

134 FERC 61,136
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 24, 2011

In Reply Refer To:
Florida Gas Transmission
Company, LLC
Docket Nos. RP10-21-000
and RP10-21-005

Mr. Michael T. Langston
Sr. Vice President, Government and Regulatory Affairs
5444 Westheimer Road
Houston, TX 77056

Re: Letter Order Approving Uncontested Settlement

Dear Mr. Langston:

1. On October 1, 2009, Florida Gas Transmission Company, LLC (Florida Gas) filed revised tariff sheets pursuant to section 4 of the Natural Gas Act (NGA) proposing revised rates for existing services and certain changes to its General Terms and Conditions (GT&C), to be effective November 1, 2009.
2. On October 30, 2009, the Commission issued an order accepting some of Florida Gas' proposed tariff sheets to be effective November 1, 2009 and accepting and suspending the remaining proposed tariff sheets to be effective April 1, 2010, subject to conditions and the outcome of a hearing on Florida Gas' rate proposals.¹ Issues to be explored at the hearing included Florida Gas' proposed cost of service, return on equity, depreciation, cost allocation,

¹ *Florida Gas Transmission Company, LLC*, 129 FERC ¶ 61,092 (2009) (October 30, 2009 Order).

throughput, rate design, and its proposed removal of its capital surcharge tracker and modification of its fuel reimbursement charge for in-line transfer points.

3. In an attempt to settle the matters set for hearing by the October 30, 2009 Order, the parties to the proceeding held a series of settlement discussions and conferences. On September 3, 2010, Florida Gas submitted a Stipulation and Agreement of Settlement (Settlement) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure.

4. Initial comments to the Settlement were filed by Florida Gas; Commission Trial Staff; Tropicana Manufacturing Company, Inc. (Tropicana); Auburndale Power Partners, L.P. and Lake Cogen, Ltd.; United States Gypsum Company (US Gypsum); Infinite Energy, Inc. (Infinite Energy); Florida Municipal Natural Gas Association (FMNGA);² Seminole Electric Cooperative, Inc.; Peoples Gas System, a Division of Tampa Electric Company (Peoples), and Tampa Electric Company (Tampa Electric); Florida Cities;³ Indicated Shippers;⁴ Florida Power & Light Company (FPL); Florida Power Corporation d/b/a Progress Energy Florida, Inc.; and Orange Cogeneration Project, Mulberry Cogeneration Facility, and Orlando Cogeneration, Ltd. Infinite Energy was the only participant that opposed the Settlement. Florida Gas, Commission Trial Staff, Infinite Energy, Tropicana, US Gypsum, Peoples and Tampa Electric, Florida Cities, Indicated Shippers, and FPL filed reply comments.

² FMNGA consists of the City of Chattahoochee, City of Clearwater Gas System, Clarke-Mobile Counties Gas District, Crescent City Natural Gas, City of DeFuniak Springs, City of Florala, Geneva County Gas District, Lake Apopka Natural Gas District, City of Leesburg, City of Live Oak, City of Madison, Okaloosa Gas District, Palatka Gas Authority, Southeast Alabama Gas District, and City of Sunrise.

³ Florida Cities include JEA, the Orlando Utilities Commission, Lakeland Electric, the City of Tallahassee, the City of Gainesville d/b/a Gainesville Regional Utilities, and Florida Gas Utility.

⁴ Indicated Shippers are BP America Production Company and BP Energy Company; Chevron U.S.A. Inc.; ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation; and Shell Offshore, Inc.

5. Having determined that Infinite Energy's comments did not raise any genuine issues of material fact, the Presiding Administrative Law Judge certified the Settlement to the Commission as contested on December 21, 2010.⁵
6. By notice dated January 10, 2011, Infinite Energy withdrew its opposition to the Settlement, thereby making it uncontested. On January 14, 2011, the Presiding Administrative Law Judge submitted to the Commission a Supplement to Certification of Settlement noting Infinite Energy's withdrawal.
7. On January 13, 2011, Florida Gas filed on behalf of itself, Settling Parties, and Commission Trial Staff, a joint answer and motion for expedited approval of the uncontested offer of settlement.
8. The main provisions of the Settlement may be summarized as follows.
9. Article I sets forth the background and procedural history of this proceeding.
10. Article II provides that the Settlement resolves all remaining issues set for hearing in the captioned proceedings, and that, within thirty days of the "Effective Date" (as defined in Article XII), FPL shall withdraw its pending request for rehearing filed in Docket No. RP10-21-005.
11. Article III describes the Settlement rates. The Article explains that Appendix B sets forth the Settlement rates for all Florida Gas services effective as of April 1, 2010 and that refunds shall be made by Florida Gas as provided in Article VI. The Article also provides that Florida Gas shall continue to charge postage-stamp rates for services rendered in its Market Area and mileage-based rates for services rendered in its Western Division; rates for SFTS service are based on a 50 percent load factor of the FTS-1 rates; and Florida Gas' rates for its ITS-1 and PNR services shall reflect an average (50/50 weighting) of its FTS-1 and FTS-2 rates, and are based on a 100 percent load factor.
12. Article IV sets forth the Settlement depreciation rates, effective as of April 1, 2010. The Article provides that the Settlement depreciation rate shall be 1.75 percent per annum for onshore transmission plant for Florida Gas' non-incremental system; an average of 5.52 percent per annum for onshore transmission – System Asbestos Removal Asset Retirement Obligation (ARO) associated with Florida Gas' non-incremental system; 0.20 percent per annum for

⁵ *Florida Gas Transmission Co., LLC*, 133 FERC ¶ 63,011 (2010). An errata to the Certification of Contested Offer of Settlement was issued on December 28, 2010.

transmission offshore negative salvage associated with Florida Gas' remaining transmission offshore non-incremental system; and 2.10 percent per annum for onshore transmission plant for Florida Gas' incremental system.

13. Article V addresses regulatory accounting matters, including the establishment and amortization of regulatory assets.
14. Article VI sets forth Florida Gas' refund obligations and provides that Florida Gas shall file with the Commission a report of refunds made pursuant to this article.
15. Article VII describes various tariff changes, including that Florida Gas' Rate Schedule TSS shall be cancelled as of the Effective Date, and Florida Gas shall eliminate the fuel charge for gas which is moved to In-Line Transfer points under Rate Schedule IPS service agreements and then redelivered to Western Division locations. The Article states that *pro forma* tariff sections effectuating the changes are attached in Appendix D.
16. Article VIII sets forth special provisions and waivers, including that each of the shippers listed in Appendix E shall have a one-time option, exercisable within 60 days of the Effective Date, to reduce its respective Maximum Daily Transportation Quantity (MDTQ) under Rate Schedules FTS-1, SFTS, and NNTS, provided that the turn back reductions in MDTQ may not exceed the quantities specified in Appendix E. The Article also provides that Settling Parties holding service agreements under Rate Schedule FTS-1 that otherwise meet the requirements of Rate Schedule SFTS shall be granted a one-time right to convert to Rate Schedule SFTS Service.
17. Article IX requires Florida Gas to file an NGA section 4 general rate case no later than November 1, 2014, and provides that in that NGA section 4 filing, Florida Gas shall allocate Administrative and General costs among all its services using the *Kansas-Nebraska* allocation methodology, provided that no Party shall be precluded from challenging the use of that methodology on a prospective basis in that proceeding. The Article also provides that in its next two NGA section 4 general rate case filings, Florida Gas shall file rates for service under Rate Schedule SFTS based on a 50 percent load factor.
18. Article X prohibits, prior to January 1, 2013: (1) Florida Gas from making a general rate case filing under NGA section 4, and (2) any Party from seeking, soliciting, or supporting a change or challenge to an effective provision of the Settlement through a complaint filed pursuant to NGA section 5 or otherwise.
19. Article XI defines "Settling Party" and "Contesting Party" and describes their rights and obligations.

20. Article XII provides that the Settlement shall become effective upon the first day of the month following the date on which a Commission order approving the Settlement becomes final (the “Effective Date”).
21. Article XIII contains special provisions and waivers, including the effect of a final Commission order approving the Settlement. The Article also provides that the Settlement shall terminate upon the effective date of revised rates filed by Florida Gas in a subsequent NGA section 4 general rate case that complies with the limitations established in Articles IX and X.
22. Article XIV states that the Settlement is subject to Rule 602 of the Commission’s Rules of Practice and Procedure, and shall be privileged, of no effect, and inadmissible in evidence in any proceeding until it is approved and becomes effective.
23. Article XV sets forth reservations, including that the terms of the Settlement are not severable and may become effective only in accordance with Articles XII and XIII of the Settlement, and that Commission approval of the Settlement shall constitute the approval necessary to permit the implementation of the provisions of the Settlement and constitute a determination that all Settlement rates, terms, and provisions are fair, equitable, and in the public interest.
24. Article XVI contains miscellaneous provisions. The Article requires Florida Gas to file revised tariff sections to implement the Settlement no later than 15 days after the Effective Date. The Article also provides that: (1) the standard of review of proposed changes to the provisions of the Settlement by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corporation*⁶ and *Federal Power Commission v. Sierra Pacific Power Company*,⁷ and (2) the standard of review for any change to the Settlement proposed by a non-party to the Settlement, a Contesting Party or the Commission acting *sua sponte*, shall be the most stringent standard permitted by law.
25. The Settlement appears to be fair and reasonable and in the public interest, and is hereby approved. The Commission’s approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

⁶ 350 U.S. 332 (1956).

⁷ 350 U.S. 348 (1956).

26. Because Florida Gas has made its baseline electronic tariff filing pursuant to Order No. 714, but did not file the settlement in the eTariff format required by Order No. 714, it is required to make a compliance filing through eTariff to ensure that its electronic tariff provisions reflect the Commission action in this order.⁸ In its compliance filing, Florida Gas should request in its transmittal letter that the settlement rates, terms and conditions become effective April 1, 2010, as stated in the settlement. However, because Florida Gas' eTariff baseline filing is effective July 30, 2010, the earliest date the settlement rates, terms and conditions can be effective in eTariff is July 30, 2010. Such a compliance filing also is necessary for any settlement filing containing *pro forma* tariff sheets, but is not necessary if the settlement was filed in eTariff format with actual tariff records (as opposed to *pro forma* records).

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁸ See *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276, at P 96 (2008).