

112 FERC ¶ 61,314
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

September 20, 2005

In Reply Refer To:
Southern LNG Inc.
Docket No. CP99-579-003

Southern LNG Inc.
1900 5th Ave. North
Birmingham, AL 35203

Attention: Patrick B. Pope, Esq.
Vice President & General Counsel

Reference: Offer of Settlement

Dear Mr. Pope:

1. On June 8, 2005, Southern LNG Inc. (SLNG) filed pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,¹ an Offer of Settlement (Settlement), intended to resolve all issues in the above-referenced proceeding. The Commission will approve the Settlement without modification.
2. BG LNG Services, LLC, Commission Trial Staff, and SLNG filed initial comments in support of the Settlement on June 28, 2005. On July 12, 2005, the Presiding Administrative Law Judge certified the Settlement to the Commission as uncontested.²
3. The major features of the Settlement are as follows:
4. Article I of the Settlement provides that the currently effective Base Rates will remain in effect, and will constitute the refund floor for consenting parties in SLNG's next general rate proceeding. The Settlement does not alter SLNG's right to make filings with respect to charges other than the Base Rates nor does it alter any consenting party's right to protest such filings.

¹ 18 C.F.R. § 385.602 (2005).

² *Southern LNG Inc.*, 112 FERC ¶ 63,006 (2005).

5. Article II of the Settlement provides that SLNG will not file a Natural Gas Act (NGA) section 4 general rate case to change the existing rates for five years. However, SLNG may file to change its rates if a regulatory body requires SLNG to change the cost allocation, rate design, services, or billing determinants underlying its rates, in a manner that materially and adversely affects SLNG's ability to recover its cost-of-service or materially increases SLNG's cost-of service.

6. Pursuant to the Settlement, during the rate moratorium, neither Shell NA LNG LLC (Shell LNG) nor Marathon LNG Marketing LLC (Marathon LNG) will take any action under NGA section 5, or otherwise, to require a change in the Settlement rates or their components. Additionally, the Settlement states that during the rate moratorium, SLNG will not file to roll-in the costs of the Elba Island Expansion Project, and that the Settlement does not affect the presumption in favor of roll-in for the Elba Island Expansion Project. *Southern LNG Inc.*, 103 FERC ¶ 61,029 at P 43 (2003). The Settlement provides that to the extent that the Commission considers during the rate moratorium any changes to the Base Rates, the standard for review for any proposed change shall be the *Mobile-Sierra* "public interest" standard.

7. The Settlement states that as consideration for Shell LNG agreeing to the Settlement, an SLNG Precedent Agreement with Shell LNG dated December 24, 2001, was revised to eliminate SLNG's right to file to amend the authority for the Elba Island Expansion Project to establish an initial, incremental rate applicable to the Service Agreement. Further, SLNG will pay Marathon LNG \$0.01 per Dth for LNG that Marathon LNG delivers to the Elba Island Terminal during the period from October 1, 2005 until October 1, 2010, capped at \$600,000 for any annual period. SLNG agrees that it will not seek to include the costs of the payments to Marathon LNG in its jurisdictional rates in any future section 4 filing.

8. Article III provides that the Settlement becomes effective on the date the Commission approves the Settlement in a final order, without modification, or the Settlement is modified in a manner that is acceptable to SLNG and the parties in this proceeding. The Settlement terminates on the date that the Base Rates are superseded. Termination of the Settlement through SLNG's filing of a section 4 rate proceeding will not affect SLNG's obligation to pay Marathon LNG for the term set forth in Article II.

9. Article IV of the Settlement addresses regulatory approvals associated with the Settlement.

10. Article V of the Settlement provides that if the Commission modifies the Settlement, each party to the proceeding shall notify the other parties and the Commission in writing, within 20 days, whether they elect to be bound by the Settlement as modified. Failure to provide such notification constitutes acceptance of the modified

Settlement. If SLNG or any party does not accept the modified Settlement, the Settlement is terminated.

11. Article VI of the Settlement sets out the standard reservations that the Settlement does not establish any policy or precedent.

12. The Commission finds that the Settlement appears to be fair, reasonable and in the public interest. Accordingly, the Commission approves the Settlement without modification. The Commission's approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

By direction of the Commission. Commission Kelly dissenting in part
with a separate statement attached.

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern LNG, Inc.

Docket Nos. CP99-579-003

(Issued September 20, 2005)

KELLY, Commissioner, *dissenting in part*:

This order approves a settlement which provides, in relevant part, that “[t]o the extent that the Commission considers during the Rate Moratorium any changes to the Base Rates, the standard for review for any proposed change shall be the *Mobile-Sierra* ‘public interest’ standard.” As I have previously stated,¹ I believe that approval of such a settlement provision is inconsistent with the Commission’s precedent set forth in *Columbia Gas Transmission Corp.*² I believe that the Commission should preserve its right to take NGA section 5 action under the “just and reasonable” standard when acting *sua sponte* or pursuant to a complaint by a non-party at such times and under such circumstances as the Commission deems appropriate. Therefore, I dissent in part from this order.

Suedeem G. Kelly

¹ See *Southern Natural Gas Co.*, Docket No. RP04-523-000, *et al.* (FERC letter order issued on July 13, 2005).

² 79 FERC ¶ 61,044 (1997).