

171 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Great Lakes Gas Transmission Limited Partnership Docket No. RP19-399-000

ORDER TERMINATING FERC FORM NO. 501-G PROCEEDING

(Issued May 11, 2020)

1. On December 6, 2018, Great Lakes Gas Transmission Limited Partnership (Great Lakes) filed the One-time Report on Rate Effect of the Tax Cuts and Jobs Act,¹ designated as FERC Form No. 501-G, as required by section 260.402 of the Commission's regulations.² The Commission required certain natural gas pipeline companies to file FERC Form No. 501-G to assist in determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the income tax reductions provided by the Tax Cuts and Jobs Act and the Commission's Revised Policy Statement,³ and precedent⁴ concerning tax allowances to address the double recovery issue identified by *United Airlines*.⁵ For the reasons discussed below,

¹ 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).

² *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (2018), *reh'g denied*, Order No. 849-A, 167 FERC ¶ 61,051 (2019) (adopting 18 C.F.R. § 260.402).

³ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁴ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018), *order on reh'g*, 166 FERC ¶ 61,142 (2019).

⁵ *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*."

we find that Great Lakes has complied with the reporting requirements of Order No. 849, and we close this proceeding.

I. Background

2. On July 18, 2018, the Commission issued Order No. 849,⁶ a final rule requiring all interstate natural gas pipeline companies, with cost-based stated rates, to file a FERC Form No. 501-G containing an abbreviated cost and revenue study using data in the pipelines' 2017 FERC Form Nos. 2 and 2-A. Order No. 849 also permitted a pipeline to make adjustments to individual line items in additional work sheets in an Addendum to the FERC Form No. 501-G, if the pipeline believes that the data in its FERC Form No. 2 or 2-A does not reflect its current situation.⁷ Order No. 849 also provided four 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: (1) a limited rate reduction filing pursuant to section 4⁸ of the Natural Gas Act (NGA) (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 (other than filing a report) (Option 4).

3. In Order No. 849, the Commission explained that the primary purpose of the FERC Form No. 501-G, together with any comments and protests to it, is to provide information relevant to determining whether the Commission should exercise its discretion to initiate an investigation under NGA section 5 as to whether the subject interstate natural gas pipeline may be collecting unjust and unreasonable rates in light of the recent reduction in the corporate income tax rate and change in the Commission's income tax allowance policies.⁹ As the Commission recognized, a rate reduction may not be justified for a significant number of pipelines for a number of reasons.¹⁰ For example, a number of pipelines may currently have rates that do not fully recover their overall cost of service, and therefore, a reduction in those pipelines' tax costs may not cause their rates to be excessive. The Commission further explained that the FERC Form No. 501-G would provide information as to whether a pipeline may fall into this category. The Commission stated that a pipeline choosing Option 3 could provide, along with any additional supporting information it deems necessary, a full explanation of why, after

⁶ Order No. 849, 164 FERC ¶ 61,031 at P 30.

⁷ *Id.* P 65.

⁸ 15 U.S.C. § 717c (2018).

⁹ Order No. 849, 164 FERC ¶ 61,031 at P 69.

¹⁰ *Id.* P 216.

accounting for its reduction in tax costs, its rates do not over recover its overall cost of service, and therefore no rate reduction is justified.¹¹

II. Great Lakes' FERC Form No. 501-G Filing

4. On December 6, 2018, Great Lakes filed its FERC Form No. 501-G in Docket No. RP19-399-000 consistent with the reporting requirements of Order No. 849. In its FERC Form No. 501-G, Great Lakes states that it is not a separate income taxpaying entity. Therefore, its FERC Form No. 501-G eliminated both its tax allowance and Accumulated Deferred Income Taxes (ADIT), consistent with the *United Airlines* Issuances. Great Lakes' FERC Form No. 501-G shows an indicated cost-of-service increase of 1.8%. Great Lakes' FERC Form No. 501-G also shows a Total Estimated Return on Equity (ROE) of 15.2% after adjustments to reflect the *United Airlines* Issuances.¹²

5. In its Addendum, Great Lakes states that by eliminating ADIT totaling \$206,415,111, its equity capitalization should be increased from 52.69% to 66.37%. Although the FERC Form No. 501-G does not permit use of a capital structure with an equity ratio in excess of 65%, Great Lakes argues that the Commission has permitted use of capital structures with equity ratios up to 68.86%.¹³ Accordingly, Great Lakes argues that it meets the Commission's criteria for using its own capital structure because it (1) issues its own non-guaranteed debt; (2) has its own bond rating separate from any corporate parent; and (3) has an actual capital structure that is not excessive compared to equity ratios approved by the Commission. Great Lakes states that its adjusted FERC Form No. 501-G yields an indicated cost-of-service reduction of 0.6%¹⁴ and Total Estimated ROE of 13.9%.¹⁵

6. On December 6, 2018, Great Lakes filed in Docket No. RP19-409-000 a limited NGA section 4 rate reduction pursuant to section 154.404 of the Commission's regulations. Great Lakes proposed a black box 2.0% reduction to its rates, which Great

¹¹ *Id.*

¹² Total Estimated ROE is the ROE as calculated in Great Lakes' FERC Form No. 501-G.

¹³ Great Lakes Addendum, Transmittal (citing *Pacific Gas Transmission Co.*, Opinion No. 381, 62 FERC ¶ 61,109, at 61,779 (1993)).

¹⁴ *Id.* page 1, line 34.

¹⁵ *Id.* page 3, line 26, column D.

Lakes states would result in a further reduced ROE of 13.1%. Great Lakes' filing was accepted by the Commission, effective February 1, 2019.¹⁶

III. Notice, Interventions and Comments

7. Public notice of Great Lakes' FERC Form No. 501-G filing was issued on December 7, 2018. Interventions and protests were due consistent with section 154.210 of the Commission's regulations.¹⁷ Pursuant to Rule 214,¹⁸ 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.

8. On December 14, 2018, the Canadian Association of Petroleum Producers (CAPP) filed comments in Docket No. RP19-399-000. On December 18, 2018, in Docket Nos. RP19-399-000, USG Corp. (USG) filed a protest and Northern States Power Company – Minnesota and Northern States Power Company – Wisconsin (NSP Companies) also filed a protest. On December 18, 2018, Michigan Public Service Commission (MPSC) filed a protest to Great Lakes' FERC Form No. 501-G filing in Docket No. RP19-399-000 and a request for clarification in Docket No. RP19-409-000.

9. On January 8, 2019, Great Lakes filed an answer to the protests and request for clarification. On January 18, 2019, USG filed a reply to Great Lakes' answer to the protests. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits answers to a protest or an answer unless otherwise ordered by the decisional authority.¹⁹ We accept the answers filed by Great Lakes and USG because they provided information that assisted us in our decision-making process.

10. All protestors take issue with Great Lakes' elimination of income tax allowance and ADIT from its rates. USG contends that Great Lakes improperly eliminated its ADIT balances and regulatory liability regarding excess ADIT, which, if not eliminated, would have increased its ROE to nearly 26.3%.²⁰ USG also contends that Great Lakes' elimination of ADIT balances without adjusting rate base violates the principle that normalization will not result in any permanent tax savings by the pipeline that are not

¹⁶ See *Great Lakes Gas Transmission Ltd. P'ship*, 166 FERC ¶ 61,079 (2019) (Limited Section 4 Rate Reduction).

¹⁷ 18 C.F.R. § 154.210 (2019).

¹⁸ 18 C.F.R. § 385.214 (2019).

¹⁹ 18 C.F.R. § 385.213(a)(2).

²⁰ USG Protest at 3.

reversed in subsequent periods.²¹ NSP Companies contest whether Great Lakes is entitled to eliminate its income tax and ADIT balances based on insufficient information provided to substantiate its claim as a pass-through entity.²² Although CAPP states that it takes no position on either the proposal that Great Lakes has made or computations contained in its FERC Form No. 501-G, CAPP notes that it does not concur independently in the adjustment made by Great Lakes in its FERC Form No. 501-G computations to its account for ADIT.²³

11. Most protestors generally take issue with the derivation of Great Lakes' Total Estimated ROEs and request that the Commission consider initiating a NGA section 5 investigation.²⁴ Specifically, USG argues that Great Lakes' Total Estimated ROEs in its FERC Form No. 501-G are excessive because the ROEs are greater than the 12% ROE threshold allowed by the Commission in pipeline rate cases.²⁵ NSP Companies contend that Great Lakes' ROEs are well in excess of the 12% ROE the Commission has set as the safe harbor for temporary protection from an NGA section 5 complaint and that the Commission should set the matter for evidentiary hearing under NGA section 5.²⁶ MPSC asks the Commission to clarify that the rate reduction filing does not affect, or otherwise place a moratorium on, the institution of an NGA section 5 investigation, because Great Lakes does not pass the 12% ROE test.²⁷

12. In its answer, Great Lakes states that its filing in Docket No. RP19-399-000 is in full compliance with Order No. 849 and Commission policy. Great Lakes notes that it filed its FERC Form No. 501-G as a pass-through entity. Accordingly, Great Lakes states that FERC Form No. 501-G automatically eliminated the income tax allowance and ADIT balance from the cost of service, consistent with Order No. 849.²⁸ Great Lakes

²¹ *Id.* at 11.

²² NSP Companies Protest at 5-6.

²³ CAPP Comments at 4.

²⁴ USG Protest at 3-4; MPSC Protest at 5; NSP Companies Protest at 9-10.

²⁵ USG Protest at 4.

²⁶ NSP Companies Protest at 10.

²⁷ MPSC RP19-409 Request for Clarification at 4.

²⁸ Great Lakes Answer at 4 n.16 (quoting Order No. 849, 164 FERC ¶ 61,031 at P 30, "if a pipeline states that it is not a tax paying entity, the revised form will not only automatically enter a federal and state income tax of zero, but also eliminate ADIT from the pipeline's cost of service.").

states that it simply complied with the Commission's instructions and accurately responded that it was not a separate income taxpaying entity. Furthermore, Great Lakes states that section 154.404(a)(2) of the Commission's regulations allows pipelines that are pass-through entities to file a limited NGA section 4 rate reduction filing to eliminate any income tax allowance and ADIT reflected in current rates.²⁹ Consistent with this directive, Great Lakes states that it accurately represented itself on its FERC Form No. 501-G. Great Lakes argues that none of the protestors have made valid arguments to establish an investigation of Great Lakes' rates under NGA section 5. Great Lakes also argues that certain issues the protestors raise are related to Order No. 849,³⁰ specifically how the Commission's Final Rule treats ADIT, but contends that these issues are beyond the scope of this proceeding. Great Lakes asserts that such arguments are before the Commission through the requests for rehearing of Order No. 849 and should only be addressed in that venue.³¹

IV. Discussion

13. We have reviewed Great Lakes' FERC Form No. 501-G, comments filed in this docket, and publicly available information on file with the Commission. We find that Great Lakes has complied with the reporting requirements of Order No. 849, and we close this proceeding.

14. In Order No. 849, the Commission required interstate natural gas pipeline companies with cost-based stated rates to file a FERC Form No. 501-G, which Great Lakes did in this docket. The Commission provided that any action the Commission might consider taking upon review of an individual pipeline's FERC Form No. 501-G, together with comments and protests thereto, would be addressed on a pipeline-by-pipeline basis. Thus, in Order No. 849 the Commission did not impose any industry-wide requirements pertaining to the change in the federal corporate income tax rate beyond the requirement to file the FERC Form No. 501-G.

15. Protestors question Great Lakes' elimination of its income tax allowance, ADIT balances, and regulatory liability related to excess ADIT on its FERC Form No. 501-G and in the adjusted FERC Form No. 501-G in the Addendum. Protestors generally argue

²⁹ *Id.* at 6.

³⁰ *Id.* at 4 (citing USG Protest 5-15; MPSC Protest at 3-4).

³¹ *Id.* at 4 n.17 (citing Process Gas Consumers Group and American Forest and Paper Association Request for Rehearing, Docket No. RM18-11-000 (August 17, 2018)). The rehearing of Order No. 849 was issued by the Commission on April 18, 2019 and addressed the ADIT issues protestors raised in the instant proceeding. Order No. 849-A, 167 FERC ¶ 61,051 (2019).

that they lack sufficient information to determine whether the elimination of Great Lakes' income tax allowance and ADIT balances is warranted, particularly regarding information on Great Lakes' ownership structure to support its claim of pass-through entity status. Here, we find that Great Lakes properly populated its FERC Form No. 501-G as it was instructed by Order No. 849. FERC Form No. 501-G required Great Lakes to identify whether it was a separate income taxpaying entity. Consistent with its current status, Great Lakes responded that it was not a separate income taxpaying entity. Thereafter, it was by operation of FERC Form No. 501-G, and not at Great Lakes' discretion, that income taxes and ADIT balances were eliminated from the cost of service.³² Great Lakes was not permitted to make adjustments to this part of the form and did not do so in either the FERC Form No. 501-G or its Addendum.

16. In Order No. 849, the Commission stated that, if a pipeline made a limited NGA section 4 rate reduction filing that reduced its Total Estimated ROE to 12% or less, the Commission would not initiate an NGA section 5 investigation into the pipeline's rates for three years from the effective date of the rate reduction.³³ Great Lakes' Total Estimated ROE after its proposed 2.0% rate reduction is 13.1%.³⁴ While we acknowledge that the total estimated ROE for Great Lakes does not meet the 12% or less threshold to allow for a three-year moratorium on Commission-initiated NGA section 5 investigations, for the reasons discussed below, we decline to initiate a section 5 investigation at this time.

17. Great Lakes' currently effective rates reflect its recently accepted Limited Section 4 Rate Reduction and the rate reduction provided for in its 2017 Settlement.³⁵ The 2017 Settlement, which resolved Great Lakes' most recent NGA section 4 rate proceeding in Docket No. RP17-598-000, requires Great Lakes to submit a general NGA section 4 rate filing no later than March 31, 2022, with rates to become effective no later than October 1, 2022 (Come-back Provision).³⁶ As stated in Great Lakes' Answer, the 2.0% rate reduction in its recent Limited Section 4 Rate Reduction provided an additional

³² We consider many of the arguments raised in the protests to be barred as untimely collateral attacks on Order No. 849.

³³ Order No. 849, FERC Stats. & Regs. ¶ 31,404 at P 199.

³⁴ Great Lakes RP19-399 Filing Letter at 2.

³⁵ See *Great Lakes Gas Transmission Ltd. P'ship*, 162 FERC ¶ 61,152 (2018) (2017 Settlement). Great Lakes filed a Stipulation and Agreement of Settlement on October 30, 2017 which was approved by the Commission on February 22, 2018.

³⁶ *Id.* P 4.

benefit on top of the rate reduction provided by the 2017 Settlement.³⁷ In Commission Trial Staff Initial Comments filed on November 20, 2017, Trial Staff calculates that the 2017 Settlement provides for an overall 27% reduction to Great Lakes' 2013 Settlement reservation and usage rates.

18. We find that the rate reductions provided for in the 2017 Settlement and the 2.0% rate reduction from the Limited Section 4 Rate Reduction proceeding have provided substantial rate relief for Great Lakes' shippers, while also having a discernable impact on Great Lakes' ROE. We also note that the Come-back Provision in the 2017 Settlement requires Great Lakes to file a general NGA section 4 rate case no later than March 31, 2022. Finally, a review of Great Lakes' index of customers reflects that approximately 70% of its capacity is held by two of its affiliates, TransCanada Pipelines Limited and ANR Pipeline Company. Therefore, for all these reasons, we exercise our discretion not to institute an NGA section 5 investigation into Great Lakes' currently effective rates at this time.³⁸

19. For these reasons, we find that Great Lakes has complied with the reporting requirement, and the proceeding is closed.

The Commission orders:

The captioned FERC Form No. 501-G proceeding is terminated.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁷ See Commission Trial Staff Initial Comments Supporting Settlement filed on November 20, 2017 at 8.

³⁸ *General Motors Corp. v. FERC*, 613 F.2d 939, 944 (D.C. Cir. 1979) (addressing Commission discretion to initiate an NGA section 5 investigation).