

150 FERC ¶ 61,235  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

(March 30, 2015)

In Reply Refer To:  
Midcontinent Independent System  
Operator, Inc.  
Docket No. ER14-279-000

Davis Wright Tremaine LLP  
Attn: James K. Mitchell, Esq.  
1919 Pennsylvania Avenue NW  
Suite 800  
Washington, DC 20006

Dear Mr. Mitchell:

1. On May 8, 2014, you filed, in the above-referenced proceeding, a Settlement Agreement between Interstate Power and Light Company (Interstate Power) and the City of Guttenberg, Iowa (Guttenberg) (collectively, Settling Parties). On May 28, 2014, Commission Trial Staff filed comments supporting the Settlement Agreement. No other comments were filed. On October 1, 2014, the Settlement Judge certified the Settlement Agreement to the Commission as an uncontested settlement.<sup>1</sup>

2. The Settlement Agreement concerns the Interconnection Facilities Agreement at Guttenberg Substation for Guttenberg and Interstate Power (Interconnection Facilities Agreement) and the Service Agreement for direct assignment facilities charges between Interstate Power and Guttenberg. The Settlement Agreement addresses all of the issues between the Settling Parties in determining the direct assignment facilities charge payable by Guttenberg for the use of Interstate Power's designated distribution facilities, reducing the transformer loss factor specified in the Interconnection Facilities Agreement, and revising the metering data management agent services provisions under the Interconnection Facilities Agreement.

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<sup>1</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 63,002 (2014).

3. Pursuant to the Settlement Agreement,

[t]his Settlement Agreement is subject to the "public interest" standard of review set forth in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Company*, 350 U.S. 348 (1956). The standard of review for any modifications to this Settlement Agreement requested by a non-Party or initiated by the FERC will be the most stringent standard permissible under applicable law. See, *NRG Power Mktg., LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010).<sup>2</sup>

4. Because the Settlement Agreement appears to provide that the standard of review applicable to modifications to the Settlement Agreement proposed by the parties is to be the "public interest" standard of review but appears to provide that the standard of review applicable to modifications to the Settlement Agreement proposed by third parties and the Commission acting *sua sponte* is to be "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 Agreement by a third party or by the Commission acting *sua sponte*.

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.<sup>3</sup> In *New England Power Generators Association v. FERC*,<sup>4</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>2</sup> Settlement Agreement at P10.

<sup>3</sup> *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041, at P 84 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299, at P 92 (2013).

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

6. The Settlement Agreement resolves all issues in dispute in these proceedings. The Settlement Agreement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission's approval of the Settlement Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

7. The Settlement Agreement was not filed in eTariff format as required by Order No. 714.<sup>5</sup> Therefore, Interstate Power is directed to file in eTariff format, within 30 days of the date of issuance of this order, tariff revisions to the Interconnection Facilities Agreement and the Service Agreement for direct assignment facilities charges to reflect the Commission's action in this order.

8. Refunds and adjustments shall be made pursuant to the Settlement Agreement.<sup>6</sup>

9. This order terminates Docket No. ER14-279-000.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>5</sup> *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

<sup>6</sup> Any refund report submitted in eTariff should use the following coding: Type of Filing Code 1130 – Refund Report.