

145 FERC ¶ 61,008
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 2, 2013

In Reply Refer To:
Hardy Storage Company, LLC
Docket Nos. RP13-714-001
RP13-714-002

James R. Downs
Director of Regulatory Affairs
Hardy Storage Company, LLC
5151 San Felipe
Suite 2500
Houston, TX 77056

Dear Mr. Downs:

1. On August 1, 2013, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.207(a)(5) (2013)), Hardy Storage Company, LLC (Hardy) filed a petition for approval of settlement (Petition) and an uncontested offer of settlement (Settlement). According to the Petition, the Settlement is between Hardy and its firm shippers¹ and it establishes revised service rates (Settlement Rates) for the Hardy system. For the reasons discussed more fully below, the Commission approves the Settlement because it appears to be fair and reasonable and in the public interest.

2. On October 30, 2009, the Commission approved a settlement agreement in Docket No. RP09-1011-000 which, among other things, required Hardy to file a cost and revenue study no later than April 1, 2013.² Hardy states that in early 2013, Hardy began negotiations with its firm shippers regarding the cost and revenue study. On March 26, 2013, Hardy filed a request for an extension of time to file the cost and revenue study in Docket No. RP13-714-000. On April 1, 2013, the Commission granted the request and

¹ Currently, the Hardy firm shippers are: Baltimore Gas & Electric Company, Piedmont Natural Gas Company, and Washington Gas Light Company.

² See *Hardy Storage Co., LLC*, 129 FERC ¶ 61,083 (2009) (2009 Settlement Order).

directed Hardy to file a progress report on the status of discussions with its customers by June 1, 2013.³ Hardy filed the progress report on May 31, 2013 and advised the Commission that it anticipated making a filing by August 1, 2013.

3. On August 1, 2013, Hardy filed the Settlement which establishes reduced rates for its customers, to become effective April 1, 2014. Hardy also filed *pro forma* tariff records⁴ reflecting revised rates to be effective April 1, 2014. Hardy argues that the proposed Settlement is fair and reasonable and is the result of negotiations between Hardy and all of its firm shippers.

4. The terms of the Settlement are summarized below.

5. Article I of the Settlement contains the effective date and terms of the Settlement. Section 1.1 provides that the Settlement Rates will become effective on April 1, 2014. Section 1.2 provides that the Settlement will continue in full force and effect until the final outcome of a subsequent Natural Gas Act (NGA) section 4 or section 5 filing, or associated settlement, replaces it. Section 1.3 states that Hardy agrees to file a cost and revenue study with the Commission on or before May 1, 2019 that includes monthly cost, rate base, plant, depreciation, tax, capital structure, cost of capital, billing determinants, and revenue data for the calendar year 2018. Section 1.4 states that there is no rate moratorium on either party making a filing under section 4 or 5 of the NGA to modify the Settlement Rates.

6. Article II describes the Settlement Rates. Section 2.1 provides that the Settlement Rates set forth on the tariff sheets in Appendix A will become effective on April 1, 2014 and reflect a unit cost for service under Rate Schedule HSS of \$1.8893 per Dth, versus the existing unit cost for service of \$1.9725 per Dth. 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 29 and 30 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 must credit the bills of Hardy shippers by the interruptible service revenues allocated pursuant to Section 6(f) of Hardy's Rate Schedule IHSS. Section 2.2 states that the overall cost of service underlying the Settlement Rates has been determined on a negotiated, "black box" basis.

³ *Hardy Storage Co., LLC*, Docket No. RP13-714-000, Notice of Extension of Time (April 1, 2013).

⁴ Hardy Storage Company, LLC, FERC NGA Gas Tariff, Hardy Tariffs, [Currently Effective Rates, HSS Rates, 3.0.0](#) and [Currently Effective Rates, IHSS Rates, 3.0.0](#).

7. Article III sets forth a depreciation rate of two percent for Hardy's depreciable plant.
8. Article IV contains the miscellaneous terms of the Settlement. Section 4.1 states that the provisions of the Settlement are not severable and represent a comprehensive negotiated agreement. 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.
9. 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 the specific provisions of the agreement. 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).
10. Section 4.5 requires Hardy, upon approval of the Settlement, to file to place the *pro forma* tariff sheets set forth in Attachment A adjusted for an intervening rate change filing under Section 29 of Hardy's FERC Gas Tariff, with a requested effective date of April 1, 2014, even if approval of this Agreement is received after April 1, 2014. It also provides that nothing in this Agreement shall affect any of the other terms or conditions of Hardy's FERC Gas Tariff, except as expressly provided herein. Section 4.6 provides that the Settlement shall be binding upon and inure to the benefit of the parties and their successors and assigns.
11. Section 4.7 states that the standard of review for any changes to the terms and conditions of the Settlement shall be the just and reasonable standard.
12. Public notice of the filing was issued on August 2, 2013, allowing for protests to be filed as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2013)). No protests or adverse comments were filed.
13. As discussed below, the Commission finds the Settlement to be fair and reasonable and in the public interest and therefore, we approve it pursuant to Rule 602(g) of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.602(g) (2013)).
14. The Commission may approve an uncontested settlement upon finding, as here, that the settlement "appears to be fair and reasonable in the public interest." Consistent with the Commission's guidance for filing settlements outside the context of an existing

proceeding set forth in *Dominion Transmission, Inc.*,⁵ the Settlement resolves Hardy's cost of service issues without the need for protracted litigation and hearing. The Commission explained in *Dominion* that when a pipeline negotiates an agreement with its customers and others to change its rates or terms and conditions of service, and it desires approval of the agreement before making an actual NGA section 4 tariff filing, it may file, pursuant to Rule 207(a)(5),⁶ a petition for approval of the agreement, along with *pro forma* tariff sheets reflecting how the agreement will be implemented. This is the procedure Hardy has followed here.

15. The Commission's approval of this Settlement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding. Approval of the Settlement furthers the Commission's policy of favoring collaborative efforts and settlements between pipelines and their shippers regarding rate and other contested issues.⁷

16. Because the Settlement Rates do not take effect until April 14, 2014, we direct Hardy to file actual tariff records that implement the Settlement 30 days before the Settlement Rates become effective.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁵ 111 FERC ¶ 61,285 (2005).

⁶ 18 C.F.R. § 385.207(a)(5) (2013).

⁷ *E.g., Columbia Gas Transmission, LLC*, 142 FERC ¶ 61,062, at P 32 (2013).