inc.  
Docket No. ER15-1976-000

Southwest Power Pool, Inc.  
201 Worthen Drive  
Little Rock, AR 72223

Attn: Matthew Harward, Esq.  
Attorney for Southwest Power Pool, Inc.

Dear Mr. Harward:

1. On August 2, 2016, you filed a Joint Offer of Settlement (Settlement) in the above-referenced proceeding on behalf of Southwest Power Pool, Inc. (SPP) and the other settling parties.<sup>1</sup> The Settlement resolves all issues that the Commission set for hearing and settlement judge procedures in its September 30, 2015 Order Accepting Tariff Revisions Implementing Formula Rates and Establishing Hearing and Settlement Judge Procedures.<sup>2</sup>
2. On August 22, 2016, Commission Trial Staff filed comments supporting the Settlement and Missouri River filed comments that did not oppose the Settlement. No other comments were filed. On September 6, 2016, the Settlement Judge certified the Settlement to the Commission as uncontested.<sup>3</sup>

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<sup>1</sup> The settling parties are East River Electric Power Cooperative, Inc. (East River), Missouri Public Service Commission, Missouri River Energy Services (Missouri River), Western Area Power Administration, Basin Electric Power Cooperative, and SPP. In addition, Xcel Energy Services Inc. does not oppose the Settlement.

<sup>2</sup> *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,248 (2015).

<sup>3</sup> *Sw. Power Pool, Inc.*, 156 FERC ¶ 63,040 (2016).

3. The Settlement addresses revisions to the SPP Open Access Transmission Tariff to include an annual transmission revenue requirement, formula rate template, and formula rate implementation protocols on behalf of East River. The proposed revisions are designed to govern SPP's transmission service using the facilities of East River that are under SPP's functional control. The Settlement provides that the fixed, base return on equity (ROE) in East River's template will be 9.6 percent effective October 1, 2015. With the Commission-approved 50 basis point adder for participation in a Regional Transmission Organization, East River's ROE will be 10.1 percent. In addition, the Settlement provides that the total ROE will apply to the higher of East River's actual capital structure, or a hypothetical capital structure with a 35 percent equity component.

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

[t]he standard of review for any change to this Settlement proposed by a party to this proceeding shall be the "public interest" application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and *NRG Power Marketing v. Maine Pub. Utilities Commission*, 558 U.S. 165 (2010). The standard of review for any modifications to this Settlement requested by a non-party to this proceeding or initiated by the Commission will be the most stringent standard permissible under applicable law, as determined by the Commission. See *Illinois Power Marketing Company*, 155 FERC ¶ 61,172 at PP 4-5 (2016), citing *New England Power Generators Ass'n. Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013); see also *NRG Power Marketing v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

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 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 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*,<sup>4</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.

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,<sup>5</sup> within 30 days of the date of this order, to reflect the Commission's action in this order.

9. This letter order terminates Docket No. ER15-1976-000.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>4</sup> 707 F.3d 364, 370-71 (D.C. Cir. 2013).

<sup>5</sup> See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).