

147 FERC ¶ 61,242  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

June 23, 2014

In Reply Refer To:  
Rockies Express Pipeline LLC  
Docket Nos. RP11-1844-000  
RP12-399-000  
RP12-1131-000  
RP13-610-000  
RP14-536-000

Amy W. Beizer  
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Washington, DC 20007-3877

Robert Harrington  
Vice President, Regulatory Affairs  
Rockies Express Pipeline LLC  
370 Van Gordon Street  
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Dear Ms. Beizer and Mr. Harrington:

1. On May 16, 2014, you filed on behalf of Rockies Express Pipeline LLC (Rockies Express) a Settlement Agreement with the Commission to resolve all issues in the above captioned dockets related to Rockies Express' fuel charges and fuel mechanism.<sup>1</sup> On

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<sup>1</sup> The proceedings in Docket Nos. RP11-1844-000 and RP12-399-000 were set for hearing and resulted in an initial decision currently pending before the Commission. The proceedings in Docket Nos. RP12-1131-000, RP13-610-000, and RP14-536-000 were made subject to the outcome of that hearing. Thus, the Settlement Agreement resolves all of the captioned dockets.

May 23, 2014, Indicated Shippers,<sup>2</sup> Ultra Resources, Inc. (Ultra), and Trial Staff filed initial comments supporting the Settlement Agreement. No reply comments were filed.

2. As specified by Article III of the Settlement Agreement, Rockies Express will make settlement payments to shippers related to issues in this proceeding involving its existing fuel mechanism. Pursuant to Article IV of the Settlement Agreement, Rockies Express is obligated to file by May 30, 2014, tariff records which are consistent with the *pro forma* tariff records attached to the Settlement Agreement and which will assess fuel costs using separate charges for (1) gas fuel and lost and unaccounted-for quantities, which will be collected in-kind and (2) electric compression power costs, which will be collected in cash.<sup>3</sup> Section 7.3 of the Settlement Agreement provides that “[t]o the extent the Commission considers any changes to the provisions of this Settlement during the term of this Settlement, the standard of review for such changes will be the most stringent standard permissible under applicable law.”

3. Because the Settlement Agreement provides that the standard of review for changes to the Settlement during its term 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.

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 Ass’n v. FERC*,<sup>4</sup> 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.

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<sup>2</sup> The Indicated Shippers include BP America Production Company, BP Energy Company, and WPX Energy Marketing, LLC.

<sup>3</sup> Rockies Express filed such tariff records on May 28, 2014, in Docket No. RP14-1003-000.

<sup>4</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

5. The Commission finds that the Settlement Agreement appears to be fair, reasonable, and in the public interest, and it is hereby approved. Commission approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Refunds and adjustments shall be made pursuant to the Settlement Agreement. This letter order terminates Docket Nos. RP11-1844-000, RP12-399-000, RP12-1131-000, RP13-610-000, and RP14-536-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

cc: All Parties