

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Nora Mead Brownell, and Suedeen G. Kelly.

Texas Gas Transmission, LLC

Docket Nos. RP05-317-000  
and RP05-317-002

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued April 21, 2006)

1. On February 21, 2006, an offer of settlement (settlement) was filed by Texas Gas Transmission, LLC (Texas Gas), to resolve all issues in this proceeding. On March 10, 2006, comments supporting the offer were filed by The Peoples Natural Gas Company, d/b/a Dominion Peoples, and Hope Gas, Inc., d/b/a Dominion Hope and The Cincinnati Gas & Electric Company. On March 13, 2006, comments supporting the offer were filed by Louisville Gas and Electric Company; Atmos Energy Corporation; Atmos Energy Marketing, LLC; KeySpan Delivery Companies; ProLiance Energy, LLC(ProLiance); Anadarko Petroleum Corporation; New York Public Service Commission (NYPS); Memphis Light, Gas and Water Division, City of Memphis, Tennessee; the Western Tennessee Municipal Group, the Jackson Energy Authority, Jackson, Tennessee, and the Kentucky Cities; the Process Gas Consumers Group and the American Forest & Paper Association; PSEG Energy Resources & Trade LLC (PSEG); Texas Gas; and this Commission's Trial Staff. On March 23, 2006, reply comments supporting the offer were filed by Texas Gas. On March 28, 2006, the administrative law judge certified the offer to the Commission as an uncontested settlement.

2. The settlement consists of an introduction and twelve articles, along with four appendices. Article I defines the scope of the settlement as resolving all issues in Docket No. RP05-317-000, *et al.*, for consenting parties as defined in Article X. Article II identifies the settlement cost of service (set forth in Appendix A) and establishes settlement base rates (set forth in Appendices B and C). This Article states that the settlement base rates are determined based on a negotiated dollar settlement utilizing a cost of service of \$257.75 million. Appendix B contains the settlement base rates applicable to the period commencing November 1, 2005, and continuing through November 30, 2005. The settlement base rates applicable to the period commencing December 1, 2005, and continuing in effect until termination of the settlement pursuant to Article XI are described in Appendix C. Article II also provides for refunds to Texas

Gas' customers of the difference between the amount computed under the settlement base rates and the base tariff rates actually charged for service provided by Texas Gas from November 1, 2005, to the first day of the next calendar month after this settlement becomes effective.

3. Article III states that certain currently effective tariff sheets, described in Appendix D, which were accepted subject to refund and conditioned upon the outcome of this proceeding, shall be considered approved upon approval of this settlement. Article IV establishes the applicable depreciation and negative salvage rates reflected in the cost of service.

4. Article V sets forth the annual amount included in the settlement cost of service associated with the recovery of pension plan costs. It requires the funding of such pension plan costs and provides procedures for the regulatory asset or regulatory liability treatment of Texas Gas' pension costs. This Article provides that, if a defined benefit pension plan covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA), is consolidated, terminated, or merged or otherwise significantly altered pursuant to Title IV of ERISA resulting in any reversion of assets to the shareholders of Texas Gas' parent, Texas Gas, or any of its subsidiaries or affiliates, including successors and assigns, Texas Gas will refund to its customers through a Commission-approved refund plan the amount of the asset reversion, if any, net of any excise or similar taxes on the reversion, and it will also establish the proper deferred income tax.

5. Article VI states that Texas Gas has established external irrevocable trusts as funding vehicles for post-retirement benefits other than pensions (PBOP) and provides that, during the term of the settlement, Texas Gas shall be prohibited from charging a regulatory asset or regulatory liability for any variance between Texas Gas' actual funding of its PBOP and the recommended funding of such plan determined by its independent actuaries.

6. Article VII provides that the settlement cost of service shall be deemed to reflect a deduction from rate base for the reserve for accumulated deferred Federal income taxes for liberalized tax depreciation, as recorded in the accounts of Texas Gas, as of October 31, 2005. Article VIII provides for the comprehensive interperiod allocation of income taxes. Article IX provides that, within thirty days of the distribution of any refunds to jurisdictional customers under this settlement, Texas Gas will file a refund report acceptable to the Commission setting forth, in detail, the data and computation supporting the distribution of the refunds covered by such report.

7. Article X establishes the effective date of the settlement and provides for comments supporting, opposing or not opposing the settlement. Consenting parties who support or do not oppose the settlement are bound by the terms of the settlement, while contesting parties who oppose the settlement retain their right to pursue any and all claims and rights in the docket which is the subject of this settlement.

8. Article XI defines the term of the settlement and provides that the effective date of Texas Gas' next general rate case shall not be earlier than November 1, 2010, after a full five month suspension by the Commission. Article XI, Section 3, provides that consenting parties agree that the effective date of any change in the settlement base rates resulting from a new rate proceeding initiated by any person with standing to initiate such a proceeding pursuant to section 5 of the Natural Gas Act (NGA) (with the exception of the Commission and any state commission) shall not be effective earlier than November 1, 2010. Article XII sets forth certain reservations and provides that the settlement shall be privileged and not admissible in evidence unless the offer becomes effective in accordance with its terms.

9. In its initial comments, ProLiance seeks clarification that the intent of the settlement is that the limited section 5 provision in Article XI, Section 3, of the settlement does not affect customers' rights to seek section 5 relief relating to operational or other non-rate issues that may arise during the period the settlement rates are in effect. Texas Gas agrees that the limited moratorium on the effective date of a consenting party's exercise of its section 5 rights in Article XI, Section 3, of the settlement does not affect a customer's right to seek relief under section 5 of the NGA relating to operational or other non-rate issues.

10. In the explanatory statement of the settlement, Texas Gas addressed several questions posed by the administrative law judge in his February 24, 2006 Order in this proceeding. With respect to the question of the proper standard of review, *i.e.*, the just and reasonable standard or the *Mobile-Sierra* standard imposed in *United Gas Pipe Line Co. v. Mobile Gas Corp.*, 350 U.S. 332 (1956), and *F.P.C. v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), Texas Gas responded that the applicable standard of review would be the just and reasonable standard, because the rates established in this proceeding were proposed pursuant to section 4 of the NGA. In its reply comments, Texas Gas noted that no commenter disagreed that the just and reasonable standard applies to the establishment of rates in this proceeding or the approval of the settlement. However, Texas Gas further noted that two parties stated in their comments that the applicable standard for changing

or modifying the settlement after it is approved and effective is the *Mobile-Sierra* public interest standard. PSEG stated:

The standard that governs the Commission's approval of this [s]ettlement is the "just and reasonable" standard. To the extent the Commission considers any change to any then effective provision(s) of the [s]ettlement, the standard of review for any such proposed change shall be the [*Mobile-Sierra*] 'public interest' standard for review.

Similarly, NYPSC stated that "[a]ny changes to the terms and conditions of the settlement would be under the *Mobile-Sierra* standard of review."

11. Texas Gas agrees with the comments of PSEG and NYPSC that, under current Commission policy, to the extent the Commission considers a change to any then-effective provision(s) of the settlement, the standard of review for such proposed change shall be the *Mobile-Sierra* "public interest" standard for review. Texas Gas states that the settlement contains no language that would make approval of the settlement subject to the *Mobile-Sierra* standard and, upon approval, the settlement provides for future changes to Texas Gas' base rates to be made pursuant to sections 4 or 5 of the NGA, with such rate changes subject to that the NGA's just and reasonable standard. Texas Gas further states that upon approval of the settlement and absent some other agreement of the parties, current Commission policy permits any future changes to the settlement's provisions, and the matters settled for the period established therein, to be made only if the *Mobile-Sierra* standard is satisfied. However, with respect to a provision of the settlement affecting rates to be charged, Texas Gas states that it believes that, if the *Mobile-Sierra* standard is satisfied so that such provision should be modified, then any subsequent proceeding that may be initiated to determine new rates will be subject to the just and reasonable standard of sections 4 and 5 of the NGA. Texas Gas states that, for example, any party unilaterally seeking to demonstrate that the settlement's rate moratoria should be lifted must satisfy the *Mobile-Sierra* public interest standard and, if that standard is met, and a proceeding subsequently is initiated under either section 4 or 5 of the NGA to modify Texas Gas's rates, then the just and reasonable standard would apply to that section 4 or 5 proceeding. Texas Gas states that it circulated a draft of the portion of its reply comments on the standard of review to all participants in this proceeding in advance of this filing and it is also authorized to represent that identifying the public interest standard under *Mobile-Sierra* as the standard of review for future changes to the settlement is acceptable to Commission Trial Staff.

12. The Commission finds that the settlement, as clarified by Texas Gas, is fair, reasonable, and in the public interest and is hereby approved. The Commission's approval of this settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

13. This order terminates Docket Nos. RP05-317-000 and RP05-317-002.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.