

168 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Bear Creek Storage Company, L.L.C.

Docket No. RP19-51-004

ORDER APPROVING SETTLEMENT

(Issued July 31, 2019)

1. On May 21, 2019, in the above-referenced proceeding, Bear Creek Storage Company, L.L.C. (Bear Creek) filed an Offer of Settlement (Settlement) pursuant to Rule 602 of the Commission's Regulations¹ that it asserts resolves all issues in a rate investigation established pursuant to section 5 of the Natural Gas Act (NGA).² Bear Creek also filed a tariff record³ to implement the Settlement. We approve Bear Creek's Settlement and accept the referenced tariff record to become effective September 1, 2019.

I. Background and Proposal

2. Bear Creek states that it is an underground natural gas storage facility located in Bienville Parish, Louisiana. Bear Creek further states that Southern Natural Gas Company, L.L.C. (Southern) and Tennessee Gas Pipeline, L.L.C. (Tennessee) each own fifty (50) percent of Bear Creek. According to Bear Creek, it provides individually certificated storage service to both pipelines, and they use that storage service to provide

¹ 18 C.F.R. § 385.602 (2018).

² *Bear Creek Storage Co., L.L.C.*, 166 FERC ¶ 61,034 (2019) (January 16 Order).

³ Bear Creek Storage Company, L.L.C., FERC NGA Gas Tariff, Bear Creek FERC Tariff Volume 1, [Rate Schedule SS-P, Rate Schedule SS-P, 2.1.0.](#)

contract storage service to their customers. Bear Creek further states that its currently effective rates were established by a settlement approved by the Commission in 2012.⁴

3. On July 18, 2018, the Commission issued Order No. 849,⁵ 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 Act⁶; and (2) the Commission's Revised Policy Statement⁷ and Opinion No. 511-C⁸ 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 in *United Airlines*.⁹ Order No. 849 required all interstate natural gas companies with cost-based stated rates to file a FERC Form No. 501-G informational filing containing an abbreviated cost and revenue study using data in the pipelines' 2017 FERC Form Nos. 2 and 2-A. Order No. 849 provided four options that 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: (1) a limited NGA section 4 rate reduction filing (Option 1); (2) a commitment to file a general NGA 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. As required by Order No. 849, in Docket No. RP19-51-000, Bear Creek filed its FERC Form No. 501-G on October 11, 2018. After reviewing Bear Creek's FERC Form No. 501-G filing, the Commission issued an order on January 16, 2019 instituting an investigation, pursuant to section 5 of the NGA, to determine whether the rates currently

⁴ *Bear Creek Storage Co.*, 140 FERC ¶ 61,129, at P 19 (2012). That settlement was a result of an investigation under section 5 of the NGA into Bear Creek's rates. *Bear Creek Storage Co.*, 137 FERC ¶ 61,134 (2011).

⁵ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36,672, 164 FERC ¶ 61,031 (2018), *order on reh'g*, Order No. 849-A, 167 FERC ¶ 61,051 (2019).

⁶ 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).

⁷ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 Fed. Reg. 12,362 (Mar. 21, 2018), 162 FERC ¶ 61,227 (2018), *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁸ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

⁹ 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*).

charged by Bear Creek are just and reasonable and set the matter for hearing. The Commission also directed Bear Creek to file a full cost and revenue study.¹⁰

5. On February 15, 2019, Bear Creek filed a request for rehearing of the January 16 Order. Bear Creek argued that the Commission should terminate the proceeding or, at a minimum, rescind its requirement that Bear Creek file a cost and revenue study that includes a derivation of rates.

6. On May 21, 2019, Bear Creek filed the instant Settlement. Subsequently, the East Tennessee Group, SNG Municipals, the Tennessee Customer Group, the Tennessee Valley Authority and the Commission Trial Staff filed comments supporting the Settlement. On June 12, 2019, the Presiding Judge certified the Settlement as an uncontested settlement.¹¹

7. Bear Creek states that, under the terms of the Settlement, all issues set for hearing to investigate its rates have been resolved. According to Bear Creek, the Settlement resolves the cost of service, cost allocation and rate design issues on a “black-box” basis. Therefore, Bear Creek states that, pursuant to Article I of the Settlement, no portion of the Settlement can be severed without destroying the balance of interests and compromises embodied in the Settlement. The pertinent provisions of the Settlement are set forth below.

8. Article IV defines the effective date of the Settlement rates, and provides the procedures to be followed if the Commission modifies the Settlement or attaches conditions to the Settlement. Article IV also provides that, if the Commission approves the Settlement without modification, the Settlement shall become effective on the date of the Commission order approving the Settlement.

9. Article V provides that the rates will be implemented in accordance with Article VIII of the Settlement and are to continue in effect until new rates are authorized or permitted to take effect by the Commission as a result of a future proceeding.

10. Article VI provides that, as of the effective date of the Settlement, Bear Creek is authorized to continue its currently effective depreciation rate of 0.5 percent. Article VI also provides that the agreed upon cost of service reflected in Appendix C to the Settlement reflects a flow back of \$1,365,544 for excess ADIT arising from the reduction in the corporate federal income tax rate from 35 percent to 21 percent, pursuant to the Tax Cuts and Jobs Act.

¹⁰ January 16 Order, 166 FERC ¶ 61,034.

¹¹ *Bear Creek Storage Co.*, 167 FERC ¶ 63,037 (2019).

11. Article VII provides that Bear Creek will provide on November 1, 2022, an informal analysis of its estimated return on equity based on 2021 Form 2 data to all supporting and non-opposing parties on record as of November 1, 2022. Article VII also provides that this informal analysis is not required to be filed at the Commission.

12. Article VIII provides that, within thirty (30) days following the effective date, Bear Creek shall file the tariff record in Appendix B to the Settlement to be effective on the first day of the month following such filing.¹²

13. Article IX of the Settlement sets forth the following standard of review:

Except as provided in Section 2 below, the standard for review for any proposed change to the terms of this Settlement shall be the “public interest” standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* and *Federal Power Commission v. Sierra Pacific Power Co.*¹³ In any such proceeding, Supporting and Non-Opposing Parties shall not support any such change to be made.

Article IX further provides that

[w]ith respect to proposed changes to the terms of this Settlement sought by non-settling third parties or the Commission acting *sua sponte*, the standard of review shall be the just and reasonable standard.

II. Discussion

14. Pursuant to the terms of the Settlement, all issues set for hearing relating to Order No. 849, the impact of the Tax Cuts and Jobs Act on Bear Creek’s rates, and Bear Creek’s FERC Form No. 501-G are resolved. The Settlement is uncontested and provides a reduction in Bear Creek’s rates. In addition, Bear Creek has agreed to withdraw its request for rehearing once the Commission has approved the Settlement. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. This order terminates Docket No. RP19-51-004.

¹² Bear Creek filed an actual tariff record when it filed its Settlement. Based on Articles IV and VIII of the Settlement, we will accept the tariff record effective September 1, 2019.

¹³ Bear Creek Settlement at 9 (citing *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*)).

The Commission orders:

(A) Bear Creek's Settlement is hereby approved, as discussed in the body of this order.

(B) The referenced tariff record is hereby accepted effective September 1, 2019, consistent with Articles IV and VIII of the Settlement, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.