

154 FERC ¶ 61,198
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

March 17, 2016

In Reply Refer To:
Public Service Company of New Mexico
Docket Nos. ER13-685-000
ER13-685-001
ER13-687-000
ER13-690-000

McGuire Woods LLP
2001 K Street, N.W.
Suite 400
Washington, DC 20006

Attention: David Martin Connelly
Counsel for Public Service Company
of New Mexico

Dear Mr. Connelly:

1. On March 20, 2015, you filed, on behalf of Public Service Company of New Mexico (PNM), a Settlement Agreement and Offer of Settlement (Settlement) in the above-captioned proceedings. The Settlement is intended to be a full and complete resolution of all issues in the above-captioned proceedings related to implementation of PNM's cost-of-service transmission formula rate. The Settlement is between PNM, El Paso Electric Company, Navajo Tribal Utility Authority, Navopache Electric Cooperative, Inc. (Navopache), Tri-State Generation and Transmission Association, Inc., and Western Area Power Administration (collectively, Settling Parties). On April 7, 2015, the Incorporated County of Los Alamos, New Mexico submitted comments supporting the Settlement and stating it would have joined as a Settling Party, but for time constraints. On April 9, 2015, Commission Trial Staff submitted comments in support of the Settlement. No other comments were filed. On May 6, 2015, the Settlement Judge certified the Settlement to the Commission as uncontested.¹

¹ *Public Service Company of New Mexico*, 151 FERC ¶ 63,007 (2015).

2. The standard of review is addressed in Article III and Article VII of the Settlement. Article III of the Settlement contains terms applicable only to PNM and Navopache and sets out the standard of review applicable to modifications to Article III. Article VII sets out the standard of review applicable to the Settlement, with the exception of modifications to Article III.

3. Section 3.10 of the Settlement provides the standard of review for modifications to Article III. Section 3.10 provides that

PNM and Navopache intend that any modification to Sections 3.2, 3.3, 3.4, 3.5 or 3.6 of Article III, except FPA Section 205 or 206 proceedings explicitly permitted by Sections 3.2.3 and 3.5.4, proposed by PNM or Navopache after the Settlement Agreement is accepted or approved by the Commission, shall be reviewed under the Mobile-Sierra public interest standard of review. *See United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). The standard of review for any modifications to Article III proposed by any party other than PNM or Navopache, after the Settlement Agreement is accepted or approved by the Commission, including any modifications resulting from the Commission acting *sua sponte*, shall be the most stringent standard permitted by law.

4. Article VII provides the standard of review that shall apply to the Settlement Agreement, except as regards Article III. Section 7.1 provides that

[e]xcept as provided in Article III, the just and reasonable standard governs all future changes to this Settlement Agreement by the Parties and the Commission. Except as provided in Article III, nothing in this Settlement Agreement is intended to impose the “public interest” application of the just and reasonable standard of review on either the Parties or the Commission, or to prevent the Commission from acting on its own motion with respect to these proceedings. *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* (“*Mobile*”), 350 U.S. 332 (1956); *Federal Power Comm’n v. Sierra Pacific Power Co.* (“*Sierra*”), 350 U.S. [348] (1956); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527 (2008).

Section 7.2 provides that

[a]ll future changes to Article III of this Settlement Agreement shall be subject to the standard of review as set forth in that Article.

5. As to Article III of the Settlement, because the Settlement provides that the standard of review for changes to the Settlement is “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 governing a later challenge to the terms in Article III of the Settlement.

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*,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.

7. The Settlement resolves all issues in dispute in these proceedings. 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 these proceedings.

8. As required by Order No. 714 and by the order authorizing PNM to implement interim rates (as corrected),³ PNM is required to make a compliance filing within 30 days of the issuance of this order in eTariff format to reflect the Commission’s action in this order.

9. Refunds, if any, shall be calculated and made in accordance with the relevant provisions set forth in the Settlement.

² *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

³ *Public Service Company of New Mexico*, 150 FERC ¶ 63,012, at P 4, *errata*, 151 FERC ¶ 63,003, at P 1 (2015).

10. This letter order terminates Docket Nos. ER13-685-000, ER13-685-001, ER13-687-000, and ER13-690-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.