

168 FERC ¶ 61,005  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Trailblazer Pipeline Company LLC

Docket No. RP18-922-001

ORDER ON REHEARING AND CLARIFICATION

(Issued July 2, 2019)

1. On July 31, 2018, the Commission issued an order in this proceeding accepting and suspending the proposed tariff records filed by Trailblazer Pipeline Company LLC (Trailblazer), subject to the outcome of a paper hearing regarding Trailblazer's proposed income tax allowance and an evidentiary hearing regarding all other issues.<sup>1</sup> On August 30, 2018, Trailblazer and the Trailblazer Shipper Group<sup>2</sup> requested rehearing of the July 2018 Hearing Order; Trailblazer also requested clarification.<sup>3</sup> In this order, we dismiss in part, and deny in part, the requests for rehearing and grant clarification, in part, as discussed below.

**I. Background**

**A. Trailblazer's Initial Filing**

2. On June 29, 2018, Trailblazer submitted its filing in this proceeding under section 4 of the Natural Gas Act (NGA). In its filing, Trailblazer proposed, among other things, to increase certain rates for firm transportation service on Trailblazer's Existing System and

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<sup>1</sup> *Trailblazer Pipeline Co. LLC*, 164 FERC ¶ 61,074 (2018) (July 2018 Hearing Order).

<sup>2</sup> The Trailblazer Shipper Group consists of Concord Energy LLC, Tenaska Marketing Ventures, and Mico, Inc.

<sup>3</sup> Trailblazer Request for Rehearing at 5-6, 14-16, 22-24.

to decrease the base rates for firm service on its Expansion System.<sup>4</sup> Trailblazer proposed that its entire filing take effect January 1, 2019, to permit all of the proposed rate and tariff changes to take effect simultaneously.

3. As part of its cost of service, Trailblazer proposed an income tax allowance. Trailblazer represented that it is a non-master limited partnership (MLP) pass-through business form, owned 55 percent by Tallgrass Energy L.P. (Tallgrass Energy), a publicly traded partnership which has elected to be taxed as a corporation and pays dividends, and 45 percent by Private Owners (which Trailblazer characterizes as 11 private equity funds).<sup>5</sup> Trailblazer stated that it is entitled to an income tax allowance in its cost of service because C-Corporations are entitled to an income tax allowance under the Commission's policy,<sup>6</sup> and the *United Airlines v. FERC*<sup>7</sup> double-recovery concern does not apply to Trailblazer's Private Owners.<sup>8</sup>

4. Trailblazer's filing also included *pro forma* tariff records to implement a cost recovery mechanism (CRM), which would reflect an additional reservation rate to recover eligible costs incurred for system safety, integrity, reliability, environmental, and cybersecurity issues.<sup>9</sup> Trailblazer stated that the CRM is consistent with the Commission's 2015 policy statement on cost recovery mechanisms.<sup>10</sup> The Trailblazer

Shipper Group, however, argued that it is not, and urged the Commission to reject it

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<sup>4</sup> Trailblazer's system capacity is divided into two tranches for rate purposes: the Existing System and the Expansion System. The Existing System includes 522,263 dekatherms per day (Dth/d) of capacity that existed before construction of the Expansion System, which consists of 324,000 Dth/d of additional capacity. See July 2018 Hearing Order, 164 FERC ¶ 61,074 at P 4.

<sup>5</sup> Ex. TPC-73 at 19:3-15; Ex. TPC-75; Ex. TPC-91 at 38-39; Ex. TPC-108 at 24.

<sup>6</sup> *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (2018).

<sup>7</sup> *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*).

<sup>8</sup> July 2018 Hearing Order, 164 FERC ¶ 61,074 at P 8.

<sup>9</sup> *Id.* P 17.

<sup>10</sup> *Id.* (citing *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (2015) (Policy Statement on Cost Recovery Mechanisms)).

outright rather than include it among the issues set for hearing.<sup>11</sup>

**B. The July 2018 Hearing Order**

5. In the July 2018 Hearing Order, the Commission accepted and suspended, subject to refund, the proposed tariff records for service on the Existing System, effective January 1, 2019.<sup>12</sup> The Commission observed, however, that the proposed tariff records for service on the Expansion System included rate decreases; therefore, the Commission accepted those tariff records without suspension, effective August 1, 2018.<sup>13</sup> The Commission stated that all tariff records were accepted subject to the outcome of a paper hearing regarding the proposed income tax allowance and an evidentiary hearing regarding all other issues, including the CRM.<sup>14</sup>

6. With respect to the Expansion System rates, the Commission observed that, because it can only require refunds of proposed rate increases above the level of the pipeline's prior rates, a rate suspension serves no point when a pipeline proposes a rate decrease for a service.<sup>15</sup> And here, the Commission determined that the proposed tariff records for the Expansion System and for the Existing System involved separate services subject to separate rate schedules (i.e., Rate Schedules FTS (Firm Transportation Service) and FTB (Firm Transportation Balancing Service) Expansion System or Rate Schedules FTS and FTB Existing System).<sup>16</sup> Accordingly, the Commission rejected Trailblazer's argument that *Tennessee Gas Pipeline Co.*—where the Commission stated it would consider as a package fuel and base rates applicable to the same service—is not applicable.<sup>17</sup>

7. Regarding the proposed income tax allowance, the Commission stated that a paper hearing was an appropriate means to address whether a double recovery of income tax

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<sup>11</sup> *Id.* PP 25-28.

<sup>12</sup> *Id.* PP 2, 37, App. A.

<sup>13</sup> *Id.* PP 2, 36, App. B.

<sup>14</sup> *Id.* PP 2, 33.

<sup>15</sup> *Id.* P 36 (citing *Transcontinental Gas Pipe Line Co., LLC*, 140 FERC ¶ 61,251, at P 29 (2012) (*Transco*)).

<sup>16</sup> *Id.* n.24.

<sup>17</sup> *Id.* (citing *Tennessee Gas Pipeline Co.*, 133 FERC ¶ 61,266 (2010) (*Tennessee*)).

costs results from permitting Trailblazer to recover in its cost of service both an income tax allowance for its owners' tax costs and a return on equity (ROE) determined by the discounted cash flow (DCF) methodology.<sup>18</sup> The Commission noted that this was an issue of first impression regarding whether a pass-through pipeline that is not wholly-owned by an MLP may recover an income tax allowance in light of the double-recovery concerns raised in *United Airlines*.<sup>19</sup>

### C. The Paper Hearing Order

8. On February 21, 2019, the Commission issued an order on paper hearing in which it preliminarily found that, because the DCF Return on Equity (ROE) incorporates investor-level income tax costs, a double recovery appears to result from permitting an income tax allowance for the income tax liability attributable to certain private ownership shares in Trailblazer in addition to a DCF ROE.<sup>20</sup> The Commission also preliminarily found that no such double recovery appears to result from permitting an income tax allowance for the corporate income tax liability attributable to Tallgrass Energy's ownership share in Trailblazer in addition to a DCF ROE.<sup>21</sup> The Commission stated that these determinations were preliminary and may change based upon subsequent evidence and argument.<sup>22</sup> The Commission also stated that the ongoing evidentiary hearing in this proceeding should fully litigate all income tax allowance issues, and noted that the parties remain free to present evidence supporting the Commission's preliminary findings or supporting different conclusions.<sup>23</sup>

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<sup>18</sup> *Id.* PP 30-31.

<sup>19</sup> *United Airlines*, 827 F.3d 122.

<sup>20</sup> *Trailblazer Pipeline Co. LLC*, 166 FERC ¶ 61,141, at P 2 (2019) (Paper Hearing Order).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* P 4.

<sup>23</sup> *Id.*

**D. Requests for Rehearing**

9. On rehearing of the July 2018 Hearing Order, Trailblazer first asks the Commission to correct a misstatement regarding Tallgrass Energy's tax election. Trailblazer states that the Commission incorrectly stated in the July 2018 Hearing Order that Tallgrass Energy did not elect to be taxed as a corporation until 2018; according to Trailblazer, Tallgrass Energy has been taxed as a corporation since 2015.<sup>24</sup> Next, Trailblazer seeks rehearing of the decision to "bifurcate implementation of [Trailblazer's] rates."<sup>25</sup> If the Commission does not change this determination, however, Trailblazer seeks clarification that it may make a single compliance filing at the conclusion of this proceeding under NGA section 5.<sup>26</sup> In addition, Trailblazer seeks annulment of the paper hearing to examine the proposed income tax allowance.<sup>27</sup> In the alternative, Trailblazer requests clarification that it may "implement any decision made in the paper hearing proceeding at the conclusion of the entire rate case, together with any other rate revisions resulting from this proceeding."<sup>28</sup>

10. The Trailblazer Shipper Group alleges in its request for rehearing that the Commission erred by failing to provide a reasoned explanation for its decision not to reject the proposed CRM outright, as advocated by protestors.<sup>29</sup> According to the Trailblazer Shipper Group, the failure to reject the CRM outright "establishes bad precedent that undermines the very objectives the Commission sought to achieve" in the Policy Statement on Cost Recovery Mechanisms.<sup>30</sup> The Trailblazer Shipper Group also alleges that the Commission failed to consider whether the proposed CRM is sufficiently compliant with the Policy Statement on Cost Recovery Mechanisms to warrant further consideration at hearing.<sup>31</sup> The Trailblazer Shipper Group therefore asks the Commission to determine whether the CRM complies with

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<sup>24</sup> Trailblazer Request for Rehearing at 5 (citing July 2018 Hearing Order, 164 FERC ¶ 61,074 at P 8 and Ex. TPC-0075, attached to Trailblazer's June 2018 Filing as Attachment A).

<sup>25</sup> Trailblazer Request for Rehearing at 5.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 6.

<sup>29</sup> Trailblazer Shipper Group Request for Rehearing at 1-2.

<sup>30</sup> *Id.* at 7.

<sup>31</sup> *Id.* at 2.

the applicable criteria and, if the Commission agrees that it does not, reject the CRM on rehearing.<sup>32</sup>

## II. Discussion

11. Trailblazer's request for rehearing focuses, in part, on the decision to establish a paper hearing to examine the proposed income tax allowance.<sup>33</sup> Trailblazer argues that a paper hearing results in an "isolated adjudication" of the income tax allowance, violating the requirement that the Commission order rate adjustments "only upon a comprehensive review of cost-of-service data."<sup>34</sup> Trailblazer also asserts that this process conflicts with the rule that the Commission cannot require a pipeline to reduce its income tax allowance without concurrently considering all cost-of-service issues.<sup>35</sup> In addition, Trailblazer contends that the paper hearing process is (1) inconsistent with the Commission's actions to address the Tax Cuts and Jobs Act for the rest of the natural gas industry;<sup>36</sup> (2) inconsistent with the Commission's finding that an MLP obtains a double-recovery of income taxes through the application of the DCF methodology used to determine the appropriate ROE;<sup>37</sup> and (3) an impediment to efforts to settle the case.<sup>38</sup> Trailblazer therefore asks the Commission to annul the paper hearing and decide issues related to the income tax allowance together with all other issues set for hearing.<sup>39</sup> Trailblazer also requests that the Commission correct a misstatement concerning Tallgrass Energy and, if it "colored" the decision to establish a paper hearing, incorporate the income tax allowance issue into the

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<sup>32</sup> *Id.* at 10.

<sup>33</sup> Trailblazer Request for Rehearing at 7, 16-22.

<sup>34</sup> *Id.* at 7 (citing *Carolina Power & Light Co. v. FERC*, 860 F.2d 1097, 1102 (D.C. Cir. 1988)).

<sup>35</sup> *Id.* (citing *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate American Forest & Paper Ass'n*, Order No. 849, 164 FERC ¶ 61,031, at P 252 (2018) (stating that the Commission "cannot simply require a pipeline to reduce its rates consistent with a known reduction in a single cost component of a cost-based rate"), *reh'g denied*, Order No. 849-A, 167 FERC ¶ 61,051 (2019)).

<sup>36</sup> *Id.* at 17-19.

<sup>37</sup> *Id.* at 19-21.

<sup>38</sup> *Id.* at 21-22.

<sup>39</sup> *Id.* at 16.

evidentiary hearing.<sup>40</sup>

12. Rule 713(b) of the Commission's Rules of Practice and Procedure permits requests for rehearing "of any final decision or other final order in a proceeding."<sup>41</sup> A final order is one that imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process.<sup>42</sup> In the July 2018 Hearing Order, however, the Commission did not make any final determinations regarding the proposed income tax allowance.<sup>43</sup> The Commission merely established additional procedures to further examine the proposed income tax allowance—an "issue of first impression."<sup>44</sup> Where, as here, Commission action is not final and will be succeeded by further Commission action,

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<sup>40</sup> *Id.* at 9.

<sup>41</sup> 18 C.F.R. § 385.713(b) (2018); *see also* 16 U.S.C. § 825l(a) (2012) (parties "aggrieved by an order issued by the Commission in a proceeding . . . may apply for a rehearing within thirty days after the issuance of such order").

<sup>42</sup> *Reliable Automatic Sprinkler Co. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) ("Final agency action 'mark[s] the consummation of the agency's decision making process' and is 'one by which rights or obligations have been determined, or from which legal consequences will flow.'" (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997))).

<sup>43</sup> *See Investigation of Terms and Conditions of Pub. Util. Mkt.-Based Rate Authorizations*, 103 FERC ¶ 61,349, at 62,373 (2003) ("Because the November 20 Order initiated an investigation and thus was not a final order, we will not consider requests for rehearing of the November 20 Order."); *City of Hamilton*, 82 FERC ¶ 61,349, at 62,359 (1998) ("Setting this matter for a trial-type hearing does not impose an obligation, deny a right, or fix some legal relationship as a consummation of the administrative process."); *Fla. Mun. Power Agency v. Fla. Power & Light Co.*, 65 FERC ¶ 61,372, at 63,012 (1993) ("By not allowing rehearing of findings that were expressly preliminary . . . the Commission was exercising its discretion to develop workable, efficient procedures.").

<sup>44</sup> July 2018 Hearing Order, 164 FERC ¶ 61,074 at P 31 (finding that a "paper hearing is appropriate under these circumstances" and "is the most appropriate means to explore [the] issue").

a request for rehearing may be dismissed.<sup>45</sup> Accordingly, Trailblazer's request for rehearing is dismissed to the extent it relates to the decision to establish a paper hearing.<sup>46</sup> We also dismiss as moot Trailblazer's argument regarding the timing of Tallgrass Energy's tax election, as the Paper Hearing Order directed that the income tax allowance issue be incorporated into the ongoing evidentiary hearing, as Trailblazer requests.<sup>47</sup> Finally, because the Paper Hearing Order emphasized that all of the Commission's income tax allowance findings were preliminary, and the parties remain free to fully litigate those issues in the evidentiary hearing in this proceeding,<sup>48</sup> we dismiss as moot Trailblazer's request for clarification that it may implement any decision on the paper hearing in a single compliance filing after the general rate case proceeding.<sup>49</sup>

13. As noted above, the Trailblazer Shipper Group argues that the Commission erred by not rejecting the proposed CRM outright. Specifically, the Trailblazer Shipper Group contends that the Commission summarized parties' arguments that the CRM should be rejected, but ultimately denied these arguments on a *de facto* basis by including the CRM

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<sup>45</sup> See *Talen Energy Marketing, LLC*, 160 FERC ¶ 61,103, at P 8 (2017) (dismissing request for rehearing as premature where underlying order made no final determinations); *Virginia Electric and Power Co.*, 158 FERC ¶ 61,083, at P 3 (2017) (same); *Internal MISO Generation v. Midcontinent Indep. System Operator*, 156 FERC ¶ 61,020, at P 10 (2016) (dismissing requests for rehearing of Commission order that "did not make any final determinations," but rather "established a paper hearing to assess" the relevant issues); *Logan Generating Co., L.P.*, 158 FERC ¶ 61,013, at PP 5-7 (2017) (dismissing request for rehearing of Commission order that established hearing and settlement judge procedures to examine proposed reactive power rates); *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250, at 62,185 (2012) (collecting cases).

<sup>46</sup> We need not address Trailblazer's other arguments concerning the paper hearing process, as they are also moot. The Paper Hearing Order emphasized that Trailblazer and all other parties remain free to present evidence "supporting the Commission's preliminary findings or supporting different conclusions" during the evidentiary hearing in this proceeding. See Trailblazer Request for Rehearing at 16-22; Paper Hearing Order, 166 FERC ¶ 61,141 at P 4.

<sup>47</sup> Trailblazer Request for Rehearing at 9.

<sup>48</sup> Paper Hearing Order, 166 FERC ¶ 61,141 at P 4.

<sup>49</sup> Trailblazer Request for Rehearing at 22-24.

among the issues set for hearing.<sup>50</sup> The Trailblazer Shipper Group states that, as a result, the Commission ignored “evidence placed before it by interested parties.”<sup>51</sup> The Trailblazer Shipper Group also states that consideration of the CRM at hearing was the outcome it sought to avoid, as this will waste the resources of the parties and the Commission.<sup>52</sup>

14. In addition, the Trailblazer Shipper Group asserts that Trailblazer did not satisfy the “clearly-defined” criteria set forth in the Policy Statement on Cost Recovery Mechanisms that pipelines must satisfy for the Commission to accept a modernization cost tracker or surcharge.<sup>53</sup> The Trailblazer Shipper Group states that the Commission’s failure to reject the CRM gives Trailblazer leverage during settlement negotiations and requires the parties to spend additional time and resources addressing proposals that may have little to no substantive merit.<sup>54</sup> The Trailblazer Shipper Group therefore requests that the Commission determine whether the CRM complies with the explicit criteria, and if the Commission agrees that it does not, reject the CRM on rehearing.<sup>55</sup>

15. We dismiss the Trailblazer Shipper Group’s request for rehearing. Similar to the July 2018 Hearing Order’s treatment of the income tax allowance, the Commission also did not make any final determinations concerning the CRM. Rather, the Commission established hearing and settlement judge procedures to further examine the issues raised by Trailblazer’s filing.<sup>56</sup> The Commission has the discretion and flexibility to decide

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<sup>50</sup> Trailblazer Shipper Group Request for Rehearing at 4 (emphasis in original).

<sup>51</sup> *Id.* at 5 (citing *Tourus Records, Inc. v. Drug Enforcement Admin.*, 259 F.3d 731, 736 (D.C. Cir. 2001); *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156 (1962))).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 6.

<sup>54</sup> *Id.* at 7.

<sup>55</sup> *Id.* at 10.

<sup>56</sup> July 2018 Hearing Order, 164 FERC ¶ 61,074 at P 33 (“[T]he Commission will establish a hearing before an Administrative Law Judge to explore the other issues arising from the filing, including, but not limited to, those summarized above and set forth in the protests”).

when and where to evaluate an issue.<sup>57</sup> And here, the Commission determined that an evidentiary hearing was necessary to “explore the other issues arising from the filing,” including the proposed CRM.<sup>58</sup> Moreover, to the extent the Trailblazer Shipper Group believes that it is aggrieved<sup>59</sup> by the Commission’s decision to establish hearing and settlement judge procedures,<sup>60</sup> we emphasize that participating in an agency hearing does not amount to aggrievement; it is simply a consequence of doing business in a regulated industry.<sup>61</sup> Accordingly, because the Commission determined that an evidentiary hearing was necessary to resolve contested issues, we need not address the merits of the CRM at this time. Additionally, arguments regarding consistency with the Policy Statement on Cost Recovery Mechanisms should be addressed in the evidentiary hearing.

16. As noted above, Trailblazer also alleges that the Commission erred by implementing the decreased rates on the Expansion System without suspension (i.e.,

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<sup>57</sup> See, e.g., *Mobil Oil Expl. & Prod. SE Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) (“An agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedure . . . [such as] where a different proceeding would generate more appropriate information[.]”) (citations omitted); see also *Tenn. Gas Pipeline Co. v. FERC*, 972 F.2d 376, 381 (D.C. Cir. 1992) (“The agency is entitled to make reasonable decisions about when and in what type of proceeding it will deal with an actual problem.”); *Nadar v. FCC*, 520 F.2d 182, 195 (D.C. Cir. 1975) (“[T]his court has upheld in the strongest terms the discretion of regulatory agencies to control the disposition of their caseload.”); *Stowers Oil and Gas Co.*, 27 FERC ¶ 61,001, at n.3 (1984) (“It is within the Commission’s purview to determine how best to allocate its resources for the most efficient resolution of matters before it.”).

<sup>58</sup> July 2018 Hearing Order, 164 FERC ¶ 61,074 at P 33.

<sup>59</sup> 16 U.S.C. § 825l(b); *CNG Trans. Corp. v. FERC*, 40 F.3d 1289, 1292 (D.C. Cir. 1994) (“To show aggrievement, a plaintiff must allege facts sufficient to prove the existence of a concrete, perceptible harm of a real, non-speculative nature.”) (internal quotations omitted).

<sup>60</sup> See, e.g., Trailblazer Shipper Group Request for Rehearing at 7 (“[P]arties . . . have to spend additional time and resources addressing proposals that may have little to no substantive merit”).

<sup>61</sup> *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (“[T]he expense and annoyance of litigation is ‘part of the social burden of living under government.’”) (quoting *Petroleum Exploration, Inc. v. Pub. Serv. Comm’n of Ky.*, 304 U.S. 209, 222 (1938)).

five months before the rates on the Existing System).<sup>62</sup> Trailblazer states that this determination unfairly forces Trailblazer to immediately implement the decreased costs on one portion of its system while disallowing recovery of offsetting cost increases on another part of its system.<sup>63</sup> Trailblazer claims that this violates the requirement that a pipeline be permitted a fair opportunity to earn a reasonable return on investment.<sup>64</sup> Trailblazer also states that *Transco* is inapplicable, as the Commission ignored fundamental distinctions between Trailblazer's circumstances and those present in *Transco*.<sup>65</sup> Specifically, Trailblazer contends that *Transco* involved "immediate implementation of rate decreases on incrementally priced facilities," and that, unlike in *Transco*, the Expansion System is not merely a lateral facility.<sup>66</sup> Additionally, in an attempt to distinguish *Northeast Energy Associates v. FERC*,<sup>67</sup> Trailblazer asserts that issues of cost allocation are central to this proceeding.<sup>68</sup> In that case, the court reversed a Commission order suspending a proposed rate decrease under certain incremental rate schedules for five months, finding that there was no reason why the presence of "some unspecified allocated costs" required that the decreased incremental rates be implemented at the same time as increased rates on the rest of the system.<sup>69</sup> Trailblazer therefore requests that the Commission implement all of Trailblazer's rates at the same time, effective January 1, 2019.<sup>70</sup>

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<sup>62</sup> Trailblazer Request for Rehearing at 6-7.

<sup>63</sup> *Id.* at 10.

<sup>64</sup> *Id.* at 6 (citing *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944)).

<sup>65</sup> *Id.* at 6-7, 11-14 (citing *Transco*, 140 FERC ¶ 61,251).

<sup>66</sup> *Id.* at 11-12.

<sup>67</sup> *Northeast Energy Assocs. v. FERC*, 158 F.3d 150 (D.C. Cir. 1998) (*Northeast Energy Associates*).

<sup>68</sup> Trailblazer Request for Rehearing at 12.

<sup>69</sup> *Northeast Energy Associates*, 158 F.3d at 155.

<sup>70</sup> Trailblazer Request for Rehearing at 14.

17. We deny rehearing. The Commission has broad discretion to determine the length of the suspension period.<sup>71</sup> The Commission's ordinary practice is to accept rate decreases without suspension in order to ensure that the rate decrease goes into effect as soon as possible.<sup>72</sup> And as discussed below, we find unpersuasive Trailblazer's attempts to distinguish this case from *Transco* and *Northeast Energy Associates*.

18. As Trailblazer recognizes, in those cases the Commission either accepted, without suspension, proposed rates that included overall rate decreases for separate services, or was reversed on appeal for not doing so in circumstances that are similar to those present here. Here, the Commission determined that the Expansion System tariff records and the Existing System tariff records propose rates for "separate services subject to separate rate schedules."<sup>73</sup> Trailblazer does not rebut this determination, but instead echoes its earlier reliance on *Tennessee*, arguing that there are changes to the "components of the cost of service allocated among all services"<sup>74</sup> and that some components have increased while others have decreased by a lesser amount, so all changes should be reflected in rates at the same time.<sup>75</sup> The Commission rejected this argument in the July 2018 Hearing Order,<sup>76</sup> and we again find it unpersuasive. Unlike Trailblazer's proposal in the instant proceeding, in *Tennessee* the pipeline did not propose an overall rate decrease for any service; rather, it proposed a substantial increase in the non-fuel rates for all services.<sup>77</sup> By contrast, the facts at issue in this case are analogous to those considered by the court in *Northeast Energy Associates*. Specifically, as with the pipeline in that case, Trailblazer has proposed

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<sup>71</sup> See, e.g., *Southern Co. Servs., Inc.*, 99 FERC ¶ 61,204, at PP 3, 21 (2002) (explaining that the Commission "has considerable discretion in determining the length of the suspension period, based upon its evaluation of the circumstances of a particular case," and "generally will not reconsider its decision regarding the length of the suspension period").

<sup>72</sup> *Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, Order No. 582-A, FERC Stats. & Regs. ¶ 31,034, at 31,562 (1996) (cross-referenced at 74 FERC ¶ 61,224).

<sup>73</sup> July 2018 Hearing Order, 164 FERC ¶ 61,074 at n.24.

<sup>74</sup> Trailblazer Request for Rehearing at 13 (citing *Tennessee*, 133 FERC ¶ 61,266 at P 34).

<sup>75</sup> *Id.*

<sup>76</sup> July 2018 Hearing Order, 164 FERC ¶ 61,074 at n.24.

<sup>77</sup> *Tennessee*, 133 FERC ¶ 61,266 at P 34.

an increase to its overall cost of service, but has proposed decreases to other, incremental rates (i.e., for the Expansion System).<sup>78</sup> Furthermore, the proposed decreases for the Expansion System are also due to the costs of service for the relevant facilities having decreased, not because of a proposed reallocation of costs among services or a change in rate design, as Trailblazer contends.<sup>79</sup> Accordingly, because Trailblazer's proposed tariff records for the Expansion System and the Existing System involve separate services subject to separate rate schedules, the July 2018 Hearing Order appropriately directed Trailblazer to implement the decreased rates on the Expansion System without suspension.

19. Finally, Trailblazer requests clarification that, if the Commission were to determine under NGA section 5 that costs currently allocated to the Existing System should be reallocated to the Expansion System, the Commission would permit Trailblazer to implement any resulting increases and decreases in the rates of the two systems in a single compliance filing at the conclusion of this proceeding, rather than requiring Trailblazer to file a separate NGA section 4 rate case in order to implement the Expansion System rate increase.<sup>80</sup> We grant this request for clarification. As the D.C. Circuit held in *United Gas Distributors v. FERC*,<sup>81</sup> when the Commission orders a change in a pipeline's existing rate design or cost allocation method pursuant to NGA section 5, with the result that the rates of some customers decrease and the rates of other customers increase, the Commission may require the pipeline to implement the offsetting rate increases and decreases simultaneously in a single compliance filing.

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<sup>78</sup> *Northeast Energy Associates*, 158 F.3d at 151 (“In total, Transco increased its revenue under the proposal, but the filing called for decreases in two rates applicable exclusively to petitioners Northeast Energy Associates and North Jersey Energy Associates.”).

<sup>79</sup> Trailblazer acknowledged that the decrease in the rates on the Expansion System “is primarily driven by the significantly higher approved depreciation rate applied to the compression.” See Trailblazer Request for Rehearing at 12.

<sup>80</sup> *Id.* at 14-16.

<sup>81</sup> *United Distribution Cos. v. FERC*, 88 F.3d 1105, 1164-6 (D.C. Cir. 1996).

The Commission orders:

The requests for rehearing are dismissed in part, and denied in part, and the requests for clarification are granted in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.