

157 FERC ¶ 61,174
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 2, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER15-2351-000

Wright & Talisman
1200 G Street, NW
Suite 600
Washington, DC 20005

Attn: Matthew Binette

Dear Mr. Binette:

1. On September 28, 2016, you filed, in the above-referenced proceeding, a Settlement Agreement between Southwest Power Pool, Inc. (SPP) and Alliant Energy Corporate Services, Inc. (Alliant). On October 18, 2016, the Commission Trial Staff filed comments in support of the Settlement Agreement. On November 1, 2016, the Settlement Judge certified the Settlement Agreement to the Commission as an uncontested settlement.¹
2. The Settlement Agreement addresses issues related to an unexecuted Market Participant Service Agreement and an unexecuted Agreement Establishing a Pseudo-Tie Electrical Interconnection Point between SPP and Alliant.
3. Article 8 of the Settlement Agreement states that

[t]o the extent that the Commission considers any changes of the provisions of this Settlement Agreement, the standard of review for such changes shall be the most stringent standard permissible under applicable law. For the avoidance of doubt, the standard of review to be applied by the Commission in considering any change to this Settlement Agreement proposed by a Settling Party, other than amendments agreed to by both

¹ *Sw. Power Pool, Inc.*, 157 FERC ¶ 63,017 (2016).

Settling Parties, shall be solely the “public interest” standard as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp. and FPC v. Sierra Pacific Power Co.*, as clarified in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, and refined in *NRG Power Marketing v. Maine Public Utilities Commission*. The standard of review to be applied by the Commission in considering any change to this Settlement Agreement that is proposed by the Commission acting *sua sponte* or by any party that is not a Settling Party shall be the strictest standard permitted by law.^[2]

4. Because the Settlement Agreement appears to provide that the standard of review applicable to the Settlement Agreement proposed by third parties and the Commission acting *sua sponte* is “the strictest 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 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 Inc. v. FERC*,³ 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 Agreement resolves all issues in dispute in this proceeding. The Settlement Agreement appears to be fair and reasonable and in the public interest, and it is hereby approved. The Commission’s approval of this Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

² Settlement Agreement at 6-7 (footnotes omitted).

³ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

7. SPP is directed to file revised tariff records in eTariff format,⁴ within 30 days of the date of this order, to reflect the Commission's action in this order.
8. This letter order terminates Docket No. ER15-2351-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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