

153 FERC ¶ 61,039
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

October 15, 2015

In Reply Refer To:
Transwestern Pipeline Company, LLC
Docket Nos. RP15-23-000
RP15-23-003
RP15-23-007

Transwestern Pipeline Company, LLC
1300 Main Street
Houston, TX 77002

Attention: Michael T. Langston

Dear Mr. Langston:

1. On June 22, 2015, Transwestern Pipeline Company, LLC (Transwestern) filed a Stipulation and Agreement of Settlement (Settlement) to resolve all issues in the above-captioned dockets. This proceeding was initiated by Transwestern's October 1, 2014, filing of tariff records in Docket No. RP15-23-000, proposing to implement a general rate change under section 4 of the Natural Gas Act (NGA). On October 30, 2014, the Commission issued an order accepting and suspending certain of Transwestern's tariff records to be effective April 1, 2015, subject to refund and the outcome of a hearing.¹
2. On July 28, 2015, the Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested.² The Commission finds that the Settlement appears to be fair and reasonable, and in the public interest, and it is hereby approved.
3. The Settlement resolves all outstanding issues in these rate-case proceedings, including requests for rehearing of the Commission's orders in the captioned dockets. The following summarizes the elements of the Settlement.

¹ *Transwestern Pipeline Co. LLC*, 149 FERC ¶ 61,094 (2014).

² *Transwestern Pipeline Co. LLC*, 152 FERC ¶ 63,008 (2015).

4. Article I and Article II provide the background and scope of the Settlement.
5. Article III establishes the rates for all Transwestern services under the Settlement, and provides the rules governing any necessary refunds due on the Settlement. Refunds shall be made within 60 days of the Settlement's Effective Date.
6. Article V provides procedures for resolving the issues of maximum Btu content in the gas stream, new peaking services, and flow control. Article VI provides procedures for resolving the issue of capacity release.
7. Article VII addresses Transwestern's various service agreements, including non-conforming agreements that shall be filed with the Commission. Article VIII addresses Transwestern's rate base and provides that Transwestern can roll-in the capital and other costs for the San Juan Expansion facilities and the New River Compressor Station. Article IX provides that Transwestern's depreciation rate for all plant facilities shall be 1.20 percent, and Article X addresses regulatory accounting and other matters.
8. Article XI establishes that Transwestern shall file an NGA general section 4 rate case on or before July 1, 2022. Article XII addresses future surcharge and tracker filings.
9. Article XIII imposes a moratorium on Transwestern's next NGA general section 4 rate case, until October 1, 2019.
10. Article XIV establishes the effective date of the Settlement, and Article XV addresses the effectiveness of the Settlement.
11. Article XVI states that until the Settlement is approved and becomes effective, it shall be privileged and of no effect, and shall not be admissible in evidence in any proceeding.
12. Article XVII addresses reservations, and Article XVIII addresses various miscellaneous provisions. Article XVIII, section 4 states that any modification of the Settlement after the Effective Date, other than as expressly provided for in the settlement, shall be reviewed under the *Mobile-Sierra* public interest standard of review. Section 4 further states that the standard of review applicable if the Commission acts on its own motion or on the request of a non-settling third party shall be the most stringent standard permissible under applicable law.
13. Because the Settlement provides that the standard of review for any changes to the terms of the Settlement 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.

14. The *Mobile-Sierra*³ “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 Ass’n, Inc. v. FERC*⁴, 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.

15. This letter order terminates Docket Nos. RP15-23-000, RP15-23-003, and RP15-23-007.

16. The Commission directs Transwestern to file revised tariff records in eTariff format⁵ that implement the Settlement. The Commission’s approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issues in this proceeding.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

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

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