

132 FERC ¶ 61,077  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Fayetteville Express Pipeline LLC

Docket No. CP09-433-001

ORDER GRANTING REHEARING

(Issued July 28, 2010)

1. On January 16, 2010, Fayetteville Express Pipeline LLC (Fayetteville) filed a timely request for rehearing of order issued in *Fayetteville Express Pipeline, LLC* (December 17 Order).<sup>1</sup> We will grant rehearing for the reasons discussed below.

**I. December 17 Order**

2. In the December 17 Order, the Commission granted Fayetteville authorization under section 7(c) of the Natural Gas Act<sup>2</sup> to construct and operate a new interstate natural gas pipeline, the Fayetteville Express Pipeline System, in Arkansas and Mississippi. The Fayetteville Express Pipeline has a project design capacity of 2,000,000 decatherms per day, and will link natural gas production from the Fayetteville Shale production area in Arkansas to markets in the Midwest, Southeast, and Northeast through interconnects with several interstate pipeline systems.

3. In its certificate application, Fayetteville proposed to start the accrual of Allowance for Funds Used During Construction (AFUDC) in April 2009, more than two months prior to filing its certificate application in Docket No. CP09-433-000 and continuing through December 2010.<sup>3</sup> In the December 17 order, the Commission relied

---

<sup>1</sup> 129 FERC ¶ 61,235 (2009).

<sup>2</sup> 15 U.S.C. § 717f (2006).

<sup>3</sup> The amount of AFUDC accrued prior to filing the certificate application is approximately \$1.6 million.

on its Accounting Release No. 5,<sup>4</sup> which provides that AFUDC should not be accrued for the period prior to the filing date of an application to the Commission for a certificate to construct facilities by a natural gas company unless justified by the company. Relying on this provision, the Commission determined that Fayetteville failed to justify the accrual of AFUDC prior to the filing of its certificate application. Therefore, the Commission required Fayetteville to reverse the AFUDC accrued between April 2009 and June 15, 2009, the date of the certificate application filing. Additionally, the Commission directed Fayetteville to adjust all cost-of-service items dependent upon Gas Plant in Service, such as income taxes, depreciation expense, return, and interest expense, to appropriately reflect the effects from the reversal of the AFUDC accrued prior to the filing date of the certificate application.

## **II. Request for Rehearing**

4. Fayetteville contends that it submitted evidentiary support for its AFUDC accruals in its certificate application, and also provided worksheet computations on a monthly basis to support its AFUDC accruals in response to Commission staff's August 13, 2009 data request. Fayetteville points out that the Commission did not seek additional information after it filed its response nor did the Commission subsequently issue a notice of deficiency or non-responsiveness.

5. Fayetteville additionally asserts that the December 17 Order would unreasonably deny it the opportunity to recover the costs of the project. Fayetteville argues regulated pipelines are entitled to recover the cost of financing construction of jurisdictional transportation facilities.<sup>5</sup>

## **III. Discussion**

6. Fayetteville is one of several pipelines that were denied early accrual of AFUDC on expenditures made prior to the filing of the certificate application.<sup>6</sup> Like Fayetteville, the other pipeline applicants argued that the Commission should allow the accrual of

---

<sup>4</sup> *Capitalization of Interest During Construction*, Accounting Release No. 5 (Revised), FERC Stats. & Regs. ¶ 40,005 (1968).

<sup>5</sup> Fayetteville's Rehearing Request at 12-13.

<sup>6</sup> *See, e.g., Ruby Pipeline, L.L.C.*, 128 FERC ¶ 61,224 (2009); *Florida Gas Transmission Co. LLC*, 129 FERC ¶ 61,150 (2009); *Southern Natural Gas Co.*, 128 FERC ¶ 61,198 (2009); *Midcontinent Express Pipeline LLC*, 128 FERC ¶ 61,235 (2009); *Pacific Connector Gas Pipeline, LP*, 129 FERC ¶ 61,234 (2009); *Texas Eastern Transmission, LP*, 129 FERC ¶ 61,151 (2009).

AFUDC on expenditures made prior to the filing of a certification application, particularly for those costs incurred during the pre-filing period. In response, on December 15, 2009, the Commission convened a technical conference seeking input and comments on the continuing propriety of the Commission's then-current policy of limiting the AFUDC accruals, absent specific justification, to expenditures incurred after the filing of an application.<sup>7</sup>

7. Based on the comments received in the technical conference proceeding, the Commission revised its AFUDC policy as described in *Southern Natural Gas Co.* and *Florida Gas Transmission LLC*.<sup>8</sup> In these orders, the Commission acknowledged that the natural gas industry has undergone significant changes since the issuance of AR-5 in 1968.<sup>9</sup> The Commission also noted that since many natural gas pipelines take advantage of the pre-filing process and incur significant project-related costs during this time, they might be at risk of not being able to capture all of the cost of financing their construction projects if they cannot accrue AFUDC on expenditures made prior to the filing of a certificate application.<sup>10</sup> Therefore, in light of the current regulatory landscape in the natural gas industry, the certificate application date is no longer an appropriate milestone for determining when construction project-related expenditures begin, and thus when to begin accruing AFUDC.<sup>11</sup>

8. Under the Commission's revised AFUDC policy, natural gas pipelines may begin accruing AFUDC on construction projects when the following two conditions are met: (1) capital expenditures for the project have been incurred and (2) activities that are necessary to get the construction project ready for its intended use are in progress.<sup>12</sup>

---

<sup>7</sup> *Notice of Technical Conference on Commission Policy on Commencement of Accrual of Allowance for Funds Used During Construction*, 74 Fed. Reg. 65,117 (Dec. 2, 2009). Pre-technical conference comments were due December 11, 2009. Post-technical conference comments were due December 29, 2009.

<sup>8</sup> 130 FERC ¶ 61,193 (2010) and 130 FERC ¶ 61,194 (2010), respectively. A full discussion of the comments received in the technical conference proceeding and the Commission's rationale for adopting the new policy can be found in *Southern Natural Gas Co.*, 130 FERC ¶ 61,193 at P 24-40.

<sup>9</sup> *E.g.*, *Southern Natural*, 130 FERC ¶ 61,193 at P 33.

<sup>10</sup> *Id.* P 33-34.

<sup>11</sup> *Id.* P 34.

<sup>12</sup> *Id.* P 36.

The term “activities” includes all actions required to prepare the construction project for its intended use, including actions prior to physical construction, such as the development of plans or the process of obtaining permits from governmental authorities, and costs listed under Gas Plant Instruction No. 3.<sup>13</sup> “Activities” does not include preliminary survey and investigation activities.<sup>14</sup> Although the Commission's revised policy does not identify a bright line for establishing when natural gas pipelines may begin to accrue AFUDC, the date that the Commission approves the request to initiate the pre-filing process is a strong indicator of the initiation of construction project-related activities.<sup>15</sup>

9. Based on the revised AFUDC policy, we grant Fayetteville’s request for rehearing and will allow Fayetteville to include its proposed AFUDC in its initial rates, subject to Fayetteville’s filing a representation that the proposed AFUDC accruals comply with the requirements set forth above and in recent orders describing the revised AFUDC policy.<sup>16</sup> Furthermore, if Fayetteville determines that its proposed AFUDC accruals should be revised in light of our revised AFUDC policy conditions, it must revise all cost-of-service items dependant on Gas Plant in Service such as income taxes, depreciation expense, return, and interest expense. Fayetteville must then file its revised rates and work papers in sufficient time for the Commission to act on the revised rates prior to its filing the tariff sheets to implement those rates.

The Commission orders:

(A) Fayetteville’s request for rehearing of the December 17, 2009 Order is granted, as discussed in this order.

(B) Fayetteville shall file a representation that its proposed AFUDC accruals for the project comply with the revised policy conditions. In the alternative, if Fayetteville determines that its proposed AFUDC accruals should be revised in light of the revised policy conditions, it shall revise all cost-of-service items dependent upon Gas Plant in Service, such as income taxes, depreciation expenses, return, and interest expense, and file its revised rates and workpapers in sufficient time for the Commission to act on the revised rates prior to filing the tariff sheets to implement those rates.

---

<sup>13</sup> *Id.*

<sup>14</sup> *See id.* P 37.

<sup>15</sup> *See id.* P 39.

<sup>16</sup> *See Florida Gas*, 130 FERC ¶ 61,194 at P 24-29; *Southern Natural*, 130 FERC ¶ 61,193 at P 36-40 (2010).

(C) Fayetteville and its representations made with respect to AFUDC accruals are subject to an audit to determine whether they are in compliance with the revised policy and related Commission rules and regulations.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.