166 FERC ¶ 61,084
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur and Richard Glick.

Southern Star Central Gas Pipeline, Inc. Docket No. RP19-289-000

ORDER APPROVING SETTLEMENT

(Issued January 31, 2019)

1. On November 14, 2018, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed a Stipulation and Agreement of Settlement (Settlement) pursuant to Rules 207(a)(5) and 602 of the Commission's regulations[1] to implement a 7.8 percent reduction in the reservation component of Southern Star's rates. The Commission approves Southern Star's Settlement, as proposed.

I. Background and Proposal

2. On July 18, 2018, the Commission issued Order No. 849,[2] a final rule adopting procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of (1) the income tax reductions provided by the Tax Cuts and Jobs Act[3] and (2) the Commission's Revised Policy Statement[4] and Opinion No. 511-C[5] establishing a policy that Master Limited Partnerships (MLPs) may not recover an income tax allowance in response to the decision of the United States

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[1] 18 C.F.R. § 385.207(a)(5) and § 385.602 (2018).

[2] *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36,672 (July 30, 2018), FERC Stats. & Regs. ¶ 31,404 (2018) (cross-referenced at 164 FERC ¶ 61,031).

[3] An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

[4] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 Fed. Reg. 12,362 (Mar. 21, 2018), FERC Stats & Regs. ¶ 35,060 (2018) (cross-referenced at 162 FERC ¶ 61,227), *order on reh'g*, 164 FERC ¶ 61,030 (2018).

[5] *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

(continued ...)

Court of Appeals for the District of Columbia Circuit in *United Airlines*.[6] Order No. 849 required, pursuant to sections 10 and 14(a) of the Natural Gas Act (NGA), that all interstate natural gas companies with cost-based stated rates, that filed a 2017 FERC Form No. 2 or 2-A, must file a FERC Form No. 501-G informational filing.[7] The FERC Form No. 501-G is designed to collect financial information to evaluate the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements. Using the data in the pipelines' 2017 FERC Form Nos. 2 and 2-A, the form estimates (1) the percentage reduction in the pipeline's cost of service resulting from the Tax Cuts and Jobs Act and the Revised Policy Statement and (2) the pipeline's current Return on Equity (ROE) before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLP pipelines.

3. Order No. 849 also provided several options each interstate natural gas pipeline may choose from to address the changes to the pipeline's revenue requirement as a result of the income tax reductions. These included (1) a limited NGA section 4 rate reduction filing (Option 1), (2) a commitment to file a general section 4 rate case or a prepackaged settlement in the near future (Option 2), (3) an explanation why no rate change is needed (Option 3), and (4) no action (Option 4).

4. Southern Star owns and operates a natural gas pipeline system in the Midwest and Midcontinent regions of the United States. Its assets also include eight underground storage fields in Kansas and Oklahoma. On October 11, 2018, in Docket No. RP19-75-000, Southern Star submitted its FERC Form No. 501-G in response to Order No. 849. In that filing, Southern Star stated that it was initiating settlement negotiations with its shippers, and requested that the Commission allow the settlement process to proceed. On November 14, 2018, Southern Star filed the instant Settlement. Southern Star, under the terms of the Settlement, will reduce the monthly maximum reservation components of its transportation and storage rates by 7.8 percent. Southern Star states that it collaborated with its shippers in drafting the Settlement and Southern Star believes that the vast majority, if not all, of its shippers either support or do not oppose the Settlement.[8] Pursuant to the terms of the Settlement, Southern Star plans to place the Settlement rates into effect on January 1, 2019. Southern Star contends that the Settlement provides shippers with a rate reduction and avoids the significant time and expense of litigating a general NGA section 4 rate case.

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[6] *United Airlines, Inc. v.* FERC, 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*). For purposes of this order, the Revised Policy Statement, *United Airlines*, and Opinion No. 511-C will collectively be referred to as "*United Airlines* Issuances."

[7] The One-time Report on Rate Effect of the Tax Cuts and Jobs Act may be referred to interchangeably as "One-time Report" or "FERC Form No. 501-G."

[8] Southern Star Transmittal at 4.

5. Article I of the Settlement establishes moratoria on both NGA section 4 and section 5 proceedings. Southern Star foregoes its right to make an NGA section 4 general rate filing to be effective before November 1, 2021. The settling parties also forego their rights to file or support any complaint or proceeding under NGA section 5 seeking to modify Southern Star's base rates prior to November 1, 2021.

6. Articles II and III establish a Modernization Capital Cost Recovery Mechanism (CRM) and describe facility costs eligible for inclusion in a new surcharge. Article II states that the CRM will provide for surcharges that will be collected between March 1, 2020 and October 31, 2021. Under the terms of the Settlement, during calendar years 2019 and 2020, Southern Star will spend no less than $50 million of capital costs on capital maintenance. Article II references a listing of facilities currently planned to be placed into service in 2019 and 2020. Article III contains additional modernization terms.

7. Article IV describes the agreement between Southern Star and the settling parties with respect to the change in federal corporate income tax rate due to the Tax Cuts and Jobs Act. Article IV provides for a rate reduction of Southern Star's maximum reservation rates under Rate Schedules TSS, FTS, and FSS of 7.8 percent effective the earlier of January 1, 2019 or 30 days after a final order is issued approving the Settlement. Maximum commodity rates under Rate Schedules ITS, ISS, STS, and SFT will also have a 7.8 percent reduction in their reservation component. Under the Settlement, Southern Star will amortize, and begin returning, excess deferred income taxes (EDIT). According to the terms of the Settlement, the EDIT amount, after gross-up, is approximately $82.7 million and will be amortized beginning January 1, 2018 over a 19-year period reflecting the average remaining life of the assets, which results in a return to shippers of approximately $4.35 million annually.

8. Article V includes provisions governing the treatment of any contesting parties. It states that if there are parties that contest the Settlement, Southern Star will file tariff sections identifying shippers that are eligible to receive the benefits of the Settlement and those that are not. In the Settlement package, Southern Star submitted *pro forma* tariff records to implement the rate reduction. Article VI states that Appendix E contains clean and marked versions of the *pro forma* tariff records, and that Southern Star will file to implement these *pro forma* records no later than 30 days after an order on the Settlement.

9. Article VII describes the effectiveness and term of the Settlement. It states that the standard of review will be the public interest standard, except that with respect to any change sought by a non-settling third party, or the Commission acting *sua sponte*, the standard of review to be applied by the Commission shall be the "just and reasonable" standard.

10. Article VII describes general reservations and holds that all parties have the same rights under the NGA that they would have had absent the Settlement, except as specifically provided for in the Settlement.

II. Notice of Filing

11. Public notice of the Settlement was issued on November 16, 2018, with interventions and protests due by November 26, 2018. Pursuant to Rule 214,[9] all timely filed motions to intervene and any unopposed motion to intervene filed out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

III. Discussion

12. The Commission finds that the Settlement appears fair and reasonable and in the public interest. The Settlement is uncontested and provides a 7.8 percent reduction in the reservation components of Southern Star's maximum rates. Accordingly, the Commission approves the Settlement. Southern Star requests that the Commission approve the Settlement no later than January 31, 2019, so that it may implement the rate reduction to be effective January 1, 2019. The Commission finds Southern Star's proposal reasonable and directs it to file tariff records to be effective January 1, 2019, as requested.

The Commission orders:

(A) Southern Star's Settlement is approved, as discussed in the body of this order.

(B) Southern Star must, within 30 days of this order, file tariff records consistent with Article VI of the Settlement in eTariff format as required by Order No. 714[10] in order to implement the *pro forma* tariff records proffered with the Settlement.

By the Commission. Commissioner McNamee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

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[9] 18 C.F.R. § 385.214 (2018).

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