

169 FERC ¶ 61,206  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

December 19, 2019

In Reply Refer To:  
GridLiance Heartland LLC, GridLiance  
High Plains LLC and GridLiance West LLC  
Docket No. ER19-2488-000

Paul Hastings LLP  
875 15th St, NW  
Washington, DC 20005

Attn: William DeGrandis, Esq.  
Counsel for GridLiance Heartland LLC, *et al.*

Dear Mr. DeGrandis:

1. On July 29, 2019, as amended on July 31, 2019, in the above-referenced proceeding, you filed an Offer of Settlement (Settlement) on behalf of GridLiance Heartland LLC, GridLiance High Plains LLC and GridLiance West LLC (collectively, GridLiance Transcos). On August 19, 2019, Commission Trial Staff filed comments supporting the Settlement. On September 5, 2019, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>1</sup>
2. The Settlement concerns the Income Tax Allowance to be included in the GridLiance Transcos' formula rates.
3. Pursuant to Section 7.1 of the Settlement,

[t]he standard of review for any change to this Settlement proposed by a Party to these proceedings that does not oppose the Settlement shall be the 'public interest' application of the just and reasonable standard set forth in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, 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 Power Marketing v. Maine*

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<sup>1</sup> *GridLiance Heartland LLC*, 168 FERC ¶ 63,032 (2019).

*Public Utilities Commission*, 558 U.S. 165 (2010). The standard of review for any modifications to this Settlement requested by other entities, including the Commission, shall be the most stringent standard permissible under applicable law, as determined by the Commission. *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, 370-71 (D.C. Cir. 2013); *see also NRG Power Mktg. v. Maine Pub. Utils. Comm'n*, 558 U.S. 165.

4. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement Agreement proposed by third parties and the Commission acting *sua sponte* is to be “the most stringent standard permissible under applicable law,” the Commission clarifies the framework that would apply if the Commission were required to determine the standard of review applicable during this period 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 v. FERC*,<sup>2</sup> 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 Docket Nos. ER18-2342-000, ER18-2342-001, ER18-2342-002, EL19-29-000, and ER19-2488-000.<sup>3</sup> The Settlement

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<sup>2</sup> *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d at 370-3710.

<sup>3</sup> The Settlement also includes a commitment by GridLiance Transcos to withdraw their pending request for rehearing of the January 29, 2019 order in Docket Nos. ER18-2342-005 and EL19-29-001 upon the Commission issuing an order accepting this Settlement without condition or modification.

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.

7. GridLiance Transcos are directed to make a compliance filing with revised tariff records in eTariff format,<sup>4</sup> within 30 days of this order, to reflect the Commission's action in this order.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>4</sup> See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008), *order on reh'g*, Order No. 714-A, 147 FERC ¶ 61,115 (2014).