

169 FERC ¶ 61,052  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Wyoming Interstate Company, L.L.C.

Docket No. RP19-420-000

ORDER TERMINATING FERC FORM NO. 501-G PROCEEDING

(Issued October 17, 2019)

1. On December 6, 2018, Wyoming Interstate Company, L.L.C. (WIC) filed the One-time Report on Rate Effect of the Tax Cuts and Jobs Act,<sup>1</sup> designated as FERC Form No. 501-G, as required by section 260.402 of the Commission's regulations.<sup>2</sup> 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,<sup>3</sup> and precedent<sup>4</sup> concerning tax allowances to address the double recovery issue identified by *United Airlines*.<sup>5</sup> For the reasons discussed below, we find that WIC has complied with the reporting requirements of Order No. 849, and we close this proceeding.

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<sup>1</sup> 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).

<sup>2</sup> *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (2018) (Order No. 849) (adopting 18 C.F.R. § 260.402).

<sup>3</sup> *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).

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

<sup>5</sup> *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*).

## I. Background

2. On July 18, 2018, the Commission issued Order No. 849,<sup>6</sup> a final rule requiring 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 Nos. 2 or 2-A does not reflect its current situation.<sup>7</sup> 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 4<sup>8</sup> 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.<sup>9</sup> As the Commission recognized, a rate reduction may not be justified for a significant number of pipelines for a number of reasons.<sup>10</sup> 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

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<sup>6</sup> Order No. 849, 164 FERC ¶ 61,031 at P 30.

<sup>7</sup> *Id.* P 65.

<sup>8</sup> 15 U.S.C. § 717c (2018).

<sup>9</sup> Order No. 849, 164 FERC ¶ 61,031 at P 69.

<sup>10</sup> *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.<sup>11</sup>

## II. WIC's FERC Form No. 501-G Filing

4. On December 6, 2018, WIC filed its FERC Form No. 501-G in Docket No. RP19-420-000 consistent with the reporting requirements of Order No. 849. In its FERC Form No. 501-G, WIC states that it is a separate income taxpaying entity. Therefore, its FERC Form No. 501-G includes a reduced tax allowance reflecting the Tax Cuts and Jobs Act's reduced federal corporate income tax rate. WIC's FERC Form No. 501-G shows a Total Estimated Return on Equity (ROE) of 19.2 percent, after adjusting for the income tax reduction.<sup>12</sup> WIC's FERC Form No. 501-G shows an indicated percentage cost-of-service reduction of 7.0 percent.

5. WIC elected to file under Option 3 (statement explaining why no rate adjustment is needed). WIC states that its current rates were established as part of a settlement, negotiated on a black-box basis and approved by the Commission on November 27, 2017 (2017 Settlement).<sup>13</sup> WIC states that the settlement was the result of an NGA section 5 proceeding initiated by the Commission on January 19, 2017.<sup>14</sup>

6. WIC states that the 2017 Settlement terms include, as relevant to the instant proceeding, a moratorium on NGA section 4 and 5 filings prior to January 1, 2021.<sup>15</sup> In addition, WIC states that Section 4.2(b) of the 2017 Settlement provides that "[n]otwithstanding anything in this [Settlement] to the contrary, WIC shall implement any lawful and applicable Commission imposed industry-wide requirements pertaining to ... statutory changes to corporate income tax rates..."<sup>16</sup> WIC avers that its FERC Form No. 501-G informational filing in this proceeding satisfies its 2017 Settlement

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<sup>11</sup> *Id.*

<sup>12</sup> Total Estimated ROE is the ROE as calculated in WIC's FERC Form No. 501-G.

<sup>13</sup> *Wyoming Interstate Co.*, 161 FERC ¶ 61,223 (2017) (*WIC*).

<sup>14</sup> *Wyoming Interstate Co.*, 158 FERC ¶ 61,040 (2017).

<sup>15</sup> WIC Transmittal at 2-3 (citing the 2017 Settlement at sections 4.1 and 4.2). WIC also notes that it must file an NGA section 4 rate case with rates effective no later than April 1, 2022, according to the terms of the Settlement.

<sup>16</sup> WIC Transmittal at 3 (quoting the 2017 Settlement at section 4.2(b)).

requirement to comply with any Commission mandated, industry-wide requirement with respect to the change in the federal corporate income tax rate.

### **III. Notice, Interventions and Comments**

7. Public notice of WIC's 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.<sup>17</sup> Pursuant to Rule 214,<sup>18</sup> 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 18, 2018, Mercator Energy LLC (Mercator)<sup>19</sup> filed comments. Mercator challenges WIC's election of Option 3 to not reduce its rates based on the information provided in its FERC Form No. 501-G. WIC filed an answer to Mercator's comments on January 2, 2019. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>20</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept WIC's answer because it provides information that assists us in our decision-making process.

9. Mercator states that WIC's Total Estimated ROE of 19.2 percent, coupled with the consequences of the reduction in federal corporate income tax reduction, provides a compelling case for the Commission to institute an NGA section 5 proceeding.<sup>21</sup> Mercator claims that WIC's filing of the FERC Form No. 501-G does not constitute exhaustive compliance with WIC's obligation under the 2017 Settlement to implement a "Commission imposed, industry-wide requirement" in response to the reduction in federal income tax rates.<sup>22</sup> Mercator argues that WIC's FERC Form No. 501-G filing represents "merely the beginning" of WIC's compliance with Order No. 849. According

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<sup>17</sup> 18 C.F.R. § 154.210 (2019).

<sup>18</sup> 18 C.F.R. § 385.214 (2019).

<sup>19</sup> Mercator states that it is a natural gas supply consultant and broker of natural gas with a principal place of business in Littleton, Colorado.

<sup>20</sup> 18 C.F.R. § 385.213(a)(2).

<sup>21</sup> Mercator Protest at 3.

<sup>22</sup> *Id.* at 3 (quoting 2017 Settlement).

to Mercator, the 2017 Settlement anticipated an exception to the rate-filing moratorium to address the possibility of a tax reduction that did indeed materialize.<sup>23</sup>

10. In its answer, WIC argues that Mercator appears to conflate the requirements of the FERC Form No. 501-G process and the requirements to permit a rate change under the exception to the rate moratorium in the 2017 Settlement. WIC contends that nowhere in the Final Rule is there a Commission imposed industry-wide requirement to change rates. Thus, the Final Rule does not qualify as an exception to the prohibition to changes in the settlement rates.<sup>24</sup> According to WIC, no reason has been advanced as to why the Commission should depart from its long-standing policy to refrain from modifying the rates in a settlement where a moratorium precludes the parties from changing the settlement rates.

#### **IV. Discussion**

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

12. WIC's rates are currently subject to a recently approved 2017 Settlement that includes a rate moratorium until January 1, 2021 and a commitment to file an NGA section 4 rate case with rates to become effective no later than April 1, 2022. Mercator argues that the 2017 Settlement permits the Commission to initiate an NGA section 5 investigation of WIC's current rates. However, our review of the 2017 Settlement indicates that, contrary to Mercator's claims, WIC has discharged its obligations under the exception to the rate moratorium in section 4.2(b) of the 2017 Settlement in connection with Order No. 849. Although the Settlement did reserve the issue of adjustments to reflect a change in the federal corporate income tax rate, the reservation only requires WIC to implement "Commission imposed industry-wide requirements."<sup>25</sup> 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,<sup>26</sup> which WIC did in this docket. The Commission provided that any action the Commission might consider taking

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<sup>23</sup> *Id.*

<sup>24</sup> WIC Reply at 5.

<sup>25</sup> See Stipulation and Agreement, section 4.2(b) included in Offer of Settlement, Docket No. RP17-302-000 (August 15, 2017).

<sup>26</sup> Order No. 849, 164 FERC ¶ 61,031 at P 30.

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.<sup>27</sup> 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. Accordingly, we determine that the rate moratorium in WIC's 2017 Settlement applies to any action we might consider taking in this proceeding with respect to WIC's FERC Form No. 501-G.<sup>28</sup> In these circumstances, we exercise our discretion not to institute an NGA section 5 investigation into WIC's currently effective rates at this time.<sup>29</sup>

13. For these reasons, we find that WIC has complied with the reporting requirement, and the proceeding is closed.

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<sup>27</sup> *Id.* PP 89, 228.

<sup>28</sup> WIC's 2017 Settlement permits the Commission to modify the settlement upon a finding that the settlement is unjust and unreasonable. *WIC*, 161 FERC ¶ 61,223 at P 9. However, we do not find the terms of the settlement to be unjust and unreasonable. As noted above, the parties specifically addressed the possibility of a change to corporate tax rates and agreed that WIC would be obligated to "implement any lawful and applicable Commission imposed industry-wide requirements." Taking into account the Commission's policy favoring the finality of settlements, we decline to disturb the bargain struck by the parties in the uncontested 2017 Settlement. *See, e.g., Trans Bay Cable LLC*, 165 FERC ¶ 61,106, at P 18 (2018); *JMC Power Projects v. Tennessee Gas Pipeline Co.*, 69 FERC ¶ 61,162 (1994), *reh'g denied*, 70 FERC ¶ 61,168, at 61,528 (1995), *affirmed*, *Ocean State Power v. FERC*, 84 F.3d 1453 (D.C. Cir. 1996); *see also El Paso Natural Gas Co.*, 120 FERC ¶ 61,170, at P 38 (2007) ("Preserving the bargains of the parties to the greatest extent possible encourages settlements and parties would be hesitant to resolve their disputes by settlement if the Commission did not honor these agreements to the greatest extent possible").

<sup>29</sup> *General Motors Corp. v. FERC*, 613 F.2d 939, 944 (D.C. Cir. 1979) (addressing Commission discretion to initiate an NGA section 5 investigation).

The Commission orders:

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

By the Commission. Commissioner Glick is dissenting with a separate statement attached.

( S E A L )

Kimberly D. Bose,  
Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Wyoming Interstate Company, L.L.C.  
Natural Gas Pipeline Company of America LLC

Docket Nos. RP19-420-000  
RP19-395-000

(Issued October 17, 2019)

GLICK, Commissioner, *dissenting*:

1. I dissent from today's orders because the Commission is falling short on its promise to pass onto consumers the benefits of the corporate tax reductions in the Tax Cuts and Jobs Act (TCJA).<sup>1</sup> The records before us suggest that Wyoming Interstate Company, L.L.C. (Wyoming Interstate) and Natural Gas Pipeline Company of America LLC (Natural) (collectively, Pipelines) are now earning returns on equity (ROE) on the order of 20 percent—a number far outside the zone of reasonableness established in the most recent fully litigated rate case under the Natural Gas Act (NGA). Viewed in light of the full records before us, that should have been enough for the Commission to institute a proceeding under section 5<sup>2</sup> of the NGA to examine whether the Pipelines' rates are just and reasonable.

2. Enacted in 2017, the TCJA lowered the corporate income tax rate from 35 percent to 21 percent. Shortly thereafter, the Commission issued Order No. 849 to address the concern that natural gas pipelines could be over-charging customers based on the old 35 percent rate. Order No. 849 required natural gas pipelines to file a one-time informational report—*i.e.*, the 501-G Form—to “provid[e] the Commission and stakeholders information necessary to take targeted actions under NGA section 5 where necessary to achieve just and reasonable rates.”<sup>3</sup> Order No. 849 also gave pipelines the option to make a limited NGA section 4<sup>4</sup> filing to voluntarily reduce their rates to reflect the lower federal income tax rate.<sup>5</sup> The Commission explained that if a pipeline elected

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<sup>1</sup> Pub. L. No. 115-97, 131 Stat. 2054 (2017).

<sup>2</sup> 15 U.S.C. § 717d (2018).

<sup>3</sup> *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031, at P 31 (2018) (Order No. 849).

<sup>4</sup> 15 U.S.C. § 717c (2018).

<sup>5</sup> Order No. 849, 164 FERC ¶ 61,031 at P 33. The Commission also gave



not to make that limited filing, it would consider initiating a section 5 proceeding to ensure that the benefits of the TCJA were passed on to consumers.

3. Wyoming Interstate and Natural chose not to make filings to reflect the reduced corporate tax rate and so the question for the Commission is whether to seek to reduce their rates under NGA section 5. The Pipelines' 501-G Forms suggest that they are now earning ROEs of 19.2 percent (Wyoming Interstate) and 23.5 percent (Natural).<sup>6</sup> As noted, those ROEs are substantially above the just and reasonable ROE established in the most recent fully litigated natural gas pipeline rate case.<sup>7</sup> Indeed, Wyoming Interstate's ROE is more than *twice* the upper bound of the zone of reasonableness established in that case. That suggests that the Pipelines' rates may well be unjust and unreasonable and it should have been a more-than-sufficient basis to institute section 5 proceedings.<sup>8</sup>

4. Instead, the Commission declines to even begin a section 5 proceeding on the basis that the Pipelines' current rates were established through settlements.<sup>9</sup> That is a mistake. Both of the relevant settlements expressly provided that the just and reasonable standard would apply to any subsequent Commission action.<sup>10</sup> As a result of the TCJA,

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pipelines a similar opportunity to address the reduction in the corporate tax rate by committing to make a section 4 filing "in the near future." *Id.* P 31.

<sup>6</sup> *Natural Gas Pipeline Co. of America LLC*, 169 FERC ¶ 61,053, at P 4 (2019) (Natural Order); *Wyoming Interstate Co., L.L.C.*, 169 FERC ¶ 61,052, at P 4 (2019) (Wyoming Interstate Order).

<sup>7</sup> In *El Paso Natural Gas Company*, the Commission calculated a zone of reasonableness of 10.39 to 11.08 percent and it set the just and reasonable ROE at 10.55. *El Paso Natural Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 642 (2013), *reh'g denied*, Opinion No. 528-A, 154 FERC ¶ 61,120 (2016). I recognize that has been several years since the record in *El Paso* was developed. But the ROE set in that proceeding nevertheless provides a relevant point of comparison for examining the Pipelines' ROEs.

<sup>8</sup> See *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (observing that "showing that the existing rate is entirely outside the zone of reasonableness" established by a discounted cash flow analysis is one way that the Commission can demonstrate that an existing ROE is unjust and unreasonable).

<sup>9</sup> Natural Order, 169 FERC ¶ 61,053 at PP 14-15; Wyoming Interstate Order, 169 FERC ¶ 61,052 at PP 11-12.

<sup>10</sup> See Natural Order, 169 FERC ¶ 61,053 at P 16 (2019) ("Natural's 2018 Settlement permits the Commission to modify the settlement upon a finding that the

there has been a material change in circumstance and the Commission must examine whether those rates remain just and reasonable. As the Commission has previously explained, it has “not only the authority, but also the responsibility under section 5 of the NGA to make an adjustment to a settlement if the terms of the settlement have become unjust and unreasonable.”<sup>11</sup> Living up to that responsibility is particularly appropriate here because the corporate income tax rate, which is set by federal law, would presumably not have been something that the parties vigorously negotiated in the settlement proceedings.

5. The Commission contends that we should not exercise our section 5 authority because the Pipelines’ settlements, which were entered prior to the TCJA,<sup>12</sup> contain moratoria with an exemption only for “industry-wide requirements” imposed by the Commission.<sup>13</sup> It argues, that by filing their 501-G forms, the Pipelines complied with the Commission’s only “industry-wide” requirements and so it is time to close the book on these proceedings. I disagree. The moratoria in both settlements expressly do not apply to the Commission and, therefore, do not provide a reasoned basis for the Commission’s decision in today’s order.<sup>14</sup> In any case, the Commission’s interpretation would transform Order No. 849, as applied to the Pipelines, into meaningless paperwork and process. That is not what the Commission had in mind when it made Order No. 849

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settlement is unjust and unreasonable.”); Wyoming Interstate Order, 169 FERC ¶ 61,052 at n.28 (2019) (Wyoming Interstate’s “[s]ettlement permits the Commission to modify the settlement upon a finding that the settlement is unjust and unreasonable.”).

<sup>11</sup> *El Paso Nat. Gas Co.*, 99 FERC ¶ 61,244, 62,008 (2002).

<sup>12</sup> Order No. 849 expressly distinguished between settlements agreed to prior to the notice of proposed rulemaking (NOPR) and those agreed to after the NOPR was published. The Commission explained that, “only in th[e] circumstance” where a settlement was agreed to after the NOPR, would it “presume that all the settling parties were aware of, and took into account, . . . the NOPR . . . when they agreed to the settlement,” meaning that “no further change in the pipeline’s rates is needed.” Order No. 849, 164 FERC ¶ 61,031 at P 160.

<sup>13</sup> Natural Order, 169 FERC ¶ 61,053 at P 15; Wyoming Interstate Order, 169 FERC ¶ 61,052 at P 12 & n.28.

<sup>14</sup> See Settlement, Docket No. RP17-302-000, §§ 4.2, 5.5 (Wyoming Interstate’s settlement, which defines “Supporting or Non-Opposing Party,” which are the only parties bound by the section 5 moratorium in the settlement); Settlement, Docket No. RP17-303-000, at §§ 7.2, 11.1 (Natural’s settlement, which defines “Settling Parties,” which are the only parties bound by the section 5 moratorium in the settlement).

the crux of its efforts to ensure that the TJCA actually benefits customers and is not just a windfall for pipelines.

6. To be clear, I fully appreciate the importance of settlements as an efficient means of addressing rate disputes that come before the Commission. I also recognize that “preserving the bargains of the parties to the greatest extent possible encourages settlements.”<sup>15</sup> But where the records indicate that rates established through a settlement are no longer just and reasonable, the Commission’s understandable solicitude for settlements cannot justify leaving in place rates that may violate the NGA. Unfortunately, that is precisely the result of today’s order.

For these reasons, I respectfully dissent.

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Richard Glick  
Commissioner

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<sup>15</sup> Wyoming Interstate Order, 169 FERC ¶ 61,052 at n.28 (internal quotation marks omitted); Natural Order, 169 FERC ¶ 61,053 at n.30 (same).