

144 FERC ¶ 61,241  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

(Issued September 27, 2013)

In Reply Refer To:  
ITC Midwest LLC and Interstate Power and Light  
Company  
Docket No. ER10-2142-000

Morgan Lewis & Bockius LLP  
Attention: Michael C. Griffen  
1111 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Mr. Griffen:

1. On February 29, 2012, you filed, in the above-referenced proceeding, a Settlement Agreement among Interstate Power and Light Company (Interstate Power) and ITC Midwest LLC (ITC Midwest), Jo-Carroll Energy, Inc., and Midwest TDUs, comprising Midwest Municipal Transmission Group, Missouri River Energy Services, and WPPI Energy (collectively, Settling Parties). On March 20, 2012, Commission Trial Staff filed comments in support of the Settlement Agreement. On March 22, 2012, the Settlement Judge certified the uncontested Settlement Agreement to the Commission.

2. The Settlement Agreement addresses all matters set for hearing regarding the rate provisions of the Operations Services Agreement between Interstate Power and ITC Midwest. Pursuant to the Settlement Agreement, the standard of review for any modifications proposed by any of the Settling Parties shall solely be the most strict standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *clarified by Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527, 128 S. Ct. 2733 (2008); *NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165, 130 S.Ct. 693 (2010). The Settlement Agreement is silent as to the standard of review that applies to any modifications proposed by the Commission or third parties. Because the Settlement Agreement is silent as to the standard of review that applies to the Commission acting *sua sponte* and third parties, and might be interpreted as invoking the *Mobile-Sierra* “public interest” presumption with respect to those entities, we will analyze the applicability here of the more rigorous application of the just and reasonable standard.

3. 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>1</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.

4. The Commission finds that the Settlement Agreement involves contract rates to which the *Mobile-Sierra* presumption applies. The Settlement Agreement addresses the rates paid by ITC Midwest to Interstate Power for the system operations services<sup>2</sup> provided by Interstate Power, as well as the Settling Parties’ access to Interstate Power’s records relating to the Operations Services Agreement. The rate provisions of the Settlement Agreement apply only to Interstate Power’s customer, ITC Midwest. The Settlement Agreement’s provisions governing the Settling Parties’ access to Interstate Power’s records apply only to the Settling Parties. These circumstances distinguish the Settlement Agreement in this case from the settlements in other cases, such as *High Island Offshore System, LLC*,<sup>3</sup> which the Commission held did not involve contract rates to which the *Mobile-Sierra* presumption applied. The settlements in those cases involved the pipelines’ generally applicable rate schedules for its open access transportation services.

5. The Settlement Agreement resolves all issues in dispute in this proceeding. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is

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<sup>1</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

<sup>2</sup> The system operations services provided under the Operations Services Agreement include, for example, unplanned operations support, emergency operations, shutdown coordination, real-time monitoring, alarm monitoring and response, system voltage maintenance, load forecasting, system restoration, and backup service.

<sup>3</sup> 135 FERC ¶ 61,105 (2011); *see also Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041 (2013); *Southern LNG Co.*, 135 FERC ¶ 61,153 (2011); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011).

hereby approved. The Commission's approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

6. On March 12, 2012, Interstate Power and ITC Midwest filed an amended Operations Services Agreement in Docket No. ER12-1245-000 in accordance with the terms of the Settlement Agreement. On May 3, 2012, the amended Operations Services Agreement was accepted for filing, subject to the outcome of this proceeding.<sup>4</sup> Consequently, ITC Midwest and Interstate Power are not required to make a compliance filing in eTariff format to reflect the Commission's action in this order.<sup>5</sup>

7. This letter order terminates Docket No. ER10-2142-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>4</sup> *Interstate Power & Light Co.*, Docket No. ER12-1245-000 (May 3, 2012) (delegated letter order).

<sup>5</sup> *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).