

150 FERC ¶ 61,078
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

February 6, 2015

In Reply Refer To:
Paiute Pipeline Company
Docket No. RP14-540-000

Douglas M. Canter
Post & Schell, PC
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Washington, DC 20005-2006

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Dear Mr. Canter:

1. On November 14, 2014, you filed on behalf of Paiute Pipeline Company (Paiute) a Settlement to resolve all issues in Paiute's above-captioned general rate case filed under section 4 of the Natural Gas Act. Comments in support of the Settlement were filed by Northern Nevada Industrial Gas Users, Sierra Pacific Power Company d/b/a NV Energy, the Commission Trial Staff, and by the Office of the Nevada Attorney General, Bureau of Consumer Protection. No reply comments were filed. On December 11, 2014, the Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested.

2. The Settlement resolves all issues in the above-captioned proceeding, and contains, among others, the following provisions. Article II explains that the settlement rates were designed using a cost of service of \$35,300,000 for Category 1 and \$34,600,000 for Category 2 rates. The Settlement states the cost of service levels reflect an overall 11.5 percent pre-tax return, but are otherwise presented on a "black box" basis. Article II further explains that the two cost of service levels and two resulting firm service rate levels exist to reflect the contract terms of the shippers' transportation and storage service agreements. Article III provides for the billing determinants and rates.

Article IV sets forth the terms and conditions for determining Category 1 and Category 2 rate eligibility. Article V outlines the permanent release and acquisition of pipeline capacity, subject to Commission approval of the 2015 Elko Area Expansion Project in Docket No. CP14-509-000, and the fulfillment of specified conditions, to support continued applicability of the Summer Period IT base tariff rate. Article VI sets out Paiute's rights and obligations relating to tariff changes, refunds, and surcharges. Article X sets forth the conditions under which the Settlement will become effective. Article XI, section 11.9 provides that "[t]he standard of review applicable to the Commission's acting on its own motion or on a non-settling third party's request for review of any provision of the Stipulation and Agreement 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 by the Commission 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*¹ "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*,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.

5. The Commission finds that the Settlement appears to be fair, reasonable, and in the public interest, and it is hereby approved. Refunds and adjustments shall be made pursuant to the Settlement. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

¹ *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*).

² *New England Power Generators Ass'n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

6. Insofar as Paiute has not filed the Settlement and tariff records implementing it in eTariff format as required by Order No. 714, Paiute is required to do so within 30 days to reflect the Commission's action in this order.³ This letter order terminates Docket No. RP14-540-000.

By direction of the Commission

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. and Regs. ¶ 31,276 (2008).