

138 FERC 61,050  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

January 24, 2012

In Reply Refer To:  
Eastern Shore Natural Gas Company  
Docket No. RP11-1670-000

William B. Zipf, Vice President  
Eastern Shore Natural Gas Company  
1110 Forest Avenue  
Suite 201  
Dover, DE 19904

Re: Order on Stipulation and Agreement of Settlement

Dear Mr. Zipf:

1. On November 7, 2011, Eastern Shore Natural Gas Company (Eastern Shore) filed a Stipulation and Agreement of Settlement to resolve all issues in this Natural Gas Act (NGA) section 4 general rate proceeding. The Stipulation and Agreement was subsequently revised on November 7, 2011 to correct some errors in the original submission (Settlement). Initial comments supporting the Settlement were filed by Eastern Shore, Easton Utilities Commission (Easton), and the Commission Trial Staff. No reply comments were filed. The Settlement Judge certified the Settlement to the Commission as uncontested on December 6, 2011.<sup>1</sup> As discussed below, the Commission approves the Settlement without modification.

2. The Settlement consists of ten articles and three appendices. Article I of the Settlement and the associated schedules in Appendix A set forth the cost of service and other information underlying the settlement rates. Paragraph 1 of Article I provides that the cost of service underlying the Settlement rates is \$29,141,000, including a \$300,000 interruptible transportation (IT) credit and a cost of service of \$1,840,262 for Receipt Zone 1 service. The overall cost of service is a “black box” number, but reflects a pre-tax return of 13.9 percent. Paragraph 2 notes that Schedule 1 of Appendix A contains the Settlement depreciation and negative salvage rates.

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<sup>1</sup> *Eastern Shore Natural Gas Co.*, 137 FERC ¶ 63,015 (2011).

3. Article II sets forth the Settlement rates. Paragraph 1 provides that the Settlement base rates use a straight fixed-variable (SFV) methodology for cost classification and rate design for all transportation services. Paragraph 2 sets forth the applicable zone boundaries. Paragraph 3 provides that the Settlement rates “are derived on a ‘black box’ basis” and do not establish any precedent or principle regarding Eastern Shore’s rate design. Paragraph 3 further provides that, in Eastern Shore’s next NGA section 4 general rate case, Eastern Shore shall have the burden of proof with regard to the existence of, and boundaries for, any rate zones, and for the method of cost allocation and rate design for such zones. Any party making a different proposal regarding such matters shall have the burden of proof regarding that proposal. Paragraph 4 provides that the section 7(c) Transportation T-1 reservation rate of \$7.1337 shall remain in effect until the current T-1 contracts executed with Delaware City Refinery Company and Delmarva Power & Light Company expire. Paragraph 5 provides that the cost of storage services provided by others shall continue to be assigned directly to storage customers. Storage cost changes by upstream storage providers shall continue to be tracked and automatically passed on to storage customers. Paragraph 6 provides that the Settlement base rates incorporate a \$300,000 IT credit to the cost of service, and that Eastern Shore will not have to credit any of its net IT revenues in excess of \$300,000 to its firm service transportation customers. The IT rate design shall continue to reflect a 100 percent load factor methodology. Paragraph 7 states that the Settlement rates reflect a representative level of all transportation and storage services on Eastern Shore’s system, and entitles Eastern Shore to retain all revenue that it collects during the term of the Settlement for these services while charging such rates.

4. Article III is titled “Deferred Income Taxes.” Paragraph 1 provides that the parties intend the Settlement rates to permit Eastern Shore to continue to qualify for full use of accelerated depreciation in preparing its federal income tax returns. Two of these amortizations, agreed to in previous Commission-approved settlements, shall survive termination or expiration of the Settlement. Paragraph 2 provides that Eastern Shore’s federal income tax rate for income tax expenses and accumulated deferred income tax is 35 percent. Paragraph 3 provides that, if subsequent developments make clear that Eastern Shore’s use of calculations prescribed in the Settlement would preclude it from qualifying for full use of accelerated depreciation in preparing its federal income tax returns, Eastern Shore may make a limited NGA section 4 filing to make the necessary rate adjustments.

5. Article IV, titled “Refunds,” states that, within 30 days after a Commission order approving the Settlement, Eastern Shore shall refund the difference between (1) the amounts it has charged for services rendered from July 29, 2011 until the date it begins to charge the Settlement rates, and (2) the amounts it would have charged during that period using the Settlement rates. Eastern Shore shall calculate and pay interest on the refunds covering the period that begins on the date it receives payment of the subject-to-refund

rates and ends on the date it pays refunds to the shippers in accordance with 18 C.F.R. § 154.501 (2011) of the Commission's regulations.

6. Article V, titled "Seasonal Entitlement Reduction," states that upon the effective date of the Settlement, Eastern Shore and Easton shall amend two of their firm service contracts to reduce the maximum daily transportation quantity from April through September by a combined amount of 500 dekatherms per day. The reduction shall remain in effect for the remaining terms of the contracts and during any extension resulting from Easton's exercise of its right of first refusal.

7. Article VI, titled "Treatment of Costs of Expansion Projects," explains that the Settlement's cost of service and rates include rolled-in rates for the costs of four expansion projects previously authorized by the Commission.<sup>2</sup>

8. Article VII, titled "Moratoria," contains five paragraphs. Paragraph 1, titled "NGA Section 4 Filings," provides that Eastern Shore shall not make a general rate filing to increase its base tariff rates or to modify the terms of the Settlement before the "fifth anniversary of the last day of the month in which the Settlement is approved by the Commission." However, during this intervening "Moratorium Period," Eastern Shore shall retain the right to file limited NGA section 4 filings if, during any rolling twelve-month period, it (1) incurs a net revenue deficiency,<sup>3</sup> and (2) either experiences changes in its income tax revenue requirement, or incurs capital and/or operational costs in order to comply with three specified categories of government mandates. Paragraph 3 clarifies that Eastern Shore may not include any increase in cost of service, other than the increases outlined in Article VII, Paragraph 1, in any of the limited NGA section 4 filings. No party responding to such a filing may (1) challenge or seek to re-open any item of the Settlement's cost of service, or (2) oppose the filing on the ground that it is an out-of-period rate adjustment. Paragraph 4 requires Eastern Shore to propose that any limited NGA section 4 filings become effective, subject to refund, no later than 30 days after filing. The parties may not oppose the proposed effective date, but may file protests or other responses to the filings to the extent Article VII permits. Paragraph 5, titled "NGA Section 5 Filings," prohibits the parties from filing, directly or indirectly, a claim under NGA section 5,<sup>4</sup> or otherwise proposing changes to the Settlement prior to the end of the Moratorium Period. If, prior to the end of that period, any person makes such a

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<sup>2</sup> The parties list the following docket numbers: Docket Nos. CP03-80-000; CP03-80-001; CP06-53-000; CP10-25-000; and CP10-51-000.

<sup>3</sup> The Settlement defines such a deficiency as a pre-tax return of less than 13.9 percent using data contained in Eastern Shore's Form Nos. 2A and 3Q.

<sup>4</sup> 15 U.S.C. § 717d (2006).

filing, or the Commission, acting *sua sponte*, institutes a section 5 proceeding to alter the Settlement, Eastern Shore may then make a general rate filing under NGA section 4.

9. Article VIII, titled “Required NGA Section 4 General Rate Filing,” states that if Eastern Shore has not made an NGA section 4 general rate filing prior to the end of the Moratorium Period, it must make such a filing subsequently. Eastern Shore must propose that the rates take effect on the fifth anniversary of the first day of the month following the month in which the Commission approves the Settlement.

10. Article IX, titled, “Procedures to be Followed,” includes Paragraph 5 which binds Sponsoring and Subject Parties to the Settlement if a Commission order approves it without any modification that materially and adversely affects the party’s interest in its reasonable discretion.

11. Article X, titled “Effectiveness and Reservations,” includes Paragraph 5 which permits amendment of the Settlement only by a written agreement by all the Parties. If the Commission considers modifying the Settlement during the Settlement term, such modifications shall be subject to the “just and reasonable” standard of review, rather than the “public interest” standard.

12. The Commission finds that the Settlement appears to be fair, reasonable and in the public interest. The Settlement is therefore approved, to become effective as proposed. The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

13. This letter order terminates Docket No. RP11-1670-000.

By direction of the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.