

155 FERC ¶ 61,172
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

May 19, 2016

In Reply Refer To:
Illinois Power Marketing Company
AmerenEnergy Resources Generating Company v.
Midcontinent Independent System Operator, Inc.
Midcontinent Independent System Operator, Inc.
Docket Nos. ER14-2619-004
ER14-2619-000
EL13-76-000
ER13-1962-000
ER14-1210-000
ER15-346-000
ER15-368-000
ER15-943-000
ER15-948-000

King & Spalding LLP
1700 Pennsylvania Avenue, NW
Washington, DC 20006

Attention: Bruce L. Richardson

Dear Mr. Richardson:

1. On December 31, 2015, you filed, in Docket No. ER14-2619-004, a Settlement Agreement (Settlement) among Illinois Power Marketing Company and Illinois Power Resources Generating, LLC (collectively, Illinois Power); Midcontinent Independent System Operator, Inc. (MISO); the Illinois Municipal Electric Agency, Prairie Power, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Southern Illinois Power Cooperative, Wabash Valley Power Association, Inc. and Southwestern Electric Cooperative, Inc.; and Noble Americas Energy Solutions LLC (collectively, Settling Parties). On January 20, 2016, Commission Trial Staff filed comments in support of the

Settlement. No other comments were filed. On February 4, 2016, the Settlement Judge certified the Settlement to the Commission as an uncontested settlement.¹

2. The Settlement addresses Illinois Power's annual revenue requirement for the operation of Edwards Unit No. 1 (Edwards), an approximately 90 MW coal-fired steam boiler located in Bartonville, Illinois, which was designated as a System Support Resource (SSR)² by MISO. Edwards was operated pursuant to an SSR agreement for 2013, 2014, and 2015. The Settlement supersedes the annual revenue requirement for Edwards that was provided for in the previously filed SSR agreements for 2013, 2014, and 2015. The Settling Parties agree that, if "approved by the Commission in its entirety..., [the Settlement] resolves all issues related to SSR service from [Edwards] in the dockets existing as of the date of this [Settlement]."³

3. Section 47 of the Settlement states that

it is intended that the Settling Parties be subject to the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) ("Mobile-Sierra" doctrine). The standard of review for any modifications to this [Settlement] requested by a non-party to this [Settlement] or initiated by the Commission will be the most stringent standard permissible under applicable law. *See NRG Power Mktg., LLC v. Maine Pub. Utils. Comm'n*, 558 U.S. 165 (2010).

4. Because the Settlement appears to provide that the standard of review applicable to modifications to the Settlement 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 by a third party or by the Commission acting *sua sponte*.

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 63,011 (2016).

² MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) defines SSRs as "[g]eneration Resources or Synchronous Condenser Units that have been identified in Attachment Y – Notification to this Tariff and are required by the Transmission Provider for reliability purposes, to be operated in accordance with the procedures described in Section 38.2.7 of this Tariff." MISO, FERC Electric Tariff, Module A, § 1.S, Definitions - S (42.0.0).

³ Settlement, § 23.

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 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*,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.
6. The Settlement resolves all issues in dispute in these proceedings. 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.
7. Illinois Power is directed to file revised tariff records in eTariff format,⁵ within 30 days of this order, to reflect the Commission’s action in this order. Specifically, Illinois Power is directed to file the settlement rate pertaining to SSR service provided in 2013, which is missing from eTariff.
8. This letter order terminates Docket Nos. ER14-2619-004, ER14-2619-000, EL13-76-000, ER13-1962-000, ER14-1210-000, ER15-346-000, ER15-368-000, ER15-943-000, and ER15-948-000.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁴ 707 F.3d 364, 370-371 (D.C. Cir. 2013).

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