174 FERC ¶ 61,099
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 18, 2021

In Reply Refer To:
Southwest Power Pool, Inc.
Docket No. ER15-2115-008

Southwest Power Pool, Inc.
201 Worthen Drive
Little Rock, AR 72223

Attention: Luke B. Hill

Dear Mr. Hill:

1. On December 17, 2020, Southwest Power Pool, Inc. (SPP) filed a Joint Offer of Settlement and Settlement Agreement (Settlement) addressing the ratemaking treatment of Northwest Iowa Power Cooperative's grandfathered agreements (GFA) with MidAmerican Energy Company.[1] On January 6, 2021, Commission Trial Staff filed comments not opposing the Settlement. On January 7, 2021, the Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested.[2]

2. Article VII provides the following standard of review:

> The standard of review for any change to this Settlement proposed by a Party to this proceeding shall be the "public interest" application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp*., 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.*

[1] The Settlement's resolution of the GFA issues disposes of all remaining issues in this docket, following the Commission's approval of a Joint Offer of Partial Settlement and Settlement Agreement on July 21, 2020, in Docket No. ER15-2115-006.

[2] *Sw. Power Pool, Inc.*, 174 FERC ¶ 63,004 (2021).

Maine Pub. Utilities Commission, 558 U.S. 165 (2010). The standard of review for any modifications to this Settlement requested by other entities, including those initiated by the Commission, will 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, 370-371 (D.C. Cir. 2013); *see also NRG Power Marketing v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

3. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement proposed by third parties and the Commission acting *sua sponte* is to be "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 in a later challenge to the Settlement by a third party or by the Commission acting *sua sponte*.

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 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.

5. The Settlement resolves all remaining issues set for hearing in Docket No. ER15-2115.[4] 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.

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[3] 707 F.3d 364, 370-71 (D.C. Cir. 2013).

[4] *Sw. Power Pool, Inc.*, 152 FERC ¶ 61,251 (2015).

6. SPP is directed to make a compliance filing with revised tariff records in eTariff format,[5] within 30 days of this order, to reflect the Commission's action in this order.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

[5] *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).