THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Wyoming Interstate Company, L.L.C.) Docket No. RP19-420-000

MOTION FOR LEAVE TO ANSWER AND ANSWER OF WYOMING INTERSTATE COMPANY, L.L.C

Pursuant to Rules 212 and 213(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[1] Wyoming Interstate Company, L.L.C. ("WIC") hereby requests leave to answer and answers[2] the "Comments of Mercator Energy LLC" ("Comments") filed on December 18, 2018 in the above-referenced docket. As explained below, the Commission should reject Mercator's arguments. The Commission's long-standing policy on refraining from disrupting rate moratoria applies to WIC's currently effective settlement. As such, no further action is warranted under the Commission's stated process for this proceeding. Granting Mercator's requested action to initiate a rate investigation would constitute an extraordinary departure from the Commission's policy and undermine its sound policy goal of promoting settlements as a consensual means for resolving disputed issues before the Commission.

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1 18 C.F.R. §§ 385.212, 385.213(a)(2) (2018).

2 Rule 213(a)(2) provides that answers to protests are not generally allowed, "unless otherwise ordered by the decisional authority." 18 C.F.R. § 385.213(a)(2) (2011). However, the Commission does permit the filing of answers to protests where such an answer responds to a new issue raised, will lead to a more accurate and complete record, or will help the Commission in the decision-making process. See, e.g., *El Paso Natural Gas Co.*, 104 FERC ¶ 61,303 at P 11 (2003); *Kern River Gas Transmission Co.*, 103 FERC ¶ 61,341 at P 9 (2003). WIC's pleading provides relevant information and will assist the Commission in reaching a decision in this proceeding. Accordingly, the Commission should grant this motion to permit this answer.

I. Background

On July 18, 2018, the Commission issued its final rule, Order No. 849, in Docket RM18-11-000, et al., to be codified in part, at 18 C.F.R. § 260.402 ("Final Rule").[3] In its Final Rule, the Commission generally required interstate pipelines to make a one-time informational filing in the form of the new FERC Form 501-G ("Form 501-G") to evaluate the impact of the Tax Cuts and Jobs Act on interstate natural gas pipelines' revenue requirements.[4] In addition, the Commission provided four options each natural gas pipeline may choose from to address the changes to the pipelines' revenue requirements as a result of the income tax reductions.[5] In the third option, the Commission permitted pipelines to explain why no rate adjustment is needed. The Commission cited a settlement with a rate moratorium that prohibited rate changes at this time as an example of such an explanation because of its long-standing policy[6] of not modifying rates in settlements with rate moratoria.[7]

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3 *Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate*, Order No. 849, 83 Fed. Reg. 36672 (July 30, 2018), FERC Stats. & Regs., Regs. Preambles ¶ 31,404 (2018) ("Final Rule").

4 Final Rule at P 2.

5 *Id.*

6 *See Iroquois Gas Transmission Sys. L.P*. 69 FERC ¶ 61,165, at 61,631(1994) ("Provisions in settlements insulating their rates from change due to subsequent Commission and Court orders in other proceedings are essential for ensuring that settlements accomplish the purpose of providing rate certainty. Without such provisions, the utility of settlements for resolving cases would be severely jeopardized. No settlement could ever be truly final, because the rates resulting from the settlement would always be subject to reopening based on subsequent Commission or Court decisions.)", *reh'g denied*, 70 FERC ¶ 61,631 (1995); *Tex. E. Transmission Corp. v. FERC*, 306 F.2d 345, 348 (5th Cir. 1962) (the Commission supported its decision not to modify a settlement on the basis that this is "consistent with the principle that approved settlements are binding on the parties and should not be modified simply because it later appears that the result is not as good as it ought to have been.") (internal quotes omitted); *JMC Power Projects v. Tennessee Gas Pipeline Co.*, 69 FERC ¶ 61,162 (1994), *reh'g denied*, 70 FERC ¶ 61,168, at 61,528 (1995), *aff'd sub nom., Ocean States Power v. FERC*, 84 F.3d 1453 (D.C. Cir. 1996) (decision without published opinion); *Natural Gas Pipeline Co.*, 162 FERC ¶ 61,009, at P 29 (2018) (Commission stated that in deciding whether to initiate an NGA section 5 rate investigation during a rate moratorium, "the Commission would take into account the parties' interest in maintaining a settlement.").

7 Final Rule at P 217.

On December 6, 2018, WIC filed its completed Form 501-G[8] and chose option 3. Consistent with the Commission's example, WIC explained in the transmittal letter ("Transmittal") accompanying its Form 501-G that it currently has a settlement in effect[9] with rate moratoria precluding rate changes along with a "come back" provision.[10] WIC noted that the only "industry-wide" requirement in the Final Rule was the filing of a Form 501-G and that by filing the form, WIC had fulfilled that requirement.[11] Finally, WIC argued that the Commission should continue to respect the settlement consistent with its long-standing policy not to modify rates in settlements with rate moratoria.[12]

On December 18, 2018, the due date for comments for WIC's Form 501-G filing, only Mercator, who is not a shipper on WIC, submitted comments.[13] In its Comments, Mercator alleges that the filing of the Form 501-G is "merely the beginning" and if the filing indicates the Commission should act there is nothing in the currently effective settlement that precludes the Commission from taking action.[14] Finally, Mercator avers the Commission's policy of recognizing the sanctity of settlements is inapplicable because the currently effective settlement permits a change in settlement rates by an investigation pursuant to section 5 of the Natural Gas Act[15] ("section 5") proceeding initiated as part of the Form 501-G process and requests such a proceeding be initiated.[16]

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8 "FERC Form No. 501-G," 2-3, Docket No. RP19-420-000 (Dec. 6, 2018). The filing included a Transmittal Letter hereinafter referred to as "Transmittal" and two different file formats of the Form 501-G.

9 *See Wyoming Interstate Co.*, 161 FERC ¶ 61,223 (2017).

10 Transmittal at 3.

11 *Id.* at 3-4.

12 Transmittal at 4.

13 Mercator is a consultant and gas broker. Although not stated in the pleading, Mercator previously represented Moriah Powder River LLC which was a Supporting or Non-Opposing Party in the currently effective settlement. Mr. John Harpole of Mercator and Mr. William F. Demerest were listed as the recipients of service for Moriah in its intervention. *See* "Motion of Moriah Powder River LLC to Intervene," Docket No. RP17-302-000 (Feb. 14, 2017).

14 Comments at 3.

15 15 U.S.C. § 717d.

16 *Id.*

II. Answer

WIC's currently effective settlement provides rate certainty by barring parties from initiating or advocating for changes to the settlement rates through a Section 5 rate proceeding during the moratorium. The other parties have received the benefit of their bargain in the form of a rate reduction. WIC's benefit is rate certainty and the avoidance of further litigation. Mercator seeks to deprive WIC of the benefits of the settlement even though shippers are paying the reduced rates. The Commission should not countenance such behavior.

The settling parties recognized that a change in federal corporate tax rates was a possibility and agreed to a very specific and narrow requirement:

> Notwithstanding anything in this S&A to the contrary, WIC shall implement any lawful and applicable Commission imposed industry-wide requirements pertaining to (i) statutory changes to corporate income tax rates or (ii) changes in policy regarding income tax allowance as of the dates specified in the industry-wide requirements. Also, notwithstanding anything in section 3.1(b) of this S&A, a change to WIC's rates under this section 4.2(b) shall not be considered as an action qualifying under section 3.1(b) that otherwise would terminate this S&A under section 3.1(b). Nothing in this S&A shall preclude a Supporting or Non-Opposing Party from advocating whatever position it deems appropriate in any Commission rulemaking or policymaking proceeding that discusses industry-wide changes to the Commission's income tax policies.[17]

Thus, for purposes of the discussion here, the key prerequisite to any rate change is that it must be a Commission imposed industry-wide requirement under the plain and unambiguous language of the S&A. The only industry-wide requirement is to file Form 501-G which WIC has done.

Mercator generally argues that the filing of Form 501-G is not "exhaustive compliance" with the Commission's industry wide requirement and that the settlement

[17] S&A at 7 (emphasis added).

contemplated an exception to the rate-filing moratorium to address the possibility of a tax rate reduction.[18] Simply put, Mercator's arguments are contrary to Order 849 and the plain language of the Settlement.

Mercator appears to conflate the requirements of the Form 501-G process and the requirements needed to permit a rate change under the moratoria. The filing was in compliance with the Final Rule and is not a rate change itself. Nowhere in the Final Rule is there a Commission imposed industry-wide requirement to change rates. Indeed, the Final Rule recognized that a rate reduction might not be appropriate for all pipelines.[19] Thus, the Final Rule does not qualify as an exception to the prohibitions to changes in the settlement rates.

Finally, no reason has been advanced as to why the Commission should depart from its long-standing policy to refrain from modifying the rates in a settlement where a moratorium precludes the parties from changing the settlement rates. As part of a settlement that was the result of extensive negotiations and significant compromises and trade-offs on complex issues, the parties established rate certainty in the S&A that includes a very narrow exception that, as discussed above, is inapplicable to the section 5 proceeding requested by Mercator. Such a section 5 proceeding would constitute a significant departure from the Commission's long-standing policy which promotes consensual resolutions before the Commission. This departure would only serve to diminish the value of settlements and the ability of litigants to resolve issues through settlement in the future.

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[18] *Id.*

[19] *See* Final Rule at P 225.

III. Conclusion

The Commission should reject Mercator's request to initiate an investigation under section 5 of WIC's rates. In the Form 501-G process, the Commission has stated it would follow its long-standing policy to refrain from modifying rates of a settlement with a moratorium in which the parties are precluded from modifying the rates. Contrary to Mercator's proffered interpretation, the plain language of the S&A only permits changes to the settlement rates that are Commission imposed industry-wide requirements. Any change in an individual section 5 proceeding required by the Commission simply would not meet that requirement. Finally, Mercator has failed to otherwise justify a departure in the Commission's long-standing policy to honor the sanctity of settlements.

Respectfully submitted,

/s/ _____

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January 2, 2019

Certificate of Service

I hereby certify that I have this day caused a copy of the foregoing document to be served upon each person designated on the official service list compiled by the Commission's Secretary in this proceeding in accordance with Section 385.2010 of the Commission's Rules of Practice and Procedures.

Dated at Colorado Springs, Colorado as of this 2nd day of January, 2019.

/s/
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