

147 FERC ¶ 61,163
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

May 29, 2014

In Reply Refer To:
DTE Electric Company
Docket No. ER14-275-000

Jennings, Strouss & Salmon, P.L.C.
Attention: Alan I. Robbins, Esq.
1350 - I Street, NW
Suite 810
Washington, DC 20005-3305

Dear Mr. Robbins:

1. On March 13, 2014, you filed, in the above-referenced proceeding, an Offer of Settlement and Settlement Agreement (Settlement) on behalf of Michigan South Central Power Agency (Michigan Agency) and DTE Electric Company (DTE) (together, Settling Parties). On April 2, 2014, Trial Staff filed comments in support of the Settlement. No other comments were filed. On April 15, 2014, the Settlement Judge certified the Settlement to the Commission as uncontested.¹
2. The Settlement addresses DTE's proposed increases to transmission service charges under a 1981 service agreement and Michigan Agency's objections to these increases.²
3. Pursuant to section 4.6 of the Settlement, the standard of review for any changes proposed by a non-party or the Commission acting *sua sponte* shall be the most stringent standard permissible under applicable law.
4. 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.

¹ *DTE Elec. Co.*, 147 FERC ¶ 63,003 (2014).

² *See DTE Elec. Co.*, 145 FERC ¶ 61,293 (2013).

5. The *Mobile-Sierra*³ “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*,⁴ however, the U.S. Court of Appeals for the District of Columbia 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.

6. The Settlement resolves all issues in dispute in this proceeding. 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.

7. The revised rate schedule submitted as Attachment A of the Settlement is accepted, effective January 1, 2014, as set forth in Article II of the revised rate schedule. A compliance filing in eTariff format must be made within 30 days of the date of this order to ensure that the electronic tariff provision reflect the Commission’s actions in this order.⁵

³ *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

⁴ *New Eng. Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

⁵ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008). The Settling Parties state, in the explanatory statement to the Settlement, that within 30 days of a Commission order approving the Settlement, DTE will make a compliance filing through eTariff to incorporate the Settlement terms into the existing rate schedule.

8. This letter order terminates Docket No. ER14-275-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.