

145 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Viking Gas Transmission Company

Docket No. RP13-185-000

ORDER ON UNCONTESTED SETTLEMENT

December 19, 2013

1. On November 15, 2012, the Commission initiated a proceeding pursuant to section 5 of the Natural Gas Act (NGA) into the justness and reasonableness of the existing rates of Viking Gas Transmission Company (Viking) and established hearing procedures.¹ In the November 2012 Order, the Commission required Viking to file a cost and revenue study within seventy-five days.
2. On August 29, 2013, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,² Viking filed an Offer of Settlement (Settlement) purporting to resolve all issues in the captioned proceeding. Viking states that the Settlement is supported or not opposed by all the participants in the captioned proceeding.³
3. The terms of the Settlement are described briefly immediately below.

¹ *Viking Gas Transmission Co.*, 141 FERC ¶ 61,118 (2012) (November 2012 Order).

² 18 C.F.R. § 385.602 (2013).

³ As used in the Settlement, the term "Participants," which include all intervenors, are: Viking; Commission Trial Staff; DTE Gas Company (f/k/a Michigan Consolidated Gas Company); Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); J.R. Simplot Company; Canadian Association of Petroleum Producers; Minnesota Energy Resources Corporation; Wisconsin Public Service Corporation; Exelon Corporation; Wisconsin Power and Light Company; Wisconsin Electric Power Company; Wisconsin Gas LLC; Process Gas Consumers Group; BP Canada Energy Marketing Corp.; Tenaska Marketing Ventures; Sequent Energy Management, L.P.; and CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas.

4. Article I of the Settlement sets forth the terms of new base settlement rates (Reduced Base Settlement Rates) for Viking's system. Viking agrees to reduce all of its base tariff rates, as in effect on November 14, 2012, by two percent and to file changes to its FERC Gas Tariff to place into effect the Reduced Base Settlement Rates in the form set forth in Attachment B of the Settlement within fifteen days following the Commission's issuance of a Final Order (as that term is defined in the Settlement) approving the Settlement. The Reduced Base Settlement Rates will take effect on January 1, 2014.

5. Article II of the Settlement provides that Viking will provide an updated cost and revenue study on or before December 31, 2018, unless, prior to that date, Viking has filed a rate change under section 4 of the NGA and the Commission has initiated a new investigation of Viking's rates under section 5 of the NGA.

6. Article III of the Settlement provides that the term of the settlement will extend from the Effective Date provided in Article V(2) of the Settlement until the effective date of new rates derived from a subsequent section 4 rate case or section 5 investigation.

7. Article IV of the Settlement provides that Viking must maintain the Reduced Base Settlement Rates for a minimum of one year, until at least January 1, 2015, provided that Viking may propose new base tariff rates at any time to be effective on or after January 1, 2015, and may make limited section 4 filings to make adjustments as authorized in its tariff to recover costs such as those incurred for fuel, lost and unaccounted for gas, and annual charge adjustments, or to implement any Commission or other regulatory requirement. Article IV further provides that Viking shall have the right to make any appropriate tariff filings for new or expanded services or service modifications, provided that no such filing shall effect any increase to the Reduced Base Settlement Rates prior to January 1, 2015. Article IV also provides that each Participant waives its rights under section 5 of the NGA to seek any change to Viking's Reduced Base Settlement Rates that would take effect prior to January 1, 2015.

8. Article V sets forth the conditions precedent to effectiveness of the Settlement. Article V also provides that the Reduced Base Settlement Rates will be made effective as of January 1, 2014, regardless of the Settlement's Effective Date.

9. Article VI provides that the Participants agree that the Settlement: (1) raises no issues of material fact; (2) is supported or not opposed by all Participants; and (3) should be approved as fair and reasonable and in the public interest. Article VI also provides that the terms of the Settlement are non-severable and, if the Commission accepts the Settlement with any condition, clarification, or modification, including the severance of any party or issue, Viking has the right to terminate the Settlement. Article VI further provides that a Participant may participate in any further proceedings the Commission may establish to resolve any severed matters, provided that any such Participant does not take a position adverse to the Settlement.

10. Article VII states that the Commission's approval of the Settlement will constitute waiver of the Commission's rules and regulations to the extent necessary to effectuate all of the provisions of the Settlement.

11. Article VIII contains reservations regarding privilege, no prejudice, reservation of rights, non-severability, the superseding of prior settlements, no establishment of settled practice, and no waivers of rights in the event the Settlement does not become effective. Article VIII also provides that "[t]o the extent the Commission considers any changes to the provisions of this Settlement during its term, as defined in Article III, the standard of review for such changes shall be the most stringent permissible under applicable law."

12. Commission Trial Staff filed comments in support of the Settlement on September 18, 2013. Trial Staff states that ratepayers will realize immediate economic relief through implementation of this rate reduction and, given the lack of refund authority in section 5 proceedings, the Settlement provides guaranteed rate relief that may not otherwise be available. Trial Staff states that the Settlement ensures that the rate relief will remain in effect for a minimum duration of one year. Trial Staff also states that Viking's commitment to provide a cost and revenue study by no later than December 31, 2018 will provide customers with the means to reevaluate this settled rate to ensure its continued reasonableness. Trial Staff states that it supports the Settlement and believes it to be fair, reasonable and in the public interest.

13. On September 20, 2013, the Presiding Judge certified the Settlement to the Commission as uncontested.⁴

14. Because the Settlement provides 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.

15. 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*,⁵ however, the

⁴ *Viking Gas Transmission Co.*, 144 FERC ¶ 63,028 (2013).

⁵ *New England Power Generators Ass'n, Inc. 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.

16. The Commission finds that the Settlement is fair and reasonable and in the public interest, and therefore, the Commission approves the Settlement pursuant to Rule 602(g), 18 C.F.R. § 385.602(g) (2013). The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

17. This order terminates Docket No. RP13-185-000.

The Commission orders:

The Settlement is approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.