

130 FERC ¶ 61,004
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 5, 2010

In Reply Refer To:
Southern Natural Gas Company
Docket Nos. RP09-427-000

Andrews Kurth LLP
1350 I street, NW
Suite 1100
Washington, DC 20005

Attention: Mark F. Sundback, Esq.
Attorney for Southern Natural Gas Company

Reference: Offer of Settlement

Dear Mr. Sundback:

1. On October 5, 2009, Southern Natural Gas Company (SNG) filed a Settlement in the above-referenced docket to resolve all issues related to its Natural Gas Act (NGA) Section 4 proceeding set for hearing¹ by the Commission.² Initial comments to the settlement were due October 8, 2009. Parties filing comments either support or do not oppose the settlement.³ The Administrative Law Judge (ALJ) certified the settlement to the Commission as uncontested on October 20, 2009.⁴

¹ *Southern Natural Gas Co.*, 127 FERC ¶ 61,003 (2009).

² On October 9, 2009, SNG filed to modify its Settlement proposal in order to satisfy a concern related to capacity associated with an Alabama Gas Corporation (Alabama Gas) contract voiced by Alabama Gas.

³ SNG (supplemented October 9, 2009); Alabama Gas (supplemented October 9, 2009); Atlanta Gas Light Company and Chattanooga Gas Company (jointly); city of Orangeburg, South Carolina; Dalton Utilities; East Tennessee Group; The Georgia

(continued...)

2. The following is a summary of the major provisions of the uncontested settlement:
- a. Article I provides that the offer resolves all issues in this proceeding; results in a rate decrease over the filed rates; results in rate certainty; is fair and reasonable and is unopposed.
 - b. Article II recounts the history of this proceeding. Paragraph H of this Article references the Appendices of the Settlement that set out the Settlement Rates, Retention Percentages, and Fuel Mechanism agreed to by the Parties. Paragraph I of this Article provides the effective dates of the tariff sheets reflected by the Appendices. Paragraph I also states the manner in which billing adjustments and refunds will be handled.
 - c. Article III provides that shippers entitled to the benefits of the Settlement agree to extend their contracts for transportation services with SNG through August 31, 2013.
 - d. Article IV describes the rate moratorium and refiling requirement the Settlement established for, *inter alia*, SNG and the active parties. The rate moratorium provides rate certainty in accordance with the Settlement terms. Article IV, Part B, also details certain, limited exceptions to the Rate Moratorium, including filings which SNG is entitled to make (e.g., Annual charge Adjustment filings) and which customers are entitled to challenge.

Article IV also provides that:

2. (a) To the extent the Commission considers during the Rate Moratorium any change to be effective during the Rate Moratorium to the terms of the Settlement, notwithstanding the terms of the Settlement, the standard for review for any such proposed change shall be the “public interest” standard of review

Industrial Group; The Indicated Producers (jointly Apache Corporation, Chevron U.S.A. Inc, Exxon Mobile Gas & Power Marketing Company, a Division of Exxon Mobile Corporation, and Shell Offshore, Inc.); The Municipals (jointly Alabama Municipal Distributors Group; Austell Gas System; Municipal Gas Authority of Georgia, and Southeast Alabama Gas District), PCS Nitrogen Fertilizer, L.P.; Southstar Energy Services, LLC; and Commission Trial Staff.

⁴ *Southern Natural Gas Co.*, 129 FERC ¶ 63,004 (2009).

set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*⁵ and *Federal Power Commission v. Sierra Pacific Power Co.*⁶ with respect to any entity that is a Supporting and Non-Opposing Participant in Article I hereof, or who becomes a Supporting or Non-Opposing Party after the date the Settlement is filed. In any such proceeding, Supporting and Non-Opposing Participants⁷, as well as Supporting or Non-Opposing Parties⁸, shall not support any change to be made effective during the Rate Moratorium to the provisions of the Settlement, including the Settlement Rate Provisions or the Settlement Tariff Provisions.

(b) With respect to any proposal to change the provisions of this Settlement regarding (i) entities that have not qualified as either Supporting and Non-Opposing Participants or Supporting or Non-Opposing Parties after approval of the Settlement by the Commission, or (ii) the Commission, acting *sua sponte*, the standard of review shall be the most stringent standard permitted by law.

- e. Article V states that eligible industrial plants that extended their contracts pursuant to this Settlement can exercise a turnback right if the plant shuts down.
- f. Article VI addresses the issue of whether to roll in the costs associated with SNG's Southeast Supply Header, LLC (SESH) project, and how to reflect those costs in rates. The Article sets out differing treatment for different portions of the total SESH Capacity.

⁵ 350 U.S. 332 (1956).

⁶ 350 U.S. 348 (1956).

⁷ A list of the participants can be found in Appendix A of the Settlement.

⁸ Article XIII of the settlement defines a "Supporting and Non-Opposing Party" as "any party or customer who does not meet the definition of a 'Contesting Party.'" Article XIII also "sets forth actions that would cause a party to be deemed a Contesting Party."

- g. Article VII states that: SNG will credit \$3 million to its cost of service in its next rate case as a Settlement Adjustment mechanism in consideration of the parties settling the instant case; SNG will fund \$1,211,868 into its FASB 106 trust annually beginning 2010 through the effective date of the next rate case; and SNG will comply with the procedures described in Appendix F of the offer toward reaching a resolution of pooling issues.
 - h. Article VIII sets out the depreciation and negative salvage rates.
 - i. Article IX states that settling and non-contesting parties shall be entitled to the Settlement rates and describes the mechanism for billing adjustments.
 - j. Article X recites the imputed load factors SNG will file in its next Section 4 rate case for the development of Small Shipper rates. This will not be considered a settled practice, and parties remain free to contest those factors.
 - k. Article XI recites various tariff changes and other provisions negotiated as part of the Settlement.
 - l. Article XII states that, with a few specified exceptions described herein, the terms of the Settlement do not survive beyond the term of the rate moratorium.
 - m. Article XIII describes the conduct the parties have agreed to abide by as part of the settlement; e.g., not challenging the Settlement directly or indirectly.
 - n. Article XIV sets out the typical general reservations, e.g., that the settlement is of no precedential effect and is non severable. The Article also defines the effective date of the Settlement, and the procedures for contesting or accepting any modification of the Settlement.
3. The Commission finds that the Settlement appears to be fair and reasonable and in the public interest. Accordingly, subject to the condition that SNG files actual tariff sheets identical to the *pro forma* tariff sheets contained in Appendix C of the Settlement consistent with the terms of the Settlement within 30 days of the issuance of the instant order, the proposed Settlement is hereby approved pursuant to Rule 602(g) of the Commission's Rules of Practice and Procedure.⁹ The Commission's approval of this

⁹ 18 C.F.R. §385.602(g) (2009).

Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

By direction of the Commission.

Kimberly D. Bose,
Secretary.