

155 FERC ¶ 61,168
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 19, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket Nos. ER14-2850-006
ER14-2851-006

Michael, Best & Friedrich LLP
601 Pennsylvania Ave NW
Suite 700
Washington, DC 20004

Attention: William D. Booth, Esq.
Attorney for Southwest Power Pool, Inc.

Dear Mr. Booth:

1. On December 10, 2015, you filed, in the above-referenced proceedings, a Joint Offer of Partial Settlement (Settlement) on behalf of Southwest Power Pool, Inc. (SPP); Western Area Power Administration – Upper Great Plains Region, Basin Electric Power Cooperative and Heartland Consumers (collectively, the Integrated System Parties); Montana-Dakota Utilities Co. (Montana-Dakota); and Midcontinent Independent System Operator, Inc. to resolve all issues raised by Montana-Dakota in the above-referenced proceedings arising out of the integration of the Integrated System Parties into SPP as transmission-owning members. The North Dakota Public Service Commission and Commission Trial Staff filed initial comments supporting the Settlement on December 17, 2015 and December 30, 2015, respectively. The Montana Public Service Commission filed comments on December 30, 2015. No other comments were filed. On January 21, 2016, the Settlement Judge certified the Settlement to the Commission as uncontested.¹ On April 12, 2016, SPP filed an errata to the Settlement correcting errors regarding the formula used to calculate the value of Montana-Dakota's section 30.9 Credit and the SPP Tariff language describing how the Credit to Montana-Dakota will be applied.

¹ *Southwest Power Pool, Inc.*, 154 FERC ¶ 63,009 (2016).

2. The Settlement, as modified by the errata, appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

3. Because the Settlement provides at Article 4.3 that the standard of review for changes to the Settlement proposed by any non-party to the Settlement, after it is approved by the Commission, including any modifications resulting from 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.

4. 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 Ass'n, Inc. v. FERC*,² 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.

5. The Settlement Agreement was not filed in eTariff format as required by Order No. 714.³ Therefore, within 30 days of the date of this order, SPP shall make a compliance filing in eTariff format, to ensure the requisite electronic tariff databases reflect the Commission's action in this order.⁴

² 707 F.3d 364, 370-371 (D.C. Cir. 2013).

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

⁴ *Id.*

6. This letter order terminates Docket Nos. ER14-2850-006 and ER14-2851-006.

By direction of the Commission.

Kimberly D. Bose,
Secretary.