

122 FERC ¶ 61,076
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

January 31, 2008

In Reply Refer To:
Eastern Shore Natural Gas Company
Docket No. RP07-38-000

Elaine B. Bittner, Vice President
Eastern Shore Natural Gas Company
417 Bank Lane
Dover, DE 19904

Re: Order on Stipulation and Settlement Agreement

Dear Ms. Bittner:

1. On September 10, 2007, Eastern Shore Natural Gas Company (Eastern Shore) filed a Stipulation and Agreement (Settlement) to resolve all issues arising out of this general section 4 rate proceeding. Initial comments supporting the Settlement Agreement were filed by Eastern Shore Natural Gas Company, Delmarva Power & Light Company, the Commission Staff, Premcor, Inc. and the Easton Utilities Commission. The parties requested that the Presiding Judge certify the Settlement as uncontested and that the Commission approve it without modification. The Presiding Judge certified the Settlement to the Commission as uncontested on October 1, 2007.¹ As set forth below, the Commission approves the Settlement without modification.

2. Article I of the Settlement and the associated schedules in Appendix A set forth the cost of service underlying the settlement rates. Section 1 of Article I of the Settlement provides that the cost of service underlying the rates to be charged is \$21,536,000. Though this amount has been negotiated on a “black box” basis (in which the parties have agreed to a specific amount rather than use of a particular methodology to derive the amount), the parties specify that the cost of service reflects a pre-tax return of 13.6 percent. The parties further agree that certain assets and equipment will be depreciated according to rates set forth in Appendix A, Schedule 1. Section 2 requires

¹ *Eastern Shore Natural Gas Company*, 121 FERC ¶ 63,001 (2007).

Eastern Shore to file the Settlement Rates concurrently with the Settlement and provides that these rates are to become effective on an interim basis on September 1, 2007.²

3. The following is a summary of the other major provisions of the Settlement:
 - a. Article II states that, if Eastern Shore's treatment of deferred income taxes is subsequently found to be in violation of the normalization requirements of the Internal Revenue Code, then Eastern Shore shall be authorized to file appropriate rate changes to make adjustments necessary to comply. Such filing will be permitted to take effect at a time to allow, without interruption, Eastern Shore's eligibility to legally use accelerated depreciation
 - b. Article III and the associated Schedule 1 in Appendix A set forth the agreed upon depreciation rates.
 - c. Article IV sets forth the rates. Eastern Shore will continue to use the existing two rate zones for firm and interruptible transportation service, and the differential between the Rate Zone One and Rate Zone Two Settlement base rates shall remain \$8.3068 throughout the Settlement. The cost of storage by others will be directly assigned to storage customers. Details of the rate design methodology underlying Eastern Shore's settlement rates are set forth in Schedule 2 in Appendix A.
 - d. Article V states that within 30 days of the effective date of this Settlement, Eastern Shore shall refund to each affected shipper all amounts, if any, collected on or after May 15, 2007, in excess of the settlement rates, together with interest calculated in accordance with 18 C.F.R. § 154.501 of the Commission's regulations.
 - e. Article VI defers treatment of costs of certain expansion projects, via the black box settlement, to Eastern Shore's next general NGA section 4 rate case. Eastern Shore will bear the burden of proof for continued rolled-in treatment of such costs in the cost of service and rates in such future case.

² This requirement is conditioned upon Eastern Shore receiving a Commission Order providing that, if the settlement does not become effective, Eastern Shore may reinstate its proposed tariff rates, placed into effect on May 15, 2007, and surcharge or direct-bill its customers for the difference between those rates and the Settlement rates, retroactive to September 1, 2007. On September 25, 2007, the Chief Administrative Law Judge granted Eastern Shore's motion to place the Settlement rates into effect on an interim basis. *Eastern Shore Natural Gas Co.*, 120 FERC ¶ 63,022 (2007).

- f. Article VII provides that, except as otherwise provided in the settlement, Eastern Shore will not file to increase rates or otherwise modify the terms of the Settlement for three years.
 - g. Article VIII provides that Eastern Shore shall make a general rate filing with rates proposed to be effective on the third anniversary of the first day of the month following the month in which the Settlement is approved by the Commission.
 - h. Article IX sets forth the procedures to be followed in connection with the Commission's review of the settlement agreement.
 - i. Article X states that the provisions of the Settlement shall not become effective unless and until the Commission enters an order accepting and approving all terms and conditions of the Settlement without modification or condition, and such order becomes final and no longer subject to further proceeding before the Commission. Additionally, this Settlement represents a negotiated agreement of the issues in this proceeding. Neither Eastern Shore nor the Commission, its Staff or any other party shall be deemed to have approved, accepted, agreed, or otherwise consented to any principle or issue in this proceeding.
4. The Commission finds the Settlement is fair, reasonable and in the public interest and is hereby approved. Commission approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue involved in this proceeding.

By direction of the Commission. Commissioner Kelly dissenting in part with a separate statement attached.

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Eastern Shore Natural Gas Company

Docket No. RP07-38-000

(Issued January 31, 2008)

KELLY, Commissioner, *dissenting in part*:

The parties to this settlement agreement request that the *Mobile-Sierra* “public interest” standard of review apply with respect to any future changes to the settlement, whether proposed by a party or a non-party. The settlement agreement calls for the “just and reasonable” standard of review regarding future changes made to the settlement by the Commission acting *sua sponte*. This settlement sets forth general rates under Eastern Shore Natural Gas’ tariff.

As I explained in *Transcontinental Gas Pipe Line Corporation*,¹ I do not believe the Commission should approve a “public interest” standard of review provision, to the extent future changes are sought by a non-party or the Commission acting *sua sponte*, without an affirmative showing by the parties and a reasoned analysis by the Commission as to the appropriateness of such a provision. As I have previously noted,² this is particularly the case where, as here, the settlement agreement will impact a generally applicable tariff under which all customers take service, including any new customers that did not have the opportunity to participate in the settlement negotiations.

Accordingly, I dissent in part from this order.

Suedeem G. Kelly

¹ 117 FERC ¶ 61,232 (2006).

² *San Diego Gas & Electric Co.*, 119 FERC ¶ 61,169 (2007).