

143 FERC ¶ 61,205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Columbia Gas Transmission, LLC

Docket No. RP13-606-000

ORDER APPROVING SETTLEMENT

(Issued June 3, 2013)

1. On February 28, 2013, Columbia Gas Transmission, LLC (Columbia) filed a petition for approval of a Stipulation and Agreement of Settlement (Settlement). Columbia filed the Settlement pursuant to Rule 207(a)(5) and Rule 602. The Settlement provides a means to fund upgrades needed at its LNG facilities located in Chesapeake, Virginia. As discussed below, the Commission approves the Settlement.

Background

2. On February 28, 2013, Columbia filed the Settlement, which it states represents a collaborative resolution between it and its three liquefied natural gas (LNG) customers, Columbia Gas of Virginia, Inc., the City of Richmond, Virginia, and Virginia Natural Gas, Inc. Columbia states that the Settlement provides a means to fund approximately \$30 million for the facility upgrades needed to extend the life of and ensure the continued safe operations of its LNG facilities located in Chesapeake, Virginia. Columbia further states that the three LNG customers have fully contracted for all of the capacity of the LNG facilities pursuant to Rate Schedules X-131, X-132, and X-133. Columbia also states that the rates for the LNG services, which consist of a base rate, a levelized facilities adder and an electric power charge, are not part of Columbia's generally applicable rates. Finally, Columbia states that it will file revised tariff records consistent with the *pro forma* tariff records included in Appendix A of the Settlement, no sooner than December 1, 2013 to be effective February 1, 2014.

3. The following is a summary of the major provisions of the Settlement:

a) Article I provides that the three LNG customers shall extend the terms of their existing X-Rate Schedules for a period of 15 years, i.e, from February 1, 2014 through January 31, 2029.

- b) Article II states that to fund the return, taxes and depreciation expenses associated with the capital improvements, the three LNG customers shall pay a levelized rate adder to Columbia's base rate for LNG service. Article III specifies that the levelized rate adder shall be adjusted downward if the actual cost of the capital improvements is less than \$30 million. It further provides that costs in excess of \$30 million shall be considered capital maintenance level expenditures and will only be used to justify Columbia's base rate for LNG services in a future section 4 rate case.
- c) Article IV establishes that all cost and revenue components of Columbia's base rate and levelized rate adder for Rate Schedules X-131, X-132, and X-133, except for the depreciation and negative salvage rates, shall be considered "black box" in nature. The depreciation rate shall be 3.0 percent and the negative salvage rate shall be 0.3 percent in both this proceeding and in Columbia's next section 4 rate case.
- d) Article V states that there shall be a moratorium on any changes to the base LNG rate through January 31, 2018. It further states that if Columbia does not file a general section 4 rate case before December 31, 2019, it shall file a limited section 4 rate case for service at the Chesapeake LNG facility.
- e) Article VI specifies that Columbia shall file the *pro forma* tariff records contained in Appendix A to the Settlement after the Commission issues an order approving the Settlement. Article VII states that the Settlement shall become effective on the first day of the month immediately following the date that a Commission becomes a final order.
- f) Article VII provides that the Settlement is privileged and of no effect unless it becomes effective. It further provides, "The standard for review for any changes to the terms of this Stipulation during the term of this Stipulation shall be the public interest standard and not the just and reasonable standard."

Notice

4. Public notice of the filing was issued on March 1, 2013. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2012)). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2012)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Columbia Gas of Virginia, Inc. filed comments in support of the Settlement. No comments in opposition to the settlement were filed.

Discussion

5. All three of Columbia's LNG customers agree to the Settlement, which resolves the issue of how Columbia will recover from those customers the approximately \$30 million cost of facility upgrades needed ensure the continued safe operation of Columbia's LNG facilities located in Chesapeake, Virginia.

6. The Settlement states that the standard of review for any changes to the Settlement is the public interest or *Mobile-Sierra* standard, under which the Commission must presume that an agreement satisfies the statutory "just and reasonable" standard of review.¹ The Commission finds that the instant settlement concerning the rates charged to Columbia's three LNG customers involves contract rates to which the *Mobile-Sierra* presumption applies. The rate provisions of the Settlement apply only to Columbia's non-open access, individually certificated service, which it provides pursuant to three individual rate schedules, each of which applies to only the single customer. Those three LNG customers are all sophisticated parties who have agreed to pay the negotiated Settlement adder to their base rates. No other shipper will pay the rates agreed to in the instant Settlement.

7. These circumstances distinguish the settlement in this case from the settlements in other natural gas pipeline cases, such as *High Island Offshore System, LLC*,² which the Commission held were not contracts to which the *Mobile-Sierra* presumption applied. The settlements in those cases involved the pipelines' generally applicable rate schedules for its open access transportation services. The Commission pointed out that the pipeline's *pro forma* service agreements for those services include provisions incorporating into each shipper's service agreement the rates, terms and conditions of the applicable open access Rate Schedule. Thus, the settlement rates in those proceedings are applicable to all present and future shippers paying the pipeline's maximum rates for the subject services, regardless of whether they were parties to the settlement. By contrast, in this case, the settlement rates apply only to the three LNG customers taking service under the relevant individually certificated X Rate Schedules, and each of those customers has agreed to the Settlement.

¹ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Sierra*). As the Supreme Court has found, the NGA's "just and reasonable" standard is the only statutory standard of review. *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527, 545 (2008) (*Morgan Stanley*).

² 135 FERC ¶ 61,105 (2011); *see also*, *Panhandle Eastern Pipe Line Co.*, 143 FERC ¶ 61,041 (2013); *Southern LNG Co., LLC*, 135 FERC ¶ 61,153 (2011); *Carolina Gas Transmission Corp.*, 136 FERC ¶ 61,014 (2011).

8. Accordingly, the Commission approves the Settlement, including its standard of review provision, as it appears fair, reasonable, and in the public interest. The Commission's approval of the Settlement does not constitute acceptance of, or precedent regarding, any principle or issue in this proceeding.

The Commission orders:

(A) The Settlement is approved as fair, reasonable, and in the public interest, as more fully described above.

(B) Columbia is directed to file, in eTariff format, actual tariff records identical to the pro forma tariff records contained in Appendix A to the Settlement, to be effective February 1, 2014.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.