

157 FERC ¶ 61,153
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 29, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER15-1775-000

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

Attention: Matthew Harward, Esq.

Dear Mr. Harward:

1. On October 12, 2016, you filed on behalf of Southwest Power Pool, Inc. (SPP) and the other settling parties,¹ a joint offer of settlement (Settlement) in the above-captioned proceeding. On October 31, 2016, Missouri River submitted comments not opposing the Settlement but raising concerns about the use of a hypothetical capital structure. On November 1, 2016, the Commission's Trial Staff filed comments in support of the Settlement. On November 14, 2016, Basin Electric filed reply comments responding to Missouri River and supporting the reasonableness of the Settlement capital structure as consistent with Commission precedent. No other comments were filed. On November 16, 2016, the Settlement Judge certified the Settlement to the Commission as uncontested.²

¹ The settling parties are SPP, Basin Electric Power Cooperative (Basin Electric), Corn Belt Power Cooperative, East River Electric Power Cooperative, Inc., Heartland Consumers Power District, Kansas Corporation Commission, Missouri Public Service Corporation, Missouri River Energy Services (Missouri River), Northwest Iowa Power Cooperative, NorthWestern Corporation, and Western Area Power Administration. In addition, Xcel Energy Services Inc., which is not a signatory to the Settlement, has authorized the settling parties to state that it does not oppose the Settlement.

² *Southwestern Power Pool, Inc.*, 157 FERC ¶ 63,022 (2016).

2. This matter began, on May 22, 2015, when SPP proposed revisions to its Open Access Transmission Tariff (Tariff). The Tariff revisions would govern SPP's transmission service using the facilities of Basin Electric located in the Eastern Interconnection. The proposed revisions included a revenue requirement, formula rate template, and formula rate implementation protocols (the template and protocols collectively are referred to as the Formula Rate). On August 21, 2015, the Commission issued an order accepting the proposed revisions, effective October 1, 2015, subject to refund.³ The Commission also set the issues related to the Formula Rate, facilities, and base return on equity for hearing and settlement judge procedures. The proposed Settlement resolves all the issues set for hearing.

3. Article IX, Section 9.1 of the Settlement states that:

The 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 PowerMarketing 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. 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 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 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:

³ *Southwest Power Pool, Inc.*, 152 FERC ¶ 61,144 (2015).

(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*,⁴ 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. The Settlement was not filed in the eTariff format required by Order No. 714.⁵ Therefore, SPP is directed to make a compliance filing with revised tariff records in eTariff format, within 30 days of this order, to reflect the Commission's action in this order.

8. This letter terminates Docket No. ER15-1775-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

cc: all parties

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

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