

152 FERC ¶ 61,096
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 31, 2015

In Reply Refer To:
Granite State Gas Transmission, Inc.
Docket No. RP10-896-003

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Dear Mr. Rich:

1. On June 11, 2015, pursuant to Rule 207(a)(5)¹ of the Commission's Rules of Practice and Procedure, Granite State Gas Transmission, Inc. (Granite) filed a Petition for Approval of a Second Amended Settlement (Settlement) in lieu of submitting a general section 4 rate filing under the Natural Gas Act (NGA). Granite represents that the State Agencies² support the Settlement.
2. Granite's interstate natural gas transportation rates were established pursuant to a Stipulation and Agreement (2010 Settlement) that resolved its last section 4 NGA rate case filing submitted in Docket Nos. RP10-896-000 and -001; the 2010 Settlement was approved by the Commission on January 31, 2011.³ On August 31, 2011, in Docket No. RP10-896-

¹ 18 C.F.R. § 385.207(a)(5) (2014).

² State Agencies include the New Hampshire Public Utilities Commission, the Maine Public Utilities Commission, Maine Public Advocate, and New Hampshire Consumer Advocate.

³ *Granite State Gas Transmission, Inc.*, 134 FERC ¶ 61,074 (2011) (2010 Settlement Order).

002, the Commission approved an amendment to the 2010 Settlement (Amended Settlement) that permitted Granite to recover the costs for its Big Three capital projects⁴ in annual limited section 4 rate filings.⁵

3. As a result of their negotiations, Granite and the State Agencies state that this Settlement, if approved, would eliminate the need for Granite to file a general section 4 rate case to be effective on January 1, 2016 (which was required by the Amended Settlement). Granite represents that the Settlement: (1) provides for a reduction in rates that would otherwise be filed in a general section 4 rate case, (2) provides rate stability for the State Agencies as well as Granite's shippers, and (3) lessens the burden on the State Agencies' limited administrative resources. Finally, Granite states the Settlement also updates the parameters of the Big Three capital projects to reflect changes in the scope of those projects since the Amended Settlement was approved.

4. Article I provides that the Settlement satisfies Granite's obligation to file a general section 4 rate case as required by the Amended Settlement in Docket No. RP10-896-002.⁶ Article I also states that the Settlement will provide rate certainty and permit Granite to recover the capital costs of the Big Three projects (as updated) and avoid the financial costs of the parties engaging in a general section 4 rate case.

5. Article II provides a background of the Settlement. Article II also provides that Granite has submitted three annual limited section 4 rate filings under the Amended Settlement.⁷ On June 29, 2012 in Docket No. RP12-838-000, Granite filed to adjust its transportation rates by \$0.0063 per Dth on a 100-percent load-factor basis effective August 1, 2012. The Commission accepted the filing on July 27, 2012.⁸ On June 28, 2013 in Docket No. RP13-933-000, Granite filed to adjust its transportation rates by \$0.0074 per Dth on a 100-percent load-factor basis effective August 1, 2013. The

⁴ Granite's Big Three capital projects are the Integrity Management Program, Disbonded Pipe Replacement, and Little Bay Bridge Crossing/Spaulding Turnpike Realignment.

⁵ *Granite State Gas Transmission, Inc.*, 136 FERC ¶ 61,153 (2011) (Amended Settlement Order).

⁶ *Id.*

⁷ *Id.*

⁸ *Granite State Gas Transmission*, Docket No. RP12-838-000 (July 27, 2012) (delegated letter order).

Commission accepted Granite's filing on July 30, 2013.⁹ On June 27, 2014 in Docket No. RP14-1062-000, Granite filed to adjust its transportation rate by \$0.0114 per Dth on a 100-percent load-factor basis effective August 1, 2014. The Commission accepted Granite's filing on July 18, 2014.¹⁰ In 2014, Granite reached the overall cost recovery cap for the Big Three capital projects.

6. Article III outlines the updates to Granite's Big Three capital projects and the capital cost estimates associated with each project.

7. Article IV provides that Granite will adjust its transportation rates by \$0.0080 per Dth on a 100-percent load-factor basis effective August 1, 2015. The Settlement rates reflect an adjustment of \$391,106 for capital cost additions totaling \$3,081,357 for the updated Big Three projects as of March 31, 2015. The maximum recourse reservation rates for all firm transportation rate schedules (FT-1 and FT-NN) will be \$4.1069 per Dth per month and the IT-1 rate will be \$0.1350 per Dth. Furthermore, the Settlement proposes there will be no change in the depreciation rate of 1.99 percent, the pre-tax return of 11.00 percent, or in the 0.35 percent fuel retention rate, which were established in the Amended Settlement. Article IV also includes work papers and *pro forma* tariff records in Appendix B, C, and D. Finally, Article IV provides that the Settlement rates shall continue until the effective date of any revised rates placed into effect under sections 4 or 5 of the NGA and limited section 4 rate filings made in compliance with the filing requirement set forth in Articles V and VI of the Settlement.

8. Article V provides for Granite's submission of limited section 4 rate adjustments filings to recover the Big Three project capital costs for the 12-month period ending on March 31 of each year and it also provides guidelines for the basis of these rate adjustments. These limited section 4 rate filings shall be made annually on or about June 29 of each year to be effective August 1 of each year. However, for the period from August 1, 2015 to July 1, 2016, the revised rates set forth in Appendix B shall be implemented as part of this Settlement based on Granite's costs for the base year ending March 31, 2015 adjusted as set forth in Article IV of the Settlement.

9. In addition, Article V provides that, beginning 2016, Granite shall submit a draft of the annual limited section 4 rate adjustment filing to the State Agencies no later than 30 days before the filing date and will meet with the agencies to discuss and reach

⁹ *Granite State Gas Transmission*, Docket No. RP13-933-000 (July 30, 2013) (delegated letter order).

¹⁰ *Granite State Gas Transmission*, Docket No. RP14-1062-000 (July 18, 2014) (delegated letter order).

agreement on the costs and rates to be included in the upcoming filing. If no agreement is reached, Granite shall note in its filing that the rate increase is contested and the Settling Parties may file protests.

10. Finally, Article V states that the limited section 4 rate adjustment filings shall conclude the earlier of the date the projects are completed and the capital costs associated with the Big Three capital projects are included in Granite's rates or the filing date of a general section 4 rate filing by Granite or the effective date of a proceeding established under section 5 of the NGA.

11. Article VI provides that Granite shall file a general rate case pursuant to section 4 of the NGA with rates to be effective no later than November 1, 2018.

12. Article VII describes the stipulated conditions under which the Settlement was negotiated and under which it is to become effective.

13. Article VIII includes various reservations clauses, one of which provides that, to the extent the Commission considers any changes to the terms of this Settlement during the term of the Settlement, the standard of review for such changes shall be the most stringent standard permissible under applicable law.

14. Public notice of the filing was issued on June 16, 2015. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2014)). Pursuant to Rule 214 (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. On July 20, 2015, the Maine Public Utilities Commission (MPUC) filed in support of the Settlement. MPUC urges the Commission to approve the proposed Settlement in its entirety without modification as fair and reasonable and in the public interest.

15. Because the Settlement provides that the standard of review for changes to the Settlement considered by the Commission is "the most stringent standard permissible under applicable law,"¹¹ 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.

¹¹ Settlement, Art. 8.3.

16. 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*,¹² 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.

17. The Settlement appears to be fair and reasonable and in the public interest, and accordingly the Commission approves the Settlement. 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.¹³ The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

¹² *New England Power Generators Ass’n. v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

¹³ See, e.g., *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) (*Dominion*); See also, *Chandeleur Pipe Line Co.*, 127 FERC ¶ 61,026, at P 6 (2009) (Consistent with the Commission’s guidance for settlement outside the context of an existing proceeding as set forth in *Dominion*, the agreement resolves rate issues without a hearing and lengthy litigation. The Commission explained in *Dominion* that when a pipeline negotiates an agreement with its customers and others to change its rates or terms and conditions of service, and it desires approval of the agreement before making an actual NGA section 4 tariff filing, it may file, pursuant to Rule 207(a)(5), a petition for approval of the agreement, along with *pro forma* tariff sheets reflecting how the agreement will be implemented.).

18. The Commission directs Granite to file tariff records in eTariff format¹⁴ that implement the Settlement. This letter order terminates Docket No. RP10-896-003.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

¹⁴ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).