

173 FERC ¶ 61,270
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 28, 2020

In Reply Refer To:

ISO New England Inc.

Town of Braintree Electric Light Department;

NSTAR Electric Company;

Chicopee Electric Light Department;

Central Maine Power Company;

Maine Electric Power Company (MEPCO);

Connecticut Municipal Electric Energy Cooperative
& Connecticut Transmission Municipal Electric
Energy Cooperative;

The City of Holyoke Gas and Electric Department;

New Hampshire Transmission, LLC;

Green Mountain Power Corporation;

Massachusetts Municipal Wholesale Electric
Company;

New England Power Company;

New Hampshire Electric Cooperative, Inc.;

The Connecticut Light and Power Company,

Western Massachusetts Electric Company, and

Public Service Company of New Hampshire;

Town of Hudson Light and Power Department;

Town of Middleborough Gas & Electric Department;

Town of Norwood Municipal Light Department;

Town of Reading Municipal Light Department;

Town of Wallingford (CT) Electric Division;

Taunton Municipal Lighting Plant;

The United Illuminating Company;

Unitil Energy Systems, Inc. and Fitchburg Gas and
Electric Light Company;

Vermont Electric Cooperative, Inc.;

Vermont Electric Power Company, Inc. and

Vermont Transco, LLC;

Versant Power f/a/a Emera Maine;

Vermont Public Power Supply Authority;

Shrewsbury Electric and Cable Operations

Docket No. ER20-2054-000

Steptoe & Johnson LLP
1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Attn: A. Hunter Hodges, Esq.
Counsel to Eversource Energy Service Company, as agent for The Connecticut
Light and Power Company and Public Service Company of New Hampshire, and
NSTAR Electric Company

Dear Mr. Hodges:

1. On June 15, 2020, the New England Transmission Owners (NETOs)¹ filed a Joint Offer of Settlement (Settlement) addressing the NETOs' local and regional transmission service revenue requirement formula rate(s) in the ISO New England Inc. (ISO-NE) Open Access Transmission Tariff.² On June 30, 2020, the New England Power Pool Participants Committee filed comments supporting the Settlement. On July 6, 2020, Trial Staff filed comments not opposing the Settlement. On July 15, 2020, the NETOs filed reply comments. On August 18, 2020, Settlement Judge certified the Settlement to the Commission as an uncontested settlement.³

¹ The NETOs are Central Maine Power Company (CMP); The Connecticut Light and Power Company and Public Service Company of New Hampshire (together, Eversource or ES); Green Mountain Power Corporation; New England Power Company, d/b/a National Grid; New Hampshire Transmission, LLC; NSTAR Electric Company; The United Illuminating Company (UI); Unitil Service Corporation on behalf of Unitil Energy Systems, Inc. and Fitchburg Gas and Electric Light Company; Vermont Electric Cooperative, Inc.; Vermont Transco, LLC; and Versant Power (f/k/a Emera Maine). Transmittal Letter at 1, 8-9.

The NETOs state that they are making this filing on behalf of the Settling Parties listed on Exhibit 1 attached to the Settlement. Transmittal at 1. On June 26, 2020, in Docket No. ER20-2054-000, the NETO's filed the Town of Wallingford Electric Division's signature page executing the Settlement.

² See ISO-NE Transmission, Markets and Services Tariff, section II.

³ *ISO New England Inc. Participating Transmission Owners Admin. Comm.*, 172 FERC ¶ 63,017, at P 132 (2020) (declining to assess the merits of Trial Staff's criticisms of the Settlement because Trial Staff does not contend that any of its criticisms justify altering any Settlement provision).

2. Paragraph 22 of the Settlement provides that

[t]he standard of review for any modifications to the [Settlement], Attachment F or any of its Appendices or the Protocols requested by a non-Party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. *See 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) (the *Mobile-Sierra* doctrine), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008), and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010). This more stringent standard of review shall not apply to any Section 205 or Section 206 filings permitted by this [Settlement] or to filings made after the moratorium period ends. Such filings permitted by the [Settlement] or made after the moratorium ends shall be subject to review under the just and reasonable standard set forth in FPA Sections 205 and 206.

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*,⁴

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

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 issues set for hearing in Docket No. EL16-19.⁵

6. 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.

7. The NETOs are directed to make a compliance filing in Docket No. ER20-2054 with revised tariff records in eTariff format,⁶ within 30 days of this order, to reflect the Commission’s action in this order.

By direction of the Commission. Commissioner Clements is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ See *ISO New England Inc. Participating Transmission Owners Admin. Comm.*, 153 FERC ¶ 61,343 (2015), *amended by*, 154 FERC ¶ 61,179, *reh’g denied*, 154 FERC ¶ 61,230 (2016).

⁶ 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).