

145 FERC ¶ 61,126
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 14, 2013

In Reply Refer To:
Great Lakes Transmission Limited Partnership
Docket Nos. RP13-1367-000
RP10-149-000

Mark F. Sundback
Andrews Kurth LLP
1350 I Street NW, Suite 1100
Houston, Texas 20005

Dear Mr. Sundback:

1. On September 27, 2013, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,¹ Great Lakes Transmission Limited Partnership LLP (Great Lakes) filed in Docket No. RP13-1367-000 a petition for approval of an uncontested Stipulation and Agreement (2013 Settlement) that, among other things, resolves certain issues related to Great Lakes' transportation rates. Great Lakes filed the 2013 Settlement in lieu of a general rate case it was otherwise obligated to file under section 4 of the Natural Gas Act. With respect to that obligation, Great Lakes filed on October 3, 2013, a motion in Docket No. RP10-149-000 (October 3 Motion) requesting that the Commission deem the 2013 Settlement as satisfying Article VI.A.1 of the currently effective 2010 Settlement, which states that Great Lakes must file a Natural Gas Act (NGA) section 4 general rate case by December 1, 2013.² As discussed below, the Commission approves the uncontested 2013 Settlement as fair and reasonable and in the public interest, and deems Great Lakes to have satisfied the requirement in the 2010 Settlement that Great Lakes file a section 4 general rate case by December 1, 2013.

¹ 18 C.F.R. 385.207(a)(5) (2013).

² The 2010 Settlement was approved by the Commission in Docket No. RP10-149-000 on July 15, 2010. *Great Lakes Transmission Ltd. P'ship*, 132 FERC ¶ 61,041 (2010). On September 25, 2013, the Commission approved an amendment to the 2010 Settlement deferring the deadline by which Great Lakes must file a general section 4 rate case from November 1, 2013, to December 1, 2013. *Great Lakes Transmission Ltd. P'ship*, 144 FERC ¶ 61,229 (2013).

2. The 2013 Settlement establishes the rates for transportation on Great Lakes' system effective November 1, 2013.³ Article III states that, subject to certain exceptions specified in the 2013 Settlement, there shall be a moratorium on any changes to the 2013 Settlement rates or to the terms of the 2013 Settlement through March 31, 2015. Article III further states that during the Rate Moratorium Period, Great Lakes will not place into effect a new firm hourly transportation rate schedule. Article III.B.5 provides that Great Lakes may file a limited section 4 rate proceeding to adjust the 2013 Settlement rates to reflect certain "Eligible Costs" (as defined in the Settlement) if the cost-of-service effect of the "Eligible Costs" exceeds \$15,000,000 annually. Article IV provides that Great Lakes will file a new section 4 general rate case to be effective no later than January 1, 2018. Article IV further states that it is not intended to preclude submission of a new settlement that seeks to replace the instant 2013 Settlement prior to January 1, 2018.

3. Article III.B.8 states that:

[T]he standard of review for any modification of the Settlement proposed by a party shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* and *Federal Power Commission v. Sierra Pacific Power Co.* ("Mobile-Sierra Doctrine") to the full extent legally permissible at the time the change is ruled upon, and with respect to any modification of the Settlement proposed by the Commission acting *sua sponte*, non-parties, or those agencies that cannot be subject to the foregoing "public interest" standard, the standard of review shall be the most stringent standard applicable under then current law. (citations omitted)

4. The Commission issued public notice of both the 2013 Settlement and Great Lakes' October 3 Motion with interventions and protests due as provided by section 154.210 of the Commission's regulations. Pursuant to 18 C.F.R. § 385.214 (2013) all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. BP Canada Energy Marketing Corp. filed comments stating that it does not oppose the settlement, and the Michigan Public Service Commission and Commission Trial Staff filed comments in support of the 2013 Settlement.⁴ Similarly, no

³ Article IX of the 2013 Settlement provides that if the Commission approves Great Lakes' tariff records implementing the 2013 Settlement rates after November 1, 2013, Great Lakes shall apply billing adjustments for the difference between the current rates on Great Lakes' System and the 2013 Settlement rates.

⁴ Appendix A of the 2013 Settlement lists the parties who support or do not oppose the Settlement.

party opposed Great Lakes request in the October 3 Motion that the 2013 Settlement be accepted in place of Great Lakes' obligation to file a section 4 general rate case on December 1, 2013, under the amended 2010 Settlement.

5. Because the Settlement provides that the standard of review for changes to the Settlement proposed by the Commission acting *sua sponte*, non-parties, or those agencies that cannot be subject to the "public interest" standard is "the most stringent standard applicable under then current 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 2013 Settlement.

6. 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 Ass'n, Inc. v. FERC*,⁵ however, the United States Court of Appeals for 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.

7. The Commission finds that the proposed 2013 Settlement appears to be fair and reasonable and in the public interest, and it is hereby approved. The 2013 Settlement, which was filed in lieu of a rate case, resolves system-wide rate issues without a hearing and lengthy litigation, consistent with the Commission's guidance for settlements outside the context of an existing proceeding.⁶ The Commission's approval of the 2013 Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Consistent with our approval of the 2013 Settlement, the Commission deems Great Lakes to have satisfied the requirements of Article VI.A.1 of the 2010 Settlement which would have required Great Lakes to file a section 4 general rate case on December 1, 2013.

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

⁶ See, e.g., *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005).

8. Within 10 days, Great Lakes is directed to file tariff records in eTariff format as required by Order No. 714⁷ in order to implement the *pro forma* tariff records proffered with the 2013 Settlement. This letter order terminates Docket Nos. RP13-1367-000 and RP10-149-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).