

146 FERC ¶ 61,005
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 7, 2014

In Reply Refer To:
Midwest Independent Transmission
System Operator, Inc.
Docket Nos. ER11-2790-000
ER11-2790-001
ER11-2790-002

Wright & Talisman, P.C.
1200 G Street, NW
Suite 600
Washington, DC 20005

Attention: Wendy Warren, Esq.

Dear Ms. Warren:

1. On May 8, 2013, pursuant to Rule 602 of the Commission's Rule of Practice and Procedure,¹ you filed, in the above-referenced proceedings, a Settlement Agreement on behalf of Ameren Services Company (Ameren Services) and Ameren Illinois Company (Ameren Illinois) (collectively, Ameren) and Hoosier Energy Rural Electric Cooperative, Inc. (Hoosier) (collectively, the Settling Parties). On May 28, 2013, Commission Trial Staff filed comments in support of the Settlement Agreement.

2. The Settlement Agreement resolves all issues in these proceedings concerning the rates, terms, and conditions of an unexecuted wholesale distribution service (WDS) agreement (Hoosier WDS Agreement) filed by the Midwest Independent Transmission System Operator (MISO)² and Ameren and under which Ameren Illinois would provide WDS to Hoosier.³

¹ 18 C.F.R. § 385.602 (2013).

² Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

³ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,242 (2011).

3. Pursuant to the Settlement Agreement, to the maximum extent permitted by law, the provisions of the Settlement shall not be subject to change under sections 205 and 206 of the Federal Power Act (FPA)⁴ absent the written agreement of the Settling Parties, and the standard of review for changes unilaterally proposed by a Settling Party shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Fed. Power Comm'n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527 (2008); and *NRG Power Mktg., LLC v. Maine Pub. Utilities Comm'n*, 558 U.S. 165 (2010). The Settlement Agreement is silent as to the standard of review that applies to 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.

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 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.

5. The Commission finds that the Settlement Agreement involves contract rates to which the *Mobile-Sierra* presumption applies. The Settlement Agreement addresses an individualized rate and associated charge for Ameren Illinois to provide WDS to Hoosier. The rate provisions of the Settlement Agreement apply only to Hoosier. These circumstances distinguish the Settlement Agreement in this case from the settlements in

⁴ 16 U.S.C. §§ 824d-824e (2012).

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

other cases, such as *High Island Offshore System, LLC*,⁶ 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 their open access transportation services.

6. The Settlement Agreement resolves all issues in dispute in these proceedings. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

7. Settling Parties state that they have not filed the revised Hoosier WDS Agreement in eTariff format. Within 30 days of the date of this order, the Settling Parties are required to submit a compliance filing through eTariff to ensure that the electronic tariff data base reflects the Commission's action in these proceedings.⁷

8. This letter order terminates Docket Nos. ER11-2790-000, ER11-2790-001, and ER11-2790-002.

By the direction of the Commission.

Kimberly D. Bose,
Secretary.

⁶ 135 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).

⁷ *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).