

165 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

North Baja Pipeline, LLC

Docket Nos. RP19-71-000
RP19-72-000

ORDER ON RATE REDUCTION FILING AND FERC FORM NO. 501-G

(Issued November 15, 2018)

1. On October 11, 2018, in Docket No. RP19-72-000, North Baja Pipeline, LLC (North Baja) filed a revised tariff record¹ pursuant to section 4 of the Natural Gas Act (NGA) to implement a rate reduction consistent with section 154.404 of the Commission's regulations.² The Commission accepts North Baja's tariff record effective December 1, 2018, as proposed.

¹ North Baja Pipeline, LLC, FERC NGA Gas Tariff, North Baja Tariffs, [4.1 - Statement of Rates, FTS-1, ITS-1, PAL-1 Rates & ACA Surcharge, 4.0.0.](#)

² 18 C.F.R. § 154.404(a) (2018), which provides:

Purpose. The limited rate filing permitted by this section is intended to permit:

(1) a natural gas company subject to the federal corporate income tax to reduce its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act of 2017, and

(2) a natural gas company organized as a pass-through entity either (i) to eliminate any income tax allowance and accumulated deferred income taxes reflected in its current rates or (ii) to reduce its maximum rates to reflect the decrease in the federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act of 2017.

I. Background and Proposal

2. On July 18, 2018, the Commission issued Order No. 849,³ 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 Act⁴; and (2) the Commission's Revised Policy Statement⁵ and Opinion No. 511-C⁶ establishing a policy that master limited partnerships (MLPs) may not recover an income tax allowance in response to the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*.⁷ Order No. 849 required, pursuant to sections 10 and 14(a) of the 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.⁸ 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 ROEs before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLP pipelines.

³ *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) (Order No. 849).

⁴ 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).

⁵ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 FR 12,362 (Mar. 21, 2018), FERC Stats & Regs. ¶ 35,060 (2018), *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁶ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

⁷ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016). 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."

⁸ The One-time Report on Rate Effect of the Tax Cuts and Jobs Act is referred to interchangeably as "One-time Report" or "FERC Form No. 501-G."

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, including a limited NGA section 4 rate reduction filing. Order No. 849 adopted section 154.404 of the Commission's regulations, authorizing natural gas pipelines to submit limited NGA section 4 filings to reduce their rates to reflect the Tax Cuts and Jobs Act and the *United Airlines* Issuances, without making any other rate changes. Section 154.404 permits pass-through pipelines, including MLPs, to either eliminate their tax allowances or reduce their rates to reflect the reduced income tax expenses provided by the Tax Cuts and Jobs Act. In order to provide an additional incentive for pipelines to make a limited NGA section 4 rate reduction filing, Order No. 849 included a guarantee that the Commission will not, for a three-year moratorium period, initiate an NGA section 5 rate investigation of a pipeline that makes such a filing, if that filing reduces the pipeline's ROE to 12 percent or less.⁹

4. On October 11, 2018, in Docket No. RP19-71-000, North Baja filed FERC Form No. 501-G consistent with the reporting requirements of Order No. 849. North Baja's FERC Form No. 501-G shows an indicated cost-of-service reduction of 5.1 percent, reflecting a reduction in its total cost of service of approximately \$1.2 million, after adjustment to reflect the Tax Cuts and Jobs Act and *United Airlines* Issuances. The FERC Form No. 501-G also shows that North Baja's Total Estimated ROE would be 47.9 percent. Additionally, in Docket No. RP19-71-000, North Baja filed an Adjusted FERC Form No. 501-G in an Addendum. In the Addendum, North Baja adjusted its capital structure to reflect that it is adding debt to its existing capitalization and acquiring a credit rating, such that North Baja will meet the Commission's criteria for utilizing its own capital structure. North Baja added \$42,205,883 in long-term debt to its Addendum,¹⁰ resulting in an adjusted total cost of service of \$25,863,781. North Baja also adjusted its overall revenues, stating that approximately 80 percent of its revenues reflected in the 2017 FERC Form No. 2 are under negotiated rate contracts.¹¹ North Baja states that its Addendum shows an indicated cost-of-service reduction of 10.8 percent and

⁹ Order No. 849, FERC Stats. & Regs. ¶ 31,404 at PP 199-200.

¹⁰ North Baja's target capitalization upon adding the new debt will be approximately 35.0 percent debt and 65.0 percent equity, as shown on page 2, line 23, column (C) and line 25, column (C) of the Adjusted FERC Form No. 501-G.

¹¹ The calculation of the adjustment is shown on Workpaper 2, and results in a reduction of \$7,814,892 in total revenue. This reduction is reflected in the Total Adjusted Revenue on page 3, line 6, column (d) of the Adjusted FERC Form No. 501-G [$\$38,796,754$ (Column C, line 6) - $\$7,814,892$ = $\$30,981,862$ (Column D, line 6)].

a Total Estimated ROE of 12.7 percent,¹² after adjustment to reflect the Tax Cuts and Jobs Act and *United Airlines* Issuances.

5. On October 11, 2018, in Docket No. RP19-72-000, North Baja filed a limited NGA section 4 rate reduction pursuant to section 154.404 of the Commission's regulations. North Baja proposes to reduce its currently effective rates by the 10.8 percent cost-of-service reduction shown in its Addendum, rather than the 5.1 percent cost-of-service reduction shown in its FERC Form No. 501-G. North Baja notes that it was 100 percent MLP-owned in 2017, and therefore, this limited NGA section 4 rate reduction filing eliminates its income tax allowance and associated accumulated deferred income taxes from North Baja's rates and general ledger, consistent with Commission policy.¹³ North Baja proposes that its rate reduction be effective December 1, 2018.

II. Notice of Filing, Interventions, and Protests

6. Public notice of North Baja's FERC Form No. 501-G filing in Docket No. RP19-71-000 was issued on October 15, 2018. Public notice of North Baja's limited NGA section 4 filing in Docket No. RP19-72-000 was also issued on October 15, 2018. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁴ Pursuant to Rule 214,¹⁵ all timely filed motions to intervene and any unopposed motions 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 this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

III. Discussion

7. The Commission finds that North Baja's proposal to implement a rate reduction of 10.8 percent based on its Adjusted FERC Form No. 501-G is consistent with section 154.404 of the Commission's regulations and provides a net benefit to North Baja's customers. Accordingly, the Commission accepts North Baja's referenced tariff record to be effective December 1, 2018.

¹² The 12.7 percent ROE reflects the "Rate Moratorium Option 12 [Percent] ROE Test" as shown on page 3, line 26, column (E) of the Addendum.

¹³ Docket No. RP19-72-000 Transmittal at 2 & n.5.

¹⁴ 18 C.F.R. § 154.210 (2018).

¹⁵ 18 C.F.R. § 385.214.

8. The Commission notes that North Baja's FERC Form No. 501-G reflects a Total Estimated ROE of 47.9 percent,¹⁶ after adjustment to reflect the Tax Cuts and Jobs Act and *United Airlines* Issuances. As such, North Baja is not eligible for the three-year moratorium period established in Order No. 849. Therefore, although the Commission is accepting North Baja's rate reduction filing, the Commission is not precluded from establishing a hearing under NGA section 5 to investigate whether a further rate reduction is justified in Docket No. RP19-71-000.

The Commission orders:

North Baja's tariff record as noted above is accepted, effective December 1, 2018.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ North Baja FERC Form No. 501-G, page 3, line 26, column (E).