

165 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Blue Lake Gas Storage Company

Docket No. RP19-261-000

ORDER APPROVING SETTLEMENT

(Issued December 7, 2018)

1. On November 8, 2018, Blue Lake Gas Storage Company (Blue Lake) filed an Agreement of Settlement (Settlement) pursuant to Rules 207(a)(5) and 602 of the Commission's regulations¹ to implement a 10.45 percent reduction in Blue Lake's rates. The Commission approves Blue Lake's Settlement, as proposed.

I. Background and Proposal

2. On July 18, 2018, the Commission issued Order No. 849,² 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 Act³ and (2) the Commission's Revised Policy Statement⁴ and Opinion No. 511-C⁵ establishing a policy that Master Limited Partnerships (MLPs) may not recover an income tax allowance in response to the decision of the United States

¹ 18 C.F.R. § 385.207(a)(5) and § 385.602 (2018).

² *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).

³ 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).

⁴ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 Fed. Reg. 12,362 (Mar. 21, 2018), FERC Stats. & Regs. ¶ 35,060 (2018), *order on reh'g*, 164 FERC ¶ 61,030 (2018).

⁵ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines, Inc. v. FERC*.⁶ Order No. 849 required, pursuant to sections 10 and 14(a) of the Natural Gas Act (NGA), that all interstate natural gas companies with cost-based stated rates, that filed a 2017 FERC Form No. 2 or 2-A, must file a FERC Form No. 501-G informational filing.⁷ The FERC Form No. 501-G is 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 Return on Equity (ROE) before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLP pipelines.

3. Order No. 849 also provided several 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. These included (1) a limited NGA section 4 rate reduction filing (Option 1), (2) a commitment to file a general section 4 rate case or a prepackaged settlement in the near future (Option 2), (3) an explanation why no rate change is needed (Option 3), and (4) no action (Option 4).

4. Blue Lake operates storage facilities in Michigan. On November 8, 2018, Blue Lake filed the Settlement in response to Order No. 849. Blue Lake, under the terms of the Settlement, will reduce the monthly maximum recourse deliverability and capacity reservation rates for storage service by 10.45 percent, with corresponding reductions in its interruptible and overrun rates. Blue Lake states that its two shippers, DTE Gas Company and ANR Pipeline Company, are in support of the Settlement. Blue Lake requests that the Commission issue an order approving the Settlement on or before December 7, 2018, and that the Commission grant a December 1, 2018 Settlement effective date. Pursuant to the terms of the Settlement, this will allow Blue Lake to place the Settlement rates into effect on January 1, 2019, which is the first day of the calendar month following a December 1, 2018 Settlement effective date.⁸ Blue Lake contends that the Settlement provides shippers with a rate reduction and avoids the significant time and expense of litigating a general NGA section 4 rate case.

⁶ 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*). 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."

⁷ The One-time Report on Rate Effect of the Tax Cuts and Jobs Act may be referred to interchangeably as "One-time Report" or "FERC Form No. 501-G."

⁸ See Blue Lake Supplemental Filing on November 16, 2018.

5. In the Settlement package, Blue Lake submitted *pro forma* tariff records to implement the rate reduction. Article I pertains to the purpose and scope of the Settlement. Article II pertains to background information. Article III provides that approval of the Settlement will reduce the reservation components of Blue Lake's maximum current rates by 10.45 percent. Blue Lake states that nothing in the Settlement limits Blue Lake to change any of its other rates at a future date. Article III also states that the Settlement does not modify any negotiated or discounted rate currently in effect or subject to an executed agreement. Article IV provides that Blue Lake shall use the same storage plant depreciation rate, 3.25 percent, as reflected in its current rates.

6. Under Article V, the Settlement provides that once the Settlement becomes effective, Blue Lake may not take any actions pursuant to section 4 of the NGA that would take effect prior to the earlier of (1) December 31, 2020, assuming a five-month suspension period imposed by the Commission, and (2) the date on which Blue Lake has incurred at least seven million dollars in capital costs after January 1, 2018. This time period will be known going forward as the Rate Moratorium Period. Article V, in addition, states circumstances where Blue Lake may take actions notwithstanding the forgoing. Article V further specifies that throughout the Rate Moratorium Period each of Blue Lake's Shippers and any affiliates shall not take any actions pursuant to NGA section 5 except for circumstances laid out in Article V. Article VI states the Reservations between Blue Lake and the Settling Parties.

7. Under Article VII, the Settlement provides that "the standard of review for any proposed modifications to the provisions of this Settlement by the Commission acting *sua sponte*, the Settling parties acting unanimously, or third parties will be the most stringent standard permissible under applicable law."

II. Notice of Filing

8. Public notice of the Settlement was issued on November 8, 2018, with interventions and protests due by November 20, 2018. Pursuant to Rule 214,⁹ all timely filed motions to intervene and any unopposed motion 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 the proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

III. Discussion

9. The Commission finds that the Settlement appears fair and reasonable and in the public interest. The Settlement is uncontested and provides a 10.45 percent reduction in the reservation components of Blue Lake's maximum rates. Accordingly, the

⁹ 18 C.F.R. § 385.214 (2018).

Commission approves the Settlement, with an effective date of December 1, 2018, as requested by Blue Lake.

10. Article VII of the Settlement provides that “the standard of review for any proposed modifications to the provisions of this Settlement by the Commission acting *sua sponte*, the Settling parties acting unanimously, or third parties will be the most stringent standard permissible under applicable law.”¹⁰ Because the Settlement provides that the standard of review for modifications to the Settlement is “the most stringent standard permitted by law,” the Commission clarifies the framework that would apply if the Commission were required to determine the standard of review in a later challenge to the Settlement by a third party or by the Commission acting *sua sponte*.

11. The *Mobile-Sierra*¹¹ “public interest” presumption applies to an agreement only if the agreement has certain characteristics that justify the presumption. In ruling on whether the characteristics necessary to justify a *Mobile-Sierra* presumption are present, the Commission must determine whether the agreement at issue embodies either (1) individualized rates, terms, or conditions that apply only to sophisticated parties who negotiated them freely at arm’s length or (2) rates, terms, or conditions that are generally applicable or that arose in circumstances that do not provide the assurance of justness and reasonableness associated with arm's-length negotiations. Unlike the latter, the former constitute contract rates, terms, or conditions that necessarily qualify for a *Mobile-Sierra* presumption. In *New England Power Generators Ass’n, Inc. v. FERC*, however, the D.C. Circuit determined that the Commission is legally authorized to impose a more rigorous application of the statutory “just and reasonable” standard of review on future changes to agreements that fall within the second category described above.¹²

The Commission orders:

(A) Blue Lake’s Settlement is approved effective December 1, 2018, as discussed in the body of this order.

¹⁰ *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 157 FERC ¶ 61,166, at PP 4-5 (2016).

¹¹ *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*).

¹² *New England Power Generators Ass’n, Inc. v. FERC*, 707 F.3d 364, 370-371 (D.C. Cir. 2013).

(B) Blue Lake must file an actual tariff record consistent with Article VIII of the Settlement in eTariff format as required by Order No. 714¹³ in order to implement the *pro forma* tariff record proffered with the Settlement.

By the Commission. Commissioner McIntyre is not voting on this order.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹³ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).