

169 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southwest Gas Storage Company

Docket No. RP19-257-004

ORDER APPROVING SETTLEMENT

(Issued October 29, 2019)

1. On July 10, 2019, in the above-referenced proceeding, Southwest Gas Storage Company (Southwest Gas Storage) filed an Offer of Settlement (Settlement) pursuant to Rule 602 of the Commission's Regulations¹ that is intended to resolve all issues in this proceeding, except those relating to the negotiated rate agreement between Southwest Gas Storage and Panhandle Eastern Pipe Line Company, LP (Panhandle Eastern), which was set for hearing in this proceeding in a rate investigation established pursuant to section 5 of the Natural Gas Act (NGA).² We approve Southwest Gas Storage's Settlement and direct Southwest Gas Storage to file tariff records reflecting the terms of the Settlement, as discussed below.

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

¹ 18 C.F.R. § 385.602 (2019).

² *Southwest Gas Storage Co.*, 166 FERC ¶ 61,117 (2019) (Hearing Order).

³ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (2018), *order on reh'g*, Order No. 849-A, 167 FERC ¶ 61,051 (2019).

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 in *United Airlines*.⁷ 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).

3. As required by Order No. 849, in Docket No. RP19-257-000, Southwest Gas Storage filed its FERC Form No. 501-G on November 8, 2018. After reviewing Southwest Gas Storage's FERC Form No. 501-G filing, the Commission issued the Hearing Order on February 19, 2019, instituting an investigation, pursuant to section 5 of the NGA, to determine whether the rates currently charged by Southwest Gas Storage are just and reasonable and set the matter for hearing. The Commission also directed Southwest Gas Storage to file a full cost and revenue study.⁸ In the Hearing Order, the Commission raised the question of whether Panhandle Eastern, Southwest Gas Storage's affiliate, is paying more for storage service than it should to an affiliate and recovering the excessive storage rates from its customers. On January 16, 2019, in its consideration of Panhandle Eastern's FERC Form No. 501-G filing, the Commission found that Panhandle Eastern may be recovering revenue substantially in excess of its cost of service and initiated an investigation pursuant to NGA section 5 with respect to

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, 162 FERC ¶ 61,227 (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).

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

⁸ Hearing Order, 166 FERC ¶ 61,117.

Panhandle Eastern's rates.⁹ In recognition of the related issues and interests, the Commission noted that consolidation of Southwest Gas Storage's proceeding with Panhandle Eastern's NGA section 5 proceeding might be appropriate but ultimately left that determination to the discretion of the Chief Judge.¹⁰ On July 22, 2019, the Chief Judge granted Southwest Gas Storage's motion to sever a single issue and consolidate the issue relating to the negotiated rate agreement between Southwest Gas Storage and Panhandle Eastern with Panhandle Eastern's proceeding in Docket No. RP19-78-000, et al.¹¹

4. On July 19, 2019, Commission Trial Staff and Southwest Gas Storage filed initial comments in support of the Settlement. No other initial or reply comments were filed. On July 26, 2019, the Presiding Judge certified the Settlement as uncontested.¹²

5. Southwest Gas Storage states the Settlement resolves all issues set for hearing to investigate its rates except for the negotiated rate agreement between Southwest Gas Storage and Panhandle Eastern, which is set for hearing. The pertinent provisions of the Settlement are described below.

6. Article II provides background and states that all participants have agreed to request that the Chief Administrative Law Judge consolidate the negotiated rate agreement issue in the above-captioned docket with the issues set for hearing in the Panhandle Eastern NGA section 5 investigation in Docket No. RP19-78-000.

7. Article III contains the substantive components of the Settlement including the rates and tariff provisions. It provides that the tariff records attached to the Settlement set forth the rates (minimum and maximum base recourse rates) for services provided under Rate Schedules FSS and ISS (Settlement Rates). Effective on the Effective Date, Article III provides that the depreciation rates shall be as set out in Appendix B of the Settlement.¹³ It also recognizes that the Settlement Rates are considered to be based on

⁹ *Panhandle Eastern Pipe Line Co., LP*, 166 FERC ¶ 61,032 (2019).

¹⁰ Hearing Order, 166 FERC ¶ 61,117 at P 13 (citing 18 C.F.R. § 375.304(b) (2019)).

¹¹ We note that Southwest Gas Storage's negotiated rate agreement with Panhandle Eastern was consolidated into Panhandle Eastern's NGA section 4 proceeding on September 30, 2019. 168 FERC ¶ 61,208, at P 41 (2019).

¹² *Southwest Gas Storage Co.*, 168 FERC ¶ 63,008 (2019).

¹³ Settlement, art. III § 2.

approved ratemaking methods for purposes of deferred tax accounting and that unless changed in accordance with law and regulation, Southwest Gas Storage will continue to use full inter-period tax normalization to establish its rate base and cost of service.¹⁴ In addition, it provides that the Commission's Statement of Policy Regarding Post-Employment Benefits Other Than Pensions (PBOP)¹⁵ will be deemed to apply to Southwest Gas Storage's payments of retirement benefits other than pensions in recognition of the requirements of the Statement of Financial Accounting Standards No. 106. Because the Voluntary Employees' Beneficiary Association Trust account which funds the Southwest Gas Storage PBOP does not currently project a shortfall in assets available to pay PBOP benefits, Southwest Gas Storage's Settlement rates include an annual PBOP cost of service allowance of \$0. Article III also provides that the Settlement resolves all issues in this proceeding except for the Southwest Gas Storage/Panhandle Eastern negotiated rate agreement originally set for hearing in this proceeding. Article III also provides that Southwest Gas Storage shall include in its annual cost of service (\$104,133) reflecting the annual amortization, adjusted for the tax-on-tax effect, to effectuate the refund of excess deferred income taxes, due to the reduction in Southwest Gas Storage's effective federal income tax rate. In addition, Article III provides that the existing regulatory liability of \$1,806,243 will be amortized by \$78,192 annually for the duration of the Settlement rates and that the remaining balance of the regulatory liability will continue as a rate base reduction until fully amortized.

8. Article IV defines the applicability of the Settlement as it pertains to certain parties. Article V pertains to other matters. Article VI defines the effective date of the Settlement rates, and provides that, if the Commission approves the Settlement without modification, the Settlement shall become effective on the first day of the first month following the date on which a Commission order approves the Settlement. The term of this Settlement shall terminate upon the effective date of revised rates filed by Southwest Gas Storage in a subsequent NGA section 4 general rate case, or upon the effective date of revised rates arising as a result of a filing of an NGA section 5 case seeking to modify rates, terms, or conditions of Southwest Gas Storage services. Article VI also provides that Southwest Gas Storage shall file a new NGA section 4 general rate case on or before the fifth anniversary of the effective date of rates implemented pursuant to the Settlement.

¹⁴ *Id.*

¹⁵ *Id.* § 2(c)(i) (citing *Post-Employment Benefits Other Than Pensions*, 61 FERC ¶ 61,330 (1992)).

9. Article VII of the Settlement contains standard reservations and miscellaneous provisions. It further provides that, “[t]he standard for review or proposed changes to the provisions of this Settlement by the parties or by the Commission on its own motion is the just and reasonable standard.”¹⁶

II. Discussion

10. 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 Southwest Gas Storage’s rates, and Southwest Gas Storage’s FERC Form No. 501-G, aside from the negotiated rate issue identified above, are resolved. The Settlement is uncontested and 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. Southwest Gas Storage is directed to make a compliance filing with revised tariff records in eTariff format,¹⁷ consistent with the terms of the Settlement. This order terminates Docket Nos. RP19-257-000 and RP19-257-004.

The Commission orders:

(A) Southwest Gas Storage’s Settlement is hereby approved, as discussed in the body of this order.

(B) Southwest Gas Storage shall file actual tariff records in eTariff format as required by Order No. 714¹⁸ consistent with the terms of the Settlement.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁶ Settlement, art. VII § 4.

¹⁷ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

¹⁸ *Id.*