

149 FERC ¶ 61,117
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

November 12, 2014

In Reply Refer To:
National Grid LNG, LLC
Docket No. RP14-1272-000

National Grid LNG, LLC
c/o Cullen and Dykman LLP
1101 Fourteenth Street, NW
Suite 550
Washington, DC 20005

Attention: Kenneth T. Maloney, Counsel for National Grid LNG, LLC

Dear Mr. Maloney:

1. On September 24, 2014, pursuant to Rule 207(a)(5),¹ National Grid LNG, LLC (National Grid LNG) submitted a petition for approval of a Stipulation and Agreement (Settlement), as corrected on October 21, 2014, regarding the provision of capacity reservation charge credits. The Commission approves the Settlement as it appears to be fair and reasonable and in the public interest, subject to National Grid LNG filing tariff records as included in Appendix B of the Settlement.
2. National Grid LNG owns a facility for the storage of liquefied natural gas (LNG) in Providence, Rhode Island. The facility is used to provide peaking supplies of natural gas on a limited number of days each year. National Grid LNG provides firm and interruptible services under Rate Schedules FST-LG and IST-LG.

¹ 18 C.F.R. § 385.207(a)(5) (2014).

3. National Grid LNG and the Supporting Parties, its primary firm customers,² have reached a Settlement, which represents a negotiated resolution of the issues presented by National Grid LNG's proposed tariff modifications concerning reservation charge credits.³ The principle terms of the Settlement are summarized below.

4. Article I establishes a new capacity reservation charge crediting mechanism to be set forth in section 36.1 to the General Terms and Conditions (GT&C) of National Grid LNG's FERC Gas Tariff, as reflected in the *pro forma* tariff provisions in Appendix B to the Settlement. Under this mechanism, in the event that National Grid LNG is unable to deliver or receive natural gas under Rate Schedule FST-LG due to a *non-force majeure* event, its customers will be provided full reservation charge credits for each day of curtailment. For *force majeure* events, National Grid LNG would not provide reservation charge credits for the second through tenth days of the curtailment of scheduled service, but would provide credits for the first day and all days after the tenth day. If National Grid LNG gives notice and the full particulars of the *force majeure* event to its customers within 72 hours of its occurrence, its obligations are suspended for the period of the *force majeure* condition and the cause of the event will as far as possible be remedied with all reasonable dispatch. Reservation charge credits will be calculated based on the formulae set forth in section 36.1(c)(i) and will reflect discounted or negotiated reservation charges as set forth in section 36.1(c)(ii).

5. GT&C section 36.1(d) sets forth certain limited exceptions to National Grid LNG's obligation to provide reservation charge credits. Specifically, National Grid LNG will not be obligated to provide reservation charge credits on any day for quantities not delivered to a customer due solely to the conduct of the customer or others not reasonably within the control of National Grid LNG, or the conduct of any trucking company or downstream point operator of facilities not controlled by National Grid LNG. Further, National Grid LNG will not be obligated to provide capacity reservation charge credits on any day on which it and its Rate Schedule FST-LG customers have mutually agreed in accordance with the terms of section 36.1(d)(ii) that National Grid LNG may curtail service to perform construction or maintenance.

² Boston Gas Company d/b/a National Grid, Consolidated Edison Company of New York, Inc., and The Narragansett Electric Company d/b/a National Grid have firm, long-term contracts for 100 percent of the storage capacity available under Rate Schedule FST-LG.

³ See *Natural Gas Supply Ass'n, et al.*, 135 FERC ¶ 61,055, *order on reh'g*, 137 FERC ¶ 61,051 (2011).

6. GT&C section 36.1(d)(iii) provides that, on a not unduly discriminatory basis, National Grid LNG may agree with a customer to a different reservation charge crediting methodology which shall be reflected in the service agreement, in which event it will file such a provision as a material deviation that requires Commission approval.

7. Article II of the Settlement establishes that the “Effective Date” of the Settlement shall be the first day of the first month after the Commission approves all of the terms and provisions of the Settlement without modification or condition in a “Final Order” that is no longer subject to rehearing. Article II further establishes that the “Implementation Date” will be the first day of the third month following the Effective Date. Article III specifies that the Settlement is an integrated package and that the various provisions of the Settlement are not severable.

8. Article IV, as corrected, specifies that after the Settlement becomes effective, the standard of review to be applied by the Commission in considering any change to any effective provision of the Settlement requested by any Supporting Party will be the “public interest” standard as set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); the standard of review for any change proposed by an entity that is not a Supporting Party or by the Commission is “the most stringent standard permissible under applicable law.” Article IV also specifies that the Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue.

9. National Grid LNG requests that the Commission approve the Settlement, unmodified, in order to allow it to become effective the first day of the third month following the Effective Date of the Settlement.

10. Public notice of National Grid LNG’s filing and correction was issued on September 25, 2014 and October 22, 2014, respectively. Interventions and protests were due as provided by section 154.210 (18 C.F.R. § 154.210 (2014)) of the Commission’s regulations. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2014), all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the 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 party filed adverse comments.

11. In this case, National Grid LNG and all of its primary firm customers have engaged in negotiations prior to the formal tariff filing to address the concerns of all participants. The Settlement, which resolves by mutual agreement reservation charge crediting requirements without the need to resort to litigation before the Commission, represents the culmination of those efforts.

12. Because the Settlement provides that the standard of review for changes to the Settlement by the Commission or a non-party 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.

13. 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, Inc. v. FERC*,⁴ 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.

14. The Commission finds that the proposed Settlement appears to be fair and reasonable and in the public interest, and is hereby approved, to be effective on the first day of the third month following the Effective Date of the Settlement subject to National Grid LNG filing tariff records as included in Appendix B of the Settlement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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