

168 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Stagecoach Pipeline & Storage Company LLC

Docket No. RP19-439-002

(Issued July 25, 2019)

ORDER DENYING REHEARING

I. Background

1. In a March 20, 2019 order, the Commission instituted an investigation, pursuant to section 5 of the Natural Gas Act (NGA)¹ to determine whether the rates currently charged by Stagecoach Pipeline & Storage Company LLC (Stagecoach) are just and reasonable.² As relevant here, the March 2019 Order set the matter for hearing and directed Stagecoach to file a cost and revenue study within 75 days, based on actual data for the latest 12-month period, including adjustments for known and measurable changes during that period.³ The March 2019 Order also permitted Stagecoach to submit a separate cost and revenue study reflecting adjustments for changes that Stagecoach projects will occur during an abbreviated six-month adjustment period following the 12-month period used in the cost and revenue study.⁴

2. On April 19, 2019, Stagecoach filed a request for rehearing of the March 2019 Order. First, Stagecoach claims that an NGA section 5 investigation into Stagecoach's rates is an inefficient use of the Commission's resources, and that it would be more efficient to address the Commission's inquiries through data requests, particularly due to the Commission's concerns regarding the allocation of costs between Stagecoach's cost-

¹ 15 U.S.C. § 717d (2012).

² *Stagecoach Pipeline & Storage Co., LLC*, 166 FERC ¶ 61,199 (2019) (March 2019 Order).

³ *Id.*

⁴ *Id.* P 16.

based services and its market-based services and negotiated rate agreements.⁵ Stagecoach alleges that it has no shippers that pay its maximum recourse reservation rates and therefore the NGA section 5 proceeding is unlikely to have any impact on the rates paid by shippers.⁶ Next, Stagecoach alleges that the Commission does not review or order modifications to negotiated rate agreements and therefore none of Stagecoach's negotiated rate shippers would receive rate reductions as a result of the proceeding, and that the FERC Form No. 501-G overstates Stagecoach's actual ROE.⁷ Finally, Stagecoach claims the Commission exceeded its authority under the NGA⁸ when it ordered Stagecoach to file a cost and revenue study and derive rates therein, which Stagecoach characterizes as the functional equivalent of an NGA section 4⁹ rate filing.¹⁰ For the reasons discussed below, we deny Stagecoach's request for rehearing.

II. Commission Determination

3. The March 2019 Order made no final determination regarding the justness and reasonableness of Stagecoach's current rates.¹¹ Rather, the Commission merely instituted an NGA section 5 investigation and set the matter for hearing. Rule 713 of the

⁵ Stagecoach Rehearing Request at 1-2.

⁶ *Id.* at 5.

⁷ *Id.* at 2, 5, 9.

⁸ 15 U.S.C. §§ 717d, 717i, 717m (2012).

⁹ 15 U.S.C. § 717c (2012).

¹⁰ Stagecoach Rehearing Request at 3, 9-17.

¹¹ See *Investigation of Terms and Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 103 FERC ¶ 61,349, at P 15 (2003) (stating that “[b]ecause the November 20 Order initiated an investigation and thus was not a final order, we will not consider requests for rehearing of the November 2018 Order”); *City of Hamilton*, 82 FERC ¶ 61,349, at 62,359 (1998) (finding that “[s]etting this matter for a trial-type hearing does not impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process”); *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61,372, at 63,012 (1993) (finding that “[b]y not allowing rehearing of findings that were expressly preliminary ... the Commission was exercising its discretion to develop workable, efficient procedures”).

Commission's Rules of Practice and Procedure¹² provides that rehearing may be sought of a "final Commission decision or other final order." An agency order is final when it "imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process."¹³ Because the March 2019 Order initiating an NGA section 5 investigation to examine the justness and reasonableness of Stagecoach's rates was simply a procedural step, it imposes no obligation, denies no right, and fixes no legal relationship; therefore, rehearing at this stage is premature.

4. Even if rehearing were appropriate at this stage, courts have recognized that the Commission has wide discretion to decide whether to initiate an NGA section 5 investigation into a pipeline's tariff rates.¹⁴ The March 2019 Order found that initiating an NGA section 5 rate investigation into Stagecoach's tariff was justified because Stagecoach's estimated return on equity was estimated to be 20.5 percent, and that its cost-based rate customers may be subsidizing market-based rate services.¹⁵ We further find that the Commission has previously addressed and rejected arguments similar to those raised by Stagecoach concerning the Commission's authority to require a cost and revenue study to facilitate its NGA section 5 investigation.¹⁶ Stagecoach's arguments are

¹² 18 C.F.R. § 385.713 (2018).

¹³ See *City of Fremont v. FERC*, 336 F.3d 910, 913-14 (9th Cir. 2003); *Cities of Riverside and Colton v. FERC*, 765 F.2d 1434, 1438 (9th Cir. 1985); *Papago Tribal Utility Authority v. FERC*, 628 F.2d 235, 239 (D.C. Cir. 1980).

¹⁴ See *Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578-79 (D.C. Cir. 1992) (the Commission has discretion to mold its procedures to the exigencies of the particular case); *Woolen Mill Assoc. v. FERC*, 917 F.2d 589, 592 (D.C. Cir. 1990) (the decision as to whether to conduct an evidentiary hearing is in the Commission's discretion); *General Motors Corp. v. FERC*, 613 F.2d 939, 944 (D.C. Cir. 1979) ("In general, an administrative agency's decision to conduct or not conduct an investigation is committed to the agency's discretion"). See also *Algonquin Gas Transmission Co.*, 84 FERC ¶ 61,174, at 61,912 (1998) ("The Commission has the discretion in determining whether to initiate investigations pursuant to section 5 or whether to set issues for formal hearing").

¹⁵ March 2019 Order, 166 FERC ¶ 61,199 at PP 7, 10.

¹⁶ *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,273, at PP 3-16 (2016); *Empire Pipeline, Inc.*, 154 FERC ¶ 61,274 (2016); *Columbia Gulf Transmission, LLC*, 154 FERC ¶ 61,275 (2016); *Bear Creek Storage Co.*, 138 FERC ¶ 61,019, at PP 27-48

dismissed without prejudice, and Stagecoach may re-raise these issues, if appropriate, at the time the Commission issues a final order in this proceeding. Thus, we do not find the Commission's decision to initiate an NGA section 5 investigation was in error.

The Commission orders:

The Commission hereby denies Stagecoach's request for rehearing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

(2012); *MIGC LLC*, 138 FERC ¶ 61,011 (2012); *Ozark Gas Transmission, L.L.C.*, 134 FERC ¶ 61,193 (2011); *Kinder Morgan Interstate Gas Transmission, L.L.C.*, 134 FERC ¶ 61,061, at PP 21-35 (2011); *Natural Gas Pipeline Co. of America, LLC*, 130 FERC ¶ 61,133, at PP 12-22 (2010).