

144 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Southwest Power Pool, Inc.

Docket Nos. ER12-1179-000
ER12-1179-001
ER12-1179-006

ORDER CONDITIONALLY APPROVING SETTLEMENT IN PART,
ESTABLISHING FURTHER HEARING AND SETTLEMENT JUDGE PROCEDURES
IN PART AND DENYING REQUEST FOR REHEARING

(Issued September 30, 2013)

1. In this order, the Commission conditionally approves in part an offer of settlement (Settlement) filed on July 31, 2013 by Southwest Power Pool, Inc. (SPP).¹ However, the Commission severs and establishes hearing and settlement judge procedures as to the issue concerning whether Grandfathered Agreement No. 494 (GFA No. 494) should be included in Schedule 1 of the Settlement. With the exception of the issue concerning GFA No. 494, the Settlement resolves all other outstanding issues concerning the treatment of grandfathered agreements in the SPP Integrated Marketplace. In addition, the Commission denies in part and dismisses as moot in part Nebraska Public Power District's (NPPD) June 19, 2013 motion for clarification or, in the alternative, request for rehearing, as discussed below.

I. Background

2. In an order dated October 18, 2012, the Commission conditionally accepted for filing, subject to further modifications, a proposal by SPP to revise its Open Access Transmission Tariff (Tariff) to implement an Integrated Marketplace.² The October

¹ On August 1, 2013, SPP submitted a revised version of the Settlement to correct an error to the list of proxy Settlement Locations established in Article 3.2.2 of the Settlement. SPP August 1, 2013 Offer of Settlement Correction.

² *Southwest Power Pool, Inc.*, 141 FERC ¶ 61,048 (2012) (October Order), *order on reh'g and clarification*, 142 FERC ¶ 61,205 (2013).

Order accepted SPP's treatment of GFAs conditioned on SPP negotiating informally with GFA holders to resolve issues about integrating GFAs into the new market.³ On March 15, 2013, in a status report to the Commission, SPP reported that it was at an impasse with Omaha Public Power District (OPPD) regarding its GFAs. Thereafter, on June 6, 2013, the Commission established formal settlement judge procedures at the request of OPPD related to its GFAs.⁴ On June 24, 2013, the Chief Judge granted SPP's motion to expand the settlement procedures to include all unresolved issues relating to other protesting parties with GFAs that had not yet been integrated into the Integrated Marketplace.⁵

II. Settlement

3. The Settlement establishes the meaning of a "Carved-Out GFA," specifies the criteria used to determine carve-out eligibility, and identifies the specific GFAs that qualify under such criteria. Under the terms of the Settlement, a GFA identified in Schedule 1 of the Settlement shall be treated as a "Carved-Out GFA" unless SPP is notified that a GFA will not be treated as a "Carved-Out GFA" in accordance with section 2.16 of the Tariff, which is currently pending in Docket No. ER13-2078-000.

4. Article 3 of the Settlement resolves all issues associated with OPPD's "partial path" GFAs. The "partial path" GFAs covered by the Settlement are identified in Schedule 2 to the Settlement.⁶ Under Article 3, SPP will recognize OPPD's right to nominate and receive auction revenue rights for the reservations identified in Schedule 2 to the Settlement for a nonrenewable five-year period commencing with the initial start date of SPP's Integrated Marketplace.

A. Comments on the Settlement

5. On August 20, 2013, NPPD, Basin Electric Power Cooperative (Basin Electric) and Tri-State Generation and Transmission Association (Tri-State) (collectively, Cooperatives), and Commission Trial Staff (Trial Staff) submitted comments on the Settlement. On August 30, 2013, SPP, NPPD, Cooperatives, and Trial Staff each

³ October Order, 141 FERC ¶ 62,048 at P 309.

⁴ *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,219 (2013) (June Order). On August 8, 2013, SPP submitted a copy of GFA No. 494 to comply with the June Order.

⁵ *Southwest Power Pool, Inc.*, 143 FERC ¶ 63,016 (2013).

⁶ Article 3 states that the Settlement is expressly limited in scope to the specific GFAs and reservations identified in Schedule 2 of the Settlement. SPP July 31, 2013 Offer of Settlement at 8.

submitted reply comments. On September 10, 2013, SPP submitted a motion for leave to file further reply comments.

6. NPPD supports the Settlement, and emphasizes that the Settlement merely identifies GFAs eligible for carve-out and does not actually determine which GFAs will be carved out from the Integrated Marketplace. NPPD states that the fact that the Settlement merely establishes eligibility for carve-out is critical because parties may not be in a position to determine whether certain GFAs should in fact be treated as “Carved-Out GFAs.” NPPD argues that GFA No. 494, the Western Nebraska Joint Transmission Agreement between NPPD and Tri-State, identified in Schedule 1 as eligible for carve-out, should be treated as embedded load that is not subject to the Integrated Marketplace. According to NPPD, it should not be responsible for Integrated Marketplace costs related to non-participating embedded load, such as Tri-State’s load.⁷ NPPD states that the Settlement identifies GFA No. 494 as eligible for carve-out, and points out that Article 2.4 of the Settlement provides that GFAs listed on Schedule 1 shall automatically be treated as a “Carved-Out GFA” unless SPP is notified otherwise by October 18, 2013. NPPD states that this procedure provides counterparties the opportunity to demonstrate that certain GFAs should be treated as out-of-market or as embedded load.

7. NPPD contends that, because the terms and conditions of SPP’s carve-out proposal are not part of the Settlement,⁸ but rather are contained in SPP’s July 31, 2013 filing submitted in Docket No. ER13-2078-000,⁹ the Settlement should be approved by the Commission as an uncontested Settlement, regardless of the absence of a resolution of the primary treatment requested by the counterparties to GFA No. 494.

8. Cooperatives request that the Commission reject the portion of the Settlement concerning GFA No. 494. Cooperatives explain that under GFA No. 494, NPPD and Tri-State established a joint transmission system and made that system available for shared use. They state that both parties have rights on the system that are equivalent to the rights of owners of the entire system because each party has transferred to the other the right to serve its load on its share of the facilities, and that in this respect, GFA No. 494 is different from other GFAs, which typically provide for a transmission provider to provide transmission service to a transmission customer.¹⁰ Cooperatives also explain that Tri-State does not use the SPP transmission system to serve its loads, and Basin Electric, as the registered Market Participant for the Tri-State loads and ultimate power supplier to

⁷ NPPD Comments at 7-8.

⁸ *Id.* at 7.

⁹ SPP Tariff Filing, Docket No. ER13-2078-000 (filed July 31, 2013).

¹⁰ Cooperatives Comments at 4.

Tri-State, also does not rely on SPP's generation to serve its load under GFA No. 494. Cooperatives further state that Tri-State does not use the SPP transmission system to serve its load as a result of NPPD's decision to join SPP.¹¹ Because SPP does not dispatch the Tri-State generation, and does not transmit either SPP generation or Tri-State generation to the Tri-State loads on the transmission system established under GFA No. 494, SPP does not experience congestion or any marginal losses with respect to Tri-State's load.¹² Cooperatives therefore assert that the Commission should find that GFA No. 494 is outside of the SPP Integrated Marketplace (i.e., is an "out-of-market" agreement) and not subject to transmission-related charges associated with the Integrated Marketplace, including charges for congestion and marginal losses. They also request that the Commission direct SPP to enter into contract negotiations with NPPD and Cooperatives to set forth the terms and conditions of a Balancing Authority Area service agreement that will apply to the service that SPP will provide to the out-of-market Tri-State GFA No. 494 load.¹³

9. Trial Staff states that the Commission should approve the Settlement, and it argues that the Settlement is beneficial because eligibility for carve-out should eliminate all of the issues about integrating the GFAs into the SPP market that are currently before the Commission.¹⁴ Trial Staff also contends that the Settlement provides sufficient facts and analysis to enable the Commission to find that the Settlement treats similar GFAs similarly and is consistent with the October Order.¹⁵

10. In its reply comments, SPP explains that in 2009, when NPPD joined SPP and ceded functional control of its transmission facilities, NPPD properly designated GFA No. 494 as a GFA because it provides grandfathered transmission service to Tri-State over NPPD facilities.¹⁶ SPP argues that despite Cooperatives' position, GFA No. 494 is not an "out-of-market" agreement because the NPPD transmission facilities over which power is delivered to Tri-State lie entirely within the current NPPD Balancing Authority Area, and when the Integrated Market commences, will lie entirely within the SPP Balancing Authority Area. SPP also argues that all of the Tri-State's loads served by these facilities lie entirely within the NPPD Balancing Authority Area now and will lie

¹¹ *Id.* at 8.

¹² *Id.* at 10.

¹³ *Id.* at 12.

¹⁴ Trial Staff Comments at 4.

¹⁵ *Id.* at 5 (citing October Order, 141 FERC ¶ 62,048 at P 314).

¹⁶ SPP Reply at 5.

entirely within the SPP Balancing Authority Area upon commencement of the Integrated Marketplace. SPP therefore contends that the transmission service Tri-State receives under GFA No. 494 therefore uses the SPP transmission system and is not an “out-of-market” agreement. SPP contends that, if a GFA customer were able to obtain “out-of-market” treatment on the grounds that it receives service based on a pre-existing transmission “contract path” under a GFA, all GFAs would be considered “out-of-market.”¹⁷ SPP maintains that it has proposed either a carve-out or integration of all GFAs, and thus has complied with the Commission’s directives. It also asserts that GFA No. 494 is not “non-participating embedded load” because the transmission services provided to Tri-State using NPPD’s facilities, which are under SPP’s control, are within the SPP footprint.

11. NPPD responds to Cooperatives by arguing that any distinction between NPPD’s position that Tri-State load should be treated as “non-participating embedded load” and Cooperatives’ position that Tri-State load should be treated as “out-of-market” appears to be more about differences in labels, rather than substance. NPPD states that under either treatment, the result is that “entities that are in any of the other SPP footprints but that choose not to participate in the Integrated Marketplace will not be subject to the Integrated Marketplace’s rules and practices.”¹⁸ NPPD contends that the facts support both NPPD’s position that the Tri-State load should be treated as non-participating embedded load and Cooperatives’ position that Tri-State load should be treated as out-of-market.

12. Cooperatives reply that the Commission should accept NPPD’s comments as an alternative basis upon which to conclude that GFA No. 494 is outside of the SPP Integrated Marketplace and not subject to transmission-related charges associated with the Integrated Marketplace, including charges for congestion and marginal losses.¹⁹ Cooperatives also argue that if the Commission determines that GFA No. 494 does not qualify for out-of-market treatment, the Commission should determine that it is eligible for carve-out treatment, and that the costs associated with the Integrated Marketplace should fall to NPPD as the Transmission Owning Member of SPP, rather than to the Tri-State load. According to Cooperatives, imposing such costs on Tri-State would modify the terms and conditions of GFA No. 494.

13. In its reply comments, Trial Staff points out that the comments oppose the Settlement only with respect to GFA No. 494. Trial Staff states that it still supports the Settlement, but with the proviso that the Commission amend the Settlement to remove

¹⁷ *Id.* at 7.

¹⁸ NPPD Reply at 2-3 (citing October Order, 141 FERC ¶ 62,048 at P 333).

¹⁹ Cooperatives Reply at 1.

GFA No. 494 from Schedule 1 of the Settlement because GFA No. 494 is out-of-market, and is non-participating embedded load.²⁰ Therefore, Trial Staff recommends approval of the Settlement for all GFAs except GFA No. 494.

B. Commission Determination

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept SPP's further reply comments and will, therefore, reject them.

15. We find that the issue of whether GFA No. 494 should be included in Schedule 1 of the Settlement raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Because we find issues of material fact that cannot be resolved based on the record before us, we cannot summarily rule on that portion of the Settlement. Therefore, pursuant to Rule 602(h)(1)(iii), which allows the Commission to sever issues from a settlement and then approve the uncontested portion of the settlement upon a finding that the uncontested portion of the settlement is fair and reasonable and in the public interest pursuant to Rule 602(g)(3),²¹ we will sever the issue of whether GFA No. 494 should be included in Schedule 1 of the Settlement.

16. Under Rule 602(h)(1)(ii), if the Commission finds that the record lacks substantial evidence, the Commission may establish procedures for the purpose of receiving additional evidence before a presiding officer upon which a decision on the contested issues may reasonably be based.²² Therefore, because the parties' arguments related to the treatment of GFA No. 494 cannot be resolved based on the record before us, we will set this matter for a trial-type evidentiary hearing.

17. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²³ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

²⁰ Trial Staff Reply at 6.

²¹ 18 C.F.R. § 385.602(h)(1)(iii) (2013).

²² 18 C.F.R. § 385.602(h)(1)(ii) (2013).

²³ 18 C.F.R. § 385.603 (2013).

otherwise, the Chief Judge will select a judge for this purpose.²⁴ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

18. With the exception of the disputed issue concerning whether Schedule 1 of the Settlement should include GFA No. 494, the Settlement appears to be fair and reasonable and in the public interest and is hereby conditionally approved.

19. The standard of review to be applied by the Commission in considering any change to any provision to the Settlement shall be the “public interest” standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*). Because the Settlement appears to invoke the *Mobile-Sierra* “public interest” presumption with respect to third parties and the Commission acting *sua sponte*, we will analyze the applicability here of that more rigorous application of the just and reasonable standard.

20. 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*,²⁵ 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.

²⁴ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission’s website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

²⁵ *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

21. The Settlement embodies rates, terms, or conditions that are generally applicable. The Settlement, among other things, specifies the criteria used to determine carve-out eligibility for GFAs. For this reason, we find that the Settlement does not embody “contract rates, terms, or conditions that *necessarily* qualify for a *Mobile-Sierra* presumption.”²⁶

22. As we have stated recently, in the context of reviewing settlements that do not involve “contract rates,” the Commission has discretion as to whether to approve a request to impose on third parties the more rigorous application of the statutory “just and reasonable” standard of review that is often characterized as the *Mobile-Sierra* “public interest” standard of review.²⁷ The Commission also stated in these orders that it will not approve imposition of that more rigorous application of the statutory “just and reasonable” standard of review on future changes to an agreement sought by non-settling third parties, absent compelling circumstances such as were found to exist in *Devon Power*. We find that the circumstances presented here do not satisfy that test. Thus, we find it unjust and unreasonable to impose the more rigorous application of the statutory “just and reasonable” standard of review in the instant proceeding with respect to future changes to the Settlement sought by the Commission acting *sua sponte* or at the request of a non-settling third party.

23. With the exception of the disputed issue concerning whether Schedule 1 of the Settlement should include GFA No. 494, the Settlement appears to be fair and reasonable and in the public interest.²⁸ As such, the Settlement is conditionally approved subject to SPP filing, within 30 days of the date of this order, a revised settlement agreement reflecting a revision to the standard of review provision.

²⁶ *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041, at P 84 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299, at P 92 (2013).

²⁷ *See, e.g., MidAmerican Energy Co.*, 138 FERC ¶ 61,028, at P 7 (2012) (citing *Devon Power, LLC*, 134 FERC ¶ 61,208, *order on reh’g*, 137 FERC ¶ 61,073 (2011) (*Devon Power*), *aff’d*, *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364 (D.C. Cir. 2013); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011); *High Island Offshore Sys., LLC*, 135 FERC ¶ 61,105, at P 24 (2011)).

²⁸ Likewise, with the exception of the issue discussed above, the Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

III. Request for Rehearing of the June Order

A. Motion for Clarification or, in the Alternative, Rehearing of the June Order

24. On June 19, 2013, NPPD submitted a motion for clarification or, in the alternative, rehearing of the June Order establishing settlement judge procedures. SPP submitted an answer in opposition to NPPD's request for rehearing.

25. In its request for clarification or, in the alternative, rehearing, NPPD asserts that "the MISO precedent relied upon by the Commission in the June 6 Order applies generally to all new load serving entities joining existing markets which would, by definition, include non-grandfathered service under the MISO tariff."²⁹ NPPD seeks clarification that the application of this precedent to resolve OPPD's partial path rights should apply on a non-discriminatory basis to all services under the Tariff, as well as under GFAs with partial paths.³⁰ NPPD also requests that the Commission clarify that the resolution of the partial path issue that arises from settlement judge procedures between SPP and OPPD would apply to NPPD's partial path issues with SPP.

B. Commission Determination

26. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure prohibits answers to requests for rehearing.³¹ Accordingly, we reject the answer filed by SPP.

27. We deny NPPD's request for clarification or, in the alternative, rehearing of the June Order, and its request that the Commission clarify that it intended that its reliance on *MISO* in the June Order should be applied broadly to all services under the SPP Tariff. Contrary to NPPD's assertions, the Commission cited to *MISO* in response to SPP's contention that establishing pseudo settlement locations for OPPD's partial path GFAs was not a viable solution. SPP had asserted that because OPPD's GFAs did not comply with North American Energy Standards Board standards for coordinating interchange transactions, creating pseudo settlement locations was not an option for resolving the issues regarding these partial path GFAs. In rejecting this argument, the Commission explained that *MISO* provided an example of the use of pseudo settlement locations as a means of preserving the parties' transmission entitlements.³² The Commission did not

²⁹ NPPD June 19 Motion at 3 (citing June Order, 143 FERC ¶ 61,219 at P 19 (citing *Midwest Indep. Transmission Sys. Operator*, 111 FERC ¶ 61,131 (2005) (*MISO*)).

³⁰ *Id.*

³¹ 18 C.F.R. § 385.713(d)(1) (2013).

³² June Order, 143 FERC ¶ 61,219 at P 19.

make reference to *MISO* for any broader purpose. In addition, NPPD's request for clarification that the Commission's reliance on *MISO* applies broadly to all services under the Tariff, and not just GFAs with partial paths, is outside the scope of the June Order and compliance with the October Order.³³

28. We also dismiss as moot NPPD's request for clarification that the resolution of the partial path issue between SPP and OPPD in the Settlement also applies to NPPD's partial path issues with SPP. On June 24, 2013, the Chief Judge granted SPP's request to expand the scope of the settlement judge proceedings to include all GFAs that had not been integrated into the Integrated Marketplace. NPPD participated in the settlement judge proceedings³⁴ and has not raised any subsequent protests concerning the treatment of partial path GFAs in the Offer of Settlement. Thus, we find that following NPPD's submission of its instant motion for clarification and rehearing, it had the opportunity to negotiate a resolution to its partial path issues with SPP. The ensuing record in this proceeding is devoid of evidence of any outstanding partial path GFA issues.

The Commission orders:

(A) With the exception of the issue of whether GFA No. 494 should be included in Schedule 1 of the Settlement, SPP's Settlement is conditionally approved, as discussed in the body of this order.

(B) SPP is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) NPPD's request for clarification or, in the alternative, rehearing is denied in part and dismissed as moot in part, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning whether GFA No. 494 should be included in Schedule 1 of the Settlement. However, the hearing shall be held in abeyance to provide

³³ While the October Order left GFA treatment to be addressed on compliance, which was the subject of the June Order, the October Order did not include any compliance requirements concerning the treatment of partial paths for non-GFA transmission service reservations.

³⁴ NPPD Protest, Docket No. ER13-2078-000, at 6-7 (filed Aug. 21, 2013).

time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Commissioner Norris is concurring with a separate statement attached.

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.

Docket Nos. ER12-1179-000
ER12-1179-001
ER12-1179-006

(Issued September 30, 2013)

NORRIS, Commissioner, *concurring*:

I concur in the outcome of this order, which conditionally approves in part a settlement filed by SPP concerning the treatment of grandfathered agreements in the SPP Integrated Marketplace. The Commission partially approves the settlement conditioned upon the Settling Parties filing a revised settlement that changes the standard of review provision to no longer bind non-settling third parties and the Commission acting *sua sponte* to the *Mobile-Sierra* public interest standard of review. I agree with the order that the settlement is not the kind of contract rate to which the public interest presumption would apply. However, while the D.C. Circuit has determined that the Commission may exercise discretion under the Federal Power Act to apply the public interest standard where the *Mobile-Sierra* presumption does not apply,³⁵ I continue to disagree, as a policy matter, that the Commission should exercise such discretion.³⁶

I believe the Commission can exercise its respect for rate certainty and stability and recognize the value of settlements, while protecting the rights of third parties and without sacrificing a future Commission's ability to review rates that may no longer be just and reasonable due to a change in circumstances. Therefore, I disagree with the analysis in this order of whether the Commission should permit the application of the public interest standard to future changes to the settlement.

For these reasons, I respectfully concur.

John R. Norris, Commissioner

³⁵ *New England Power Generators Ass'n, Inc. v. FERC*, No. 11-1422, at 10-12 (D.C. Cir Feb. 15, 2013).

³⁶ *Devon Power LLC*, 134 FERC ¶ 61,208 (2011), *Norris, dissenting in part*.

Document Content(s)

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