

129 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Hardy Storage Company

Docket No. RP09-1011-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued October 30, 2009)

1. On August 31, 2009, Hardy Storage Company, LLC (Hardy) filed a petition requesting that the Commission approve an Uncontested Stipulation and Settlement Agreement (Settlement) between Hardy and its firm shippers¹ to establish revised rates for the Hardy system for the period from April 1, 2010 to March 31, 2013. The Commission approves the Settlement and directs Hardy to file actual tariff sheets that implement the Settlement consistent with its terms, pursuant to section 4(d) of the Natural Gas Act (NGA).

I. Background

2. On April 25, 2005, in Docket No. CP05-151-000, Hardy filed an application pursuant to section 7(c) of the NGA and Parts 157 and 284 of the Commission's regulations to seek authorization for the development and operation of a new underground natural gas storage facility in two partially depleted gas production fields located in Hampshire and Hardy Counties, West Virginia (Hardy Storage Project). On November 1, 2005, the Commission issued a certificate authorizing Hardy to develop and operate the Hardy Storage Project.²

3. On October 26, 2006, Hardy filed an application to amend its certificate of public convenience and necessity to implement an uncontested settlement agreement revising

¹ Hardy's firm shippers are: Baltimore Gas and Electric Company (BG&E), Piedmont Natural Gas Company (Piedmont), and Washington Gas Light Company (Washington Gas) (together, the Hardy Firm Shippers).

² *Columbia Gas Transmission Corp.*, 113 FERC ¶ 61,118 (2005) (November 1 Order).

the initial rates approved by the November 1 Order (October 2006 Settlement). The amendment application and uncontested settlement were approved on March 15, 2007.³

4. Hardy subsequently determined that the rates resulting from the October 2006 Settlement would be insufficient to recover Hardy's cost of service upon expiration of the settlement. Hardy therefore determined that, absent a settlement with the Hardy Shippers to increase its rates, Hardy would be required to file a general rate increase pursuant to section 4 of the NGA. Hardy met with the Hardy Firm Shippers on April 23, 2009, June 11, 2009, July 1, 2009, and July 30, 2009 to resolve the revenue sufficiency issues and to avoid a rate proceeding under NGA section 4. As a result of these negotiations, Hardy and the Hardy Firm Shippers agreed to the Settlement revising Hardy's rates. On August 31, 2009, Hardy filed, pursuant to section 385.207(a)(5)⁴ of the Commission's regulations, a petition for approval of the Settlement, together with *pro forma* tariff sheets for implementation.

II. Terms of the Settlement

5. Article I sets forth the effective date and terms of the Settlement.

6. Section 1.1 states that the Settlement Rates will become effective on April 1, 2010. Section 1.1 also provides that the Settlement will become binding when the Commission issues a final order approving the Settlement as to all its terms without material modifications, reservations, or conditions.

7. Section 1.2 provides that the Settlement will continue in full force and effect until March 31, 2013.

8. Section 1.3 requires Hardy to file a cost and revenue study with the Commission on or before April 1, 2013.

9. Section 1.4 prohibits any party from filing under section 4 or section 5 of the NGA to modify the rates set forth in Appendix A of the Settlement (Settlement Rates) with a proposed effective date prior to April 1, 2013, but permits making a filing under such sections prior to April 1, 2013 if the proposed effective date is on or after April 1, 2013. Section 1.4 also prohibits any party from advocating during the term of the Settlement for a service- or tariff-related change that would alter the rates set forth in the Settlement. Section 1.4 states that to the extent that revenues recovered by Hardy pursuant to the Settlement Rates do not cover Hardy's costs of providing service during the period that those rates are in effect, such costs shall be foregone, not deferred, and not recoverable by Hardy from customers after termination of the Settlement.

³ *Hardy Storage Co., LLC*, 118 FERC ¶ 61,200 (2007).

⁴ 18 C.F.R. § 385.207(a)(5) (2009).

10. Article II describes the Settlement Rates.
11. Section 2.1 provides that the Settlement Rates set forth on the tariff sheets in Appendix A will become effective on April 1, 2010 and reflect a unit cost for service under Rate Schedule HSS of \$1.9725 per Dth.⁵ Section 2.1 also specifies that the Settlement Rates do not include fuel or any other cost component of the rates that Hardy is entitled to recover under sections 32 and 33 of its FERC Gas Tariff and do not modify the revenue crediting provisions of section 6(f) of Hardy's Rate Schedule ISS. Section 2.1 further requires that each June, Hardy credit the bills of Hardy shippers by the interruptible service revenues allocated pursuant to Section 6(f) of Hardy's Rate Schedule IHSS.
12. Section 2.2 states that the overall cost of service underlying the Settlement Rates has been determined on a negotiated, "black box" basis, using a traditional cost-of-service methodology and that the parties have agreed not to specify in the Settlement the individual components on which the rates are based.
13. Article III sets forth the depreciation rate and pre-tax rate of return.
14. Section 3.1 states that the depreciation rate applicable to Hardy's depreciable plant is 2.30 percent.
15. Section 3.2 states that Hardy's pre-tax rate of return is 11.33 percent.
16. Article IV sets forth miscellaneous terms.
17. Section 4.1 states that the provisions of the Settlement are not severable and represent a comprehensive negotiated agreement.
18. Section 4.2 provides that the Settlement represents a negotiated resolution and the entire agreement of the parties. Section 4.2 further provides that no party will be deemed to have waived any claim or right in a future proceeding except as provided in the Settlement.
19. Section 4.3 describes the precedential effect of the Settlement and states that the Commission's approval of the Settlement will not constitute a determination on the merits of its provisions. Section 4.3 also states that no party will be deemed to have consented to any policy or principle underlying the Settlement and nothing in the Settlement will be deemed a "settled practice," as interpreted in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

⁵ Under the Settlement, the reservation charge would increase from \$5.527 to \$5.730, and the capacity charge would increase from \$7.90 to \$8.20.

20. Section 4.4 provides that the Settlement shall supersede in its entirety the October 2006 Settlement effective April 1, 2010, but that Hardy's obligation to file revised rates effective November 1, 2009 through March 31, 2010, as well as the Hardy Firm Shippers' rights and limitations in challenging those revised rates as set forth in the October 2006 Settlement, remain in full force and effect.

21. Section 4.6 requires Hardy, upon approval of the Settlement by the Commission, to file to place the *pro forma* tariff sheets set forth in Appendix A of the Settlement into effect with a requested effective date of April 1, 2010, even if approval is received after April 1, 2010. Section 4.6 also states that nothing in the Settlement shall affect any other terms or conditions of Hardy's FERC Gas Tariff except as provided.

22. Section 4.7 provides that the Settlement shall be binding upon and inure to the benefit of the parties and their successors and assigns.

III. Notice, Interventions, and Comments

23. Notice of Hardy's filing was issued on September 2, 2009. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁶ Pursuant to Rule 214,⁷ all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Washington Gas filed a motion to intervene. Baltimore Gas and Electric Company (BG&E) and Piedmont Natural Gas Company (Piedmont) filed comments in support of the Settlement. The North Carolina Utilities Commission (NCUC) filed a protest. On September 28, 2009, Hardy filed a request that the Commission extend the date for reply comments and hold the proceeding in abeyance in order to give Hardy the opportunity to resolve the concerns raised by NCUC. NCUC withdrew its protest on October 19, 2009.

24. Washington Gas asserts that the Settlement serves the public interest and reflects a fair and reasonable resolution of issues, provided that an error in the *pro forma* tariff sheets in Appendix A is corrected and that the Settlement is otherwise approved by the Commission without any material modification. Washington Gas notes that the *pro forma* tariff sheets reflect an overall rate of \$1.977 per Dth rather than the agreed-upon rate of \$1.9725 per Dth. Washington Gas represents that Hardy has agreed to correct the error after the Settlement is approved by the Commission by adjusting the Rate Schedule HSS Capacity Charge downward from 8.20 cents to 8.159 cents when filing the effective tariff sheet on March 1, 2010 to become effective on April 1, 2010.

⁶ 18 C.F.R. § 154.210 (2009).

⁷ 18 C.F.R. § 385.214 (2009).

25. BG&E argues that the Settlement serves the public interest and supports the Settlement as a means of: (1) forestalling the imminent filing of a NGA section 4 rate increase application; (2) avoiding the uncertainty and expense of such a proceeding; and (3) safeguarding BG&E and its ratepayers from any attempt by Hardy to collect any underrecovery for the period of April 1, 2010 to March 31, 2013. BG&E notes that Hardy is required under the Settlement to file a detailed cost and revenue study on or before April 1, 2013 to assist in the establishment of rates to take effect once the effective period of the Settlement expires.

26. Piedmont asserts that the Settlement establishes reasonable rates and is a fair and reasonable resolution of a dispute between the parties. Piedmont also argues that the Settlement avoids an otherwise imminent NGA section 4 rate proceeding and the uncertainty and expense associated with such a proceeding. In addition, Piedmont maintains that the Settlement provides a means to protect Piedmont and its ratepayers from any attempt by Hardy to collect any underrecovery for the period April 1, 2010 to March 31, 2013.

IV. Commission Determination

27. The Commission finds that the Settlement is fair, reasonable, and in the public interest. The Settlement is therefore approved, subject to Hardy adjusting its Rate Schedule HSS Capacity Charge downward from 8.20 cents to 8.159 cents in order to reflect the overall rate of \$1.9725/dth instead of \$1.977/dth which Hardy and the Hardy Firm Shippers agreed upon, and filing actual tariff sheets pursuant to NGA section 4(d) that implement the Settlement consistent with its terms. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

The Commission orders:

The Settlement is hereby approved, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.