

153 FERC ¶ 61,324
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 18, 2015

In Reply Refer To:
ITC Great Plains, LLC
Docket Nos. ER09-548-002
EC11-108-001

Stuntz, Davis & Staffier
555 Twelfth Street NW
Suite 630
Washington, DC 20004

Attention: John R. Staffier

Dear Mr. Staffier:

1. On August 18, 2015, you filed, in order to resolve the above-referenced proceedings, a settlement agreement (Settlement) between ITC Great Plains, LLC (ITC Great Plains) and the Kansas Corporation Commission (Kansas Commission). On September 8, 2015, Commission Trial Staff filed comments in support of the Settlement. No other comments were filed. On September 25, 2015, the Settlement Judge certified the Settlement to the Commission as uncontested.¹

2. The Settlement addresses ITC Great Plains' May 20, 2013 filing (May 20 Filing) of a proposed formula rate and formula rate protocols to enable ITC Great Plains to recover, as regulatory assets, its costs for acquiring and developing transmission facilities in the Southwest Power Pool region. In a March 16, 2009 order, the Commission authorized such recovery but required ITC Great Plains to make a filing, under section 205 of the Federal Power Act, to demonstrate that the costs proposed for recovery were just and reasonable.² The Kansas Commission protested the May 20 Filing as

¹ *ITC Great Plains, LLC*, 152 FERC ¶ 63,028 (2015).

² *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at PP 69-70 (2009), *order on reh'g*, 150 FERC ¶ 61,226 (2015).

insufficiently supported. The Commission accepted the May 20 Filing, suspended it for a nominal period, made it effective July 19, 2013, subject to refund, and set it for hearing and settlement judge procedures.³ The Settlement resolves all issues in dispute in these proceedings.

3. The Settlement provides that

The standard of review for any change to this Settlement Agreement proposed by a Settling Party shall be the ‘public interest’ application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) and *Fed. Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Washington*, 128 S. Ct. 2733, 171 L. Ed. 2d 607 (2008) and refined in *NRG Power Mktg. v. Maine Pub. Utils. Comm’n*, 130 S. Ct. 693, 700 (2010). The standard of review for any modifications to the Settlement requested by a non-Settling Party or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. See *NRG Power Mktg. v. Maine Pub. Utils. Comm’n*, 130 S. Ct. 693,700 (2010).⁴

4. Because the Settlement provides, with respect to a modification initiated by a non-Settling Party or the Commission, that the standard of review for changes to the Settlement 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.

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

³ *ITC Great Plains, LLC*, 150 FERC ¶ 61,226 at P 26.

⁴ Settlement, Article VII.(3).

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 Inc. v. FERC*,⁵ 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 appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings. Refunds and adjustments shall be made pursuant to the Settlement.

7. Insofar as the Settlement was not filed in eTariff format as required by Order No. 714,⁶ within 30 days of the date of this order, ITC Great Plains is required to submit a compliance filing through eTariff to ensure that the electronic tariff data base reflects the Commission’s action in this proceeding.⁷

8. This letter order terminates Docket Nos. ER09-548-002 and EC11-108-001.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ 707 F.3d 364, 370-71 (D.C. Cir. 2013).

⁶ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).

⁷ Article II.E. of the Settlement also requires ITC Great Plains to submit, within 30 days of this order approving the Settlement, a compliance filing implementing the agreed-upon clarification to Line 53 of ITC Great Plains’ formula rate template to ensure that the amortization amounts for the approved regulatory assets are properly included in its total operating and maintenance expense.