

148 FERC ¶ 61,115
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

August 11, 2014

In Reply Refer To:
WBI Energy Transmission, Inc.
Docket Nos. RP14-118-000,
RP14-118-004

Paul Korman
Van Ness Feldman, L.L.P.
1050 Thomas Jefferson Street, N.W.
7th Floor
Washington, DC 20007-3877

Keith A. Tiggelaar
Director of Regulatory Affairs
WBI Energy Transmission, Inc.
P.O. Box 5601
Bismarck, ND 58506-5601

Dear Mr. Korman and Mr. Tiggelaar:

1. On June 4, 2014, you filed on behalf of WBI Energy Transmission, Inc. (WBI) and other active participants, a Settlement Agreement to resolve all issues in WBI's above-captioned general rate case filed under section 4 of the Natural Gas Act. WBI also included with the Settlement a tariff record to be effective May 1, 2014.¹ On June 10, 2014, Northern States Power Company (NSP), Whiting Oil and Gas Corporation, and Trial Staff filed comments supporting the Settlement. No reply comments were filed. On June 11, 2014, the Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested.

2. The Settlement Agreement resolves all issues in the above-captioned proceeding, and contains, among others, the following provisions. Article III explains that the Settlement Rates were designed using a "black box" cost of service of \$95,000,000 and that other than depreciation rates, the Settlement does not identify any basis for any component of cost of service. Article V addresses issues related to rolled-in rate

¹ WBI Energy Transmission, Inc., FERC NGA Gas Tariff, Third Revised Volume No. 1, [Sheet No. 450D, 1.1.0](#).

treatment of the Grasslands Pipeline Project, Sheyenne Expansion Project, and the Mapleton Extension Project. Furthermore, the Part 284 non-conforming rate that NSP has been paying to use the Mapleton Extension Project will cease. WBI Energy and NSP will enter into an amendment of their existing non-conforming rate agreement memorializing this change and NSP will withdraw its appeal before the United States Court of Appeals for the District of Columbia within five (5) days of a final non-appealable order approving the Settlement. Article VI explains that WBI Energy will be unbundling its fuel charge into separately stated and documented Fuel Use, and Lost and Unaccounted for Gas percentages, commencing with WBI Energy's next annual Fuel and Electric Power Reimbursement filing effective April 1, 2015. Article VII establishes an annual reporting requirement concerning interruptible storage injections and withdrawals. Article X provides that there shall be no refunds because the final Settlement Rates are the same as Interim Settlement Rates that took effect on May 1, 2014. Article XII, section 12.3 of the Settlement 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 shall be the most stringent standard permissible under applicable law.”

3. Because the Settlement 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*,² 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.

² *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 does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. The Commission also approves the filed tariff record to be effective May 1, 2014, as requested.

6. This letter order terminates Docket Nos. RP14-118-000 and RP14-118-004.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.