

170 FERC ¶ 61,254
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Enable Mississippi River Transmission, LLC	Docket Nos. RP18-923-007
	RP18-923-001
	RP18-923-006
	RP20-131-000
	RP20-212-000

ORDER APPROVING SETTLEMENTS

(Issued March 26, 2020)

1. On November 5 and November 6, 2019, on behalf of the settling participants, pursuant to Rules 102(e), 207(a)(5), and 602 of the Commission's Rules of Practice and Procedure,¹ Enable Mississippi River Transmission, LLC (MRT) filed two separate Stipulation and Agreements² (Settlements) in the above-captioned dockets, which were both subsequently supplemented³ (Supplements). The Settlements resolve issues with customers representing 97% of MRT's load, while the Supplements address the concerns of MRT's remaining customers, primarily relating to small customer transportation (SCT) service.

2. In this order, we approve the Settlements and Supplements filed by MRT to address all issues raised in these proceedings. The 2018 Rate Case Settlement and

¹ 18 C.F.R. §§ 385.102(e), 385.207(a)(5), 385.602 (2019).

² MRT, Stipulation and Agreement, Docket No. RP18-923-007 (Nov. 5, 2019) (2018 Rate Case Settlement) and MRT, Stipulation and Agreement, Docket No. RP20-212-000 (Nov. 6, 2019) (2019 Rate Case Settlement).

³ MRT, Supplement to Stipulation and Agreement, Docket No. RP20-212-000 (Dec. 12, 2019) (Supplement to the 2019 Rate Case Settlement); MRT, Supplement to Stipulation and Agreement, Docket No. RP18-923-007 (Dec. 13, 2019) (Supplement to the 2018 Rate Case Settlement). MRT submitted the latter supplement to the presiding administrative law judge (ALJ) as a motion to supplement the 2018 Rate Case Settlement. The ALJ granted the motion on February 20, 2020. In response, on February 21, 2020, MRT refiled the supplement with minor changes.

Supplement to the 2018 Rate Case Settlement resolve issues related to MRT's 2018 Natural Gas Act (NGA) section 4 general rate filing in Docket No. RP18-923-000 (2018 Rate Case), and the 2019 Rate Case Settlement and Supplement to the 2019 Rate Case Settlement resolve issues related to MRT's 2019 NGA section 4 general rate filing (2019 Rate Case).⁴ We direct MRT to file tariff records consistent with the Settlements and Supplements, as discussed more fully below.

I. Background

3. On June 29, 2018, in Docket No. RP18-923-000, MRT filed its 2018 Rate Case, consisting of revised tariff records pursuant to Section 4 of the NGA and a 2013 settlement resolving a previous rate proceeding. As part of the 2018 Rate Case, MRT proposed significant rate increases, a change to its zone boundary, modifications to certain rate schedules, and various other changes to the General Terms and Conditions (GT&C) of its tariff. MRT's proposals included a change to its zone boundary from the Missouri-Arkansas border to a "null point" located at Glendale, Arkansas, a new daily balancing program, and revisions to its right of first refusal tariff provisions. MRT also proposed changes to its SCT service, including lowering maximum daily quantity (MDQ) limits from 5,000 Dth per day to 2,000 Dth per day and requiring shippers to exhaust their SCT service limits before utilizing other transportation service(s) (referred to as the "first through the meter" presumption). MRT stated that the proposed rate changes were warranted by the anticipated turn back of capacity by its largest customer, Spire Missouri Inc. (Spire Missouri), which planned to move its service to a new pipeline.

4. On July 31, 2018, the Commission accepted and suspended the 2018 Rate Case tariff records effective January 1, 2019, subject to refund, the outcome of a hearing on rate-related issues, and a technical conference on non-rate related issues.⁵ In addition, the Commission made summary determinations addressing MRT's proposed tax allowance and reversing an MRT adjustment to its billing determinants to reflect contract terminations because Spire Missouri subsequently re-contracted the service.⁶ MRT filed

⁴ See *Enable Miss. River Transmission, LLC*, 164 FERC ¶ 61,075 (2018) (2018 Suspension Order); *Enable Miss. River Transmission, LLC*, 169 FERC ¶ 61,163 (2019) (2019 Suspension Order). The 2019 Rate Case was filed in Docket No. RP20-131-000. However, the RP20-212-000 Settlement and Supplement were assigned a separate docket.

⁵ 2018 Suspension Order, 164 FERC ¶ 61,075.

⁶ *Id.* PP 24-40.

tariff revisions to comply with the 2018 Suspension Order on August 30, 2018.⁷ On August 30, 2018, in Docket No. RP18-923-001, MRT sought rehearing of the 2018 Suspension Order and the Master Limited Partnership Association (MLPA) filed a motion to intervene out time and a request for rehearing.⁸

5. The technical conference to review MRT's proposed non-rate terms and conditions was held on September 19, 2018. On December 31, 2018, the Commission accepted certain of MRT's proposals discussed at the technical conference, finding them just and reasonable, and rejected other proposals, including provisions for penalties and changes to the right of first refusal qualifying criteria.⁹ In addition, the Commission referred other issues to the ongoing hearing and settlement judge procedures established in the 2018 Suspension Order.¹⁰ On January 30, 2019, in Docket No. RP18-923-006, MRT and the Ad Hoc Captive Customer Group (CCG) sought rehearing of the Technical Conference Order.¹¹

6. On October 30, 2019, MRT filed the 2019 Rate Case in Docket No. RP20-131-000. On November 1, 2019, in anticipation of filing the Settlements, MRT filed negotiated rate agreements, which effectuate the rates and contract extensions that served as the foundation for filing the Settlements with two customers: Union Electric Company dba Ameren Missouri (Ameren Missouri) in Docket No. RP20-196-000 and CenterPoint Energy Resources Corp. (CERC) in Docket No. RP20-197-000, to be effective January 1, 2019. Similarly, on November 4, 2019,

⁷ *Enable Miss. River Transmission, LLC*, 165 FERC ¶ 61,215 (2018) (finding that the *pro forma* tariff records in MRT's compliance filing comport with the directives in the 2018 Suspension Order).

⁸ The Chief ALJ denied MLPA's late intervention in the settlement proceeding in Docket No. RP18-923-000 but did not rule on MLPA's intervention in the rehearing docket. *Enable Miss. River Transmission, LLC*, 164 FERC ¶ 63,031 (2018) (order of Chief ALJ denying late intervention).

⁹ *Enable Miss. River Transmission, LLC*, 165 FERC ¶ 61,285 (2018) (Technical Conference Order).

¹⁰ Technical Conference Order, 165 FERC ¶ 61,285 at PP 143-152.

¹¹ For the purpose of their request for rehearing, the CCG consists of Ashley Energy LLC, Cerro Flow Products, LLC, Elementis Specialties Inc., Industrial Steam Products (Industrial Steam), Liberty Utilities Corp, Mississippi Lime Co., Missouri Industrial Energy Consumers, Olin-Winchester LLC, Solutia Inc., and U.S. Steel Corp., as well as the municipalities Bismarck and Potosi, Mo. and Chester, Dupo, Red Bud and Waterloo, Ill.

in anticipation of the approval of the Settlements, MRT made a filing in Docket No. RP20-201-000 consisting of negotiated rate agreements with Spire Missouri to implement the terms of the Settlements.¹²

7. On November 5, 2019, in Docket No. RP18-923-007, MRT filed the 2018 Rate Case Settlement representing an agreement between MRT and approximately 97% of the subscribed firm transmission and storage service entitlements on MRT.¹³ On December 13, 2019, MRT filed, in Docket No. RP18-923-007, the Supplement to the 2018 Rate Case Settlement.

8. On November 6, 2019, in Docket No. RP20-212-000, MRT filed the 2019 Rate Case Settlement to resolve matters relating to the 2019 Rate Case. On December 12, 2019, in Docket No. RP20-212-000, MRT filed the Supplement to the 2019 Rate Case Settlement.

9. On November 26, 2019, the Commission issued two orders: (a) the 2019 Suspension Order, accepting and suspending the 2019 Rate Case subject to the outcome of the Settlements,¹⁴ and (b) an order accepting the November 1, 2019 and November 4, 2019 negotiated rate agreement filings effective January 1, 2019, subject to the outcome of the Settlements.¹⁵

¹² The January 1, 2019 effective date corresponds to the end of the suspension period and the refund date for the 2018 Rate Case. *See also* MRT 2019 Rate Case Filing Letter, Docket No. RP20-131-000 at 5 (Oct. 30, 2019) (“The rates established herein will not affect such settling shippers served under agreements setting rates that have become effective during the moratorium period established by the settlement to be filed in this case”).

¹³ 2018 Rate Case Settlement at 1.

¹⁴ 2019 Suspension Order, 169 FERC ¶ 61,163.

¹⁵ *Enable Miss. River Transmission, LLC*, 169 FERC ¶ 61,164 (2019). MRT has subsequently filed additional negotiated rate agreements in Docket Nos. RP20-407-000, RP20-409-000, RP20-412-000, RP20-413-000, RP20-416-000, RP20-420-000, RP20-434-000, RP20-445-000, RP20-507-000, RP20-529-000, RP20-638-000, RP20-645-000, RP20-648-000 and RP20-647-000 to implement the terms of the Settlements.

II. The Settlements and Supplements

A. The 2018 Rate Case Settlement and Supplement

10. MRT submitted the 2018 Rate Case Settlement pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure¹⁶ on behalf of the settling participants. The settling participants entered into contracts under the Settlement and represent approximately 97% of the subscribed firm transmission and storage service entitlements on MRT.¹⁷ Thereafter, MRT submitted the Supplement to the 2018 Rate Case Settlement to the ALJ, including provisions addressing concerns of remaining shippers relating to SCT service. Appendices to the 2018 Rate Case Settlement and the Supplement to 2018 Rate Case Settlement, submitted in Docket No. RP18-923-007, provide *pro forma* tariff records demonstrating how MRT would implement the Settlement rates and service changes.¹⁸

11. The 2018 Rate Case Settlement incorporates a rate filing moratorium barring MRT from filing a new NGA section 4 rate case through the term of the 2018 Rate Case Settlement.¹⁹ MRT is required to file cost and revenue studies by July 31, 2024 and August 1, 2030 if MRT has not filed a general NGA section 4 rate filing subsequent to the 2019 Rate Case.

12. The 2018 Rate Case Settlement is a “black box” settlement that specifies depreciation and negative salvage rates.²⁰ In addition, the 2018 Rate Case Settlement rates reflect a zero income tax allowance and elimination of accumulated deferred income tax (ADIT), regardless of any change in the Commission’s tax allowance policy, during the settlement term.²¹

¹⁶ 18 C.F.R. § 385.602.

¹⁷ 2018 Rate Case Settlement, Opening Para.; Art. III(A) and (B) (providing industrial customers that execute new or extended contract with limited option for further extension or reduction in service). The Missouri Public Service Commission is to be considered a “non-opposing” participant. *Id.*, App. A.

¹⁸ *See also* Art. IV, establishing phased rates that reflect the change in MRT’s zone boundary from the Missouri – Arkansas border to Glendale, Ark.

¹⁹ Art. II.

²⁰ Art. IV(C)(2).

²¹ Art. IV(E).

13. The 2018 Rate Case Settlement provides that MRT will offer new enhanced storage service options under Rate Schedule FSS.²² The 2018 Rate Case Settlement establishes the rate for SCT authorized overrun service as the 100% load factor interruptible transportation rate.²³ In addition, the 2018 Rate Case Settlement prohibits MRT from pursuing revisions to daily balancing, daily balancing penalties, or daily scheduling variance penalties during the term of the Settlement; but MRT may file for such changes no more than six months in advance of the Term's end, provided it recognizes a notice and suspension period, and under such circumstances a Settling Participant, notwithstanding the provisions of Article II.A.3., is free to contest such filing.²⁴ The 2018 Rate Case Settlement specifies parameters for the 2019 Rate Case filing.²⁵

14. The 2018 Rate Case Settlement states that, if all CCG participants settle, MRT will withdraw pending non-rate tariff provisions related to Rate Schedule SCT within five days after a Commission order approving the Settlement becomes final and non-appealable.²⁶ Article V(B) of the 2018 Rate Case Settlement provides that "all tariff provisions that are the subject of requests for rehearing will be rendered moot by the withdrawal of MRT's and the parties' rehearing requests." Article VI(A) states that MRT and the settling participants "will withdraw each of their respective requests for rehearing in Docket No. RP18-923 within five business days after an order approving the [2018 Rate Case Settlement] becomes final and non-appealable[.]" Article VII contains terms for implementing the 2018 Rate Case Settlement, including provisions for interest and refunds "upon a Commission order accepting 'live' tariff records," with MRT otherwise providing billing adjustments under the customer service agreements. The 2018 Rate Case Settlement establishes the date on which the Settlement is approved as the first day of the month after a Commission order approving the Settlement without modification or condition becomes final and non-appealable.²⁷ The 2018 Rate Case

²² Art. V.

²³ Art. V(B)(1)(b).

²⁴ Art. VI(A).

²⁵ Art. VI(B) and (D).

²⁶ Art. V(B)(1). Certain tariff provisions previously accepted by the Commission will remain in effect.

²⁷ Art. IX(A)(1).

Settlement states that approval of the Settlement will represent Commission authorization to make the rate and tariff changes described in the Settlement.²⁸

15. Article IX(E) of the 2018 Rate Case Settlement states:

To the extent that after its approval pursuant to a final order, any change to the terms of the Settlement is considered notwithstanding the agreements reflected herein, the standard for review for any such modification proposed by MRT or the Settling Participants shall be the “public interest” standard for review set forth in *United Gas Pipe Line Company v. Mobile Gas Service Corporation*, *Federal Power Commission v. Sierra Pacific Power Company* and subsequent cases.²⁹

16. The Supplement to the 2018 Rate Case Settlement proposes further reductions to SCT rates and additional revised terms of service, including authorized overrun service at interruptible rates and imputed load factors for the time in which the rates are in effect. The Supplement to the 2018 Rate Case Settlement also states that the “first through the meter” presumption and the 2,000 Dth/day SCT contract limit will be reversed, with revised agreements filed as required.³⁰ For contracts identified in the Supplement, the Supplement to the 2018 Rate Case Settlement rates will supersede the 2018 Rate Case Settlement rates. The Supplement to the 2018 Rate Case Settlement features a revenue cap, with a provision for annual SCT revenues over \$400,000 to be credited to SCT customers.

B. The 2019 Rate Case Settlement and Supplement

17. MRT submitted the 2019 Rate Case Settlement to resolve all issues arising from its 2019 Rate Case filing in Docket No. RP20-131-000. On December 12, 2019, MRT submitted the Supplement to the 2019 Rate Case Settlement addressing SCT service issues. MRT stated that the service entitlement turnbacks of both transmission and storage service and the resulting decreased billing determinants have significantly impacted its rates, but that it agreed to limit the rate impact on participants that have

²⁸ Art. X(A).

²⁹ Article IX(E) (citing *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) (*Mobile*); *Federal Power Comm’n v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Sierra*); *NRG Power Marketing, LLC v. Me. Pub. Utils. Comm’n*, 558 U.S. 165 (2010) (*NRG*)) (footnotes omitted).

³⁰ Supplement to the 2018 Rate Case Settlement, Art. I(A).

resolved their differences with MRT.³¹ The 2019 Rate Case Settlement and the Supplement to the 2019 Rate Case Settlement, submitted in Docket No. RP20-212-000, include *pro forma* tariff records demonstrating how MRT would implement the Settlement rates.³²

18. The term of the 2019 Rate Case Settlement begins on the date that rates in the 2019 Rate Case, submitted in Docket No. RP20-131-000, take effect, and continues until either April 30, 2024 or the date on which rates are placed into effect pursuant to a Commission rate investigation or an NGA section 4 filing.³³ The 2019 Rate Case Settlement incorporates a rate filing moratorium barring MRT from filing a new NGA section 4 rate case through April 30, 2024 or the date on which a Commission rate investigation commences.³⁴

19. The 2019 Rate Case Settlement is a black box settlement that specifies rates of depreciation and negative salvage,³⁵ zero income tax allowance and the elimination of ADIT, regardless of any change in the Tax Allowance Policy, for the term of the settlement. The 2019 Rate Case Settlement reflects the same treatment of SCT service as the 2018 Rate Case Settlement, including the commitment to withdraw pending non-rate tariff provisions related to Rate Schedule SCT within five days after a Commission order approving the Settlement becomes final and non-appealable.

20. The compliance and implementation provisions in the 2019 Rate Case Settlement follow the terms for the 2018 Rate Case Settlement described above.

21. Article IX(E) of the 2019 Rate Case Settlement states:

To the extent that after its approval pursuant to a final order, any change to the terms of the Settlement is considered notwithstanding the agreements reflected herein, the standard for review for any such modification proposed by MRT or the

³¹ MRT 2019 Rate Case Settlement Filing Letter at 4.

³² The 2019 Rate Case Settlement incorporates rates that are identical to the 2018 Rate Case Settlement rates for the relevant time period.

³³ 2019 Rate Case Settlement Art. II.

³⁴ Art. II(A). The 2019 Rate Case Settlement also incorporates the requirement to file cost and revenue studies in 2024 and 2030, in the absence of a new rate case. Art. II(A)(1).

³⁵ Art. IV(A) & (C)(2).

Settling Participants shall be the “public interest” standard for review set forth in [*Mobile-Sierra*] and subsequent cases.³⁶

22. Similar to the Supplement to the 2018 Rate Case Settlement, the Supplement to the 2019 Rate Case Settlement reflects reductions to SCT rates and revised terms of service, commencing May 1, 2020 (unless otherwise implemented by agreement).³⁷ The Supplement to the 2019 Rate Case Settlement states that the “first through the meter” presumption and the 2,000 Dth/day SCT contract limit will be reversed, with revised agreements filed as required.³⁸ For contracts identified in the Supplement, the rates provided in the Supplement to the 2019 Rate Case Settlement will supersede the 2019 Rate Case Settlement rates. The Supplement to the 2019 Rate Case Settlement also features a revenue cap, with provision for annual SCT revenues over \$400,000 to be credited to SCT customers.

III. Notice, Interventions and Responsive Pleadings

23. Pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, comments on the 2018 Rate Case Settlement were due November 25, with reply comments due December 5, 2019.³⁹ On November 25, 2019, Trial Staff, CERC, CenterPoint Energy Services, Inc. (CES) and Spire Missouri filed Comments. On December 5, 2019, MRT filed Reply Comments. In its Reply Comments, MRT reported that it had reached agreement in principle with the remaining shippers and that it would be filing additional documentation related to the agreements.⁴⁰

24. Pursuant to Rule 602 of the Commission’s Rules of Practice and Procedure, comments on the Supplement to the 2018 Rate Case Settlement were due January 2, with reply comments due January 13, 2020. No participant filed comments on the Supplement to the 2018 Rate Case Settlement. The 2018 Rate Case Settlement and its Supplement are unopposed.

³⁶ Art. IX(E) (citing *Mobile*, 350 U.S. 332; *Sierra*, 350 U.S. 348; *NRG*, 558 U.S. 165) (footnotes omitted)

³⁷ Supplement to the 2019 Rate Case Settlement, Art. II(B).

³⁸ Supplement to the 2018 Rate Case Settlement, Art. I(A).

³⁹ 18 C.F.R. § 385.602(f).

⁴⁰ MRT Reply Comments, Docket No. RP18-923-007 at 5 (Dec. 5, 2019) (providing term sheet for service to former participant, Industrial Steam). *See also* Industrial Steam, Notice of Withdrawal, Docket No. RP19-923-000 (July 23, 2019).

25. Public notice of the 2019 Rate Case Settlement was issued November 7, with interventions and protests due by November 18, 2019. Public notice of the Supplement to the 2019 Rate Case Settlement was issued January 9, 2020, with interventions and protests due by January 13, 2020. Pursuant to Rule 214, all timely filed motions to intervene filed in Docket No. RP20-212-000 are granted.⁴¹ On November 18, 2019, Spire Missouri and CERC filed Comments supporting the 2019 Rate Case Settlement. On November 25, 2019, CES filed Comments supporting the Settlement. No protests or adverse comments were filed.

26. On December 6, 2019, the remaining CCG participants withdrew their request for rehearing of the Technical Conference Order in Docket No. RP18-923-006 and also a pleading addressing severance in the hearing proceeding, with both withdrawals conditioned on approval of the 2018 Rate Case Settlement.⁴²

27. On February 25, 2020, the ALJ certified the 2018 Rate Case Settlement and its Supplement as uncontested.⁴³

28. We deny MLPA's contested August 30, 2018 motion to intervene out of time.⁴⁴ In ruling on a motion to intervene out-of-time, we apply the criteria set forth in Rule 214(d) of the Commission's Rules of Practice and Procedure, and consider, *inter alia*, whether the movant had good cause for failing to file the motion within the time prescribed.⁴⁵ When, as here, late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. MLPA offers no explanation for its delay in moving to intervene in this proceeding. In these circumstances, MLPA's interest in the potential precedential effect of the Commission's 2018 Suspension Order is insufficient to justify its late intervention.⁴⁶ MLPA is not directly affected by the rates, terms and

⁴¹ 18 C.F.R. § 385.214 (2019).

⁴² No opposition to the withdrawals was submitted. 18 C.F.R. § 385.216 (2019).

⁴³ *Enable Miss. River Transmission, LLC*, 170 FERC ¶ 63,021 (2020) (ALJ certification of settlement and supplement).

⁴⁴ CCG and Spire Missouri filed answers in opposition to MLPA's intervention on September 14, 2018.

⁴⁵ *See* 18 C.F.R. § 385.214(d).

⁴⁶ *Alaska Power & Telephone Co.*, 97 FERC ¶ 61,064, at 61,353 (2001); *Kansas-Nebraska Natural Gas Co. Inc.*, 21 FERC ¶ 61,285, at 61,781 (1982)

conditions for transportation service that are the subject of this proceeding, and we find that its interest in contesting the income tax policy implemented in this proceeding is outweighed by the parties' interest in resolving this matter by settlement.⁴⁷

Consequently, MLPA has failed to demonstrate good cause for its failure to submit a timely intervention that would meet the high burden for intervention after a dispositive order has issued. Based on our denial of late intervention, MLPA's request for rehearing in Docket No. RP18-923-001 is dismissed because it is not a party and is not eligible to seek rehearing.⁴⁸

IV. Discussion

29. The 2018 Rate Case Settlement and 2019 Rate Case Settlement, including the Supplements to those Settlements, resolve all issues set for hearing in Docket Nos. RP18-923-000 and RP20-131-000. The Settlements and Supplements to the Settlements appear to be fair, reasonable, and in the public interest and are therefore approved. The Commission's approval of these Settlements and Supplements to the Settlements does not constitute approval of, or precedent regarding, any principle or issue in the underlying proceedings.

30. MRT is directed to make a compliance filing with revised tariff records in eTariff format,⁴⁹ consistent with the terms of the Settlement. As the Settlements provide, MRT and settling participants will withdraw their requests for rehearing in Docket Nos. RP18-923-001 and RP18-923-006 within five business days after an order approving the Settlements becomes final and non-appealable.

The Commission orders:

(A) MRT's Settlements and Supplements are hereby approved, as discussed in the body of this order.

(B) MRT shall file actual tariff records consistent with the Settlements in

("A petitioner seeking the right to intervene must have a direct interest in a proceeding and not merely the desire to shape precedent").

⁴⁷ 18 C.F.R. § 385.214(d)(ii) and (iv) (decisional authority may consider disruption of the proceeding and prejudice to existing parties from late intervention).

⁴⁸ 18 C.F.R. § 385.713(b).

⁴⁹ See *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).

eTariff format as required by Order No. 714⁵⁰ in order to implement the *pro forma* tariff records proffered with the Settlements and Supplements, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵⁰ *Id.*