

152 FERC ¶ 61,105
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

AUGUST 3, 2015

In Reply Refer To:
Midcontinent Independent System
Operator, Inc. and Ameren
Illinois Company
Docket No. ER11-2777-003

Midwest Independent
Transmission System Operator,
Inc. and Ameren Illinois
Company
Docket Nos. ER11-2777-004
ER11-2778-003
ER11-2779-004
ER11-2782-004
ER11-2786-004
ER11-2788-004
ER11-2789-003
ER11-2790-007

Wright & Talisman, P.C.
1200 G Street, NW
Suite 600
Washington, DC 20005

Attention: Wendy B. Warren, Esq.

Dear Ms. Warren:

1. On June 8, 2015, you filed, in the above-referenced proceedings, a Settlement Agreement between Ameren Services Company, on behalf of Ameren Illinois Company d/b/a Ameren Illinois (collectively, Ameren), and the Illinois Municipal Electric Agency, Norris Electric Cooperative, Prairie Power, Inc., Southern Illinois Power Cooperative, and Wabash Valley Power Association, Inc. (collectively, the Customer Group) (Ameren and the Customer Group are collectively the Settling Parties).

2. Notice of Ameren's filing was published in the *Federal Register*, 80 Fed. Reg. 35,949 (2015), with interventions and comments due on or before June 29, 2015. None was filed.

3. The Settlement Agreement concerns the rates, terms, and conditions for providing service under five wholesale distribution agreements (WDS Agreements) between Ameren and each member of the Customer Group.

4. Section 7.9 of the Settlement Agreement states that:

the standard of review for changes unilaterally proposed by a Settling Party shall be the public interest standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956); *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 527 (2008); and *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010). The standard of review for any modifications to this Settlement Agreement requested by any third party or the Commission acting *sua sponte*, shall be the most stringent standard permissible under applicable law.

5. Because the Settlement Agreement 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*.

6. 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.¹ In *New England Power Generators Association v. FERC*,² however, the

¹ *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041, at P 84 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,299, at P 92 (2013).

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

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.

7. 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 these proceedings.

8. Midcontinent Independent System Operator, Inc. is directed to file revised WDS Agreements in eTariff format,³ within 30 days of the date of issuance of this order, to reflect the Commission’s action in this order.

9. This order terminates Docket Nos. ER11-2777-003, ER11-2777-004, ER11-2778-003, ER11-2779-004, ER11-2782-004, ER11-2786-004, ER11-2788-004, ER11-2789-003, and ER11-2790-007.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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