158 FERC ¶ 61,044
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, and Colette D. Honorable.

Natural Gas Pipeline Company of America LLC — Docket No. RP17-303-000

ORDER INSTITUTING INVESTIGATION AND SETTING MATTER FOR HEARING PURSUANT TO SECTION FIVE OF THE NATURAL GAS ACT

(Issued January 19, 2017)

1. As discussed in more detail below, based upon our review of publicly available information on file with the Commission, it appears that Natural Gas Pipeline Company of America LLC (Natural) may be substantially over-recovering its cost of service, causing Natural's existing rates to be unjust and unreasonable. Therefore, the Commission is initiating an investigation, pursuant to section 5 of the Natural Gas Act (NGA), to determine whether the rates currently charged by Natural are just and reasonable and setting the matter for hearing. The Commission directs Natural to file a full cost and revenue study, as modified in the order, within 75 days of the issuance of this order.

I. Background

2. Natural owns and operates approximately 9,700 miles of interstate natural gas pipelines, field system lines, storage fields and related facilities. Natural's system consists primarily of two major interconnected transmission pipelines, the Amarillo and Gulf Coast Lines, which both terminate in the Chicago, Illinois metropolitan area. The Amarillo Line originates in the West Texas and New Mexico producing areas and consists of about 4,400 miles of mainline and various small-diameter pipelines. The Gulf Coast Line originates in the Gulf Coast areas of Texas and Louisiana and consists of approximately 4,100 miles of mainline and various small-diameter pipelines. These two main pipelines are connected at points in Texas and Oklahoma by Natural's 800-mile Amarillo/Gulf Coast Line. Natural's system also includes the Louisiana Line, which

extends east from Natural's Compressor Station No. 302 near New Caney, Texas to the Henry Hub in Vermilion Parish, Louisiana.[1]

3. On November 19, 2009, the Commission instituted a section 5 investigation into Natural's rates that resulted in a settlement[2] approved on July 29, 2010.[3] The 2010 Settlement provided for phased reductions to Natural's transportation and fuel rates.[4] The 2010 Settlement also provided that neither Natural nor any settling parties would file to propose changes to the settlement rates before April 1, 2016. As required by the 2010 Settlement,[5] Natural filed a cost and revenue study based on actual data for calendar year 2014 on June 1, 2015.[6] In that study, Natural contended its revenues exceeded its costs (including a pre-tax return on equity of 14.98 percent) by only 0.5 percent. On June 15, 2015, the Indicated Shippers[7] filed a request that the Commission fully examine the cost and revenue study. Natural contended that the Indicated Shippers' request violated the 2010 Settlement moratorium, and that the Commission should take no further action on the cost and revenue study. On March 30, 2016, the Commission accepted the study as adequately complying with the 2010 Settlement.[8] Natural's rates have not been re-examined since the 2010 Settlement.

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[1] General system information was gathered from FERC Form Nos. 2, 549B, and 567.

[2] Stipulation and Agreement of Settlement and Related Appendices of Natural Gas Pipeline of America LLC, Docket No. RP10-147-000 (June 11, 2010) (2010 Settlement).

[3] *Natural Gas Pipeline Co. of America LLC*, 132 FERC ¶ 61,082 (2010).

[4] Article III of the 2010 Settlement provided that fuel would be retained based on a fixed percentage matrix and not a fuel tracker.

[5] *See* Settlement, Article V.

[6] Cost and Revenue Study of Natural Gas Pipeline Company of America LLC, Docket No. RP10-147-000 (Study).

[7] The Indicated Shippers included: Anadarko Energy Services Company, Apache Corporation, Chevron U.S.A. Inc., Cross Timbers Energy Services Inc., ConocoPhillips Company, Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P.

[8] *Natural Gas Pipeline Co. of America. LLC*, 154 FERC ¶ 61,260 (2016).

II. Discussion

4. In March 2008, the Commission issued Order No. 710,[9] a final rule to change the forms and reporting requirements for interstate natural gas pipelines to enhance the transparency of financial reporting and better reflect current market and cost information relevant to interstate natural gas pipelines and their customers. The revised forms included FERC Form No. 2 (Form 2), the annual report for major natural gas companies, and FERC Form No. 3-Q (Form 3-Q), the quarterly financial report of natural gas companies, electric utilities, and licensees. The Commission stated that the revised forms and reporting requirements would provide, in greater detail, the information the Commission needs to carry out its responsibilities under the NGA to ensure just and reasonable rates. The Commission required major interstate pipelines to use the revised Form 2 in making their annual reports beginning in calendar year 2008.

5. The Commission has reviewed the cost and revenue information provided by Natural in its Form 2 for the years 2014 and 2015. Based upon our review of this cost and revenue information, the Commission estimates Natural's return on equity for those calendar years to be 28.5 percent and 20.8 percent, respectively. Based upon these figures, the Commission is concerned that Natural's level of earnings may substantially exceed its actual cost of service, including a reasonable return on equity. A description of how the Commission arrived at these figures is set forth below.[10]

6. Based upon the information provided by Natural in its Form 2 for 2014, the Commission calculated Natural's 2014 cost of service to be $357.39 million excluding

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[9] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, FERC Stats. & Regs. ¶ 31,267 (2008), *reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. Am. Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir. 2010), *order on remand*, Order No. 710-B, 134 FERC ¶ 61,033, *order on reh'g*, Order No. 710-C, 136 FERC ¶ 61,109 (2011).

[10] Details of the Commission's derivation of the return on equity are set forth in the Appendix to this order. The Appendix, where applicable, provides a page and line reference to Natural's Form 2s for 2014 and 2015 for each item utilized by the Commission in its calculations.

equity return and related income taxes.[11] Next, the Commission compared this estimated cost of service to Natural's 2014 Form 2 reported revenues, as adjusted, of $634.21 million. The difference between Natural's reported adjusted revenues[12] and the estimated cost of service is $276.82 million, before income taxes. After taking into consideration income taxes, Natural's equity return totals approximately $168.92 million for 2014. This equates to an estimated return on equity of 28.5 percent.

7. An identical analysis, based upon the cost and revenue information provided by Natural in its 2015 Form 2, generated a similar estimated return on equity. Based upon the information contained in Natural's Form 2 for 2015, the Commission calculated Natural's cost of service for 2015 to be $362.33 million, exclusive of equity return and related income taxes. Next, the Commission compared this estimated cost of service to Natural's 2015 Form 2 reported revenues, as adjusted, which total $567.56 million. The difference between Natural's reported adjusted revenues and the estimated cost of service is $205.23 million, before income taxes. After taking into consideration income taxes, Natural's equity return totals approximately $125.23 million. This equates to an estimated return on equity of 20.8 percent.

8. The Commission finds that, based upon its preliminary analysis of the information provided by Natural in its Form 2s for the calendar years 2014 and 2015, Natural's currently effective tariff rates may be unjust and unreasonable. The Commission's analysis of this information indicates that Natural's currently effective tariff rates may allow Natural to recover revenue substantially in excess of its estimated cost of service. While NGA section 4 permits Natural to seek authorization from the Commission to adjust its rates to establish just and reasonable rates, Natural does not appear to have adjusted its system's rates since the 2010 Settlement, which included a phased rate reduction and a rate case moratorium through April 1, 2016. Accordingly, the

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[11] Because Natural listed a 100 percent equity capitalization in its Form 2, we have used a hypothetical capital structure to calculate the pipeline's cost of service. However, in this order, we make no finding as to what would constitute a just and reasonable capital structure for Natural. That is among the issues set for hearing in this order and should be decided consistent with the Commission's capital structure policies. *See 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).

[12] As detailed in the Appendix, for purposes of this analysis, the total Other Revenues reflected in column (f) of page 301 of the Form 2 were adjusted to include annual charge adjustment (ACA) revenues.

Commission is initiating an investigation to examine the justness and reasonableness of Natural's rates pursuant to section 5 of the NGA and setting the matter for hearing.[13]

9. As the Commission has done in other cases initiating section 5 investigations of a pipeline's rates,[14] it directs Natural to file a cost and revenue study based on cost and revenue information for the latest 12-month period available. The filing shall be made within 75 days of the date this order issues and include all the schedules required for submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations.[15] Because the Commission is seeking actual cost and revenue information, the information submitted by Natural must exclude any adjustments or projections that may be attributable to a test period referenced in the schedules and statements set forth in section 154.312 of the regulations. Thus, Natural should not file

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[13] In this order, we make no finding as to what would constitute a just and reasonable return on equity for Natural. That is among the issues set for hearing by this order and should be decided consistent with the Commission's 2008 policy statement, *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

[14] *See Tuscarora Gas Transmission Co.*, 154 FERC ¶ 61,030 (2016); *Iroquois Gas Transmission System, L.P.*, 154 FERC ¶ 61,028 (2016); *Empire Pipeline, Inc.*, 154 FERC ¶ 61,029 (2016); *Columbia Gulf Transmission, LLC*, 154 FERC ¶ 61,027 (2016); *Wyo. 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); and *ANR Storage Co.*, 137 FERC ¶ 61,136 (2011); *Ozark Gas Transmission, LLC*, 133 FERC ¶ 61,150 (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.

[15] 18 C.F.R. § 154.312 (2016).

nine months of post-base-period adjustment data required by section 154.303(a).[16] 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 Natural's costs and revenues.[17] Additionally, because Natural does not have an NGA section 4 burden in this section 5 proceeding and will be filing testimony in response to other parties, Natural does not need to file the Statement P required by section 154.312(v) of the Commission's regulations at this juncture.[18]

10. However, as we have done in other recent section 5 proceedings, in addition to the cost and revenue study required above, Natural may file a separate cost and revenue study that reflects adjustments for changes Natural projects will occur during an abbreviated six-month adjustment period following the 12-month base period used for the cost and revenue study.[19] Given the expedited hearing schedule 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.[20]

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[16] However, Natural 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.

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

[18] *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 Natural 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 Transmission, LLC*, 154 FERC ¶ 61,275 at P 9 n.19.

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

[20] *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.

11. Finally, due to the potential for continued over-recovery of revenues, the Commission is establishing a date for an initial decision from an administrative law judge. Such a date will expedite the proceeding. We believe 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, the Commission orders that the deadlines in the Track II timeline run from the date the pipeline'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.

<u>The Commission orders</u>:

(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 Natural'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.

(C) The Commission directs that the hearing 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) Natural 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.

(E) Any person wishing to become a party to this proceeding must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Such notice or motion must be filed within 30 days of the date of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link at http://www.ferc.gov. Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

(F) The Secretary shall promptly publish in the Federal Register a notice of the Commission's initiation of the proceeding under section 5 of the NGA in Docket No. RP17-303-000.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Natural Gas Pipeline Company of America	Form 2 Reference	2015	2014
Rate Base			
Gas Plant in Service	p. 110; ln. 2, col. C	$4,015,890,376	$3,984,762,026
Accumulated Depreciation	p. 110; ln. 5	($2,595,000,737)	($2,556,491,097)
Gas Stored Underground			
Account 117.1 (Base Gas)	p. 220; ln. 5, col. b	$185,497,856	$148,705,690
Account 117.2 (System Balancing)	p. 220; ln. 5, col. c	$3,506,780	$10,907,449
Working Capital			
Prepayments	p. 111; ln. 54	$528,600	$562,223
Materials and Supplies	p. 111; ln. 45	$17,445,643	$19,175,027
ADIT			
Account 190	p. 235; ln. 7, col. k, as adjusted on p. 552.1	$0	$0
Account 282	p. 275; ln. 7, col. k, as adjusted on p. 552.1	($406,776,008)	($402,152,287)
Account 283	p. 277; ln. 7, col. k, as adjusted on p. 552.1	($4,698,083)	($5,106,035)
Regulatory Assets	p. 232; ln. 40, col. g	$13,288,063	$14,635,281
Regulatory Liabilities	p. 278; ln. 45, col. g	($222,419)	($240,176)
Total Rate Base		$1,229,460,071	$1,214,758,101
Capital Cost	pp. 114, 116		
Cost of Debt(1)		5.03%	4.80%
Capitalization(2)	p. 112		
Debt		50.00%	50.00%
Equity		50.00%	50.00%
Weighted Cost of Debt		2.51%	2.40%
Cost of Service			
Interest on Debt		$30,915,798	$29,154,194
Other Taxes	p. 114; ln. 14, col. c	$24,347,375	$24,935,879
Depreciation	p. 114; ln. 6-9, col. c	$88,564,362	$88,444,998
O&M			
Production & Gathering	p. 317; ln. 30	$1,660	$2,846
Net Storage Costs	p. 322; ln. 177 (less ln. 106)	$24,335,098	$28,660,786
Net Transmission Costs	p. 323; ln. 201 (less ln. 184)	$152,330,172	$145,442,577
Administrative &General	p. 325; ln. 270	$41,839,074	$40,746,825
Total Cost of Service Excl. Return and Taxes		$362,333,539	$357,388,105
Operating Revenue			
Other Revenues	p. 301; ln. 21, col. f	$576,050,465	$649,823,330
ACA Revenues	p. 300; ln. 21, col. d	$1,889,121	$1,604,873
(Less) Sales for Resales (Act. 480-484)	p. 301; ln. 4, col. f	($10,379,378)	($17,220,397)
(Less) Commercial & Industrial Sales	p. 301; ln. 2, col. f	$0	$0
(Less) Gas Sales & Oth Adj. from Acct 495	p. 308	$0	$0
Total Adjusted Revenue		$567,560,208	$634,207,806
Income			
Income Before Income Taxes		$205,226,669	$276,819,701
Composite Income Tax		$79,997,117	$107,903,998
Net Income		$125,229,551	$168,915,702
Total Estimated ROE		20.8%	28.5%
Composite Tax Rate		39.0%	39.0%

(1)The capital costs are based upon a hypothetical capital structure; debt interest rates approximated upon Moody's Analytics' CreditTrends for seasoned public utility bonds during 2015.
(2) The capitalization on p. 218 of the 2015 Form 2 for reflects 100 percent equity; a hypothetical capital structure was used.

Document Content(s)