

140 FERC ¶ 61,129  
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.

Bear Creek Storage Company L.L.C.

Docket Nos. RP12-121-000

ORDER ON UNCONTESTED SETTLEMENT

(Issued August 15, 2012)

1. On November 17, 2011, the Commission initiated a proceeding pursuant to section 5 of the Natural Gas Act (NGA) into the justness and reasonableness of the existing rates of Bear Creek Storage Company L.L.C. (Bear Creek) and established hearing procedures.<sup>1</sup> In the November 2011 Order, the Commission required Bear Creek to file a cost and revenue study within 75 days. On January 11, 2012, the Commission denied rehearing of the November 2011 Order.<sup>2</sup> On June 22, 2012, pursuant to Rule 602 of the Commission's Rules of Practice and Procedure,<sup>3</sup> Bear Creek filed a Stipulation and Agreement and related materials (Settlement) to resolve all outstanding issues in the above-referenced docket.
2. The terms of the Settlement are described briefly below.
3. Article I sets out the purpose and scope of the Settlement and Article II describes the factual and procedural background of this proceeding.
4. Article III defines the terms "Supporting And Non-Opposing Parties" and "Contesting Parties." Article IV defines the "Effective Date" of the Settlement and

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<sup>1</sup> *Bear Creek Storage Co., L.L.C.*, 137 FERC ¶ 61,134 (2011) (November 2011 Order).

<sup>2</sup> *Bear Creek Storage Co., L.L.C.*, 138 FERC ¶ 61,019 (2012).

<sup>3</sup> 18 C.F.R. § 385.602 (2012).

details the procedures to be followed if the Commission modifies or attaches conditions to the Settlement.

5. Article V sets forth the “Settlement Rates,” which together with other Settlement tariff provisions, are the “Settlement Rate Provisions.” Article V also sets forth when the Settlement Rates will take effect for Bear Creek’s two customers – Southern Natural Gas Company, L.L.C. (Southern) and Tennessee Gas Pipeline Company, L.L.C. (Tennessee) – and provides that those rates will continue in effect until new rates are authorized or permitted to take effect by the Commission as a result of a future proceeding.

6. Article VI states that, except as otherwise provided, the Settlement Rates have been established on a “black box” basis. Article VI also provides that a “Final Commission Order” approving the Settlement shall constitute all necessary authority under NGA section 9 for Bear Creek to lower its currently-effective depreciation rate from 3.75 percent to 0.5 percent. Lastly, Article VI provides that the Settlement Rates reflect the *Equitable Gas Co.*<sup>4</sup> method of cost allocation.

7. Article VII provides for the early flow through of the reduced Bear Creek cost of service to Southern’s and Tennessee’s storage customers before the next Southern and Tennessee NGA section 4 general rate cases. Article VII, paragraph A provides that the early flow through on Southern will be implemented through a discount to Southern’s Rate Schedule CSS storage reservation rate and lays out the derivation of the discount and the effective dates. In the event in the Next Southern Rate Case<sup>5</sup> the Commission suspends the Rate Schedule CSS rates for a period less than five months, Southern will provide a one-time credit on the affected customer’s bill, the derivation of which is explained in the Article. Article VII, Paragraph A also provides for a locked-in period of four years from the Effective Date of this Settlement for Southern’s storage customers during which the benefit of the reduced Bear Creek cost of service will continue to be reflected in Southern’s storage rates, whether or not Bear Creek has received authority from the Commission to charge market based rates or provide open access service and regardless of whether or not Southern’s customers subscribe to Bear Creek’s storage services directly from Bear Creek or indirectly through Southern.

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<sup>4</sup> 36 FERC ¶ 61,147 (1986).

<sup>5</sup> The Settlement provides that, pursuant to the terms of the settlement of its last NGA section 4 general rate case in Docket No. RP09-427, Southern must file an NGA section 4 general rate case to be effective, assuming a five month suspension period on or before September 1, 2013, but not before September 1, 2012. *See Southern Natural Gas Co., L.L.C.*, 130 FERC ¶ 61,004 (2010).

8. Similarly, Article VII, paragraph B provides that early flow through on Tennessee will be implemented through a discount to Tennessee's Rate Schedule FS-PA Deliverability Rate and Space Rate and lays out the derivation of the discount and the effective dates. Article VII, paragraph B also provides that, in the event that in the Next Tennessee Rate Case<sup>6</sup> the Commission suspends the Rate Schedule FS-PA rates for a period less than five months, Tennessee will provide a one-time credit on the affected customer's bill. The article then explains the derivation of that credit. Article VII, paragraph B also provides for a locked-in period of three years from the Effective Date of this Settlement for Tennessee's storage customers during which the benefit of the reduced Bear Creek cost of service will continue to be reflected in Tennessee's storage rates, whether or not Bear Creek has received authority from the Commission to charge market based rates or provide open access service and regardless of whether or not Tennessee's customers subscribe to Bear Creek's storage services directly from Bear Creek or indirectly through Tennessee.

9. Article VII also sets forth procedures for Southern's and Tennessee's storage customers to execute a discount agreement to reflect the rate discounts provided for in Article VII, Paragraphs A and B. Lastly, Article VII provides that any Southern or Tennessee customer executing a discount agreement provided for in Article VII shall continue to qualify for the right of first refusal for the time period in which the discounted storage rates are in effect subject to the stated conditions.

10. Article VIII requires Bear Creek to file to make certain specified modifications to its Fuel Adjustment provisions in section 3.4 of Rate Schedule SS-P to provide that: (a) Bear Creek cannot recover extraordinary gas losses directly from its customers through the Annual Adjustment provision set forth in section 3.4; and (b) Bear Creek must make an annual fuel filing, to show the annual true up and, if applicable, the flow-through of the fuel and ordinary losses to its customers. Article VIII also requires Bear Creek to file to make certain specified modifications to section 8.2 of its GT&C to eliminate the reference that migration losses may be flowed through directly to Bear Creek's customers and shall change the standard of liability for gas losses to actual damages caused by Bear Creek's negligence.

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<sup>6</sup> The Settlement provides that, pursuant to the terms of the settlement of its last NGA general section 4 rate case in Docket No. RP11-1566, Tennessee must file an NGA section 4 general rate case to be effective on November 1, 2015, assuming a five month suspension period and Tennessee may file an NGA section 4 general rate case to be effective no earlier than April 1, 2014, assuming a five month suspension period.

11. Article IX provides that no provision of Bear Creek's tariff, as amended pursuant to Article VIII above, or this Settlement shall preclude or restrict Bear Creek from filing or proposing to recover extraordinary gas losses in its cost of service in a future NGA section 4 or section 5 rate proceeding and that no Supporting or Non-Opposing Party shall be prohibited from opposing the amount of extraordinary losses Bear Creek seeks to recover in a future rate proceeding, but no Supporting or Non-Opposing Party shall assert that Bear Creek's tariff or the Settlement precludes or bars recovery in such a proceeding.

12. Article X provides for a rate moratorium during which neither Bear Creek nor any Supporting or Non-Opposing Party can take prohibited action with respect to "Settled Matters" (a) prior to the date three years after the Effective Date of the Settlement, and (b) prior to the date four years after the Effective Date of this Settlement with respect to the Southern obligations set forth in Article VII.A.4. Article X also provides that the standard of review for any proposed change to "Settled Matters" sought by any Supporting or Non-opposing Party shall be the "public interest" standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* and *Federal Power Commission v. Sierra Pacific Power Co.*<sup>7</sup> With respect to proposed changes to any "Settled Matter" sought by non-settling third parties or the Commission acting *sua sponte*, Article X provides that the standard of review shall be the just and reasonable standard.

13. Article X also sets forth the "Permitted Actions" and "Prohibited Actions" by Bear Creek and the Supporting and Non-Opposing Parties during the rate moratorium. Lastly, Article X requires Bear Creek to file a cost and revenue study four years after the Effective Date of the Settlement, unless Bear Creek has filed an NGA section 4 general rate case, obtained authority to charge market based rates, or the Commission has initiated an investigation of Bear Creek's rates pursuant to NGA section 5.

14. Article XI provides that within forty-five days of the Effective Date of the Settlement, Bear Creek will file to voluntarily dismiss the petition for review filed with United States Court of Appeals for the District of Columbia Circuit in Case No. 12-1141.

15. Article XII provides that no resolution in the Settlement is a "settled practice" and Articles XIII and XIV set out certain reservations and miscellaneous provisions.

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<sup>7</sup> *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

16. Trial Staff, Alabama Gas Corporation, SNG, TGP, Bear Creek, East Tennessee Group,<sup>8</sup> Tennessee Valley Authority, Tennessee Customer Group,<sup>9</sup> Municipals,<sup>10</sup> and Atmos Energy Corporation filed initial comments in support of the Settlement. All of the commenters believe that the settlement is fair and reasonable and in the public interest and therefore, should be approved by the Commission without modification. Several of the commenters also pointed out that this Settlement will provide rates, which in the aggregate are lower than Bear Creek's current rates, to Bear Creek's direct customers Southern and Tennessee and Bear Creek's indirect customers who receive storage services from Southern and Tennessee that utilize the storage service that each pipeline holds on Bear Creek. The Settlement will benefit Bear Creek's indirect customers by providing for: (i) the early flow through of the reduced Bear Creek rates to Southern's and Tennessee's storage customers before the next Southern and Tennessee NGA section 4 general rate cases; and (ii) a locked-in period of four years from the Effective Date of this Settlement for Southern's storage customers and three years from the Effective Date of this Settlement for Tennessee's storage customers during which the benefit of the

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<sup>8</sup> The East Tennessee Group includes Appalachian Natural Gas Distribution Company, Athens Utilities Board, Bridgeport Utilities, Citizens Gas Utility District, Cookeville Gas Department, Elk River Public Utility District, Etowah Utilities Gas Department, Fayetteville Public Utilities, Gallatin Natural Gas System, Harriman Utility Board, Hawkins County Gas Utility District, Jamestown Gas System, Jefferson-Cocke County Utility District, Knoxville Utilities Board, Lenoir City Utilities Board, Lewisburg Gas Department, Livingston Gas Department, Loudon Utility Gas Department, Madisonville Gas System, Marion Natural Gas System, Middle Tennessee Natural Gas Utility District, Mt. Pleasant Gas System, Oak Ridge Utility District, Powell Clinch Utility District, Rockwood Water & Gas, Sevier County Utility District, Sweetwater Utilities Board, and Unicoi County Gas Utility District,

<sup>9</sup> The Tennessee Customer Group includes CenterPoint Energy Resources Corp.; City of Clarksville Gas and Water Department, City of Clarksville; City of Corinth Public Utilities Commission; Delta Natural Gas Company, Inc.; Greater Dickson Gas Authority; Hardeman Fayette Utility District; Henderson Utility Department; Holly Springs Utility Department; Humphreys County Utility District; Town of Linden; Morehead Utility Plant Board; Portland Natural Gas System, City of Portland; Savannah Utilities; Springfield Gas System, City of Springfield; City of Waynesboro; and West Tennessee Public Utility District.

<sup>10</sup> The Municipals include Alabama Municipal Distributors Group, the Austell Gas System, The Southeast Alabama Gas District, and the Municipal Gas Authority of Georgia.

reduced Bear Creek rates will continue to be reflected in Southern's and Tennessee's storage rates.

17. Several commenters also pointed out that the Settlement also provides for a moratorium on NGA section 4 or section 5 actions that would modify Bear Creek's rates for three years after the effective date of this Settlement or four years from the effective date for certain obligations of Southern described under Article VILA.4. Further, if Bear Creek has not filed an NGA section 4 rate case, or received authority from the Commission to charge market based rates, or the Commission has not initiated an investigation of Bear Creek's rates under section 5 of the NGA, then Bear Creek must file a cost and revenue study pursuant to the provisions of 18 C.F.R. § 154.312 of the Commission's regulations four years after the effective date of this Settlement.

18. On July 20, 2012, the Presiding Judge certified the Settlement to the Commission as uncontested.<sup>11</sup>

19. The Commission finds that the Settlement is fair and reasonable and in the public interest, and therefore, the Commission approves the Settlement pursuant to Rule 602(g), 18 C.F.R. § 385.602(g) (2012).

20. This order terminates Docket No. RP12-121-000.

The Commission orders:

The Settlement is approved as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>11</sup> *Bear Creek Storage Co. L.L.C.*, 140 FERC ¶ 63,005 (2012).