146 FERC ¶ 61,037
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 23, 2014

In Reply Refer To:
PJM Interconnection, L.L.C. and
Essential Power Rock Springs,
LLC
Docket No. ER13-488-000

Troutman Sanders LLP
Daniel L. Larcamp, Esq.
Counsel to Essential Power Rock Springs, LLC
401 9th Street, NW
Suite 1000
Washington, DC 20004-2134

Dear Mr. Larcamp:

1. On July 17, 2013, Essential Power Rock Springs, LLC (Rock Springs), Old Dominion Electric Cooperative, Inc., and the Indicated PJM Transmission Owners[1] filed

[1] Indicated PJM Transmission Owners are: American Electric Power Service Corporation, on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company; Duke Energy Corporation on behalf of its subsidiaries Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.; Duquesne Light Company; Exelon Corporation; Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, American Transmission Systems, Incorporated, Trans-Allegheny Interstate Line Company (collectively, FirstEnergy Companies); Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; PPL Electric Utilities Corporation, PPL EnergyPlus, LLC, PPL Brunner Island, LLC, PPL Holtwood, LLC, PPL Ironwood, LLC, PPL Martins Creek, LLC, PPL Montour, LLC, PPL Susquehanna, LLC, Lower Mount Bethel Energy, LLC, PPL New Jersey Solar, LLC, PPL New Jersey Biogas, LLC, PPL Renewable Energy, LLC (collectively, the PPL PJM Companies); Public Service Electric and Gas Company; and UGI Utilities, Inc.

an Offer of Settlement and Settlement Agreement (Settlement). The Settlement resolves all issues in dispute in this proceeding.

2. The Settlement addresses Rock Springs' formula transmission rate, filed as Attachment H-23 to the PJM Interconnection, L.L.C. (PJM) Open Access Transmission Tariff (OATT) and appended to the Settlement as Exhibit A.[2] Specifically, PJM Attachment H-23 contains a fixed annual transmission revenue requirement of $225,000, which Rock Springs and the Indicated PJM Transmission Owners commit to for a period of three years starting July 1, 2013.[3] Pursuant to the Settlement, any modifications proposed by one of the Settling Parties will be subject to the "public interest" application of the just and reasonable standard of review.[4]

3. On August 6, 2013, Commission Trial Staff filed initial comments in support of the Settlement. No other comments were filed. On August 20, 2013, the Settlement Judge certified the settlement to the Commission as uncontested.[5]

4. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

5. The Settlement provides that the standard of review for any modifications proposed by the Commission acting *sua sponte* or by a non-settling party shall be subject to the most stringent standard available under applicable law.[6] Because the Settlement provides that the standard of review for changes to the Settlement is "the most stringent standard available 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.

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[2] *See* Settlement at Article 3, § 3.2; Settlement at Exhibit A.

[3] Settlement at Article 3, § 3.4.

[4] Settlement at Article 3, § 3.6.

[5] *PJM Interconnection, L.L.C. and EP Rock Springs, LLC*, 144 FERC ¶ 63,016 (2013).

[6] Settlement at Article 3, § 3.7.

6. The *Mobile-Sierra*[7] "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*,[8] 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.

7. The Settlement was not filed in the eTariff format required by Order No. 714. Therefore, Rock Springs is required to make a compliance filing within thirty days in eTariff with tariff provisions that reflect the Commission's action in this order.[9] The formula transmission rate submitted as part of the Settlement is accepted, effective July 1, 2013, as set forth in the Settlement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[7] *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

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

[9] *See Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).