



Bear Creek Storage
Company, L.L.C.
a Kinder Morgan operated company

May 21, 2019

Ms. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: *Bear Creek Storage Company, L.L.C.*, Docket No. RP19-51-____
Offer of Settlement

Dear Ms. Bose:

Pursuant to Rule 602 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure,¹ Bear Creek Storage Company, L.L.C. ("Bear Creek") hereby files the attached Stipulation and Agreement ("S&A") and related materials ("Settlement") to resolve all outstanding issues in the referenced proceeding relating to the Commission's investigation of Bear Creek's rates pursuant to section 5 of the Natural Gas Act initiated on January 16, 2019.² In accordance with Rule 602(b)(2)(i), Bear Creek requests that the Settlement be transmitted to Presiding Administrative Law Judge Jennifer M. Long for certification to the Commission³.

The Settlement represents the product of the exchange of several settlement offers and counteroffers, all toward the goal of achieving a negotiated resolution of the issues raised in this proceeding. The Settlement would resolve all issues set for hearing in this proceeding. The Settlement reflects the agreement of Bear Creek, Commission Trial Staff and the Supporting and Non-Opposing Parties to resolve all of these issues and must be considered as an integrated package. Any modification or condition placed on the Settlement could jeopardize the negotiated compromise and balance of interests that is reflected in the Settlement and result in recourse to hearing procedures and further expenditure of the parties' and the Commission's resources.

The Settlement is supported or not opposed by all of the active parties in the proceeding. Bear Creek is not aware of any party to the proceeding that opposes the Settlement.

In light of the support of all of the active parties to the proceedings, following the comment period established by the Commission, Bear Creek respectfully requests that Presiding

¹ 18 C.F.R. § 385.602 (2011).

² *Bear Creek Storage Co., L.L.C.*, 166 FERC ¶ 61,034 (2019).

³ On May 20, 2019, Bear Creek made this same filing using FERC Type of Filing Code ("TOFC") 570 which was not the appropriate TOFC. That filing was assigned Docket No. RP19-1230. Today's filing is being made using TOFC 1400. Upon acceptance of today's filing, Bear Creek will file with the Commission to withdraw RP19-1230 using TOFC 590.

Administrative Law Judge Long proceed expeditiously to certify to the Commission that the Settlement is uncontested.

UNOPPOSED MOTION FOR EXPEDITED COMMENT PERIOD

The participants that actively participated throughout the negotiation and drafting of the Settlement support its expeditious review and approval. The parties are not aware of any participant's opposition to the instant Settlement. In light of the foregoing, Bear Creek requests a waiver of Rule 602(f) to permit a shortened comment period. Bear Creek respectfully requests an initial comment period of 10 days after the filing, i.e., initial comments due by May 31, 2019, with reply comments due 5 days thereafter, i.e., June 5, 2019. To the extent necessary, please treat this transmittal letter as a motion, pursuant to Rule 212, requesting such shortened comment periods. Bear Creek is authorized to represent that no active party opposes this motion for a shortened comment period. Bear Creek believes that the Commission should evaluate the Settlement in light of the foregoing.

If Bear Creek's motion for an expedited comment period is not granted, then according to Rule 602(f)(2), initial comments would be due on June 10, 2019, and reply comments would be due on June 20, 2019. Bear Creek hereby directs the attention of persons served with this Offer of Settlement to Rule 602(f)(3), which provides that "[a]ny failure to file a comment constitutes a waiver of all objections to the offer of settlement."

CONTENTS OF SUBMISSION

In accordance with Rule 602(c), this submission includes:

- An Offer of Settlement and Explanatory Statement;
- A Stipulation and Agreement and Appendices; and
- A Statement of References to documents relevant to the Stipulation and Agreement.

Bear Creek respectfully requests that the Commission grant waiver of any and all regulations that may be necessary in order to permit the approval of this Settlement as filed and without modification.

Such materials are being served on all participants on the service list in this proceeding and on all other persons required to be served by operation of Rule 602(d).

Respectfully submitted,

/s/ Mosby Perrow

T. Brooks Henderson
Director, Rate & Regulatory Affairs
Bear Creek Storage Company, L.L.C.
Brookwood Office Center
569 Brookwood Village, Suite 749

Mosby Perrow
Deputy General Counsel, Vice President
Patricia S. Francis
Assistant General Counsel
Margaret G. Coffman

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Birmingham, AL 35209
(205) 325-3843
brooks_henderson@kindermorgan.com

Assistant General Counsel
Michelle Grant
Assistant General Counsel
1001 Louisiana Street
Houston, TX 77002
(713) 420-3882
(205) 325-7696
(205) 325-7424
(713) 420-6680
mosby_perrow@kindermorgan.com
patricia_francis@kindermorgan.com
meghan_coffman@kindermorgan.com
michelle_grant@kindermorgan.com

*Attorneys for
Bear Creek Storage Company, L.L.C.*

May 21, 2019

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Bear Creek Storage Company, L.L.C.)

Docket No. RP19-51-000

OFFER OF SETTLEMENT AND EXPLANATORY STATEMENT

Bear Creek Storage Company, L.L.C. (“Bear Creek”), pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“FERC” or the “Commission”) Rules of Practice and Procedure,¹ hereby submits this Offer of Settlement and Explanatory Statement, including a Stipulation and Agreement (“S&A”) and Appendices (together with the S&A, the “Settlement”). The Settlement resolves all issues set for hearing in this investigation initiated by Commission under section 5 of the Natural Gas Act (“NGA”). The Settlement provides for a reduction in the rates that Bear Creek charges its two customers Southern Natural Gas Company, L.L.C. (“SNG”) and Tennessee Gas Pipeline Company, L.L.C. (“TGP”). SNG and TGP utilize the storage capacity that they hold on Bear Creek to provide storage service to their storage customers under their Rate Schedules CSS and FS-PA, respectively. Bear Creek urges the Commission promptly to issue an order approving this Settlement.

I. BACKGROUND

Bear Creek is an underground natural gas storage facility located in Bienville Parish, Louisiana, and constructed in 1979 under a certificate of public convenience and necessity issued by the Commission.² Bear Creek is owned 50 percent each by SNG and TGP. Bear Creek

¹ 18 C.F.R. § 385.602 (2011),

² See *Bear Creek Storage Co.*, 7 FERC ¶ 61,001 (1979).

provides individually certificated storage service under Part 157 of the Commission’s regulations to two customers – SNG and TGP.

Bear Creek’s currently-effective rates were established by a settlement approved by the Commission in 2012,³ after the Commission initiated an investigation of Bear Creek’s rates pursuant to section 5 of the NGA.⁴

On October 11, 2018, Bear Creek filed its FERC Form No. 501-G in this docket in compliance with Order No. 849⁵ and Section 260.402 of the Commission’s Regulations (“Form No. 501-G”). After review of Bear Creek’s Form No. 501-G, the Commission issued an order on January 16, 2019, instituting an investigation pursuant to section 5 of the NGA, to determine whether Bear Creek’s currently-effective rates are just and reasonable (the “Investigation Order”).⁶ The Commission set the matter for hearing and Administrative Law Judge Jennifer M. Long was designated to preside over the proceedings. The Investigation Order required Bear Creek to file a cost and revenue study in accordance with section 154.312 of the Commission’s regulations by April 1, 2019. As directed by the Commission, Bear Creek filed such cost and revenue study on April 1, 2019 (“Cost and Revenue Study”).

On February 15, 2019, Bear Creek filed a request for rehearing of the Investigation Order, arguing that the Commission should terminate this proceeding, or at a minimum, rescind its requirement that Bear Creek file a cost and revenue study that includes a derivation of rates. The Commission has not yet acted on this request; however, upon issuance of an order by the

³ See *Bear Creek Storage Co.*, 140 FERC ¶ 61,129 (2012).

⁴ See *Bear Creek Storage Co.*, 137 FERC ¶ 61,134 (2011).

⁵ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, 164 FERC ¶ 61,031 (2018), *order denying reh’g*, 167 FERC ¶ 61,051 (2019) (hereinafter referred to as “Order No. 849”).

⁶ See *Bear Creek Storage Co.*, 166 FERC ¶ 61,034 (2019).

Commission approving this Settlement, Bear Creek agrees to withdraw its request for rehearing from the Docket.

In an effort to achieve a negotiated resolution of the issues set for hearing by the Commission in this proceeding, the Participants have exchanged several settlement offers and counteroffers. These efforts have resulted in the instant Settlement. This Settlement resolves all issues set for hearing in Docket No. RP19-51 and any sub-dockets, including all issues arising from Commission Order No. 849⁷ regarding income tax reductions provided by the Tax Cuts and Jobs Act of 2017.

On May 16, 2019, the Acting Chief Administrative Law Judge granted an unopposed motion by Bear Creek to hold the procedural schedule in abeyance pending the filing of a settlement agreement.

II. EXPLANATORY STATEMENT

The participants have invested a significant amount of time and resources to reach the negotiated resolution that is reflected in the Settlement. This Explanatory Statement provides a brief overview for the convenience of the Presiding Judge and Commission and is not intended to alter or interpret the Settlement. In the event of any conflict between the Explanatory Statement and the Settlement, the provisions of the Settlement shall govern. If not defined in this Explanatory Statement, capitalized terms shall have the meaning ascribed to them in the Stipulation and Agreement.

⁷ *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, 164 FERC ¶ 61,031 (2018), *order denying reh'g*, 167 FERC ¶ 61,051 (2019) (hereinafter referred to as “Order No. 849”).

A. Summary of the Settlement

The Settlement resolves all issues set for hearing in this investigation of Bear Creek’s rates initiated by the Commission pursuant to section 5 of the NGA. The participants have agreed to a resolution of most traditional cost of service, cost allocation and rate design issues on a “black box” basis. The Settlement also provides for an informal analysis based on 2021 Form 2 data to be provided to all Supporting and Non-Opposing Parties on record as of November 1, 2022.

B. Specific Provisions of the Settlement

Article I sets out the Purpose and Scope of the Settlement, which is to resolve all issues set for hearing in this proceeding. The Settlement is the result of negotiations between the participants. The Settlement is a unified document embodying numerous compromises. No portion of the Settlement can be severed without destroying the balance of interests and compromises embodied in the Settlement.

Article II is an introduction describing the factual and procedural background of this proceeding.

Article III defines “Supporting or Non-Opposing Parties” and “Contesting Parties.” Paragraph A provides that a Supporting or Non-Opposing Party is any party listed in Appendix A along with any party that does not file comments with the Commission in opposition to the Settlement. Paragraph B.1 describes the actions that shall cause a Supporting or Non-Opposing Party to become a Contesting Party. In Paragraph B.2, the Supporting or Non-Opposing Parties and Bear Creek request that, if the Commission finds that a Contesting Party cannot be bound by the settlement, that such Contesting Party be severed and that the provisions of the Settlement not apply to that Contesting Party.

Article IV defines the Effective Date of the Settlement, and procedures to be followed if the Commission modifies the Settlement or attaches conditions to the Settlement. Any modifications or conditions present significant risks that the Settlement may be rejected by one or more parties and withdrawn by Bear Creek, resulting in the potential for protracted litigation to achieve resolution of the issues set for hearing and technical conference in the proceedings.

Article V provides for the “Settlement Rates.” The Settlement Rates are shown on the Tariff sheets in Appendix B. Article V sets out when the Settlement Rates will take effect for Bear Creek’s two customers – SNG and TGP – and provides that they will cease to be effective when supplanted by new rates as a result of a future proceeding.

Article VI, Paragraph A provides that, except as provided in this Settlement and in Appendix C, the Settlement Rates have been established on a “black box” basis. Article VI, Paragraph B provides that a Final Commission Order approving the Settlement shall constitute all necessary authority under NGA section 9 for Bear Creek to continue its currently-effective depreciation rate of 0.5 percent. Article VI, Paragraph C provides that the Settlement Rates reflect the *Equitable*⁸ method of cost allocation. Article VI, Paragraph D.1 provides the treatment of excess accumulated deferred income taxes arising from the reduction in the corporate federal income tax rate from thirty-five percent to twenty-one percent that became effective January 1, 2018.

Article VII provides that Bear Creek will provide on November 1, 2022 an informal analysis of its estimated FERC returns based on 2021 Form 2 data to Supporting and Non-Opposing Parties on record as of November 1, 2022. This informal analysis is not required to be filed at the Commission.

⁸ *Equitable Gas Co.*, 36 FERC ¶ 61,147 (1986).

Article VIII provides that, within thirty days following the Effective Date, Bear Creek will file the Tariff sheets in Appendix B within 30 days hereto to be effective on the first day of the month following such filing.

Noteworthy for review of the Presiding Judge and the Commission, Article IX, Paragraph 1 provides that the standard applicable to the terms of this Settlement shall be the “public interest” standard pursuant to the “*Mobile-Sierra*” doctrine.⁹ Paragraph 2 provides that changes to this Settlement proposed by non-settling third parties and by the Commission acting *sua sponte* shall be the just and reasonable standard.

Article X provides that no resolution in this Settlement is a “settled practice.”

Article XI and Article XII set out certain reservations, implementing and miscellaneous provisions.

C. Information To Be Provided With Settlement Agreement

In accordance with the order of the Chief ALJ issued on October 15, 2003, which directed parties to address the following five questions in their Explanatory Statement, Bear Creek states as follows:¹⁰

1. What are the issues underlying the settlement and what are the major implications?

The issues underlying the Settlement involve many of the issues that typically arise in an investigation pursuant NGA section 5. The major implication of the Settlement is that it will provide for Bear Creek to reduce its rates.

2. Do any of the issues raise policy implications?

⁹ See *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

¹⁰ See Notice to the Public, issued October 15, 2003 by the Chief ALJ (<http://www.ferc.gov/legal/admin-lit/rev-errata.pdf>).

Bear Creek does not believe that the Settlement itself raises any policy implications. In particular, the participants have taken great care to avoid any need for the Commission to modify or condition approval of the Settlement. With respect to proposed changes to any Settled Matter sought by non-settling third parties or the Commission acting *sua sponte*, Article VIII, Paragraph 2 states that the standard of review shall be the just and reasonable standard as provided in the most current Commission precedent.

3. Are there other pending cases that may be affected?

Bear Creek does not believe any other pending cases will be affected by the Settlement.

4. Does the settlement involve issues of first impression, or are there any previous reversals on the issues involved?

Bear Creek does not believe that the Settlement involves any issues of first impression or previous reversals on the issues involved.

5. Is the proceeding subject to the just and reasonable standard or is there *Mobile-Sierra* language making it the standard, *i.e.*, the applicable standard of review?

Consistent with Commission policy,¹¹ the Settlement is subject to the just and reasonable standard with respect to changes proposed by non-settling third parties or the Commission acting *sua sponte*. With respect to parties other than non-settling third parties and the Commission acting *sua sponte*, any changes to the Settlement shall be subject to the *Mobile-Sierra*¹² public interest standard of review.

III. REQUEST FOR APPROVAL

Bear Creek requests that the Offer of Settlement be approved without any condition or modification, because any such change will require acceptance of the parties and will alter the

¹¹ See *Petal Gas Storage, LLC*, 135 FERC ¶ 61,152 (2011).

¹² *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (*Mobile*); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (*Sierra*) (“*Mobile-Sierra*”).

balance of the negotiated terms among the different interests involved. Bear Creek also asks the Commission to grant such waivers and permissions regarding the Commission's orders and regulations to the extent necessary to effectuate all of the provisions contained in the Settlement.

IV. CONCLUSION

WHEREFORE, Bear Creek respectfully asks that the Commission promptly issue an order approving this Offer of Settlement without condition or modification. Any condition or modification by the Commission has the potential under the terms of the Settlement to deprive the participants of the benefits agreed upon in the Settlement and impose on the participants the uncertainty and expense of additional proceedings.

Respectfully submitted,

/s/ Mosby Perrow

T. Brooks Henderson
Director, Rate & Regulatory Affairs
Bear Creek Storage Company, L.L.C.
Brookwood Office Center
569 Brookwood Village, Suite 749
Birmingham, AL 35209
(205) 325-3843
brooks_henderson@kindermorgan.com

Mosby Perrow
Deputy General Counsel, Vice President
Patricia S. Francis
Assistant General Counsel
Margaret G. Coffman
Assistant General Counsel
Michelle Grant
Assistant General Counsel
1001 Louisiana Street
Houston, TX 77002
(713) 420-3882
(205) 325-7696
(205) 325-7424
(713) 420-6680
mosby_perrow@kindermorgan.com
patricia_francis@kindermorgan.com
meghan_coffman@kindermorgan.com
michelle_grant@kindermorgan.com

*Attorneys for
Bear Creek Storage Company, L.L.C.*

May 21, 2019

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Bear Creek Storage Company, L.L.C.

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Docket No. RP19-51-000

STIPULATION AND AGREEMENT

(May 21, 2019)

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STIPULATION AND AGREEMENT

(May 21, 2019)

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“**FERC**” or “**Commission**”),¹ Bear Creek Storage Company, L.L.C. (“**Bear Creek**”) and the **Supporting and Non-Opposing Parties**, as defined in Article III, submit this Stipulation and Agreement (“**S&A**”) along with appendices, attachments, tariff records and related materials (collectively, the “**Settlement**”) to resolve all issues in the captioned proceeding as set forth below. Bear Creek respectfully requests that the Commission grant any necessary authorizations under the Natural Gas Act (“**NGA**”) and any waivers of its regulations, rules, orders or any provision in Bear Creek’s currently-effective FERC Gas Tariff (“**Tariff**”) necessary to effectuate the Settlement.

ARTICLE I PURPOSE AND SCOPE

A. Resolution of Issues

1. This Settlement resolves all issues set for hearing in Docket No. RP19-51 and any sub-dockets, including all issues arising from Commission Order No. 849² regarding income tax reductions provided by the Tax Cuts and Jobs Act of 2017 (“**TCJA**”).³ The Settlement, if implemented as to all customers, will provide for rate certainty as described herein and will impose an obligation upon Bear Creek to provide all parties to this proceeding with an informal

¹ 18 C.F.R. § 385.602 (2018).

² *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, 164 FERC ¶ 61,031 (2018), *order denying reh’g*, 167 FERC ¶ 61,051 (2019) (hereinafter referred to as “Order No. 849”).

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). The Tax Act, among other things, reduced the federal corporate income tax rate from 35 percent to 21 percent effective January 1, 2018.

analysis on November 1, 2022, based on Form 2 data of Bear Creek’s estimated return on equity by November 1, 2022.

B. Indivisibility of Settlement Terms

1. This Settlement is the result of extensive negotiations and represents a delicate compromise of numerous complex, interrelated issues. The resolution of these issues as manifested in the Settlement cannot be altered in part without jeopardizing the whole. The Settlement produces an overall result that is fair and reasonable and in the public interest and represents a consensus among all active parties and the Commission Trial Staff (“**Staff**”) (collectively, the “**Participants**”).

2. The Settlement is an indivisible package and embodies compromises by Bear Creek, the Supporting and Non-Opposing Parties, and Staff. No particular issue or provision of the Settlement can be severed from, or modification made to, this package without disturbing the balance of interests represented in the Settlement.

**ARTICLE II
BACKGROUND**

A. Bear Creek is an underground natural gas storage facility located in Bienville Parish, Louisiana, and constructed in 1979 under a certificate of public convenience and necessity issued by the Commission.⁴ Bear Creek is owned 50 percent each by Southern Natural Gas Company, L.L.C. (“**SNG**”), and Tennessee Gas Pipeline Company, L.L.C. (“**TGP**”). Bear Creek provides individually certificated storage service under Part 157 of the Commission’s regulations to two customers – SNG and TGP.

⁴ See *Bear Creek Storage Co.*, 7 FERC ¶ 61,001 (1979).

B. Bear Creek's currently-effective rates were established by a settlement approved by the Commission in 2012,⁵ after the Commission initiated an investigation of Bear Creek's rates pursuant to section 5 of the NGA.⁶

C. On October 11, 2018, Bear Creek filed its FERC Form No. 501-G in this docket in compliance with Order No. 849 and Section 260.402 of the Commission's Regulations ("Form No. 501-G"). After review of Bear Creek's Form No. 501-G, the Commission issued an order on January 16, 2019, instituting an investigation pursuant to section 5 of the NGA, to determine whether Bear Creek's currently-effective rates remain just and reasonable (the "**Investigation Order**").⁷ The Commission set the matter for hearing and Administrative Law Judge Jennifer M. Long was designated to preside over the proceedings. The Investigation Order required Bear Creek to file a cost and revenue study in accordance with section 154.312 of the Commission's regulations by April 1, 2019. As directed by the Commission, Bear Creek filed such cost and revenue study on April 1, 2019 ("**Cost and Revenue Study**").

D. On February 15, 2019, Bear Creek filed a request for rehearing of the Investigation Order, arguing that the Commission should terminate this proceeding, or at a minimum, rescind its requirement that Bear Creek file a cost and revenue study that includes a derivation of rates. The Commission has not yet acted on this request; however, upon issuance of an order by the Commission approving this Settlement, Bear Creek agrees to withdraw its request for rehearing from the Docket.

⁵ See *Bear Creek Storage Co.*, 140 FERC ¶ 61,129 (2012).

⁶ See *Bear Creek Storage Co.*, 137 FERC ¶ 61,134 (2011).

⁷ See *Bear Creek Storage Co.*, 166 FERC ¶ 61,034 (2019).

E. In an effort to achieve a negotiated resolution of the issues set for hearing by the Commission in this proceeding, the Participants have exchanged several settlement offers and counteroffers. These efforts have resulted in the instant Settlement.

F. On May 16, 2019, the Acting Chief Administrative Law Judge granted an unopposed motion by Bear Creek to hold the procedural schedule in abeyance pending the filing of a settlement agreement.

ARTICLE III SUPPORTING AND NON-OPPOSING PARTIES AND CONTESTING PARTIES

A. Supporting and Non-Opposing Parties

1. Appendix A to this Settlement lists the parties in this proceeding that either support or do not oppose this Settlement. Each such party, including Bear Creek, as well as any other person or entity that supports or does not file comments or other pleadings with the Commission in opposition to the Settlement, shall be considered to be a “**Supporting or Non-Opposing Party**” to the Settlement; collectively, they are the “**Supporting and Non-Opposing Parties.**”

B. Contesting Parties

1. Any person or entity shall become a **Contesting Party** on the date that it (a) files any pleading prior to Commission action on this Settlement that either (i) opposes any provision of this Settlement, (ii) proposes any modification or condition to any provision of this Settlement, (iii) seeks any clarification or requests the Commission to make any ruling, filing, or interpretation that is inconsistent with this Settlement, or (iv) seeks to be severed from the Settlement and asserts the existence of genuine issues of material fact that prevent the Commission from imposing the terms of the Settlement on such entity; or (b) provides notice as set forth in Article IV, Paragraph 3; or (c) subsequent to the Commission’s approval of the

Settlement without modification or condition, (i) pursues rehearing, reconsideration or appeal of such Commission Order approving the Settlement, or (ii) opposes or objects to any compliance filings by Bear Creek to implement the Settlement Rates, other than for the reason that the compliance filing is not consistent with the terms of the Settlement.

2. If the Commission finds that a Contesting Party cannot be bound by the Settlement, Bear Creek and the Supporting and Non-Opposing Parties request that the Commission sever such Contesting Party and not make any provision of this Settlement effective as to such Contesting Party.

ARTICLE IV EFFECTIVENESS

A. Effective Date

1. The “**Effective Date**” shall be the date on which a Commission order approving the Settlement with or without modification(s) or condition(s) is issued. If a Commission order approving the Settlement requires modification(s) and/or condition(s), the Settlement shall take effect with the modification(s) and/or condition(s) required by the Commission, subject to the rights of the parties enumerated in this Article. To the extent this Settlement is approved without modification(s) or condition(s), Bear Creek and the Supporting and Non-Opposing Parties are bound by the terms of the Settlement and waive any and all rights to file requests for rehearing, clarification and/or reconsideration of such Commission order approving the Settlement.

B. Condition or Modification Affecting Bear Creek

1. If an order approving the Settlement requires a modification(s) or imposes a condition(s) that materially and adversely affects Bear Creek, as determined by Bear Creek in its reasonable discretion, then within ten (10) business days of such Commission order, Bear Creek shall provide notice to the Commission and all parties to the proceeding stating whether it will

withdraw the Settlement and, if it does not withdraw the Settlement, whether it intends, at the time of said notice, to seek rehearing of such Commission order. If Bear Creek does not withdraw the Settlement, then the Settlement shall remain in effect with the modification(s) and/or condition(s) required by the Commission as of the Effective Date, subject to the outcome of any request for rehearing filed by Bear Creek; provided, however, nothing shall obligate Bear Creek to file a request for rehearing on any modification or condition regardless of whether or not Bear Creek elects to withdraw the Settlement.

C. Condition or Modification Affecting a Supporting or Non-Opposing Party

1. If an order approving the Settlement requires a modification(s) or imposes a condition(s) that materially and adversely affects any Supporting or Non-Opposing Party, as determined by such Supporting or Non-Opposing Party in its reasonable discretion, then within ten (10) business days of such Commission order, the Supporting or Non-Opposing Party shall provide notice to the Commission and all parties to the proceeding stating whether it elects to continue to be bound by the Settlement and whether it intends, at the time of said notice, to seek rehearing of such Commission order. Notwithstanding any such request for rehearing filed by a Supporting or Non-Opposing Party pursuant to this Paragraph 3, the Settlement shall remain in effect with the modification(s) and/or condition(s) required by the Commission as of the Effective Date, subject to the outcome of any request for rehearing filed by such Supporting or Non-Opposing Party. A Supporting or Non-Opposing Party providing notice that it elects not to be bound by the Settlement as modified or conditioned shall cease to be a Supporting or Non-Opposing Party and shall be deemed to be a Contesting Party, as defined in Article III, as of the date of such notice.

D. Effect of Becoming a Contesting Party

1. If a Supporting or Non-Opposing Party becomes a Contesting Party, then it shall have the right to litigate all issues in this proceeding, unless the Commission determines otherwise.

E. Effect of Withdrawal of the Settlement

1. If Bear Creek withdraws the Settlement, the Settlement shall terminate, and all parties' rights, obligations and commitments under the Settlement are deemed null and void, and all parties' rights, obligations and commitments under the Settlement are returned to the *status quo ante*. All parties shall be deemed to be restored to the position they would have been in had the Settlement never been filed.

F. Privileged Status of Settlement

1. If the Settlement is withdrawn, it shall be treated as an offer of settlement that is not approved by the Commission for purposes of Rule 602 of the Commission's Rules of Practice and Procedure and shall not be subject to discovery in any NGA Section 4 or 5 rate case.

**ARTICLE V
ESTABLISHMENT OF SETTLEMENT RATES**

A. Settlement Rates

1. Base rates established pursuant to this Settlement are set out on the Tariff sheets in Appendix B hereto ("**Settlement Rates**"). The Settlement Rates shall be implemented in accordance with Article VIII and shall continue in effect until new rates are authorized or permitted to take effect by the Commission as a result of a future proceeding.

**ARTICLE VI.
COST OF SERVICE ISSUES**

A. “Black Box” Rates

1. Except as otherwise provided in this Settlement (and in Appendix C, which contains a workpaper showing the derivation of the Settlement Rates attributable to the \$25,800,000 cost of service), the Settlement Rates established in this Settlement have been agreed to on a “black-box” basis.

2. Notwithstanding the “black-box” nature of the cost of service and rates agreed to herein, Bear Creek, Staff and the Supporting or Non-Opposing Parties recognize that the Settlement Rates take into consideration the decrease in the corporate income tax rate set forth in Subtitle C, Part I, Section 13001(a) of the TCJA as part of the overall black box settlement.

B. Depreciation Rates

1. As of the Effective Date, Bear Creek shall be authorized under section 9 of the NGA to continue its currently-effective depreciation rate of 0.5 percent.

C. Cost Allocation

1. The Settlement Rates reflect the *Equitable*⁸ method of cost allocation.

D. Accumulated Deferred Income Taxes

1. The agreed upon cost of service reflected in Appendix C reflects a flow back of \$1,365,544 for excess accumulated deferred income taxes (ADIT) arising from the TCJA reduction in the corporate federal income tax rate from thirty-five percent to twenty-one percent that became effective January 1, 2018. This flow back will begin on the date the settlement rates go into effect pursuant to Article VIII.

**ARTICLE VII
FUTURE INFORMAL ANALYSIS**

⁸ *Equitable Gas Co.*, 36 FERC ¶ 61,147 (1986).

A. Informal Analysis

1. Bear Creek will provide on November 1, 2022 an informal analysis of its estimated return on equity based on 2021 Form 2 data to all Supporting and Non-Opposing Parties on record as of November 1, 2022. This informal analysis is not required to be filed at the Commission.

**ARTICLE VIII
IMPLEMENTATION OF SETTLEMENT RATES**

A. Within thirty (30) days following the Effective Date, Bear Creek shall file the Tariff sheets in Appendix B hereto to be effective on the first day of the month following such filing.

**ARTICLE IX
STANDARD OF REVIEW**

A. Except as provided in Section 2 below, the standard for review for any proposed change to the terms of this Settlement shall be the “public interest” standard for review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.* and *Federal Power Commission v. Sierra Pacific Power Co.*⁹ In any such proceeding, Supporting and Non-Opposing Parties shall not support any such change to be made.

B. With respect to proposed changes to the terms of this Settlement sought by non-settling third parties or the Commission acting *sua sponte*, the standard of review shall be the just and reasonable standard.

⁹ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (“*Mobile-Sierra*”).

**ARTICLE X
SETTLED PRACTICE**

A. No resolution or provision in this Settlement shall be deemed to be a “settled practice.”

**ARTICLE XI
RESERVATIONS**

A. Settlement Has No Precedential Value

1. This Settlement is submitted under Rule 602 of the Commission’s Rules of Practice and Procedure. Until it becomes effective under Article IV, the Settlement and its contents shall be privileged and of no effect. Except as provided elsewhere in this Settlement, neither Bear Creek nor any Supporting or Non-Opposing Party shall be bound or prejudiced by any part of this Settlement unless this Settlement is approved in accordance with the procedures set out in Article IV.

2. This Settlement is made upon the express understanding that it constitutes a negotiated settlement and neither Bear Creek, Staff, nor any other party or person shall be deemed to have approved, accepted, agreed to, or consented to any principle or issue in these proceedings, or to have prejudiced positions taken or that may be taken in any other proceedings, except as otherwise expressly provided in this Settlement. Nor shall any rate design, cost-of-service, cost allocation, ratemaking, or Tariff principle or methodology underlying or supposed to underlie the rates and charges herein be treated as the “settled practice” in future rate proceedings by virtue of approval of this Settlement, except as otherwise expressly provided in this Settlement; provided that, nothing in this Settlement undermines or constitutes a lessening of a “settled practice” that may have existed independently of this Settlement.

3. This Settlement constitutes the full and complete agreement of Bear Creek and the Supporting and Non-Opposing Parties with respect to all issues raised in these proceedings and all provisions in this Settlement.

B. Effect of Approval of Settlement

1. The Commission's approval of this Settlement shall constitute:

- (i) Commission authorization and approval for Bear Creek to file tariff records to make the rate changes set forth in the Settlement, and implement Settlement Rates in accordance with Article VIII, all of the foregoing effective as of the time provided for herein without suspension (if so requested herein) and without conditions other than those specified herein; and
- (ii) Commission waiver of compliance, to the extent (if any) necessary, by Bear Creek, with the requirements of (a) Commission Rules and Regulations, policies, procedures, or practices, including those under the NGA and Natural Gas Policy Act, including but not limited to Parts 154, 157, 201 and 284, and (b) any provision of Bear Creek's Tariff, including any service agreement in effect, as necessary to carry out any provision of this Settlement on the Effective Date.

C. Conflicts

1. In the event of any conflict or inconsistency between this S&A and the Tariff records contained in Appendix B, the terms of such Tariff records shall govern and control as to the point of conflict.

2. In the event of conflict between terms contained in the Settlement and those of the attached Explanatory Statement, the terms of the Settlement control.

D. Defined Terms

1. All capitalized terms specifically defined herein shall have the meaning defined in this S&A regardless of the placement of the definition of such term in the document.

**ARTICLE XII
MISCELLANEOUS**

A. This Settlement has been negotiated and drafted through a collaborative process. No party shall be deemed the drafter of this Settlement, and this Settlement shall not be construed against any party as the drafter.

B. For purposes of this Settlement, the term “party” shall have the meaning provided in 18 C.F.R. § 385.102(c), and the term “participant” shall have the meaning provided in 18 C.F.R. § 385.102(b).

C. The provisions of the Settlement are not severable and may become effective only in accordance with the terms of the Settlement.

###

WHEREFORE, Bear Creek respectfully requests that the Commission approve this Settlement in its entirety, without modification.

Respectfully submitted,

/s/ Mosby Perrow

T. Brooks Henderson
Director, Rate & Regulatory Affairs
Bear Creek Storage Company, L.L.C.
Brookwood Office Center
569 Brookwood Village, Suite 749
Birmingham, AL 35209
(205) 325-3843
brooks_henderson@kindermorgan.com

Mosby Perrow
Deputy General Counsel, Vice President
Patricia S. Francis
Assistant General Counsel
Margaret G. Coffman
Assistant General Counsel
Michelle Grant
Assistant General Counsel
1001 Louisiana Street
Houston, TX 77002
(713) 420-3882
(205) 325-7696

(205) 325-7424
(713) 420-6680
mosby_perrow@kindermorgan.com
patricia_francis@kindermorgan.com
meghan_coffman@kindermorgan.com
michelle_grant@kindermorgan.com

*Attorneys for
Bear Creek Storage Company, L.L.C.*

May 21, 2019

APPENDIX A

Supporting and Non-Opposing Parties

The following parties in this proceeding either support or do not oppose the Settlement:

Alabama Municipal Distributors Group
Austell Gas System
Bear Creek Storage Company, L.L.C.
East Tennessee Group
EQT Energy, LLC
Municipal Gas Authority of Georgia
National Grid Gas Delivery Companies
Nicor Gas Company
NJR Energy Services Company
PSEG Energy Resources & Trade LLC
Southeast Alabama Gas District
Southern Natural Gas Company, L.L.C.
Tenaska Marketing Ventures
Tennessee Customer Group
Tennessee Gas Pipeline Company, L.L.C.
Tennessee Valley Authority

APPENDIX B

Clean Tariff Sheets

RATE SCHEDULE SS-P

STORAGE SERVICE

1. Availability

This Rate Schedule is available to Southern Natural Gas Company, L.L.C. and Tennessee Gas Pipeline Company, L.L.C. (hereinafter called "Customers"), if said Customers individually execute Service Agreements with Bear Creek Storage Company (hereinafter called "Bear Creek") in the form contained in this Tariff, which are accepted by Bear Creek and in which said Customers agree to purchase storage service subject to this Rate Schedule.

2. Applicability and Character of Service

This Rate Schedule shall apply to storage services rendered by Bear Creek to Customers under executed Service Agreements. Services rendered under this Rate Schedule shall consist of the injection and storage in the Pettit Reservoir of the Bear Creek Field by Bear Creek of gas tendered by Customers and accepted by Bear Creek, and the withdrawal and delivery by Bear Creek of such stored gas to Customers. Services rendered under this Rate Schedule, within the limitations hereinafter set forth, shall be firm and shall not be subject to curtailment or interruption except as provided in Section 11 of the General Terms and Conditions.

3. Rates

3.1 Monthly Charge. For each month commencing with the first month following the date on which Bear Creek notifies its Customers that it is ready to receive injections of Top Storage Gas in the Pettit Reservoir, each Customer shall pay to Bear Creek a charge which shall be the sum of a Storage Deliverability Demand Charge, a Storage

Capacity Demand Charge, and Injection and Withdrawal Commodity Charges

determined as follows:

- (1) Storage Deliverability Demand Charge: A charge of \$2.0603 per Dth of Maximum Daily Withdrawal Rate
- (2) Storage Capacity Demand Charge: A charge of \$.0158 per Dth of Maximum Storage Capacity Volume
- (3) Injection and Withdrawal Commodity Charges: A charge of \$.0054 per Dth of gas each Customer tenders for injection or withdrawal and Bear Creek accepts for injection or withdrawal for the account of said Customer during the month.

3.2 Injection Gas Retention. One and one-half (1.5) percent of the volume of gas each Customer tenders for injection into storage and Bear Creek accepts for injection for the account of said Customer on any given day shall be retained by Bear Creek as (i) fuel gas used to perform the injection service, and (ii) gas otherwise used or unaccounted for in operations.

3.3 Withdrawal Gas Retention. One (1) percent of the volume of gas each Customer requests to be withdrawn from storage and Bear Creek withdraws for the account of

said Customer on any given day shall be retained by Bear Creek as (i) fuel gas used to perform the withdrawal service, and (ii) gas otherwise used or unaccounted for in operations.

3.4 Annual Adjustment. At the conclusion of each Injection Period, the actual gas used as fuel gas by Bear Creek for injection service and withdrawal service will be assessed to each Customer on a gas-handled basis, and gas otherwise used or unaccounted for will be assessed to each Customer according to a percentage to be determined by dividing each Customer's Maximum Storage Capacity Volume by the Maximum Storage Capacity Volumes of all Customers receiving storage service from the Storage Reservoir; provided, however, such gas used or unaccounted for under this Section 3.4 shall not include any gas losses which are extraordinary losses. Such assessments will be balanced against the Injection Gas Retention and Withdrawal Gas Retention previously billed to each Customer, with the storage records duly debited and credited to reflect said adjustments. No later than December 31 of each year, Bear Creek shall file with the FERC the annual assessment to each Customer as provided above along with any corresponding workpapers and information in accordance with the requirements of Section 154.403(d) of the Commission's regulations supporting the true-up of such fuel and ordinary gas losses during the

previous annual period ending October 31 of each year. This annual assessment filing will be submitted to implement an annual adjustment, if such adjustment is applicable, and all interested parties will have the right to provide comments and/or protests for Commission resolution.

4. Minimum Bill

The minimum monthly bill shall be the sum of the Storage Demand Charge and the Storage Capacity Charge.

5. General Provisions

5.1 Injections and Withdrawals. Subject to the limitations and conditions hereinafter set forth, Bear Creek will inject into storage and withdraw from storage for the account of its Customers such volumes as its Customers nominate by proper notice to Bear Creek's dispatcher, subject to the qualifications set forth in Section 6.2 and 7.2. All injections into storage and withdrawals from storage will be deemed to have been made at uniform hourly rates.

5.2 Seasonal Deliveries. The Injection Period shall be the seven consecutive months beginning with April 1 and ending with the next succeeding October 31. The Withdrawal Period shall be the five consecutive months beginning with November 1 and ending with the next succeeding March 31. Notwithstanding the foregoing

designations, a Customer will be permitted, to the extent prudent operation allows, to make injections of gas during any Withdrawal Period or withdrawals of gas during any Injection Period.

- 5.3 Notice Required. At least four (4) hours prior to the beginning of a day on which there will be a requested change in gas deliveries, each Customer shall notify Bear Creek's dispatcher of the quantity of gas that said Customer desires to have Bear Creek inject into storage or withdraw from storage for its account. Bear Creek, at its option, may waive any part of the notice requirement upon request.

6. Injections Into Storage

- 6.1 General Procedure. During the Injection Period, a Customer may, after proper notification, tender Top Storage Gas for storage at such times and at such rates of injection as it may desire, up to such Customer's Maximum Daily Injection Rate, and until such Customer's Top Storage Gas Balance is equal to such Customer's Maximum Storage Capacity Volume as specified in its executed Service Agreement. Bear Creek shall not be obligated to inject and store gas for a Customer in excess of its Maximum Storage Capacity Volume.

6.2 Excess Tenders. If on any day a Customer offers to deliver Top Storage Gas for storage at an injection rate in excess of its Maximum Daily Injection Rate, Bear Creek shall, so long as prudent operation allows, accept such excess gas for injection. In the event Bear Creek cannot accept the total excess gas tendered by all Customers on a given day, the capacity to inject excess gas will be prorated to each Customer tendering excess gas on the basis of the ratio of the Maximum Daily Injection Rate of said Customer to the sum of the Maximum Daily Injection Rates of all other Customers tendering excess gas on said day.

6.3 Force Majeure. In the event a condition of force majeure prevents the injection into storage by Bear Creek of all volumes tendered for injection by Customers on a given day, Bear Creek shall prorate the volumes deliverable into storage by each Customer in proportion to each Customer's tendered volume on that day up to its Maximum Daily Injection Rate. If such condition of force majeure continues beyond one day, the provisions of Section 11.3 of the General Terms and Conditions shall govern injections into storage.

7. Withdrawals From Storage

- 7.1 General Procedure. During the Withdrawal Period, a Customer may, after proper notification, withdraw Top Storage Gas from storage at such times and at such rates of withdrawal as it may desire, up to the Maximum Daily withdrawal Rate and until said Customer has exhausted its Top Storage Gas Balance.
- 7.2 Excess Demands. If on any day a Customer proposes to withdraw Top Storage Gas from storage at a withdrawal rate in excess of its Maximum Daily Withdrawal Rate, Bear Creek shall, so long as prudent operation allows, permit such excess gas to be withdrawn. In the event Bear Creek cannot deliver the total gas requested by all Customers on a given day, the capacity to withdraw excess gas will be prorated to each Customer requesting excess gas on the basis of the ratio of the Maximum Daily Withdrawal Rate of said Customer to the sum of the Maximum Daily Withdrawal Rates of all Customers requesting excess gas on said day.
- 7.3 Force Majeure. In the event a condition of force majeure prevents the withdrawal from storage and the delivery to all Customers of all volumes nominated for withdrawal on a given day, Bear Creek shall prorate the volumes deliverable from storage to each Customer in proportion to each Customer's nominated withdrawal on that day up to its Maximum Daily Withdrawal Rate. If such condition of force

majeure continues beyond one day, the provisions of Section 11.3 of the General Terms and Conditions shall govern withdrawals from storage.

7.4 Use of Base Storage Gas. In order to assist either or both Customers in meeting their firm storage gas requirements after depletion of its Top Storage Gas Balance, Bear Creek may, upon request, permit, subject to the limitations contained herein, any Customer to utilize and withdraw a specified amount of the Base Storage Gas held by Bear Creek. Any withdrawals by a Customer in excess of its Top Storage Gas Balance shall be deemed to be made from Base Storage Gas. In the event Bear Creek permits a withdrawal of Base Storage Gas as provided herein, Bear Creek shall so long as prudent operation allows, specify such amount of Base Storage Gas and the times when and the withdrawal rates at which the same may be used and withdrawn, subject to the following limitation that any such withdrawals of the Base Storage Gas shall not impair the ability of Bear Creek to provide the applicable Maximum Daily Withdrawal Rate to the other Customer. A Customer which shall so use any Base Storage Gas shall pay the injection and withdrawal charges specified in Section 3.1 in addition to the fuel gas required in Section 3.3. The replacement of Base Storage Gas

shall be accomplished with the first gas thereafter delivered into storage by such Customer and shall be completed in no event later than the following October 31.

8. Storage Inventory Account

8.1 Top Storage Gas Balance. A Storage Inventory Account shall be maintained by Bear Creek for each Customer which shall reflect said Customer's current daily Top Storage Gas Balance. In the event that a Customer makes emergency withdrawals of Base Storage Gas pursuant to Section 7.4 of this Rate Schedule, Bear Creek shall reflect said emergency gas withdrawals and penalty gas assessments as a negative balance in said Customer's Storage Inventory Account.

8.2 Daily Adjustment. Each day pursuant to the Dispatching Procedures set forth in Section 17 of the General Terms and Conditions, Bear Creek, in undertaking to satisfy the nominations for injections and withdrawals made by said Customers, will adjust the Storage Inventory Accounts of said Customers to appropriately reflect the changes in the Top Storage Gas Balances of said Customers resulting from the satisfaction of all requests for injections and withdrawals on such day and will then actually deliver and/or receive at the Bear Creek Area Delivery Point the net volumes deemed adequate by Bear Creek to satisfy all such requests on such day.

9. General Terms and Conditions

The General Terms and Conditions are applicable to this Rate Schedule and are hereby made

a part hereof.

APPENDIX B

Marked Tariff Sheets

RATE SCHEDULE SS-P

STORAGE SERVICE

1. Availability

This Rate Schedule is available to Southern Natural Gas Company, L.L.C. and Tennessee Gas Pipeline Company, L.L.C. (hereinafter called "Customers"), if said Customers individually execute Service Agreements with Bear Creek Storage Company (hereinafter called "Bear Creek") in the form contained in this Tariff, which are accepted by Bear Creek and in which said Customers agree to purchase storage service subject to this Rate Schedule.

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This Rate Schedule shall apply to storage services rendered by Bear Creek to Customers under executed Service Agreements. Services rendered under this Rate Schedule shall consist of the injection and storage in the Pettit Reservoir of the Bear Creek Field by Bear Creek of gas tendered by Customers and accepted by Bear Creek, and the withdrawal and delivery by Bear Creek of such stored gas to Customers. Services rendered under this Rate Schedule, within the limitations hereinafter set forth, shall be firm and shall not be subject to curtailment or interruption except as provided in Section 11 of the General Terms and Conditions.

3. Rates

3.1 Monthly Charge. For each month commencing with the first month following the date on which Bear Creek notifies its Customers that it is ready to receive injections of Top Storage Gas in the Pettit Reservoir, each Customer shall pay to Bear Creek a charge which shall be the sum of a Storage Deliverability Demand Charge, a Storage

Capacity Demand Charge, and Injection and Withdrawal Commodity Charges

determined as follows:

- (1) Storage Deliverability Demand Charge: A charge of \$2.212.0603 per McfDth of Maximum Daily Withdrawal Rate
- (2) Storage Capacity Demand Charge: A charge of \$.017.0158 per McfDth of Maximum Storage Capacity Volume
- (3) Injection and Withdrawal Commodity Charges: A charge of \$.0055.0054 per McfDth of gas each Customer tenders for injection or withdrawal and Bear Creek accepts for injection or withdrawal for the account of said Customer during the month.

3.2 Injection Gas Retention. One and one-half (1.5) percent of the volume of gas each Customer tenders for injection into storage and Bear Creek accepts for injection for the account of said Customer on any given day shall be retained by Bear Creek as (i) fuel gas used to perform the injection service, and (ii) gas otherwise used or unaccounted for in operations.

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previous annual period ending October 31 of each year. This annual assessment filing will be submitted to implement an annual adjustment, if such adjustment is applicable, and all interested parties will have the right to provide comments and/or protests for Commission resolution.

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6.2 Excess Tenders. If on any day a Customer offers to deliver Top Storage Gas for storage at an injection rate in excess of its Maximum Daily Injection Rate, Bear Creek shall, so long as prudent operation allows, accept such excess gas for injection. In the event Bear Creek cannot accept the total excess gas tendered by all Customers on a given day, the capacity to inject excess gas will be prorated to each Customer tendering excess gas on the basis of the ratio of the Maximum Daily Injection Rate of said Customer to the sum of the Maximum Daily Injection Rates of all other Customers tendering excess gas on said day.

6.3 Force Majeure. In the event a condition of force majeure prevents the injection into storage by Bear Creek of all volumes tendered for injection by Customers on a given day, Bear Creek shall prorate the volumes deliverable into storage by each Customer in proportion to each Customer's tendered volume on that day up to its Maximum Daily Injection Rate. If such condition of force majeure continues beyond one day, the provisions of Section 11.3 of the General Terms and Conditions shall govern injections into storage.

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- 7.2 Excess Demands. If on any day a Customer proposes to withdraw Top Storage Gas from storage at a withdrawal rate in excess of its Maximum Daily Withdrawal Rate, Bear Creek shall, so long as prudent operation allows, permit such excess gas to be withdrawn. In the event Bear Creek cannot deliver the total gas requested by all Customers on a given day, the capacity to withdraw excess gas will be prorated to each Customer requesting excess gas on the basis of the ratio of the Maximum Daily Withdrawal Rate of said Customer to the sum of the Maximum Daily Withdrawal Rates of all Customers requesting excess gas on said day.
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9. General Terms and Conditions

The General Terms and Conditions are applicable to this Rate Schedule and are hereby made

a part hereof.

APPENDIX C

Derivation of Settlement Rates

BEAR CREEK STORAGE COMPANY

Docket No. RP19-51

Rate Design

	<u>Total</u>	Storage Deliverability Demand <u>Charge</u>	Storage Capacity Demand <u>Charge</u>	Storage Injection/ Withdrawal Commodity <u>Charge</u>
Cost of Service	\$25,800,000	\$12,621,216	\$12,621,216	\$557,568
Billing Determinants		6,126,000 dth	796,380,000 dth	103,253,413 dth
Rates Per Dth		\$2.0603	\$0.0158	\$0.0054

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Bear Creek Storage Company, L.L.C.

)

Docket Nos. RP19-51-000

STATEMENT OF REFERENCES

In accordance with the provisions of Rule 602(c)(1)(iii) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.602(c)(1)(iii) (2018), Bear Creek Storage Company, L.L.C. ("Bear Creek") hereby submits in summary form this Statement of References to documents relevant to the Offer of Settlement that accompanies this submission. Bear Creek states that the documents supporting this Offer of Settlement are: (1) Bear Creek's filing of its FERC Form No. 501-G filed on October 11, 2018 in the above captioned docket; (2) the Commission's January 16, 2019 Order Instituting Investigation and Setting Matter for Hearing Pursuant to Section 5 of the Natural Gas Act, 166 FERC ¶ 61,034 (2019); (3) Bear Creek's cost and revenue study filed in the above-captioned docket on April 1, 2019; (4) the attached Offer of Settlement, including Appendices; (5) the Explanatory Statement; (6) any comments filed on the Offer of Settlement; (7) and any other record evidence to the extent it is relevant to this Offer of Settlement.

Respectfully submitted,

/s/ Mosby Perrow

T. Brooks Henderson
Director, Rate & Regulatory Affairs
Bear Creek Storage Company, L.L.C.
Brookwood Office Center
569 Brookwood Village, Suite 749
Birmingham, AL 35209
(205) 325-3843
brooks_henderson@kindermorgan.com

Mosby Perrow
Deputy General Counsel, Vice President
Patricia S. Francis
Assistant General Counsel
Margaret G. Coffman
Assistant General Counsel
Michelle Grant
Assistant General Counsel
1001 Louisiana Street
Houston, TX 77002

(713) 420-3882

(205) 325-7696

(205) 325-7424

(713) 420-6680

mosby_perrow@kindermorgan.com

patricia_francis@kindermorgan.com

meghan_coffman@kindermorgan.com

michelle_grant@kindermorgan.com

Attorneys for

Bear Creek Storage Company, L.L.C.

May 21, 2019