

124 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern Star Central Gas Pipeline, Inc.

Docket No. RP08-84-000

ORDER FOLLOWING TECHNICAL CONFERENCE AND APPROVING
UNCONTESTED SETTLEMENT

(Issued July 3, 2008)

1. On November 30, 2007, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed a revised tariff sheet¹ and supporting workpapers to reflect annual adjustments to its fuel and loss reimbursement percentages (FLRPs) as required by section 13 of its tariff's General Terms and Conditions (GT&C). Southern Star's proposed FLRPs include, among other things, losses due to a cracked girth weld in a pipeline segment near Hutchison, Kansas (Hutchison Loss) and a loss resulting from the failure of a field lateral line in the McLouth storage field (McLouth Loss). On December 28, 2007, the Commission issued an order² accepting and suspending the tariff sheet, to become effective January 1, 2008, subject to a technical conference established to address the issues raised by the filing. The technical conference was held on February 8, 2008. Subsequently, the parties engaged in informal settlement talks and on May 30, 2008, Southern Star filed an offer of settlement in the form of a stipulation and agreement (Agreement) proposing revised FLRPs and resolving all issues in this proceeding, to be effective June 1, 2008. In this order, we approve the Agreement, to be effective June 1, 2008, as requested.

I. Background

2. Section 13 of the GT&C requires shippers to reimburse Southern Star for fuel and losses in kind.³ The section also requires Southern Star to file annually to revise its

¹ Seventh Revised Sheet No. 12 of its FERC Gas Tariff, Original Volume No. 1.

² *Southern Star Central Gas Pipeline, Inc.*, 121 FERC ¶ 61,306 (2007).

³ *See Southern Star Central Gas Pipeline, Inc.*, 109 FERC ¶ 61,378 (2004) (approving section 13 of the GT&C as part of a settlement in Docket Nos. RP03-135-000 and RP04-93-000).

FLRPs, effective January 1 of each year, based on actual fuel and losses for the twelve-month period ending September 30 of the previous year and adjusted for any over- or under-recovery during the same period. Southern Star is required to submit specific calculations for its production area, market area, and for storage under section 13.

3. In its filing, Southern Star proposed to adjust its FLRPs as follows: (1) 1.62 percent increase in the Production Area FLRP, from 1.18 percent to 2.80 percent; (2) 0.54 percent increase in the Market Area FLRP, from 0.51 percent to 1.05 percent; and (3) 0.76 percent increase in the Storage FLRP, from 6.29 percent to 7.05 percent. The Hutchison Loss was reflected in the Production Area FLRP, and the McLouth Loss was reflected in the Storage FLRP.

4. On December 12, 2007, the Missouri Public Service Commission (MoPSC) and the Kansas Corporation Commission (KCC) filed protests arguing that Southern Star should not be permitted to recover costs associated with the Hutchison and McLouth Losses in its FLRPs. MoPSC also argued that Southern Star continues to experience significant losses in its McLouth storage field and that Southern Star should be required to identify any information that it has developed since its last annual FLRP filing⁴ that can explain these losses. Both MoPSC and KCC requested a technical conference to determine whether Southern Star appropriately accounted for the above-mentioned losses in its FLRPs.

5. On December 19, 2007, Southern Star filed an answer, which provided additional information regarding the Hutchison and McLouth Losses. The Hutchison Loss resulted from a failure in a girth weld seam on a 26-inch LS 130 transmission line, installed in 1948, which caused a crack-like opening on the underside of the pipe through which gas escaped. The loss went undetected for roughly fifteen days (on or about January 22 through February 5, 2007) because it took place in a rural, sparsely populated area near a two-lane state highway and a railroad crossing. Southern Star calculates the extent of the loss at 1,037,888 Dth. The McLouth Loss resulted from the rupture of a 16-inch storage lateral pipeline in the McLouth storage field on the evening of August 18, 2007. The rupture was the result of internal corrosion on the line, which was installed in 1978. The rupture was readily observable, and within four hours, Southern Star personnel shut in that portion of the storage field. Southern Star states that the total loss was calculated at 204,687 Dth. Southern Star objected to the protesters' arguments that these losses should not be recovered in Southern Star's FLRPs. Southern Star did not object, however, to discussing the issues further at a technical conference.

⁴ Southern Star Central Gas Pipeline, Inc., December 1, 2006 Filing, Docket No. RP07-96-000.

6. On December 28, 2007, the Commission issued an order⁵ accepting and suspending the tariff sheet, to become effective January 1, 2008, subject to a technical conference established to address the issues raised by the filing. At the February 8, 2008 technical conference, the parties agreed to conduct an informal round of questions and answers, in which intervening parties posed questions to Southern Star by February 22, 2008, and Southern Star provided answers on March 5, 2008.⁶ Initial comments on the technical conference were then filed on March 19, 2008, and reply comments were filed on April 2, 2008.⁷ Southern Star, KCC, MoPSC, Missouri Gas Energy, a Division of Southern Union Company (MGE), Aquila, Inc. (Aquila), Koch Nitrogen Company (Koch), and Kansas Gas Service, a Division of Oneok, Inc. (KGS) filed initial comments. Southern Star, MoPSC, KGS, and MGE filed reply comments.

7. Subsequently, the parties engaged in informal settlement talks and on May 30, 2008, Southern Star filed the Agreement, which resolves all of the issues raised in this proceeding. Southern Star submits the Agreement pursuant to Rule 602 of the Commission's Rules of Practice and Procedure on behalf of itself and the active parties in this docket.⁸ Additionally, Southern Star requests expedited Commission action and a shortened comment period.

II. Terms of the Settlement

8. Article I of the Agreement provides that in future annual fuel and loss tracking filings made pursuant to Article 13 of Southern Star's GT&C, Southern Star will do the following: (1) clearly identify any gas losses attributable to reportable Department of Transportation (DOT) incidents that Southern Star proposes to recover through such tracker filing; and (2) refrain from classifying as "fuel" any quantity of gas not actually consumed as fuel.

⁵ *Southern Star Central Gas Pipeline, Inc.*, 121 FERC ¶ 61,306 (2007).

⁶ These informal questions and answers, however, are not part of the record in this proceeding.

⁷ Since the Commission's initial order was issued in this proceeding on December 28, 2007, additional entities have filed motions to intervene out of time. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedures, 18 C.F.R. § 385.214(d) (2007), the Commission will grant these late-filed motions to intervene given the entities' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁸ Southern Star lists the active parties as Aquila, Atmos Energy Corporation (Atmos), KCC, KGS, Koch, MGE, and MoPSC.

9. Article II provides that Southern Star will remove the impact of the Hutchison and McLouth Losses from the projected rates for 2008. Article III provides that Southern Star will absorb 778,416 Dth of the Hutchison Loss. Article IV provides that Southern Star will absorb 102,344 Dth of the McLouth Loss. Article V provides that Southern Star will not include any costs related to the volumes from the Hutchison or McLouth Losses in any future Natural Gas Act section 4 filings, and will remove any such costs from its general rate filing in Docket No. RP08-350-000. Articles VI through VIII include provisions pertaining to the timing and effectiveness of the tariff sheets accompanying the Agreement and the general reservations of the settling parties.

10. The Agreement is silent as to the standard of review against which future modifications will be judged. However, the explanatory statement filed with the Agreement states that after approval, any future changes to the Agreement, and matters settled for calendar year 2008 therein, must satisfy the *Mobile-Sierra* standard.⁹

III. Public Notice and Comments

11. Notice of Southern Star's filing was issued on June 4, 2008, with initial comments due on or before June 6, 2008, and reply comments due on or before June 11, 2008. Southern Star, KGS, MGE, Aquila, KCC, MoPSC and Atmos filed initial comments and Southern Star filed reply comments, all in support of the Agreement. The commenters urge the Commission to accept the Agreement in an expedited fashion. Commenters agree that the Agreement will resolve all issues raised in this proceeding. Additionally, commenters state that expeditious approval of the Agreement by the Commission will result in an immediate and significant rate reduction for customers and is therefore fair, reasonable and in the public interest.

IV. Discussion

12. We find that the subject Agreement resolves all of the issues set for technical conference in Docket No. RP08-84-000. Furthermore, we find that the Agreement is fair and reasonable and in the public interest and is hereby approved, effective June 1, 2008. The Agreement has the effect of reducing Southern Star's Production Area FLRP, from 2.80 percent to 1.56 percent, and its Storage FLRP, from 7.05 percent to 5.86 percent. The Commission's approval of this Agreement does not constitute approval of, or precedent regarding, any principle or issue in this proceeding.

13. The Agreement itself is silent with respect to the standard of review for future changes to the Agreement. The explanatory statement provides that "after approval, any

⁹ This shorthand is derived from two Supreme Court cases decided on the same day, *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

future changes to the Agreement itself, and the matters settled for calendar year 2008 therein, must satisfy the *Mobile-Sierra* standard.”¹⁰ Here the parties appear to seek to bind parties, non-parties and the Commission to *Mobile-Sierra*’s public interest standard for any modifications to the Agreement that are not agreed to by the settling parties.¹¹

14. In light of *Maine Pub. Util. Comm’n v. FERC*, 520 F.3d 464 (D.C. Cir. 2008), the Commission may not accept the proposed standard of review with regard to third parties in this new agreement. As such, the settlement is accepted conditioned on the parties revising the standard of review applicable to third parties consistent with the Commission’s decision in *Duke Energy Carolinas, LLC*, 123 FERC ¶ 61,201, at P 10 & n.10 (2008). Southern Star should, within thirty days of the date of this order, file a revised standard of review provision consistent with this precedent.

The Commission orders:

The Agreement is hereby accepted, subject to Southern Star filing a revised standard of review for future changes proposed by third parties, within thirty (30) days of the date this order issues, as discussed above.

By the Commission. Commissioners Wellinghoff and Kelly dissenting in part with a joint statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁰ Southern Star, May 30, 2008, Explanatory Statement to Stipulation and Agreement, at 3.

¹¹ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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WELLINGHOFF and KELLY, Commissioners, dissenting in part:

The majority states in today's order that the Agreement before us is silent as to the standard of review for future changes to the Agreement. Citing the parties' explanatory statement, the majority further states that the parties intended for the Commission to apply the "public interest" standard of review when it considers future changes to the Agreement that may be sought by any of the parties, a non-party, or the Commission acting *sua sponte*.

The majority finds that, in light of the U.S. Court of Appeals for the District of Columbia Circuit's (D.C. Circuit) decision in *Maine Public Utilities Commission v. FERC*,¹ the Commission may not accept the parties' proposed standard of review. The majority, however, accepts the Agreement conditioned on the parties revising the standard of review provision consistent with the Commission's decision in *Duke Energy Carolinas, LLC*.²

We continue to disagree with the majority's characterization of the D.C. Circuit's holding in *Maine PUC* as to the applicability of the "public interest" standard. For the reasons set forth in our dissents in *Duke Energy Carolinas, LLC* and *Westar Energy, Inc.*,³ we respectfully dissent in part.

Jon Wellinghoff
Commissioner

Suede G. Kelly
Commissioner

¹ 520 F.3d 464 (D.C. Cir. 2008) (*Maine PUC*).

² 123 FERC ¶ 61,201 (2008).

³ 123 FERC ¶ 61,252 (2008).