137 FERC ¶ 61,134
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Bear Creek Storage Company L.L.C. Docket No. RP12-121-000

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

(Issued November 17, 2011)

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

I. Background

2. Bear Creek provides individually certificated storage service under Part 157 of the Commission's Regulations. Bear Creek is owned 50 percent each by Southern Natural Gas Company (Southern) and Tennessee Gas Pipeline Company (Tennessee), both subsidiaries of El Paso Corporation (El Paso). Southern operates Bear Creek, which provides storage service in Louisiana to Southern and Tennessee, who in turn each utilize the storage service to provide contract storage service to certain of their customers. The costs of operating the facility are included in the derivation of Tennessee's and Southern's rates.

3. Bear Creek's current rates were established as part of a settlement approved by Commission on August 1, 1989.[1] The settlement was the result of a NGA section 5 proceeding initiated by the Commission approximately 22 years ago.[2]

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[1] *Bear Creek Storage Co.*, 48 FERC ¶ 61,216 (1989).

[2] *Bear Creek Storage Co.*, 46 FERC ¶ 61,215 (1989).

II. <u>Discussion</u>

4. In March 2008, the Commission issued Order No. 710,[3] 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), and 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 Bear Creek in its Form 2 for the years 2009 and 2010. Based upon our review of this cost and revenue information, the Commission estimates Bear Creek's return on equity for those calendar years to be 22.43 percent, and 29.16 percent, respectively. Based upon these figures, the Commission is concerned that Bear Creek's level of earnings may be substantially exceeding 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.[4]

6. Based upon the information provided by Bear Creek in its Form 2 for 2009, the Commission calculated Bear Creek's 2009 cost of service to be $17.3 million, excluding equity return and related income taxes.[5] Next, the Commission compared Bear Creek's

[3] *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008), *reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 (2008), *remanded sub nom. American Gas Ass'n v. FERC*, 593 F.3d 14 (D.C. Cir. 2010), *order on remand*, Order No. 710-B, 134 FERC ¶ 61,033 (2011), *order on reh'g*, Order No. 710-C, 136 FERC ¶ 61,109 (2011).

[4] Details of the Commission's derivation of the return on equity are fully set forth in the Appendix to this order. The Appendix, where applicable, provides a page and line reference to Bear Creek's Form 2 for 2009 and 2010 for each item utilized by the Commission in its calculations.

[5] Because Bear Creek 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 Bear Creek. That is among the issues set for hearing in this order and should be decided consistent with the Commission's capital structure

(continued…)

cost of service to Bear Creek's 2009 Form 2 adjusted revenues of $36.7 million. The difference between Bear Creek's adjusted reported revenues and the estimated cost of service is $19.4 million, before income taxes. After taking into consideration income taxes, Bear Creek's return totals approximately $11.6 million for 2009. This equates to an estimated return on equity of 22.43 percent.

7. An identical analysis, based upon the cost and revenue information provided by Bear Creek in its 2010 Form 2, generated an even higher estimated return on equity. Based upon Bear Creek's Form 2 for 2010, the Commission calculated Bear Creek's cost of service for 2010 to be $12.74 million, exclusive of equity return and related income taxes. Next, the Commission compared this cost of service to Bear Creek's 2010 Form 2 reported revenues, as adjusted, which total $37.96 million. The difference between Bear Creek's adjusted reported revenues and the estimated cost of service is $25.22 million, before income taxes. After taking into consideration income taxes, Bear Creek's net return totals approximately $15.13 million. This equates to an estimated return on equity of 29.16 percent.

8. The Commission finds that, based upon its preliminary analysis of the information provided by Bear Creek in its Form 2 for the calendar years 2009 and 2010, Bear Creek's currently effective tariff rates may be unjust and unreasonable. The Commission's analysis of this information indicates that Bear Creek's currently effective tariff rates may allow Bear Creek to recover revenue substantially in excess of its estimated cost of service. While NGA section 4 permits Bear Creek to seek authorization from the Commission to adjust its rates to establish just and reasonable rates, Bear Creek has not filed a general NGA section 4 rate in the 22 years since the 1989 settlement of the previous section 5 proceeding concerning its rates. Accordingly, the Commission will initiate an investigation to examine the justness and reasonableness of Bear Creek's rates pursuant to section 5 of the NGA and set the matter for hearing.[6]

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policies. *See Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084, at 61,413-5 (1998), *reh'g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied*, *North Carolina Utilities Commission v. FERC*, D.C. Cir. Case No. 99-1037 (February 7, 2000) (per curiam).

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

9. As the Commission has done in other cases initiating section 5 investigations of a pipeline's rates,[7] it directs Bear Creek 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.[8] Because the Commission is seeking actual cost and revenue information, the information submitted by Bear Creek 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, Bear Creek should not file nine months of post-base-period adjustment data required by section 154.303(a).[9] The cost and revenue study required by this paragraph will provide a baseline of actual annual costs and revenues, which can then be used as a starting point for further analysis of Bear Creek's costs and revenues.[10] Additionally, because Bear Creek does not have an NGA section 4 burden in this section 5 proceeding and will be filing testimony in response to other parties, Bear Creek does not need to file the Statement P required by section 154.312(v) of the Commission's regulations at this juncture.[11]

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[7] *See 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 Gas*); *Northern Natural Gas Co.*, 129 FERC ¶ 61,159 (2009), *reh'g denied*, 130 FERC ¶ 61,134 (2010) (*Northern Natural*); *Great Lakes Gas Transmission Limited Partnership*, 129 FERC ¶ 61,160 (2009), *reh'g denied*, 130 FERC ¶ 61,132 (2010) (*Great Lakes*). 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.

[8] 18 C.F.R. § 154.312 (2011).

[9] However, Bear Creek 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 month 5 of the 12-month period, an adjustment to the cost of service could be made to annualize the impact of this cost change.

[10] *Kinder Morgan*, 134 FERC ¶ 61,061 at P 45.

[11] *See Pub. Serv. Comm'n of New York*, 115 FERC ¶ 61,368, at P 6 (2006).

10. However, as we have done in other recent section 5 proceedings, in addition to the cost and revenue study required above, Bear Creek may file a separate cost and revenue study that does reflect adjustments for changes Bear Creek projects will occur during a time frame which may reasonably be taken into account in this proceeding, as established in the following paragraph.[12] Given this expedited hearing schedule, this abbreviated adjustment period should be limited to a six-month period after the 12-month base period, to permit the parties to perform discovery and prepare testimony for the hearing based on actual data for this test period.[13]

11. Finally, due to the potential for continued over recovery of revenues, the Commission will establish 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 Administrative Law Judges' Track II Hearing Timeline is reasonable. However, to provide more time to 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.

The Commission orders:

(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

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

[13] For a detailed explanation why the adjustment period in the section 5 proceeding differs from the adjustment period in a section 4 proceeding *see Kinder Morgan*, 134 FERC ¶ 61,061 at P 34-51. *See also Ozark*, 134 FERC ¶ 61,062 at P 17-36, *reh'g granted in part and denied in part*, 134 FERC ¶ 61,193 at P 26. Given that the hearing schedule in this case is set to begin on the date the cost and revenue study is due (*see* P 11 *infra*), the Commission finds that it is appropriate to extend the adjustment period from approximately 4 months, as was the case in *Ozark* and *Kinder Morgan*, to 6 months. In *Ozark* and *Kinder Morgan*, the Commission permitted an adjustment period, but the adjustment period was abbreviated to 4 months based on the hearing schedule established in those proceedings. In this case, the Commission is ordering the hearing schedule to begin 75 days later than the hearing schedule ordered in *Ozark* and *Kinder Morgan*. Therefore, it is appropriate to extend the adjustment period to the same extent the hearing schedule is extended.

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 Bear Creek'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 and that an initial decision be issued in this proceeding within 47 weeks of the date the cost and revenue study is due, as discussed in the body of this order.

(D) Bear Creek 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. 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 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

By the Commission. Commissioner Spitzer is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Bear Creek Storage Company, L.L.C.	**Form 2 Reference**	2010	2009
Rate Base			
Gas Plant in Service	p. 110; ln. 2, col. C	$161,966,819	$161,705,604
Accumulated Depreciation	p. 110; ln. 5	($160,025,103)	($159,426,622)
Gas Stored Underground			
Account 117.1 (Base Gas)	p. 220; ln. 5, col. b	$102,732,246	$102,732,246
Account 117.2 (System Balancing)	p. 220; ln. 5, col. c	$0	$0
Working Capital			
Prepayments	p. 230a; ln. 6	$0	$0
Materials and Supplies	p. 111; ln. 45	$2,330,950	$2,220,832
ADIT			
Account 190	p. 235; ln. 7, col. k	$0	$163
Account 282	p. 275; ln. 7, col. k, as adjusted on p. 552.1	($3,237,773)	($3,450,328)
Account 283	p. 277; ln. 7, col. K	$163	($1,661)
Regulatory Assets	p. 232; ln. 40, col. g	$50,225	$59,219
Regulatory Liabilities	p. 278; ln. 45, col. g	($43,988)	$0
Total Rate Base		$103,773,539	$103,839,453
Capital Cost	p. 218a		
Cost of Debt[(1)]		6.04%	6.04%
Capitalization[(2)]	p. 218a		
Debt		50.00%	50.00%
Equity		50.00%	50.00%
Weighted Cost of Debt		3.02%	3.02%
Cost of Service			
Interest on Debt		$3,133,961	$3,135,951
Other Taxes	p. 114; ln. 14, col. c	$2,546,048	$2,428,993
Depreciation	p. 337; ln. 12, col. h	$649,203	$4,930,387
O&M			
Production & Gathering	p. 317; ln. 30	$0	$0
Net Storage Costs	p. 322; ln. 177 (less ln. 106)	$3,820,272	$5,358,809
Net Transmission Costs	p. 323; ln. 201 (less ln. 184)	$0	$0
A&G	p. 325; ln. 270	$2,590,662	$1,419,158
Total Cost of Service Excl. Return and Taxes		$12,740,146	$17,273,298
Operating Revenue			
Other Revenues	p. 301; ln. 21, col. F	$37,961,300	$36,683,963
ACA Revenues	p. 300; ln. 21, col. d	$0	$0
(Less) Sales for Resales (Act. 480-484)	p. 301; ln. 4, col. f	$0	$0
(Less) Commercial & Industrial Sales	p. 301; ln. 2, col. f	$0	$0
(Less) Gas Sales from Account 495	p. 308; ln. 10	$0	$0
Total Adjusted Revenue		$37,961,300	$36,683,963
Income			
Income Before Income Taxes		$25,221,154	$19,410,665
Composite Income Tax		$10,088,462	$7,764,266
Net Income		$15,132,692	$11,646,399
Total Estimated ROE		29.16%	22.43%
Composite Tax Rate		40.00%	40.00%

[(1)]The capital costs were not listed in the Form 2; debt interest rates approximated upon Moody's Analytics' CreditTrends for seasoned public utility bonds during December 2010
[(2)] The capitalization on p. 218a of the Form 2 reflects 100 percent equity; a hypothetical capital structure was used.