



Southern Natural Gas
Company, L.L.C.
a Kinder Morgan operated company

September 7, 2018

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

Re: Docket No. RP18-
Southern Natural Gas Company, L.L.C.
Request for Waiver of Form No. 501-G

Dear Ms. Bose:

Southern Natural Gas Company, L.L.C. (“SNG”) is requesting a waiver of Section 260.402(b) of the Commission’s Regulations to file the Form No. 501-G (“Form”). Per FERC Order No. 849 dated July 18, 2018 in Docket No. RM18-11 (“Final Rule”), SNG is on the schedule to file the Form on December 6, 2018. As explained in Paragraph No. 162 of the Final Rule, a pipeline can ask for a waiver to file the Form if it believes its settlement filed before March 26, 2018 (date that the Notice of Proposed Rulemaking in Docket No. RM18-11 (“NOPR”) was published in the Federal Register) reflects the Tax Cuts and Jobs Act and/or the Federal Energy Regulatory Commission’s (“FERC”) Revised Policy Statement¹ and Opinion No. 511-C² concerning income tax allowances following the decision of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *United Airlines*.³ SNG believes a waiver is justified for the following reasons:

1. SNG filed its rate case settlement in Docket No. RP18-556 on March 12, 2018 with the FERC (“SNG Settlement”), which was only three days before the NOPR was issued on March 15, 2018, and only fourteen days before the NOPR was published in the Federal Register on March 26, 2018. Accordingly, the SNG Settlement was filed only weeks before the exception referenced in Section 260.402(b)(ii) which specifies that pipelines with rate case settlements filed after March 26, 2018 do not need to file the Form.
2. The FERC approved the SNG Settlement on May 30, 2018, which was after the March 26, 2018 date for which an exception for filing the Form is given under the regulations. Parties had a chance in the case of the SNG Settlement, even though it was technically filed prior to the notice date of the NOPR from which the Final Rule derived, to make comments in SNG’s proceeding after the March 26, 2018 notice date

¹ *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).

² *SFP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

³ *United Airlines, Inc. v. FERC*, 827 F.3d 122 (D.C. Cir. 2016). For purposes of this filing, the Revised Policy Statement, *United Airlines*, and Opinion No. 511-C will collectively be referred to as “*United Airlines* Issuances.”

and prior to the Settlement Order, but no such comments were raised objecting to the SNG Settlement in light of the terms of the NOPR.

3. Most significantly, the SNG Settlement was reached in March, 2018, after the December, 2017, passage of the Tax Cuts and Jobs Act, such that all parties were on notice of the details of the Tax Cuts and Jobs Act. Specifically, the SNG Settlement explicitly recognizes in Article III D., that the SNG Settlement reflects the Tax Cuts and Jobs Act with the following wording:

SNG and the Supporting/Non-Opposing Participants recognize that the Settled Matters and 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 Tax Cuts and Jobs Act of 2017 (“TCJA”) and an amortization of excess deferred income taxes arising from such decrease as part of an overall black box settlement.

The SNG Settlement provides for a significant rate decrease for SNG’s transportation and storage customers, with general system-wide transportation and storage rates decreasing by 1% effective September 1, 2018 and by an additional 7% effective September 1, 2019, for an aggregate rate reduction of 8%. Thus, the SNG Settlement meets the criteria highlighted by the Commission as eligible for a waiver because there is no justification to make any further changes in SNG’s rates other than the reduction that is already incorporated in the SNG Settlement.

4. Also, the SNG Settlement contains a rate moratorium up to September 1, 2021, so SNG would not be proposing to implement a reduction in rates, even if it were to file a Form 501-G. Therefore, a waiver is warranted because the purpose of the filing is limited. Customers and interested parties had the opportunity to recently review much more extensive and relevant data than the Form 501-G contents regarding the derivation of SNG’s rates prior to the filing of the SNG Settlement. All of the parties to the SNG Settlement agreed on the terms of the black box settlement with full understanding of the implications of the Tax Cuts and Jobs Act and they agreed upon the term for the rate moratorium.
5. Finally, SNG is not a master limited partnership. SNG is a partnership owned 50% by Kinder Morgan, Inc. and 50% by Southern Company (which are both C corporations and pay income taxes). SNG is thus organized as a pass-through entity all of whose income or losses are consolidated on the federal income tax return of its corporate parents. As explained in Paragraph No. 32 of the Final Rule, the Final Rule clarifies that a natural gas company organized as a pass-through entity is considered subject to the federal corporate income tax if all of its income or losses are consolidated on the federal income tax return of its corporate parent and thus such a pass-through entity is eligible for a tax allowance. Therefore, the issues raised by the *United Airlines* decision are not applicable to SNG.

Given the above reasoning and support, SNG requests a waiver to be issued by November 1, 2018 of the requirement to file the Form.

Copies of this filing are being made at SNG's offices in Birmingham, Alabama, and electronically mailed to SNG's customers and to interested state commissions.

The names, titles, and mailing addresses of the persons to whom communications concerning this filing are to be addressed and to whom service is to be made are as follows:

T. Brooks Henderson
Director – Rates and Regulatory
Southern Natural Gas Company, L.L.C.
Post Office Box 2563
Birmingham, Alabama 35202-2563
(205) 325-3843
brooks_henderson@kindermorgan.com

Patricia S. Francis
Assistant General Counsel
Southern Natural Gas Company, L.L.C.
Post Office Box 2563
Birmingham, Alabama 35202-2563
(205) 325-7696
patricia_francis@kindermorgan.com

Respectfully submitted,

SOUTHERN NATURAL GAS COMPANY, L.L.C.

/s/ T. Brooks Henderson
T. Brooks Henderson
Director – Rates and Regulatory
Southern Natural Gas Company, L.L.C.
Post Office Box 2563
Birmingham, Alabama 35202-2563
(205) 325-3843
brooks_henderson@kindermorgan.com