

145 FERC ¶ 61,005
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.

Wyoming Interstate Company, L.L.C.

Docket No. RP13-184-000

ORDER ON UNCONTESTED SETTLEMENT

(Issued October 1, 2013)

1. On November 15, 2012, the Commission initiated a proceeding pursuant to section 5 of the Natural Gas Act (NGA) into the justness and reasonableness of the existing rates of Wyoming Interstate Company, L.L.C. (WIC) and established hearing procedures.¹ In the November 2012 Order, the Commission required WIC to file a cost and revenue study within seventy-five days. On December 17, 2012, WIC filed a request for rehearing of the Commission's November 2012 Order.
2. On June 24, 2013, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,² WIC, on behalf of itself and the other sponsoring participants,³ filed an Offer of Settlement which contained a Stipulation and Agreement with its accompanying appendices (collectively referred to as, Settlement) to resolve all issues in the above-captioned docket.
3. The terms of the Settlement are described briefly immediately below.
4. Article I describes the procedural background leading up to the Offer of Settlement.

¹ *Wyoming Interstate Co., L.L.C.*, 141 FERC ¶ 61,117, at P 1 (2012) (November 2012 Order).

² 18 C.F.R. § 385.602 (2012).

³ The other sponsoring participants include Commission Trial Staff, Anadarko Energy Services Company, Bill Barrett Corporation, BP Energy Company, Chevron U.S.A. Inc., Occidental Energy Marketing, Inc., Public Service of Colorado, Pioneer Natural Resources USA, Inc., Shell Energy North America (US), L.P. and WPX Energy Marketing, LLC.

5. Article II has five sections. Section 2.1 establishes new base rates for WIC's transportation services on a "black box" basis as set forth on the *pro forma* tariff records in Appendices B and C to the Settlement. The new base rates set forth in Appendices B and C become effective on July 1, 2013 and January 1, 2014, respectively. Section 2.2 provides for how refunds will be calculated and processed if the Settlement becomes effective after the settlement base rates should have been charged. Section 2.3 sets forth WIC's FERC depreciation rates for book purposes and for the settlement rates. Section 2.4 provides that the costs attributable to the Echo Springs Lateral shall be rolled into the cost of service for WIC's mainline service effective February 1, 2015 and for any future rate proceedings. Lastly, section 2.5 provides that WIC shall be permitted to accrue incurred costs as defined in section 2.5 beginning on July 1, 2013. At any time after July 1, 2016 through the term of the Settlement, WIC may file to recover those costs through limited NGA section 4 filings. For purposes of section 2.5, the recoverable costs are defined to include prudently incurred costs, charges, or taxes from new or revised requirements, regulations, or legislation that become effective on or after July 1, 2013 (a) relating to any greenhouse gas or clean air emissions initiatives, or (b) relating to operating safety for pipeline facilities.

6. Article III provides that, if prior to July 1, 2018, WIC has not filed a general system-wide rate case under section 4 of the NGA and the Commission has not initiated an investigation into WIC's base rates under NGA section 5, WIC shall file a cost and revenue study on or before July 3, 2018.

7. Article IV provides that the Settlement will extend from the Effective Date as defined in Article V of the Settlement through the earlier of: (a) the date new rates become effective under a general system-wide rate case filed by WIC pursuant to NGA section 4, or (b) the date a new base rate(s) becomes effective pursuant to a Commission-initiated NGA section 5 investigation. Article IV also provides that, prior to July 1, 2016, WIC may not file a general system-wide rate case proposing new base tariff rates pursuant to NGA section 4. Finally, Article IV provides that, prior to July 1, 2016, each "settling party" waives and relinquishes its rights under NGA section 5 to advocate or request any changes or adjustments to any provision of the Settlement.

8. Article V sets forth the requirements for the Settlement to become effective. Article V also defines "settling party" and "contesting party."

9. Article VI sets forth the reservations.

10. Article VII provides that, "[t]o the extent the Commission considers any changes to the provisions of this [Settlement] during its term, the standard of review for changes shall be the most stringent standard permissible under applicable law."

11. Article VIII provides that, within thirty days after the effective date of the Settlement, WIC will file to withdraw its request for rehearing filed on December 17, 2012, in Docket No. RP13-184-001.
12. Commission Trial Staff filed comments in support of the Settlement on July 1, 2013. Trial Staff states that the rate reductions provide substantial savings for WIC's shippers. Trial Staff also states that the Settlement provides for a degree of rate certainty through July 1, 2016, as WIC is prohibited from filing a general rate case and each settling party waives its rights under section 5 of the NGA prior to that date. Staff states that the Settlement produces an overall fair and reasonable result that is in the public interest, and avoids a costly and time-consuming hearing.
13. On July 11, 2013, the Presiding Judge certified the Settlement to the Commission as uncontested.⁴
14. Because the Settlement provides that the standard of review for changes to the Settlement is "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.
15. 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*,⁵ 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.
16. The Commission finds that the Settlement is fair and reasonable and in the public interest, and therefore, the Commission approves the Settlement pursuant to Rule 602(g),

⁴ *Wyoming Interstate Co., L.L.C.*, 144 FERC ¶ 63,004 (2013).

⁵ *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

18 C.F.R. § 385.602(g) (2012). The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

17. This order terminates Docket No. RP13-184-000.

The Commission orders:

(A) The Settlement is approved, as discussed in the body of this order.

(B) Within fifteen days of the effective date of the Settlement, WIC must file revised tariff records consistent with the terms of the Settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.