

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Southern Star Central Gas Pipeline, Inc.

Docket No. RP04-276-000

ORDER APPROVING UNCONTESTED SETTLEMENT

(Issued April 18, 2005)

1. This order approves an uncontested settlement submitted by Southern Star Central Gas Pipeline, Inc. (Southern Star) on January 21, 2005, in the captioned proceeding. This order serves that public by resolving a number of rate issues Southern Star has pending before the Commission. An unresolved issue involving Southern Star's balancing procedures is now on appeal.<sup>1</sup> The order here does not affect the status of that appeal or the rights any party may have under it.

**I. Background**

2. On April 30, 2004, Southern Star made a general rate filing, under section 4 of the Natural Gas Act (NGA) to increase its FERC jurisdictional rates and to change the Rate Schedules and General Terms and Conditions in its FERC Gas Tariff. On May 28, 2004, the Commission conditionally accepted and suspended Southern Star's new rates and accepted certain of its proposed tariff changes. The Commission permitted the rates to become effective subject to refund on November 1, 2004, and established hearing procedures to resolve all issues with respect to such rates.<sup>2</sup> The active participants held settlement conferences in October and November, 2004, which continued in December through numerous telephone and e-mail discussions. Ultimately, these participants reached this settlement resolving all of the issues set for hearing in this proceeding.

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<sup>1</sup> See *Southern Star Central Gas Pipeline, Inc.*, 107 FERC ¶ 61,222 (2004), *order on reh'g*, 108 FERC ¶ 61,178 (2004); *Midwest Gas Users' Ass'n, et al. v. FERC*, Nos. 04-1345 and 04-1348 (D.C. Cir. filed Oct. 7, 2004).

<sup>2</sup> *Southern Star Central Gas Pipeline, Inc.*, 107 FERC ¶ 61,222 (2004).

## II. Settlement Provisions

3. Article I provides for an annual settlement cost of service of \$178,000,000 which has been agreed to for purposes of settlement of all cost of service issues in this proceeding. In addition to the settlement cost of service, the settlement also encompasses a separate, agreed-upon incremental Rate Schedule X-23 cost of service.

4. The settlement cost of service is to be Southern Star's annual cost of service for the period commencing November 1, 2004, until the earlier of the effectiveness of Southern Star's next general rate filing pursuant to section 4(e) of the NGA or the effective date of a change in Southern Star's jurisdictional rates directed by a Commission order pursuant to NGA section 5. Article II addresses the Pension Expense and Post Retirement Benefits other than Pensions. Article III addresses cost classification, cost allocation, and rate design.

5. Article IV addresses annual settlement billing determinants which have been agreed to for purposes of settlement in this proceeding. Article V provides that the pro forma tariff sheets reflecting settlement rates based upon the settlement cost of service, the settlement billing determinants and the cost classification, cost allocation and rate design are to be effective for the period commencing November 1, 2004. Upon approval of the settlement, Southern Star shall file actual tariff sheets to become effective consistent with Article VIII.

6. Article VI addresses refunds, and provides that within sixty days after the settlement becomes effective as provided in Article VIII, Southern Star shall refund to its shipper customers, with interest in accordance with section 154.501(d) of the Commission's regulations, 18 C.F.R. § 154.501(d) (2004), from the date of payment to the date of refund, the total amount, if any, collected since November 1, 2004, in excess of the amounts that would have been collected under the settlement rates. Southern Star shall be permitted to offset (net) over-collections and under-collections during the refund period among all rate schedules for each customer to recover all costs under the settlement rates allocable to such customer. Southern Star shall file a refund report in accordance with section 154.501(e) of the Commission's regulations. *See* 18 C.F.R. § 154.501(e) (2004).

7. Article VII provides that Southern Star shall make an NGA section 4(e) general rate filing to be effective no later than November 1, 2008. However, prior to the effectiveness of such filing, there shall be a moratorium on the filing of any NGA section 4(e) general rate filing, defined in Article I, proposing a change in rates to be effective before November 1, 2006, and there shall be a moratorium on any NGA section 5 rate complaints or challenges by any party other than the Commission proposing a change in the settlement rates to be effective before November 1, 2006.

8. Article VIII addresses approval by the Commission, effectiveness, and term of the settlement. Article VIII provides that the settlement shall become effective and binding on the first day of the first month commencing at least 30 days after a Commission order approving the settlement as to all its terms and conditions without material modification becomes final and no longer subject to rehearing (unless an earlier date is requested by Southern Star and granted by the Commission). The Commission's order approving the settlement effectuates all of the provisions of the settlement, approves the revised rates and tariff sheets submitted with the settlement, and disposes of all issues in Docket No. RP04-276-000, except with respect to the ultimate disposition of the consolidated appeals pending in *Midwest Gas Users' Association, et al. v. FERC*, D.C. Cir. No. 04-1345.

9. Article IX provides that the settlement represents a negotiated resolution of all issues set for hearing in this docket, and, except as specifically provided in the settlement, no party shall be deemed to have waived any claim or right as to matters not resolved herein. Except as specifically provided in the settlement, no party shall be deemed to have accepted or consented to any policy or principle purported to underlie the provisions of the settlement. Except as specifically provided in the settlement, the parties shall have the same rights under the Natural Gas Act that they would have had absent approval of the settlement.

### **III. Settlement Comments**

10. The following parties filed comments in support of the settlement and support all its provisions: the Missouri Public Service Commission, Southern Star, Midwest Energy, Inc., the Kansas Corporation Commission, Missouri Gas Energy, a division of Southern Union Company, Aquila, Inc. d/b/a Aquila Networks, Laclede, Atmos Energy Corporation, and Kansas Gas Service, a division of ONEOK, Inc., Anadarko Petroleum Corporation, ExxonMobil Gas & Power Marketing Company, a division of Exxon Mobil Corporation, and Occidental Energy Marketing, Inc. (filing jointly). The Commission staff also supports the settlement.

11. Two parties filed comments specifically noting that the settlement does not affect their rights under certain issues now on appeal. Process Gas Consumers Group (PGC) notes that Article IX preserves the rights for parties to pursue litigation of issues not set for hearing and not resolved by the settlement. PGC asserts that, therefore, under the terms of this provision, PGC may proceed with its pending appeal in the D.C. Circuit, Case No. 04-1348, regarding Southern Star's imbalance tolerances which were accepted by orders issued May 28, 2004 and August 9, 2004 in this case. The Midwest Gas Users' Association (MGUA) filed comments stating that it did not oppose the settlement. MGUA states that, while it is generally agreeable to the cost of service aspects of the

settlement, MGUA's transportation-related issues are not addressed in the settlement. MGUA is also currently pursuing these issues on appeal.<sup>3</sup>

**IV. Disposition**

12. The Commission concludes that this settlement is in the public interest and should be approved. It resolves issues typical of rate cases, such as the appropriate cost of service, throughput, cost classification, cost allocation and rate design, and does not raise any major policy implications. Article VIII of the settlement provides that the settlement would resolve the issues in this docket except with respect to the ultimate disposition of the consolidated appeals now pending before the United States Court of Appeals for the D.C. Circuit.

13. The proposed settlement would not affect the rights of MGUA and PGC to pursue their issues on appeal. Neither MGUA nor PGC object to any other provision of the settlement, and the Commission concludes that it is uncontested. Pursuant to Rule 602(g) (3) the Commission approves the settlement as fair and reasonable and in the public interest.

The Commission orders:

The settlement proffered by Southern Star is approved.

By the Commission. Commissioner Kelly concurring with a  
separate statement attached.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>3</sup> See footnote 1, *supra*.

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KELLY, Commissioner, *concurring*:

Article VII of the settlement being approved in this order states that “there shall be a moratorium on any NGA Section 5 rate complaints or challenges by any party other than the Commission proposing a change in the Settlement Rates to be effective before November 1, 2006.” I believe that approval of such a settlement is appropriate because the Commission has interpreted similar settlement provisions to not preclude the Commission from acting *sua sponte* on behalf of a non-party or pursuant to a complaint by a non-party.<sup>4</sup>

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Suedeem G. Kelly

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<sup>4</sup> See, e.g., *Columbia Gas Transmission Corp.*, 79 FERC ¶ 61,044 (1997).