

169 FERC ¶ 61,103
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tallgrass Interstate Gas Transmission, LLC

Docket Nos. RP19-423-000
RP19-423-001

ORDER APPROVING SETTLEMENT AND TERMINATING
FERC FORM NO. 501-G PROCEEDING

(Issued November 8, 2019)

1. On December 6, 2018, in Docket No. RP19-423-000, Tallgrass Interstate Gas Transmission, LLC (Tallgrass) filed the One-time Report on the Rate Effect of the Tax Cuts and Jobs Act,¹ designated as FERC Form No. 501-G, as required by section 260.402 of the Commission's regulations.² On May 1, 2019, in Docket No. RP19-423-001, Tallgrass filed a prepackaged settlement (Settlement) and related pro forma tariff records pursuant to Rule 207(a)(5) of the Commission's regulations.³ Tallgrass states that the Settlement resolves the matters in Tallgrass' FERC Form No. 501-G proceeding. As discussed below, we approve the uncontested Settlement, as proposed, and terminate Tallgrass' FERC Form No. 501-G proceeding.

I. Background

2. On November 2, 2016, the Commission approved a settlement of Tallgrass' Natural Gas Act (NGA) section 4 general rate case in Docket Nos. RP16-137-000 and RP16-137-001 (RP16-137 Settlement).⁴ The RP16-137 Settlement contained a rate

¹ 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).

² *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 164 FERC ¶ 61,031 (2018) (adding 18 C.F.R. § 260.402 (2019)), *order on reh'g*, Order No. 849-A, 167 FERC ¶ 61,051 (2019).

³ 18 C.F.R. § 385.207(a)(5) (2019).

⁴ *Tallgrass Interstate Gas Transmission, LLC*, 157 FERC ¶ 61,082 (2016).

moratorium and, pursuant to Article II, required Tallgrass to file a new rate case on May 1, 2019, unless Tallgrass filed a pre-filing settlement on or before that date.⁵

3. On July 18, 2018, the Commission issued Order No. 849,⁶ 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; and (2) the Commission's Revised Policy Statement⁷ and Opinion No. 511-C⁸ establishing a policy that master limited partnerships 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, Inc.*⁹ Order No. 849 required all interstate natural gas pipeline companies with cost-based stated rates to file a FERC Form No. 501-G containing an abbreviated cost and revenue study using data in the pipelines' 2017 FERC Form Nos. 2 and 2-A. Order No. 849 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 certain income tax reductions: (1) a limited rate reduction filing pursuant to section 4 of the NGA (Option 1); (2) a commitment to file a general NGA section 4 rate case or prepackaged settlement in the near future (Option 2); (3) an explanation why no rate change is needed (Option 3); and (4) no action (other than filing a report) (Option 4).

4. On December 6, 2018, Tallgrass submitted its FERC Form No. 501-G in Docket No. RP19-423-000 consistent with the reporting requirements of Order No. 849. In its FERC Form No. 501-G, Tallgrass stated that it is not a separate income-tax paying entity. Therefore, its FERC Form No. 501-G eliminated both its tax allowance and its Accumulated Deferred Income Taxes (ADIT) consistent with the *United Airlines* Issuances. The FERC Form No. 501-G shows an indicated cost-of-service reduction of 10.2 percent. The FERC Form No. 501-G also shows that Tallgrass' Total Estimated

⁵ See RP16-137 Settlement, Explanatory Statement, Article II, at 6.

⁶ Order No. 849, 164 FERC ¶ 61,031.

⁷ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 162 FERC ¶ 61,227, *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁸ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

⁹ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016). For purposes of this order, the Revised Policy Statement, *United Airlines, Inc.*, and Opinion No. 511-C will collectively be referred to as "*United Airlines* Issuances."

Return on Equity (ROE) would be 17.7 percent¹⁰ after adjustment to reflect the *United Airlines* Issuances.

5. Tallgrass elected to file under Option 3 (statement explaining why no adjustment is needed) and submitted an Addendum in support of its contention that no rate reduction is necessary. Tallgrass' Addendum contains various adjustments related to a corporate restructuring. Among other things, Tallgrass stated that, as a result of the corporate restructuring, it is indirectly owned by private equity owners and an entity that is taxed as a C-Corporation.¹¹ Tallgrass also included capital structure adjustments. As a result of these changes, the Addendum calculates a Total Estimated ROE of 13.1 percent. Tallgrass requested that the Commission recognize and honor the terms of the RP16-137 Settlement by not initiating an NGA section 5 proceeding in light of both the rate moratorium and the requirement for Tallgrass to file an NGA section 4 rate case on May 1, 2019.

6. On December 18, 2018, the Kansas Corporation Commission (KCC) filed a protest and the Public Service Company of Colorado (PSCo) filed adverse comments regarding Tallgrass' FERC Form No. 501-G. KCC submits that Tallgrass' ROE of 17.7 percent shown in its FERC Form No. 501-G warrants the Commission's attention and that the 13.1 percent ROE in Tallgrass' Addendum is still too high. PSCo submits that Tallgrass may be over-recovering its cost of service, and that the RP16-137 Settlement rate moratorium would not have prohibited Tallgrass from reducing rates through a limited NGA section 4 filing prior to the expiration of the moratorium.

II. Settlement

7. As described above, Article II of the RP16-137 Settlement required Tallgrass to file a new rate case on May 1, 2019, unless Tallgrass filed a qualifying pre-filing settlement. Tallgrass states that the Settlement filed on May 1, 2019 qualifies as such a pre-filing settlement because it (1) was filed on or before May 1, 2019; (2) reflects rates that will take effect no later than November 1, 2019; and (3) is supported or unopposed by a majority of Tallgrass' non-affiliated shippers based upon the maximum rate contracted firm capacity on Tallgrass. Tallgrass asserts that the Settlement eliminates the need for Tallgrass to file an NGA section 4 general rate case and obviates the need for any further action regarding Tallgrass' FERC Form No. 501-G filing.

8. Tallgrass states that the Settlement is the product of several months of extensive work by Tallgrass and the Settling/Non-Contesting Participants following Tallgrass'

¹⁰ Tallgrass' FERC Form No. 501-G, page 3, line 26, column D.

¹¹ Tallgrass states that Tallgrass Energy, LP, an entity that is taxed as a C-Corporation, now owns 55.64 percent of Tallgrass' parent company, Tallgrass Equity, LLC, with the remaining 44.36 percent owned by private equity owners.

filing of its FERC Form No. 501-G,¹² and that through the Settlement, they have successfully resolved the matters that may have been raised in a new NGA section 4 general rate case or in Tallgrass' FERC Form No. 501-G proceeding.¹³

9. Article II of the Settlement sets forth provisions related to the rate moratorium effective June 1, 2019, through May 31, 2023, and the mandatory requirement that Tallgrass file an NGA section 4 rate case on June 1, 2023. Article III of the Settlement requires all shippers with maximum recourse rate firm contracts with Tallgrass as of May 1, 2019, either to extend their contracts until at least May 31, 2023, or become a Contesting Party. Those shippers are identified in Appendix E of the Settlement. Article III also specifies that shippers that are parties to negotiated rate or discount rate contracts are not required to extend their negotiated rate or discount rate contracts.

10. Article IV of the Settlement sets forth the black box nature of the Settlement rates, including related parameters of depreciation, negative salvage, excess ADIT, various surcharge exceptions, permanent roll-in of certain facility costs,¹⁴ non-electronic flow meter delivery points charges, and odorization practices. Article IV also provides that Tallgrass shall not implement a Cost Recovery Mechanism. Article V of the Settlement sets forth Settlement implementation features regarding Settlement Rates and Treatment of Contesting Parties.

11. Article V of the Settlement establishes implementation procedures upon Settlement approval. Among other things, Article V A.1.b provides that, in the event there are Contesting Parties as of the implementation date of the Settlement, the Contesting Parties will be charged the tariff rates in effect as of May 1, 2019 (Non-Settlement Rates).

12. Article VI of the Settlement establishes certain reservations between Tallgrass and the Settling/Non-Contesting Participants. Article VII sets forth the intended Settlement effective date of June 1, 2019, and provisions detailing the determination of the approval date of the Settlement (1) without modification or condition; or (2) subject to any modification or condition in a manner that materially and adversely affects Tallgrass or a Settling/Non-Contesting Participant. Article VII further provides that, if the Settlement is conditioned or modified as a result of Commission action on an application for rehearing

¹² See Docket No. RP19-423-001, Transmittal Letter at 2.

¹³ See Docket No. RP19-423-001, Petition of Tallgrass Interstate Gas Transmission, LLC for Approval of Settlement, Explanatory Statement at 3.

¹⁴ Approval of the Settlement authorizes the complete and permanent roll-in of the cost of the West Zone facilities, referred to as the Colorado Lateral, into Tallgrass' system rates, as more fully described in Docket No. CP07-430-000 (citing *Kinder Morgan Interstate Gas Transmission LLC*, 122 FERC ¶ 61,154 (2008)).

or reconsideration, or by a court on appeal, Tallgrass and the Supporting/Non-Contesting Participants shall have the same rights as they respectively would have if the initial order had been conditioned or modified. Article VII, part D, states that:

the standard for review for any such modification proposed by [Tallgrass] or the Supporting/Non-Contesting Participants shall be the “public interest” standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*,^[15] *Federal Power Commission v. Sierra Pacific Power Co.*^[16] and subsequent cases.^[17] The standard of review for any modification to the Settlement requested by a non-settling party or initiated by the Commission acting *sua sponte* will be the ordinary just and reasonable standard.^[18]

13. Article VIII of the Settlement sets forth the request of Tallgrass and the Supporting/Non-Contesting Participants for Commission approval of the Settlement without further conditions.

III. Notice, Interventions and Responsive Pleadings

14. Notice was provided as discussed in the Commission’s September 24, 2019 order.¹⁹ As discussed above, PSCo submitted adverse comments and KCC submitted a protest to Tallgrass’ FERC Form No. 501-G filing. NorthWestern filed adverse comments to Tallgrass’ Settlement and Tallgrass filed reply comments. Further, NorthWestern filed supplemental comments.

15. The issue in dispute revolved around NorthWestern’s status as a party to the Settlement (i.e., either as a Settling/Non-Contesting Participant or as a Contesting Party).²⁰

¹⁵ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956).

¹⁶ *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

¹⁷ See, e.g., *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165 (2010).

¹⁸ See *Morgan Stanley Capital Group Inc. v. Public Util. Dist. No. 1 of Snohomish Washington*, 554 U.S. 527, 534-35 (2008).

¹⁹ *Tallgrass Interstate Gas Transmission, LLC*, 168 FERC ¶ 61,192, at PP 14-15 (2019) (September 24, 2019 Order).

²⁰ See September 24, 2019 Order, 168 FERC ¶ 61,192 at PP 16-26.

IV. Further Procedures

16. On July 2, 2019, Commission staff issued a data request, which sought to establish (1) what, if any, efforts may have taken place between Tallgrass and NorthWestern to resolve their dispute; and (2) NorthWestern's current status as a party for purposes of the Settlement. On July 12, 2019, Tallgrass responded that NorthWestern did not execute and return the maximum recourse rate contract extensions as required by the Settlement by June 15, 2019, and that Tallgrass is no longer in any active discussions with NorthWestern to resolve the dispute. Tallgrass stated that NorthWestern's current status for purposes of the Settlement was therefore that of a Contesting Party.²¹

17. On September 24, 2019, an Order Establishing Settlement Judge Procedures was issued²² for the purpose of resolving matters regarding Tallgrass' Settlement, which also addressed Tallgrass' FERC Form No. 501-G.²³

V. NorthWestern's Withdrawal of Comments

18. On October 15, 2019, NorthWestern filed a Notice of Withdrawal of Comments, in which it seeks to withdraw its comments filed on May 13, 2019²⁴ and its supplemental comments filed on August 14, 2019 (NorthWestern's Withdrawal of Comments). NorthWestern's Withdrawal of Comments is granted by operation of Rule 216 of the Commission's Rules of Practice and Procedure.²⁵ Thus, the Settlement as filed on May 1, 2019, is now uncontested. On October 17, 2019, as a result of NorthWestern's Withdrawal of Comments, an Order Cancelling Settlement Conference was issued, stating that the participants informed the settlement judge on October 15, 2019, that they had achieved a resolution of the issues in this proceeding.

VI. Discussion

19. We find that the Settlement appears to be fair and reasonable and in the public interest. The Settlement is uncontested and provides rate relief in the form of a

²¹ See Tallgrass' July 12, 2019 response to Staff Data Request No. 2.

²² September 24, 2019 Order, 168 FERC ¶ 61,192.

²³ See Docket No. RP19-423-001, Transmittal Letter at 2.

²⁴ NorthWestern clarifies (1) it submitted a two-part pleading styled: "Motion To Intervene And Comments Of Northwestern Corporation, Dba Northwestern Energy;" (2) the motion to intervene portion of the pleading was granted on September 24, 2019; and (3) it seeks to withdraw Sections II through IV of its pleading.

²⁵ 18 C.F.R. § 385.216 (2019).

12.1 percent reduction in recourse rates, effective June 1, 2019, and rate certainty for Tallgrass and the Settling/Non-Contesting Participants via contract extensions for the maximum recourse rate firm contracts through May 31, 2023. The Settlement also establishes a rate moratorium through May 31, 2023, and requires that Tallgrass file an NGA section 4 general rate case on June 1, 2023. Accordingly, we approve the Settlement. Such approval moots the comments and protests filed in response to Tallgrass' FERC Form No. 501-G filing.

20. Our approval of the Settlement does not constitute approval of, or precedent regarding, any principle or issue in these proceedings.

21. This order terminates Docket Nos. RP19-423-000 and RP19-423-001.

The Commission orders:

(A) The Settlement filed by Tallgrass in Docket No. RP19-423-001 is approved, as discussed in the body of this order.

(B) Tallgrass shall file actual tariff records in eTariff format as required by Order No. 714²⁶ consistent with the terms of the Settlement.

(C) The captioned FERC Form No. 501-G proceeding is hereby terminated, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

²⁶ *Electronic Tariff Filings*, Order No. 714, 124 FERC ¶ 61,270 (2008).