

149 FERC ¶ 61,003  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

October 1, 2014

In Reply Refer To:  
Viking Gas Transmission Company  
Docket No. RP14-1185-000

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

Attention: Jeffrey G. DiSciullo

Dear Mr. DiSciullo:

1. On August 15, 2014, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure,<sup>1</sup> Viking Gas Transmission Company (Viking) filed in Docket No. RP14-1185-000 a Petition for Approval of Settlement (Settlement) in lieu of submitting a general rate change filing. The Settlement is uncontested. As discussed below, the Commission approves the Settlement, with the rates thereunder to become effective January 1, 2015. The principal terms of the Settlement are summarized below.

2. Article I of the Settlement, captioned "Base Rates, ROFR Tariff Revisions, and Capital Projects" sets forth the terms of the agreed-upon settlement rates, summarizes modifications to Viking's right of first refusal notice and service extension provisions, and describes the capital projects that Viking is committing to complete in accordance with the Settlement.

3. Article II of the Settlement describes the Term of the Settlement and provides that the Settlement rates shall remain effective until the earlier of: (a) the date new rates become effective pursuant to a new general, system-wide rate change submitted by Viking pursuant to section 4 of the Natural Gas Act (NGA); (b) the date new rates

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<sup>1</sup> 18 C.F.R. § 385.207(a)(5) (2014).

become effective pursuant to a Pre-Filing Settlement, as defined in Article III(1)(b);<sup>2</sup> or (c) the date new rates become effective pursuant to action taken by the Commission under section 5 of the NGA.

4. Article III of the Settlement provides that the Settlement does not limit Viking's section 4 rights or any participant's section 5 rights. Article III also sets forth the limitations on Viking's right to seek recovery of costs related to Pipeline and Hazardous Materials Safety Administration compliance outside a general section 4 rate filing. Article III further requires Viking to submit a general section 4 rate filing, with rates to be effective no later than January 1, 2020, unless: (i) Viking has filed for Commission approval of a Pre-Filing Settlement (as defined in the Settlement); or (ii) an NGA section 5 rate investigation has been initiated into Viking's base tariff rates and results in the establishment of new base tariff rates that become effective on or after January 1, 2018. Finally, Article III describes the Precautionary Rate Filing<sup>3</sup> submitted by Viking on August 29, 2014, which Viking states will be withdrawn upon Commission approval of the Settlement.

5. Article IV of the Settlement describes the Settlement's scope and identifies the Appendices attached to the Settlement.

6. Article V of the Settlement sets forth the conditions precedent to the effectiveness of the Settlement, including required Commission approvals and forthcoming tariff submissions and provides for refunds and surcharges to the extent necessary to implement the Settlement Rates, to become effective January 1, 2015. Article V specifies that Viking shall file formal tariff records that are substantively identical to the *pro forma* tariff records appended to the Settlement within 15 days of the Settlement's becoming effective.

7. Article VI describes the Settlement as uncontested and its provisions as non-severable. Article VI also provides for withdrawal from or termination of the Settlement under certain conditions, and the procedures governing the treatment of a Severed Participant.

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<sup>2</sup> A "Pre-Filing Settlement" is defined as a negotiated agreement, comparable to the subject Settlement in lieu of rate case filing, reflecting rates to be effective January 1, 2020.

<sup>3</sup> The Precautionary Rate Filing is a general NGA section 4 rate filing made in Docket No. RP14-1214-000, to become effective March 1, 2015, only in the event the subject Settlement is not approved.

8. Article VII states that Commission approval of the Settlement shall constitute all needed authorization or waivers to effectuate the Settlement, including approval of the Settlement Rates and *pro forma* tariff changes included with the Settlement.

9. Article VIII sets forth a series of reservations intended to clarify the parties' rights under the Settlement and specifies the standard of review applicable to proposed modifications by the Commission to the settled terms. Specifically, Article VIII provides that "[t]o the extent the Commission considers any changes to the provisions of this Settlement during its term, as defined in Article II, the standard of review for such changes shall be the most stringent permissible under applicable law."<sup>4</sup> Because the Settlement provides that the standard of review for changes to the Settlement by the Commission is "the most stringent 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.

10. The *Mobile-Sierra*<sup>5</sup> "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*,<sup>6</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>4</sup> Article VIII further provides, however, that the standard applicable to any proceeding initiated by any Participant in accordance with Article III is the just and reasonable standard, provided that such proceeding would not involve a change to the provisions of the Settlement during its term.

<sup>5</sup> *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

<sup>6</sup> *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

11. Public notice of the Settlement was issued on August 18, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.<sup>7</sup> Pursuant to 18 C.F.R. § 385.214 (2014), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

12. The Commission finds that the Settlement appears to be fair and reasonable and in the public interest, and accordingly the Commission approves the Settlement, with the rates thereunder to become effective January 1, 2015, pursuant to its terms. The Settlement, which was filed in lieu of a rate case, resolves system-wide rate issues consistent with the Commission's guidance for settlements outside the context of an existing proceeding.<sup>8</sup> The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

13. Within 15 business days of the effective date of the Settlement, the Commission directs Viking to file tariff records in eTariff format as required by Order No. 714<sup>9</sup> in order to implement the *pro forma* tariff records proffered with the Settlement. This letter order terminates Docket No. RP14-1185-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>7</sup> 18 C.F.R. § 154.210 (2014).

<sup>8</sup> See, e.g., *Dominion Transmission Inc.*, 111 FERC ¶ 61,285 (2005).

<sup>9</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).