

155 FERC ¶ 61,043
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

April 21, 2016

In Reply Refer To:
Southwest Power Pool, Inc.
Docket Nos. ER14-2850-004
ER14-2851-004

Michael, Best & Friedrich LLP
601 Pennsylvania Ave NW
Suite 700
Washington, D.C. 20004

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

Dear Mr. Booth:

1. On October 16, 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 (Western-UGP), and Municipal Energy Agency of Nebraska (MEAN) to resolve all issues raised by MEAN in the above-referenced proceedings arising out of the integration of Western-UGP, Basin Electric Power Cooperative, and Heartland Consumers Power District into SPP as transmission-owning Members. Commission Trial Staff filed initial comments supporting the Settlement on November 6, 2015. No other comments were filed. On December 10, 2015, the Settlement Judge certified the Settlement to the Commission as uncontested.¹

2. Because the Settlement provides at Article 5.7 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*,

¹ *Southwest Power Pool, Inc.*, 153 FERC ¶ 63,021 (2015).

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.

3. 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.
4. The Settlement 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.
5. This letter order terminates Docket Nos. ER14-2850-004 and ER14-2851-004.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

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