

149 FERC ¶ 61,226  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

December 15, 2014

In Reply Refer To:  
Central Minnesota Municipal  
Power Agency  
Docket No. ER14-246-000

Spiegel & McDiarmid LLP  
1333 New Hampshire Avenue, NW  
Washington, DC 20036

Attention: David E. Pomper, Esq.

Dear Mr. Pomper:

1. On June 10, 2014, you filed, on behalf of the Central Minnesota Municipal Power Agency (CMMPA) and the MISO Transmission Owners<sup>1</sup> (together, the Settling Parties),

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<sup>1</sup> The MISO Transmission Owners consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois, and Ameren Transmission Company of Illinois; Big Rivers Electric Corporation; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Gulf States Louisiana, L.L.C.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

a Settlement Agreement (Settlement). On June 26, 2014, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On July 15, 2014, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.<sup>2</sup>

2. The Settlement addresses the costs associated with CMMPA's transmission function and investments, including investment in the Brookings County, South Dakota to Hampton, Minnesota transmission line.<sup>3</sup>

3. The Settlement provides that:

[a]ny modifications proposed by the Commission acting *sua sponte* or by a non-settling party shall be subject to the most stringent standard available under applicable law. That is, subsequent challenges to the Settlement by a third party or non-settling party, or by the Commission acting *sua sponte*, are subject to the *Mobile-Sierra* public interest standard of review presumption if the Commission determines that the Settlement falls into the category of "individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated freely at arm's length."<sup>4</sup> If the Commission determines that the Settlement falls into the category of "rates, terms or conditions that are generally applicable,"<sup>5</sup> challenges raised by a third party or non-settling party or the Commission acting *sua sponte* are subject to the ordinary just and reasonable standard of review unless the Commission exercises its legal authority to "impose a more rigorous application of the statutory 'just and reasonable' standard of review"<sup>6</sup> – the *Mobile-Sierra* public interest standard of review.

4. Because the Settlement provides that the standard of review for changes proposed by the Commission acting *sua sponte* or a non-settling party to the Settlement is "the most stringent standard permissible under applicable law" and because the Settlement does not fully characterize the framework that the Commission would apply if the

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<sup>2</sup> *Cent. Minn. Mun. Power Agency*, 148 FERC ¶ 63,004 (2014).

<sup>3</sup> *See Cent. Minn. Mun. Power Agency*, 145 FERC ¶ 61,300, at P 1 (2013).

<sup>4</sup> Settlement at 7 (quoting *Desoto City Generating Co.*, 145 FERC ¶ 61,199, at P 4 (2013)).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Commission were required to determine the standard of review in a later challenge to the Settlement,<sup>7</sup> we clarify that here.

5. 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 Association v. FERC*,<sup>8</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.

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 the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

7. The Settlement was not filed in eTariff. Within 30 days of the date of this order, the Settling Parties are directed to make a compliance filing in eTariff to comply with Order No. 714.<sup>9</sup>

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<sup>7</sup> We note that the Settling Parties indicate that their description of the framework that the Commission will apply is taken from *Desoto City Generating Co.*, 145 FERC ¶ 61,199 at P 4. See Settlement at 7 nn.14-16. We find that the Settling Parties have misstated the Commission’s holding in that proceeding. See *Desoto City Generating Co.*, 145 FERC ¶ 61,199 at P 4.

<sup>8</sup> *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

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

8. This letter order terminates Docket No. ER14-246-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.