

166 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Stagecoach Pipeline & Storage Company LLC

Docket No. RP19-439-000

ORDER ON FERC FORM NO. 501-G,
INSTITUTING INVESTIGATION AND SETTING MATTER FOR HEARING
PROCEDURES PURSUANT TO SECTION 5 OF THE NATURAL GAS ACT

(Issued March 20, 2019)

1. On December 6, 2018, Stagecoach Pipeline & Storage Company LLC (Stagecoach) filed its FERC Form No. 501-G in the above referenced docket. As discussed in more detail below, based upon our review of that filing and publicly available information on file with the Commission, it appears that Stagecoach may be substantially over-recovering its cost of service, causing Stagecoach's existing rates to be unjust and unreasonable. Therefore, we are initiating an investigation, pursuant to section 5 of the Natural Gas Act (NGA),¹ to determine whether the rates currently charged by Stagecoach are just and reasonable and setting the matter for hearing. We direct Stagecoach to file a full cost and revenue study, modified as discussed below, within 75 days of the issuance of this order.

I. Background

2. Stagecoach states that it owns a storage field located in Tioga County, New York and Bradford County, Pennsylvania, and pipeline facilities connecting the storage field and the interstate pipelines of Tennessee Gas Pipeline Company, L.L.C. (Tennessee), Transcontinental Gas Pipe Line Company, LLC (Transco) and Millennium Pipeline Company, L.L.C. (Millennium).² Stagecoach further states that it offers market-based

¹ 15 U.S.C. § 717 (2012).

² 18 C.F.R. § 154.106 (2018) requires pipelines to permit the public to display and download their system maps from an internet Web site. While Stagecoach's tariff provides a link to its map (Stagecoach Pipeline & Storage Company LLC, FERC NGA

rate storage services and cost-based rate transportation services. Stagecoach also states that it is a limited liability company.³

3. On July 18, 2018, the Commission issued Order No. 849,⁴ a final rule adopting procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of (1) the income tax reductions provided by the Tax Cuts and Jobs Act,⁵ (2) the Commission's Revised Policy Statement,⁶ and Opinion No. 511-C.⁷ establishing a policy that master limited partnerships (MLPs) may not recover an income tax allowance in response to the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*.⁸ Order No. 849 required, pursuant to sections 10 and 14(a) of the NGA, that all interstate natural gas companies, with cost-based stated rates, that filed a 2017 FERC Form No. 2 or 2-A,

Gas Tariff, FERC Gas Tariff, [Section 3.0, Map of System, 0.0.0](#)), the web page indicates that it is unable to display the map (<http://www.gasnom.com/ip/Stagecoach/>, retrieved March 6, 2019).

³ General system information was gathered from FERC Form Nos. 2-A, 3Q, 549B, and 567.

⁴ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36,672 (July 30, 2018), FERC Stats. & Regs. ¶ 31,404 (2018) (cross-referenced at 164 FERC ¶ 61,031) (Order No. 849).

⁵ An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Pub. L. No. 115-97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

⁶ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 Fed. Reg. 12,362 (Mar. 21, 2018), 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁷ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

⁸ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016). For purposes of this order, the Revised Policy Statement, *United Airlines*, and Opinion No. 511-C will collectively be referred to as "*United Airlines* Issuances."

must file a FERC Form No. 501-G informational filing.⁹ The FERC Form No. 501-G was designed to collect financial information to evaluate the impact of the Tax Cuts and Jobs Act and *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements. Using the data in the pipelines' 2017 FERC Form Nos. 2 and 2-A, the form estimates (1) the percentage reduction in the pipeline's cost of service resulting from the Tax Cuts and Jobs Act and the Revised Policy Statement, and (2) the pipeline's current rate of return on equity (ROE) before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLP pipelines. Order No. 849 also provided four options each interstate natural gas pipeline may choose from to address the changes to the pipeline's revenue requirement as a result of the income tax reductions: (1) a limited NGA section 4¹⁰ rate reduction filing; (2) a commitment to file a general section 4 rate case or prepackaged settlement in the near future; (3) an explanation why no rate change is needed; and (4) no action (other than filing a report).

A. Stagecoach's FERC Form No. 501-G Filing

4. Stagecoach states in its FERC Form No. 501-G that it is not a separate tax paying entity. Therefore, its FERC Form No. 501-G does not include an income tax allowance consistent with the *United Airlines* Issuances. Stagecoach notes that, as it has no debt of its own, it used the hypothetical capital structure provided in FERC Form No. 501-G. Stagecoach's FERC Form No. 501-G reports a total estimated ROE of 20.5 percent after eliminating an income tax allowance.¹¹ The form's indicated cost-of-service reduction is 3.6 percent.

5. Stagecoach chose Option 4 (no action), and made no additional comments with regard to its FERC Form No. 501-G.

B. Notice, Interventions and Comments

6. Public notice of Stagecoach's FERC Form No. 501-G filing in Docket No. RP19-439-000 was issued on December 7, 2018. Interventions and protests were due as

⁹ The One-time Report on Rate Effect of the Tax Cuts and Jobs Act is referred to interchangeably as "One-time Report" or "FERC Form No. 501-G."

¹⁰ 15 U.S.C. § 717c (2012).

¹¹ Stagecoach's FERC Form No. 501-G at 3 § 1. 26(d). The total estimated ROE is the ROE as calculated in Stagecoach's FERC Form No. 501-G, Page 3, Line 26, Column (D).

provided in section 154.210 of the Commission's regulations.¹² Pursuant to Rule 214,¹³ all timely filed motions to intervene and any unopposed motions to intervene filed out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No party protested or made adverse comments to Stagecoach's filing.

II. Discussion

7. We have reviewed Stagecoach's FERC Form No. 501-G and publicly available information on file with the Commission. Based upon our review of this cost and revenue information, we estimate Stagecoach's ROE to be 20.5 percent, as reflected in Stagecoach's 2017 FERC Form No. 2-A, tax profile and capital structure data, as adjusted for the *United Airlines* Issuances. In light of these figures, we are concerned that Stagecoach's level of earnings may substantially exceed its actual cost of service, including a reasonable return on equity.

8. Stagecoach offers services under two fundamentally different rate designs: (1) market-based rates for storage services¹⁴ and (2) cost-based rates for transportation services. When Stagecoach received permission to implement market-based rates for storage services, the Commission also stated that there was no need for Stagecoach to have cost-based financial statements prepared in accordance with the Commission's Uniform System of Accounts (USofA), conditioned upon Stagecoach maintaining accounts and financial information of its Stagecoach Storage Field Project consistent with generally accepted accounting principles.¹⁵ Subsequent to the initiation of storage

¹² 18 C.F.R. § 154.210 (2018). *See also* Order No. 849, 164 FERC 61,031, at P 96 (2018).

¹³ 18 C.F.R. § 385.214 (2018).

¹⁴ *Central New York Oil and Gas Co., LLC*, 94 FERC ¶ 61,194, at 61,705-07 (2001) (2001 Order) (authorization to provide firm and interruptible storage services at market-based rates); *Central New York Oil & Gas Co., LLC*, 116 FERC ¶ 61,277, at P 35 (2006) (2006 Order) (authorization to provide interruptible wheeling services at market-based rates)). Central New York Oil And Gas Company, LLC changed its name to Stagecoach Pipeline & Storage Company LLC effective October 29, 2015. *Stagecoach Pipeline & Storage Pipeline Co. LLC*, Docket No. RP16-102-000 (Nov. 20, 2015) (delegated order).

¹⁵ 2001 Order at 61,707. The 2006 Order at P 39 slightly modified this waiver, requiring Stagecoach to file pages 520 and 520a of Form No. 2-A to report gas volume information such that the Commission could impose an Annual Charge Adjustment.

service, Stagecoach received permission to construct and operate a pipeline that interconnects Tennessee, Millennium, Transco and the Stagecoach Storage Field, and to provide cost-based rate transportation services through these pipeline facilities.¹⁶ The Commission noted the existing waiver of the USofA regulations as it applied to its market-based rate storage services, and required Stagecoach to comply with the USofA and FERC Form No. 2 or FERC Form No. 2-A reporting requirements applicable to its cost-based rates.¹⁷

9. Most of the financial data that populates Stagecoach's FERC Form No. 501-G is from Stagecoach's 2017 FERC Form No. 2-A. Stagecoach states in its 2017 FERC Form No. 2-A:

The Respondent has included the cost of service based revenues (firm wheeling services, firm transportation services and interruptible transportation services) related to the North-South and Marc I Projects only; storage related revenues are not included in the results of operations in these financial statements. *Additionally various expenses associated with transportation and storage services cannot be bifurcated or separately classified, and as such the Respondent has also included all Stagecoach Pipeline expenses in the financial statements* (with the exceptions noted below).

Exceptions to the presentation described in the previous paragraph are that of depreciation expense, overhead allocation, and certain direct market based storage expenses. Depreciation is calculated separately and specifically based on the property, plant, and equipment represented in the balance sheet and within the requirements set forth by FERC. Corporate allocation expenses were calculated separately and expenses that are specifically unique to providing market based storage services have also been excluded from the expenses for the periods presented.¹⁸

10. Stagecoach does not identify which accounts were not functionalized between storage and transmission. The import of Stagecoach's statement is that certain expense accounts contain both storage and transmission costs, but all those costs are reported as

¹⁶ *Central New York Oil and Gas Co., LLC*, 137 FERC ¶ 61,121 (2011).

¹⁷ *Id.* P 29.

¹⁸ Stagecoach's 2017 FERC Form No. 2-A at p. 122.4 (emphasis added).

transmission function costs. As this pertains to the FERC Form No. 2-A data used to populate Stagecoach's FERC Form No. 501-G, it appears that the reported expenses are overstated as some of the reported transmission expenses are actually storage expenses. Thus, our review indicates that the calculated ROE of 20.5 percent may be understated. Further, Stagecoach's FERC Form No. 2-A statement raises concerns that Stagecoach's accounting may lead to cost-based rate customers subsidizing market-based rate services.¹⁹

11. Page 313 of Stagecoach's 2017 FERC Form No. 2-A shows significant amounts of negotiated rate billing units. However, its fourth quarter 2017 FERC Form No. 549B (Index of Customers) does not identify any negotiated rate customers. Further, Stagecoach's 2018 second quarter Index of Customers and its tariff identify only a few negotiated rate contracts. It is not clear from Stagecoach's filings why there is such a difference between the reported data.

12. We find, based upon our preliminary analysis of the information provided by Stagecoach in its one-time report and publicly available information on file with the Commission, that Stagecoach's currently effective tariff rates may be unjust and unreasonable. Our analysis of this information indicates that Stagecoach's currently effective tariff rates may allow Stagecoach to recover revenue substantially in excess of its estimated cost of service. Accordingly, we are initiating an investigation to examine the justness and reasonableness of Stagecoach's rates pursuant to section 5 of the NGA and setting the matter for hearing.²⁰

¹⁹ See *Northern Natural Gas Co.*, 117 FERC ¶ 61,191, at P 21 (2006), *reh'g denied*, 119 FERC ¶ 61,072, at P 20 (2007) (Commission finds that Northern's maintaining separate records will help enable the Commission to ensure in a future rate case that existing cost-based rate customers will not subsidize the costs of the expansion recoverable through market-based rates).

²⁰ In this order, we make no finding as to what would constitute a just and reasonable capital structure or ROE for the company. Those are among the issues set for hearing by this order and should be decided consistent with the Commission's capital structure policies and ROE policies. See, e.g., *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,413-15, *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied sub nom. N.C. Utils. Comm'n v. FERC*, D.C. Cir. Case No. 99-1037 (Feb. 7 2000) (per curiam), and *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

13. As the Commission has done in other cases initiating NGA section 5 investigations of a pipeline's rates,²¹ we direct Stagecoach to file a cost and revenue study based on cost and revenue information for the latest 12-month period available.²² The filing shall be made within 75 days of the date this order issues and must include all the schedules required for submission of an NGA section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations.²³ Because we are seeking actual cost and revenue information, the information submitted by Stagecoach must exclude any adjustments or projections that may be attributable to a test period referenced in the

²¹ See *Southwest Gas Storage Co.*, 166 FERC ¶ 61,117 (2019); *Panhandle Eastern Pipe Line Co., LP*, 166 FERC ¶ 61,032 (2019); *Northern Natural Gas Co.*, 166 FERC ¶ 61,033 (2019); *Bear Creek Storage Company, L.L.C.*, 166 FERC ¶ 61,034 (2019); *East Tennessee Natural Gas, LLC*, 165 FERC ¶ 61,198 (2018); *Midwestern Gas Transmission Co.*, 162 FERC ¶ 61,219 (2018); *Dominion Energy Overthrust Pipeline, LLC*, 162 FERC ¶ 61,218 (2018); *Natural Gas Pipeline Co. of America LLC*, 158 FERC ¶ 61,044 (2017); *Wyoming Interstate Co., L.L.C.*, 158 FERC ¶ 61,040 (2017); *Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,030, *order denying reh'g and granting clarification*, 154 FERC ¶ 61,273 (2016); *Iroquois Gas Transmission System, L.P.*, 154 FERC ¶ 61,028 (2016); *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016), *order denying reh'g*, 154 FERC ¶ 61,274; *Columbia Gulf Transmission, LLC*, 154 FERC ¶ 61,027 (2016), *order denying reh'g*, 154 FERC ¶ 61,275 (*Columbia Gulf*); *Wyoming Interstate Co., L.L.C.*, 141 FERC ¶ 61,117 (2012) (*WIC*); *Viking Gas Transmission Co.*, 141 FERC ¶ 61,118 (2012) (*Viking*); *Bear Creek Storage Co. L.L.C.*, 137 FERC ¶ 61,134 (2011), *order denying reh'g*, 138 FERC ¶ 61,019 (2012); *MIGC LLC*, 137 FERC ¶ 61,135 (2011), *order denying reh'g*, 138 FERC ¶ 61,011 (2012); *ANR Storage Co.*, 137 FERC ¶ 61,136 (2011); *Ozark Gas Transmission, LLC*, 133 FERC ¶ 61,158 (2010), *reh'g granted in part and denied in part*, 134 FERC ¶ 61,062, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193 (2011) (*Ozark*); *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,157 (2010), *reh'g granted in part and denied in part*, 134 FERC ¶ 61,061 (2011) (*Kinder Morgan*); *Natural Gas Pipeline Co. of America LLC*, 129 FERC ¶ 61,158 (2009), *reh'g denied*, 130 FERC ¶ 61,133 (2010) (*Natural*). As the Commission explained in the *Natural* rehearing order, “[s]ections 10(a) and 14(a) of the NGA authorize the Commission to require [the pipeline] to submit the information required by the [order instituting investigation] in order to carry out its responsibility under NGA section 5 to ensure that the pipeline's rates are just and reasonable.” See *Natural*, 130 FERC ¶ 61,133 at P 16.

²² This cost and revenue study must include all of Stagecoach's functions, including storage.

²³ 18 C.F.R. § 154.312 (2018).

schedules and statements set forth in section 154.312 of the regulations.²⁴ Thus, Stagecoach should not file the nine months of post-base-period adjustment data required by section 154.303(a).²⁵ The cost and revenue study required herein will provide a baseline of actual annual costs and revenues, which can then be used as a starting point for further analysis of Stagecoach's costs and revenues.²⁶ Additionally, because Stagecoach does not have an NGA section 4 burden in this section 5 proceeding and will be filing testimony in response to other parties, Stagecoach does not need to file the Statement P required by section 154.312(v) of the Commission's regulations at this juncture.²⁷

14. However, as the Commission has done in other recent NGA section 5 proceedings, in addition to the cost and revenue study required above, Stagecoach may file a separate cost and revenue study that reflects adjustments for changes that Stagecoach projects will occur during an abbreviated six-month adjustment period following the 12-month base period used for the cost and revenue study.²⁸ Given the expedited hearing schedule

²⁴ Stagecoach is required to identify which expenses and accounts it believes contain storage and transmission function costs that cannot be bifurcated or separately classified as it noted in its FERC Form No. 2-A, and reconcile this identification with the cost and revenue study.

²⁵ However, the company may, if fully supported, reflect changes to costs and revenues for a known and measurable change that took place during the 12-month period. For example, if a general pay raise became effective during the fifth month of the 12-month period, an adjustment to the cost of service could be made to annualize the impact of this cost change.

²⁶ *Ozark*, 134 FERC ¶ 61,062 at P 26.

²⁷ See *Pub. Serv. Comm'n of N.Y. v. Nat'l Fuel Gas Supply Corp.*, 115 FERC ¶ 61,368, at P 6 (2006). In addition, while section 154.312(f) requires the pipeline to show in Statement F-1 "the percentage rate of return claimed and the general reasons therefore," we will permit Stagecoach simply to use an illustrative return on equity in that statement, without taking any position as to whether that return is just and reasonable. See, e.g., *Columbia Gulf*, 154 FERC ¶ 61,275 at P 9 n.19.

²⁸ See, e.g., *Ozark*, 134 FERC ¶ 61,062, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193.

established herein, the adjustment period must be limited to six months in order to permit the parties to perform discovery and prepare testimony for the hearing based on actual data for both the base period and the adjustment periods.²⁹

15. Finally, due to the potential for continued over-recovery of revenues, we are establishing a date for an initial decision from an administrative law judge.³⁰ Such a date will expedite the proceeding. We find that conducting the hearing in this case pursuant to the Track II hearing timeline is reasonable. However, to provide more time for the parties to conduct discovery concerning the cost and revenue study, we order that the deadlines in the Track II timeline run from the date Stagecoach's cost and revenue study is due, rather than the date of the order designating the presiding judge. Therefore, the initial decision must issue within 47 weeks of the date the cost and revenue study is due.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Natural Gas Act, particularly section 5 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Natural Gas Act, a public hearing shall be held concerning whether Stagecoach's rates are unjust, unreasonable, or otherwise unlawful.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall, within thirty (30) days of the date of this order, convene a prehearing conference in these proceedings in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

²⁹ See *WIC*, 141 FERC ¶ 61,117 at P 10; *Viking*, 141 FERC ¶ 61,118 at P 10. For a detailed explanation of why the adjustment period in the section 5 proceeding differs from the adjustment period in a section 4 proceeding, see *Ozark*, 134 FERC ¶ 61,062 at PP 17-36, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193 at PP 21-27. See also *Kinder Morgan*, 134 FERC ¶ 61,061 at PP 36-51.

³⁰ To aid the parties in settlement efforts, parties may request a settlement judge at any time.

(C) The hearing shall be conducted pursuant to the Track II hearing timeline starting the date the cost and revenue study is due and that an initial decision be issued in this proceeding within 47 weeks of that date, as discussed in the body of this order.

(D) Stagecoach shall file a cost and revenue study within 75 days of this order. The filing should include only actual data for the latest 12-month period available as of the date of this order, and may include adjustments for known and measurable changes during that period. The filing should include all of the schedules required for the submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations (18 C.F.R. § 154.312), as modified above.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.