

165 FERC ¶ 61,253  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southeast Supply Header, LLC

Docket Nos. RP19-266-000  
RP19-267-000

ORDER ON RATE REDUCTION FILING AND FERC FORM NO. 501-G

(Issued December 20, 2018)

1. On November 8, 2018, in Docket No. RP19-267-000, Southeast Supply Header, LLC (SESH) filed revised tariff records<sup>1</sup> pursuant to section 4 of the Natural Gas Act (NGA) to implement a rate reduction consistent with section 154.404 of the Commission's regulations.<sup>2</sup> The Commission accepts SESH's revised tariff records effective January 1, 2019, as proposed.

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<sup>1</sup> Southeast Supply Header, LLC, FERC NGA Gas Tariff, SESH Database 1, [1., Statement of Transportation Rates, 1.0.0](#); and [2., Statement of Capacity Release Rates, 1.0.0](#).

<sup>2</sup> 18 C.F.R. § 154.404(a) (2018), which provides:

*Purpose.* The limited rate filing permitted by this section is intended to permit:

(1) a natural gas company subject to the federal corporate income tax to reduce its maximum rates to reflect the decrease in the federal corporate income tax rate pursuant to the Tax Cuts and Jobs Act of 2017, and

(2) a natural gas company organized as a pass-through entity either (i) to eliminate any income tax allowance and accumulated deferred income taxes reflected in its current rates or (ii) to reduce its maximum rates to reflect the decrease in the federal income tax rates applicable to partners pursuant to the Tax Cuts and Jobs Act of 2017.

## I. Background and Proposal

2. On July 18, 2018, the Commission issued Order No. 849,<sup>3</sup> 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<sup>4</sup> and (2) the Commission's Revised Policy Statement<sup>5</sup> and Opinion No. 511-C<sup>6</sup> 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*.<sup>7</sup> 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, must file a FERC Form No. 501-G informational filing.<sup>8</sup> 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 ROEs before and after the reduction in corporate income taxes and the elimination of income tax allowances for MLP pipelines.

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<sup>3</sup> *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).

<sup>4</sup> 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).

<sup>5</sup> *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, Revised Policy Statement, 83 FR 12,362 (Mar. 21, 2018), FERC Stats & Regs. ¶ 35,060 (2018), *order on reh'g*, 164 FERC ¶ 61,030 (2018).

<sup>6</sup> *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

<sup>7</sup> *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."

<sup>8</sup> 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."

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, including a limited NGA section 4 rate reduction filing. Order No. 849 adopted section 154.404 of the Commission's regulations, authorizing natural gas pipelines to submit limited NGA section 4 filings to reduce their rates to reflect the Tax Cuts and Jobs Act and the *United Airlines* Issuances, without making any other rate changes. Section 154.404 permits pass-through pipelines, including MLPs, to either eliminate their tax allowances or reduce their rates to reflect the reduced income tax expenses provided by the Tax Cuts and Jobs Act. In order to provide an additional incentive for pipelines to make a limited NGA section 4 rate reduction filing, Order No. 849 included a guarantee that the Commission will not, for a three-year moratorium period, initiate an NGA section 5 rate investigation of a pipeline that makes such a filing, if that filing reduces the pipeline's ROE to 12 percent or less.<sup>9</sup>

4. On November 8, 2018, SESH filed FERC Form No. 501-G in Docket No. RP19-266-000 consistent with the reporting requirements of Order No. 849. SESH states that its two owners are currently MLPs. Therefore, in its FERC Form No. 501-G, SESH states that it is not a tax paying entity. Accordingly, the FERC Form No. 501-G eliminates its tax allowance and accumulated deferred income taxes (ADIT) from its cost-of-service. SESH's FERC Form No. 501-G shows that SESH's indicated cost-of-service reduction is 3.1 percent or approximately \$3.8 million, and that its Total Estimated ROE would be 8.8 percent, after an adjustment to reflect the *United Airlines* Issuances. SESH stated in that filing it would submit a limited NGA section 4 filing to reduce its maximum tariff rates consistent with Option 1 in Order No. 849.

5. On November 8, 2018, in Docket No. RP19-267-000, SESH filed a limited NGA section 4 rate reduction pursuant to section 154.404 of the Commission's regulations. SESH proposes to reduce its currently effective rates by the 3.1 percent cost-of-service reduction shown in its FERC Form No. 501-G, to be effective January 1, 2019. Therefore, SESH states, consistent with Commission policy, this limited NGA section 4 rate reduction filing eliminates its income tax allowance and associated ADIT from SESH's rates and general ledger.<sup>10</sup>

## **II. Notice of Filing, Interventions, and Protests**

6. Public notice of SESH's FERC Form No. 501-G filing in Docket No. RP19-266-000 and of SESH's limited NGA section 4 filing in Docket No. RP19-267-000 was issued on November 9, 2018. Interventions and protests were due as provided in

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<sup>9</sup> Order No. 849, FERC Stats. & Regs. ¶ 31,404 at PP 199-200.

<sup>10</sup> Docket No. RP19-267-000 Transmittal at 2, n.8.

section 154.210 of the Commission's regulations.<sup>11</sup> Pursuant to Rule 214,<sup>12</sup> 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 protests or adverse comments were filed.

### **III. Discussion**

#### **A. Rate Reduction**

7. The Commission finds that SESH's proposal to reduce its rates by 3.1 percent as calculated in the FERC Form No. 501-G is consistent with section 154.404 of the Commission's regulations and provides a net benefit to SESH's customers. Accordingly, the Commission accepts SESH's referenced tariff records to be effective January 1, 2019, as requested.

#### **B. NGA Section 5 Investigation Moratorium**

8. Order No. 849 provides that:

A pipeline would qualify for the NGA section 5 investigation moratorium if (1) the Commission accepts its limited NGA section 4 filing and (2) its Total Estimated ROE after the filing, as calculated on page 3, line 26, column (E) of its FERC Form No. 501-G, is 12 percent or less.<sup>13</sup>

SESH states that its Total Estimated ROE from its FERC Form No. 501-G is 8.8 percent, which is less than 12 percent. Accordingly, the Commission finds that SESH will not be subject to an NGA section 5 investigation for three years from the date the proposed rate reduction becomes effective, that is, from January 1, 2019 through January 1, 2022. As Order No. 849 stated, the primary purpose of the FERC Form No. 501-G is to provide information relevant to determining whether the Commission should exercise its discretion to initiate an NGA section 5 rate investigation of the subject pipeline. Because SESH has complied with the reporting requirement and qualifies for the NGA section 5 moratorium, the Commission closes Docket No. RP19-266-000.

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<sup>11</sup> 18 C.F.R. § 154.210 (2018).

<sup>12</sup> 18 C.F.R. § 385.214 (2018).

<sup>13</sup> Order No. 849, FERC Stats. & Regs. ¶ 31,404 at P 199.

The Commission orders:

(A) SESH's tariff records noted above are accepted to be effective January 1, 2019.

(B) SESH is provided an NGA section 5 investigation moratorium through January 1, 2022.

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

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.