

142 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Southern Natural Gas Company, L.L.C.

Docket No. RP09-427-006

ORDER ON PETITION SUBJECT TO CONDITIONS

(Issued January 31, 2013)

1. On December 21, 2012, Southern Natural Gas Company, L.L.C. (Southern) filed a petition to amend the Stipulation and Agreement (Settlement), approved by the Commission in Docket No. RP09-427-000,¹ which settled Southern's most recent general rate case. Southern proposes postponing the date by which Southern must file its next rate case for three months from February 28, 2013, to May 31, 2013. Southern would use this additional time to attempt to reach a pre-filing settlement with its shippers instead of filing a general rate case under section 4 of the Natural Gas Act (NGA), as the Settlement otherwise requires. Southern requests the Commission act by January 31, 2013. For the reasons discussed below the Commission grants the petition, subject to the conditions below.

I. Background

2. On March 2, 2009, in Docket No. RP09-427-000, Southern commenced its most recent general section 4 rate case. The Commission held a technical conference to discuss the filing's proposed tariff changes and set the matter for hearing to examine Southern's rates. Southern filed an uncontested Settlement resolving the contested issues on October 5, 2009, and the Commission approved the settlement on January 5, 2010.

3. Article IV, Paragraph E of the Settlement requires Southern to file a new general section 4 rate case to be effective, assuming a five month suspension period, on or before September 1, 2013. Southern asserts that, given the Commission's thirty day notice requirement and the five month suspension period, it would be required, under the

¹ *Southern Natural Gas Co.*, 130 FERC ¶ 61,004 (2010) (Settlement Order).

Settlement, to file its next general section 4 rate case on or before February 28, 2013. In anticipation of the upcoming deadline, Southern filed the instant petition seeking to modify the Settlement by postponing the date that its next general section 4 rate case must be filed.

4. The current Article IV, Paragraph E of the Settlement states:

Southern Natural shall file a NGA Section 4 general rate case to be effective (assuming a five month suspension period) (a) on or before September 1, 2013, (b) but not before September 1, 2012.

Southern proposes to replace the entire paragraph with the following:

On or before the last day of the calendar month occurring four months after the Commission issues an order approving the “Petition to Amend Stipulation and Agreement and Motion for Shortened Answer Period and Expedited Action” filed on December 21, 2012, in Docket No. RP09-427-006, Southern Natural shall either (x) file an NGA Section 4 general rate case; or (y) file a pre-filing rate settlement.

Southern asserts that its proposed amendment effectively requires the next filing to be made on or before May 31, 2013.

5. Southern states that in late October it began discussions with firm customers to determine whether there was any interest in pursuing a pre-filing settlement in lieu of the upcoming rate case. After receiving some positive feedback, Southern announced at its general shipper meeting on November 14, 2012, that it would start the settlement process and would soon hold a general settlement conference hearing.² Southern then distributed confidentiality agreements to its customers; those who have already executed confidentiality agreements are termed by Southern as ‘Active Parties.’ Southern asserts that the Active Parties have begun requesting information from Southern and Southern has set up a website to allow the Active Parties access to Southern’s responses and other data.

6. Further, Southern convened a settlement meeting on December 10, 2012 to discuss the pre-filing settlement process and timeline. Southern also held meetings or conference calls on December 11, 17, and 19, 2012. Southern states that its filing is made on behalf

² Southern’s petition asserts that the contents of the general shipper meeting were posted on its Electronic Bulletin Board.

of itself and parties representing over 95 percent of the storage and transportation revenue on its system and is widely supported.

7. Southern asserts that an extension will allow it time to engage in preliminary settlement discussions with its shippers to attempt to reach a pre-filing settlement to resolve rate issues and eliminate the need for a full adjudicatory proceeding in the upcoming general section 4 rate case. Southern avers that avoiding a general section 4 rate case would save the Commission and the parties substantial time, effort, and resources that could be allocated to other endeavors. Southern asserts that, because of these potential benefits, the proposed amendment is fair, reasonable, and in the public interest.

8. In its petition, Southern also states that if the parties fail to reach a pre-filing settlement and if Southern's rate case is filed, proceeds through litigation, and ultimately results in a final Commission decision on the merits that results in rates below Southern's current rates, Southern will issue its customers a refund, with interest, to compensate them for the extension of time and the delay in the effective date of the rates ordered by the Commission. Southern proposes that the refund for each customer shall be equal to the product of: (i) the difference between the Reduced Rates, and Southern's current rates, both expressed on a daily basis, and (ii) the total number of days between February 28, 2013, and the actual filing date of such rate case, and (iii) the applicable transportation and storage quantities during this same period. Southern proposes that the amount of the refund would also include interest at a rate that is applicable to gas pipeline refunds. Southern states that its proposed refund would be in addition to any refunds ordered by the Commission attributable to the difference between Southern's motion rates placed into effect in such rate case and Southern's current rates. Finally, Southern asserts that the refund would ensure that all signatories to the Settlement get the benefit of their bargain and thus the proposed amendment is in the public interest, even if opposed. Southern requests that the Commission act on the petition no later than January 31, 2012.

II. Notice and Responsive Pleadings

9. Public notice of Southern's filing was issued on December 26, 2012. Responses were due on December 28, 2012. Pursuant to Rule 214,³ all timely filed motions to intervene and any unopposed motion 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. Comments in support of the petition were filed by the Southern Cities, Alabama Municipals Group, *et al.*, and South Carolina Electric & Gas Company, *et al.* PCS

³ 18 C.F.R. § 385.214 (2012).

Nitrogen Fertilizer, L.P. (PCS) filed a response opposing Southern's request for a shortened filing deadline for answers to the petition on December 24, 2012, and then filed a more detailed protest against the amendment proposal on December 28, 2012. Southern filed an answer to PCS's protest on January 8, 2013.⁴

10. In its protest, PCS provides five arguments for why Southern has not met its burden to demonstrate that the petition is fair and reasonable, unopposed, and in the public interest, and thus should be denied in favor of enforcing the existing Settlement.

11. First, PCS argues that the petition is not unopposed because PCS opposes it and PCS was a signatory and party to the Settlement. PCS states that the Settlement deadline for Southern to file a rate case is important because it set dates by which Southern must open its books and records to the scrutiny of shippers and FERC Staff. PCS states that absent a showing that the pipeline and the customers are on the brink of reaching settlement, PCS is unwilling to forego or postpone the needed access to this crucial data or the involvement of Commission Staff.

12. Second, PCS argues that the petition ignores the balance of interests stated in the Settlement. For support, PCS points to Article XIV, paragraph H, which states:

This Settlement is an indivisible package that comprehensively resolves all matters in Docket No. RP09-427. No particular issue or provision of the Settlement can be severed from, or modification made to, this package without disturbing the balance of interests represented in the Settlement.

PCS states that, as a condition of the Settlement, it gave up its rights to file complaints under section 5 during a rate moratorium which extended until September 1, 2012 (including a five-month suspension period).⁵

13. PCS states that it has caused studies to be undertaken based on FERC Form No. 2 data that purportedly proves that Southern was, and still is, significantly over-earning its allowed return. PCS believes it and other shippers were and are paying rates in excess of

⁴ Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2012), prohibits the filing of answers to a protest unless permitted by the decisional authority. We find that good cause exists to allow Southern's answer because it provides a better understanding of the issues and a more complete record in this proceeding.

⁵ See Article IV, Part B of the Settlement.

what the Commission would find just and reasonable. However, due to the Settlement's 'Rate Moratorium,' in which no party to could file a NGA section 5 complaint, PCS was unable to act on its information. PCS states that after the expiration of the Rate Moratorium, it refrained from filing a NGA section 5 complaint because it was rightfully expecting Southern to file a general section 4 rate case in the near future and was actively and vigorously preparing to be involved in the section 4 rate case mandated in the Settlement. PCS asserts that now that the wait is almost over, and Southern is finally obligated to subject its rates to scrutiny, Southern is proposing to amend the one provision of the Settlement that allows PCS access to the full array of data necessary to complete its analysis.

14. Third, PCS argues that the Settlement does not contemplate the possibility of postponement. PCS claims that the Settlement is devoid of a discussion on how to amend the Settlement if any amendment is objected to by any settling party. PCS asserts that because the Settlement does not contain provisions for amending or postponing deadlines, that possibility was not part of the bargain and the Settlement's requirement of an upcoming general section 4 rate filing by Southern should be enforced.

15. PCS also attacks the refund provisions proposed in Southern's petition. PCS raises the issue that if the amendment is approved and Southern files its general section 4 rate case in the future, then the base and test periods underlying that filing will be different than if Southern files by the deadline set forth in the Settlement. PCS states that its bargain with Southern in the Settlement was for the filing dates and the data that corresponds to those filing dates, and that Southern should not be allowed to shift the dates, and effectively the data, on which a new rate case would be premised.

16. Fourth, PCS argues that Southern's proposal is not a result of "unequivocal public necessity"⁶ or "extraordinary circumstances,"⁷ as has been required by the Supreme Court. PCS also argues that Southern has not met its heavy burden of showing that the public interest requires a Settlement modification. PCS asserts that Southern's need to efficiently focus its resources, as stated in Southern's petition, is merely a convenience and does not rise to the level of significance that would allow the Commission to modify the Settlement against the will of one of the settling parties.

17. PCS also argues that the Commission should not approve the proposed amendment to the Settlement merely because of apparent support for the petition from other shippers. PCS notes that the Commission is bound to protect the public interest, even when all parties to a proceeding seem to be in agreement. In the instant case PCS

⁶ *In re Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968).

⁷ *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 582 (1981).

asserts that as the largest industrial customer and eighth largest shipper on Southern's system, it is a consumer whose rights should be protected under a public interest analysis.

18. Fifth and finally, PCS argues that modifying the Settlement will have a chilling effect on future settlements. PCS argues that the Commission's case law and precedent invite and encourage settlements. PCS asserts that allowing modification of the Settlement would cause uncertainty because parties to existing and future settlements will not be assured that they will receive the benefit of their bargain. PCS asserts that the Settlement contains provisions for enforcement by one party to the Settlement against another for failing to honor the Settlement, which PCS sees as strengthening the inference that the Settlement was meant to be final and not upset or modified later.

19. On January 8, 2012, Southern filed an answer to PCS's protest. Southern contends that its proposal is fair, reasonable, and in the public interest and offers benefits to all shippers. More specifically Southern asserts that no customers will be harmed by the proposed extension and asserts that the potential benefits to shippers are great as a settlement could lead to significant savings of money, time, and resources.

20. Southern's answer urges the Commission to evaluate the proposed amendment of the Settlement as a contested settlement and points the Commission to the four approaches for addressing contested issues in settlements as set forth in *Trailblazer*.⁸ Southern asserts that in *Trailblazer*, the Commission set forth the following four ways of evaluating contested settlements: (1) the Commission may make a decision on the merits of each contested issue; (2) the Commission may determine that the settlement provides an overall just and reasonable result; (3) the Commission may determine that the benefits of the settlement outweigh the nature of the objections, and the contesting parties' interests are too attenuated; or (4) the Commission may determine that the contesting parties can be severed. Southern asserts that under *Trailblazer* a lack of unanimity is no bar to Commission approval of the amendment.

21. Southern states that the proposed extension of time would not harm PCS, because Southern has agreed that if a new settlement is not reached and the Commission ultimately approves rates below the level of its current rates, Southern will waive the section 4 refund floor for a period equal to the length of the filing extension. As a result, Southern stated the maximum rates to which PCS can be exposed during the deferral period in the event of a litigated outcome is the actual just and reasonable rate and not any rate greater than that. Additionally, Southern contends that PCS would not be harmed if a new settlement is reached during the proposed extension period. Restated, Southern contends that there is no way that PCS could be subjected to a rate higher than

⁸ *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345 (1998), *order on reh'g*, 87 FERC ¶ 61,110, *reh'g denied*, 88 FERC ¶ 61,168 (1999) (*Trailblazer*).

the just and reasonable rate set by either a settlement during the extension period or an upcoming rate case following unsuccessful negotiations.

22. Southern also contends that PCS's argument that the base periods used to calculate rates in the upcoming rate case would be impermissibly altered by an extension of time is misguided. Southern cites 18 C.F.R. § 154.303 and states that it has a four-month window of discretion within which it may choose to end the base period in its rate case.⁹ Southern argues that because there is no certainty when it will make its rate case filing, there is no predictability to the test period that may be used in an upcoming rate case and thus, no shipper can be seen as relying on base period dates as part of their bargain.

23. Southern further answers that the Commission should be able to conclude that the benefits of an extension outweigh the objections. Southern states that PCS's theory regarding the chilling effects the proposed extension would have on future settlements is unfounded and any future effect of the proposal is attenuated and speculative. Southern also asserts that if the Commission denies the extension it and its shippers would be forced to focus on the rate case and litigation preliminaries and settlement efforts would be postponed. Southern also argues that if the extension is approved and a settlement is not reached, Southern's customers will be able to pay current rates, instead of the higher motion rates, for an additional three month period until December 1, 2013. Southern also states that an earlier effective date for lower rates is more likely to result from a settlement as opposed to a litigated rate case and so Southern's customers would most likely benefit from a settlement as opposed to a rate case. Finally, Southern reiterates that the Commission generally has preferred settlements in the past and granting the extension would foster compromise and collaboration, as opposed to a rate case, which would force parties to be adversarial and litigate against each other, at least initially.

24. On January 17, 2013, PCS filed an answer to Southern's answer. PCS argues that Southern's reliance on *Trailblazer* contradicts judicial precedent. Rather, PCS points to *Brooklyn Union*,¹⁰ in which the court distinguished *Trailblazer* and upheld the Commission's decision to enforce a filing deadline imposed by a prior settlement, just as in the instant case. Rather, the court found that moving the filing deadline would deprive

⁹ 18 C.F.R. § 154.303 (2012). That section provides that the base period consists of 12 consecutive months of the most recently available actual experience, and the last day of the base period may not be more than four months before the filing of the rate case.

¹⁰ *Brooklyn Union Gas Co. v. FERC*, 409 F.3d 404 (D.C. Cir. 2005) (*Brooklyn Union*).

the objecting party of the benefit of its bargain, thus undermining Commission policy of encouraging settlements.¹¹

III. Discussion

25. The Commission grants Southern's petition to amend the Settlement's deadline for it to file a new section 4 rate case, subject to conditions. The Commission finds that, as conditioned, a three-month deferral of Southern's rate case will provide a further opportunity for the parties to reach a settlement which would obviate the need for a rate case, while at the same time substantially preserving for PCS the benefits of the Settlement's requirement that Southern file a new section 4 rate case.

26. All parties other than PCS support Southern's request for a three-month deferral of the deadline for it to file a section 4 rate case, so that they can continue negotiations in order to reach a settlement concerning Southern's rates. As the courts have recognized, resolution of contested issues between a pipeline and other interested parties is in the public interest.¹² Accordingly, we believe that it is reasonable and in the public interest to give the parties a short period to continue settlement negotiations which could avoid the need for Southern to file, and the parties to litigate, a new section 4 rate case, so long as the benefits PCS bargained for in the Settlement are substantially preserved.

27. A settlement provision requiring a pipeline to file a new rate case by a particular date benefits the pipeline's shippers by ensuring them that they will have an opportunity to review whether the rates agreed to in the settlement continue to be just and reasonable, based on access to all the information concerning the pipeline's cost and revenues required to be included in a section 4 rate case filing. While Southern proposes to defer the Settlement's requirement that it file a section 4 rate case, Southern does not propose to eliminate that requirement. If Southern and its shippers, including PCS, fail to reach a new settlement that they all support by May 31, 2013, Southern will have to file a general section 4 rate case by that date. This will provide a full opportunity to review the justness and reasonableness of Southern's rates in a section 4 rate proceeding, as required by the Settlement, but three months later than agreed in the Settlement. Therefore, in considering whether the amendment to the Settlement is reasonable, we must focus on whether a three-month delay in filing the new rate case would significantly undermine the benefits provided by the Settlement's rate case filing requirement.

¹¹ PCS January 17, 2013 Answer at 6.

¹² *United Municipal Distribution Group v. FERC*, 732 F.2d 202, 208 (D.C. Cir. 1984); *Panhandle Eastern Pipe Line v. FERC*, 95 F.3d 62, 74 (D.C. Cir. 1996); *Trailblazer*, 85 FERC ¶ 61,345 at 62,340.

28. We thus review the three potential adverse effects of a three-month delay in Southern's section 4 rate filing identified by PCS. PCS argues that the delay: (1) would, if Southern's rates are too high as PCS alleges, let Southern collect unjustly high rates for another three months; (2) may also delay the opportunity to review the evidence that Southern would be required to file justifying its proposed rates; and (3) would change the test period that Southern uses, which was arguably a bargained-for term in the Settlement.¹³ We find that the conditions we impose below on our approval of the three month extension of Southern's rate case filing requirement address these concerns.

29. First, Southern has agreed that, if the Commission were to extend the deadline by three months and the Commission ultimately finds in a section 4 rate case filed by May 31, 2013 that Southern's rates must be reduced below their current level, Southern will waive the section 4 refund floor for a period equal to the three-month deferral of its section 4 rate case filing. In particular, Southern agrees that the refund for each customer for this three-month period shall be equal to the product of: (i) the difference between the Reduced Rates, and Southern's current rates, both expressed on a daily basis, and (ii) the total number of days between February 28, 2013, and the actual filing date of such rate case, and (iii) the applicable transportation and storage quantities during this same period. PCS does not object to this calculation.

30. We find that this refund commitment would indeed protect all customers from the financial risk of the proposed three-month extension by assuring that the rates they pay during the three-month extension period will be no higher than whatever rates the Commission ultimately determines are just and reasonable, even if that is less than the section 4 rate case floor.¹⁴ However, as a condition of granting Southern's petition, we require it to modify its proposed amendment to the Settlement to expressly include this refund commitment, within 15 days of the date that this order issues.

31. Second, PCS claims that it has caused studies to be undertaken based on Form 2 data proving to its satisfaction that Southern was, and still is, significantly over-earning its allowed return. PCS asserts that Southern is proposing to amend the one provision of

¹³ 18 C.F.R. § 154.303(a) requires that the Commission base its rate case determinations upon a test period consisting of a twelve-month base period and an adjustment period of up to, but no more than, nine months following the date of the rate case filing.

¹⁴ We also note that Southern states that, if it does not reach a settlement with all its shippers, it will make a section 4 filing proposing a rate increase. If the Commission were to approve a rate increase, the delay in Southern's rate case filing will have benefitted all shippers, including PCS, by delaying the effective date of the rate increase by three months.

the Settlement that allows PCS access to the full array of the pipeline's cost and revenue data necessary to complete its analysis. However, to the extent that a three-month delay in PCS obtaining this information through a section 4 rate case filing were to delay resolution of the rate case by a similar period, Southern's agreement to the additional refund obligation described above would place PCS in a similar position as it would have been in had the rate case been filed sooner. Moreover, we find that the three-month delay in filing the rate case will not necessarily cause a similar delay in PCS obtaining the cost and revenue data necessary to analyze the justness and reasonableness of Southern's current rates. As Southern explains, in order to convince its customers to engage in early settlement discussions, it has agreed to engage in a good-faith exchange of otherwise confidential business information with Active Parties who execute confidentiality agreements. Southern has begun processing information requests from Active Parties and has set up a website to allow such customers access to Southern's responses and certain other data. PCS is an eligible Active Party and thus may obtain cost and revenue data from Southern through this process.

32. Third, PCS states that the proposed delay in Southern's section 4 filing would change the test period that Southern uses in that filing. Section 154.303 of our regulations requires that the test period include both a twelve-month base period and a nine-month adjustment period. The base period must consist of the 12 months of most recently available experience as of the date of the rate case filing and may not end more than four months prior to the filing date. The overall test period, including the adjustment period, may not extend more than nine months beyond the filing date.¹⁵ Thus, the filing date of a section 4 rate case does affect the beginning and end dates of the overall test period and the base and adjustment period components of the test period. While Commission regulations do give a pipeline a four-month window of discretion as to the end of its base period,¹⁶ a four-month window centered on February 28, 2013 clearly produces a different range of options than a four-month window centered on May 31, 2013.

33. Southern argues that no one, including itself, can prejudge the results of such a choice, and therefore PCS cannot claim to be adversely affected. We reject this reasoning. It is undisputed that the parties to the original Settlement bargained over the date of the next section 4 filing. When PCS and the other Active Parties to the original Settlement agreed to a February 28, 2013, filing deadline, they necessarily also agreed the base period would use data that the ending date for the filing's base period would be based on the 12 months of most recently available experience as of a rate case filing date no later than February 28, 2013, and would end no more than 4 months before that date.

¹⁵ 18 C.F.R. §§154.303(a)(1) through (3).

¹⁶ *See* 18 C.F.R. § 154.303 (2012).

They also agreed that the adjustment period must begin by that date. PCS argues that, while it “has no way of knowing whether the data set underlying a filing date different than the one embodied in the Settlement will lead to a ‘better’ or ‘worse’ outcome,” the original window is the one that “PCS bargained for and received in Settlement.”¹⁷

34. In order to address PCS’s concern, the amendment to the Settlement permitting a three-month deferral of its section 4 rate case filing must place counterparties in the same position as they would have been if there had been no amendment. In this case, that can be accomplished by requiring that, in the event that a further settlement is not reached by May 31, 2013, and Southern must file a section 4 rate case, its filing will use a test period consistent with what the section 154.303 would have required if it had made its section 4 rate case filing on February 28, 2013. Thus, a section 4 rate filing by Southern must use a base period consisting of 12 consecutive months of the most recently available actual experience as of February 28, 2013, and ending not more than four months before February 28, 2013. Also, the adjustment period may not extend more than nine months beyond February 28, 2012.

35. This condition will ensure that, despite the three-month deferral of Southern’s section 4 rate case filing, that rate case will use a test period consistent with the expectations of the parties to the Settlement, including PCS. Moreover, this condition will permit PCS and the other affected parties to focus their information collection efforts pursuant to the procedure established by Southern on the time period which would be used to determine Southern’s rates if it must make a section 4 rate filing. Accordingly, as a condition of granting Southern’s petition, we require it to modify its proposed amendment to the Settlement to include this condition.

36. With the conditions described above, neither PCS nor any other party would be adversely affected, either procedurally or financially, by delaying the deadline for the next section 4 filing. If the parties do not reach a new settlement, Southern will have to file a section 4 rate case based on the same cost and revenue data as it would have absent the three-month extension of the deadline for filing that rate case. Because these conditions preserve the benefits of the bargain underlying the Settlement, we find that a short extension of the deadline for Southern to file a new rate case to facilitate its efforts to negotiate a new settlement in this case should not have any significant chilling effect on the formation of future settlements in other cases. In the alternative, if Southern cannot or chooses not to comply with the conditions described above within 15 days of the date of this order, then by the terms of the existing Settlement it shall file a new section 4 rate case on February 28, 2013 as previously required.

¹⁷ PCS December 28, 2012 Protest at 8.

37. Finally, we find that PCS's reliance on our orders in *Equitrans*¹⁸ and the court's decision in *Brooklyn Union* affirming those orders is misplaced. In *Equitrans*, the parties had agreed to a settlement in 1999 requiring the pipeline to file a new section 4 rate case with revised rates to take effect no later than August 1, 2003. On March 25, 2003, the pipeline filed a new settlement, supported by most of its customers, proposing to permanently eliminate the requirement for the pipeline to make a new section 4 rate case filing, and instead providing that the 1999 Settlement rates would remain in effect until at least March 31, 2005. Several interested parties opposed the 2003 settlement offer on the ground that it would deprive them of the benefit of the new section 4 rate case filing they had bargained for in the 1999 Settlement. The Commission rejected the 2003 settlement offer, agreeing that it would deprive the opposing parties of the benefit of their bargain and undermine the Commission's policy of encouraging rate settlements. The court affirmed the Commission in *Brooklyn Union*.

38. By contrast, in this case, the requirement that Southern file a new section 4 rate case is not being permanently removed, nor is any new moratorium on rate changes being imposed. As elaborated above, we are only permitting a short three-month extension of the rate case filing requirement, and we have imposed conditions on the extension which should ensure that PCS is not harmed by that delay. The refund condition should ensure that PCS can get the benefit of any reduction in Southern's rates below their current level in approximately the same time frame as if Southern had filed the rate case by February 28, 2013. The condition concerning the test period ensures that the rates proposed in the section 4 rate case will be based on cost and revenue information from the same period as if Southern had filed the rate case by the deadline in the Settlement, thereby addressing what appears to be PCS's primary concern with the delay in filing the rate case.

The Commission orders:

The petition to modify the Settlement in RP09-427-000 is granted, subject to Southern making a compliance filing within 15 days of the issuance of this order to modify its proposed amendment to the Settlement as directed in the body of this order.

By the Commission

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ *Equitrans, L.P.*, 104 FERC ¶ 61,008 (2003), *order on reh'g*, 106 FERC ¶ 61,013 (2004) (*Equitrans*), *order on appeal, Brooklyn Union*, 409 F.3d 404.