175 FERC ¶ 61,175
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

Southern Star Central Gas Pipeline, Inc. Docket No. RP21-778-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS, SUBJECT TO REFUND, AND ESTABLISHING HEARING AND PAPER HEARING PROCEDURES

(Issued May 28, 2021)

1. On April 30, 2021, Southern Star Central Gas Pipeline, Inc. (Southern Star) filed revised tariff records[1] pursuant to section 4 of the Natural Gas Act (NGA)[2] and Part 154 of the Commission's regulations.[3] Southern Star proposes, in its Primary Case, increases to its transportation and storage service rates, revisions to the General Terms and Conditions (GT&C) of its FERC Gas Tariff, and implementation of a modernization cost recovery mechanism (CRM). In its Preferred Case, Southern Star proposes rate design changes filed as *pro forma* tariff records, which include changes to Southern Star's Rate Zone Boundary and conversion of the Storage Reservation – Capacity charge from a storage balance charge to a contractual Maximum Storage Quantities charge.

2. Southern Star requests acceptance and suspension of the Primary Case tariff records for five months, subject to refund to become effective November 1, 2021. Southern Star states that the full five-month suspension period is consistent with the Commission's longstanding practice with respect to proposed rates in general NGA section 4 rate filings, and also ensures that the proposed rates would only be effective commencing on November 1, 2021, which it asserts is consistent with the provisions of Article I.A of its Stipulation and Agreement of Settlement which resolved issues related to the Tax Cuts and Jobs Act (TCJA) and established its Modernization I program (2018 Settlement).[4] Southern Star proposes that the Preferred Case *pro forma* tariff

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[1] *See* app. A.

[2] 15 U.S.C. § 717c.

[3] 18 C.F.R. §§ 154.301 - .315 (2020).

[4] *S. Star Central Gas Pipeline, Inc.*, 166 FERC ¶ 61,084 (2019) (approving 2018 Settlement).

records become effective prospectively upon Commission approval and after Southern Star's completion of the business system modifications necessary for the implementation of the changes.

3. As discussed below, we accept and suspend the Primary Case tariff records in appendix A, to be effective upon motion November 1, 2021, subject to refund and the outcome of hearing and paper hearing procedures established herein. We establish paper hearing procedures with respect to the tariff records regarding the Winter Storage Inventory changes for Rate Schedule FSS, which are part of the Primary Case tariff records. We also set the proposed language of the Preferred Case *pro forma* tariff records for hearing procedures, as established in this order.

I. <u>Background</u>

4. Southern Star states that it operates facilities in seven states, including: Kansas, Oklahoma, Missouri, Wyoming, Nebraska, Texas, and Colorado. Southern Star's system consists of approximately 5,800 miles of pipeline with a design capacity of 2.4 billion cubic feet (Bcf) per day and seasonal storage of 46.9 Bcf from eight storage fields. According to Southern Star, annual throughput on its system is approximately 394.1 million dekatherms (Dth) and it sources gas supply from the Mid-Continent, Rockies, and Permian Regions. Southern Star has two transportation rate zones; a Production Area and a Market Area.

5. On January 31, 2019, in Docket No. RP19-289-000, the Commission approved Southern Star's 2018 Settlement, that established Southern Star's currently effective rates as a result of the TCJA and established a CRM for the modernization of facilities on Southern Star's system. Article I.A of the 2018 Settlement established a moratorium on NGA section 4 and section 5 proceedings in which Southern Star agreed to forego its right to file an NGA section 4 general rate case proceeding to be effective before November 1, 2021. Therefore, Southern Star proposes an effective date of June 1, 2021 for its Primary Case, subject to a five-month suspension so that the tariff records become effective November 1, 2021, in compliance with the terms of the 2018 Settlement.[5]

II. <u>Rate Proposals</u>

6. Southern Star proposes rates calculated using a straight fixed-variable rate design, based on a total annual cost of service of $411,675,517 and total rate base of $1,100,647,036 using data for the base period consisting of 12 months ending January 31, 2021, as adjusted for known and measurable changes through October 31, 2021. Southern Star projects mainline commodity throughput quantities of 394.1 million Dth per year. Southern Star seeks an overall rate of return of 11.46%, with an allowed rate of

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[5] Transmittal at 1-2.

return on equity (ROE) of 14.60%, a cost of debt of 4.69%, and its own capital structure that consists of 68.28% equity and 31.72% debt. Southern Star seeks to increase its annual depreciation rates and negative salvage rates for Storage and Transmission facilities. Southern Star also proposes to roll in the Ozark Trails incremental project with the general system cost-based facilities in the Market Area. Southern Star asserts that the proposed rate changes are necessary to avoid a revenue deficiency based on its current and projected cost of operations.

III. Tariff Proposals

A. Primary Case

7. Southern Star proposes changes to its currently effective FERC Gas Tariff to address operational issues that have arisen with respect to Southern Star's storage services.[6] Southern Star proposes to impose variable maximum Winter Storage Inventory requirements to Rate Schedule FSS. Southern Star states that these changes will help ensure that its storage fields are drawn down in a methodical manner year after year and that large amounts of working gas are not left in the storage fields.

8. Southern Star also proposes a to recover facilities modernization costs (Modernization II Program).[7] Southern Star states that it anticipates spending approximately $528 million over the next six years to address modernization requirements for its system and, accordingly, that it proposes a modernization CRM for recovering the costs. Southern Star submits that the CRM is designed to allow recovery of such modernization costs generated in the following three categories: (1) improvement of system safety and integrity; (2) improvement of system reliability and efficiency; and (3) compliance with existing and emerging regulatory requirements.

9. Southern Star also submits an Eligible Facilities Plan describing the projects it has identified that would be eligible for recovery through the CRM over the proposed term of its modernization program.[8] Southern Star states that the Eligible Facilities Plan projects are based on: (1) use of an appropriate risk model for the project; (2) input from internal teams of subject matter experts; and (3) project execution considerations. Southern Star

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[6] *Id*. at 11.

[7] *Id*. at 9-10.

[8] *Id*. at 10.

contends that its CRM proposal is consistent with Commission policy set forth in the Commission's Modernization Policy Statement.[9]

10. Southern Star proposes to revise GT&C section 32 of its FERC Gas Tariff to implement its CRM, thereby setting forth procedures by which it will make limited NGA section 4 filings to implement an additive surcharge for recovering the cumulative revenue requirement for capital investments made and a limited class of eligible expenses related to facilities identified in its Eligible Facilities Plan.[10] Southern Star indicates that, over the proposed term of the CRM, the amount of annual investment in eligible facilities and/or eligible expenses incurred will not exceed an annual cap of $88 million, subject to a 10% annual tolerance above this annual cap. Southern Star also proposes a $528 million hard cap on the total amount of investment in eligible facilities and/or eligible expenses incurred over the entire six-year cost recovery term of its modernization program.

B. Preferred Case

11. Southern Star proposes as part of its Preferred Case, two rate design changes which include changes to Southern Star's Rate Zone Boundary and conversion of the Storage Reservation – Capacity charge from a storage balance charge to a contractual Maximum Storage Quantities charge which it included as *pro forma* tariff records.[11] Southern Star states that its Rate Zone Boundary design change would more appropriately balance Southern Star's two rate zones with regards to transportation and fuel rates, and thereby support Southern Star's marketing of Production Area capacity. Southern Star proposes to move the zone boundary, or Interface, between the Production and Market Areas so that the entirety of the Blackwell, Oklahoma, Hesston, Kansas, and Cotton Valley, Oklahoma compressor stations will be located in the Market Area and not the Production Area.

12. Southern Star states that its second proposed rate design change converts the Storage Reservation – Capacity charge from a storage balance charge (principally, a commodity charge) to a contractual Maximum Storage Quantities charge on a prospective basis. Southern Star states that the proposed changes reflect the proposed relocation of the Interface, including rates and housekeeping changes to its tariff, as well as changes to Rate Schedule FSS to reflect the proposed changes to the determinants for

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[9] *Id*. at 10 n.6 (citing *Cost Recovery Mechanisms for Modernization of Natural Gas Facilities*, 151 FERC ¶ 61,047 (Modernization Policy Statement), *clarification denied*, 152 FERC ¶ 61,046 (2015)).

[10] *Id.* at 10.

[11] *Id.* at 9.

the proposed rate changes.[12] Southern Star proposes to make those changes effective only after a Commission order approving the proposed changes.

IV. Notice of Filing, Interventions, and Protests

13. Public notice of Southern Star's filing was issued on May 3, 2021. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.[13] Pursuant to Rule 214,[14] all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On May 7, 2021, Midwest Energy, Inc. (Midwest) filed a motion to extend the comment date; Midwest's motion was denied May 14, 2021. The entities that submitted protests and comments (Protestors) in response to Southern Star's filing, as well as the applicable abbreviations for each entity, are listed in appendix B. On May 19, 2021, Southern Star filed a motion for leave to answer and answer. On May 20, 2021, Southern Star filed an errata to its motion for leave to answer and answer. On May 25, 2021, KCC, MoPSC, and the Consumer-Owned Shippers (jointly, Interested Parties) filed a joint motion for leave to answer and answer. On May 26, 2021, Southern Star filed a motion for leave to answer and limited answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority.[15] We will reject the answers because they do not provide information that has assisted us in our decision-making process.

14. Protestors generally argue that Southern Star has not demonstrated that its proposed rate and tariff changes are just and reasonable and request that, if accepted, the tariff records be suspended for the maximum period of five months, subject to refund and the outcome of a full evidentiary hearing. Protestors raise several issues regarding Southern Star's filing, including but not limited to cost-of-service components, depreciation and negative salvage rates, and the proposed ROE of 14.60%. Spire Missouri also requests that the Commission require Southern Star to remove the costs of any facilities that have not been placed in service during the test period and to make corresponding adjustments to its proposed rates before they may be moved into effect.

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[12] *Id.* at 11.

[13] 18 C.F.R. § 154.210 (2020).

[14] 18 C.F.R. § 385.214 (2020).

[15] 18 C.F.R. § 385.213(a)(2) (2020).

15. Protestors also raise concerns about Southern Star's proposed CRM, Southern Star's rate design changes in the *pro forma* tariff records comprising the Preferred Case, and the proposed Winter Storage Inventory changes to Southern Star's tariff under Rate Schedule FSS. Protestors argue that these issues should also be suspended for the maximum period and set for hearing. KCC requests that the Commission set the non-rate issues for technical conference and that the Commission reject Southern Star's Winter Storage Inventory changes.

16. Protestors argue that Southern Star's proposed CRM is inconsistent with Commission requirements. Specifically, Protestors contend that Southern Star's proposed CRM calculation methodology does not provide enough information and, therefore, requires further scrutiny. KCC states that the Commission's Modernization Policy Statement provides five guiding principles that a pipeline must satisfy for the Commission to approve a proposed modernization cost tracker: (1) Review of Existing Base Rates; (2) Defined Eligible Costs; (3) Avoidance of Cost Shifting; (4) Periodic Review of the Surcharge and Base Rates; and (5) Support of Shippers and interested Parties, and states that Southern Star's CRM proposal fails to satisfy all of these criteria.[16]

17. Protestors state that the CRM is inconsistent with the Commission's Modernization Policy Statement noting that Southern Star has not demonstrated that it has conducted a comprehensive review of its system to develop the Eligible Facilities Plan. Protestors contend that Southern Star has failed to collaborate with its customers before proposing to extend and significantly expand the existing modernization program and CRM. Additionally, Protestors argue that Southern Star neglected to engage in an annual review process that would have provided customers with transparency and the opportunity to engage with Southern Star before the imposition of the proposed surcharge. Protesters further argue that Southern Star's proposal to automatically roll the net capital costs of the Modernization II Program into rate base in its next general rate case is inconsistent with the Commission's Modernization Policy Statement. KCC also questions whether Southern Star's CRM proposal is premature given the uncertainty as to what regulatory requirements will need to be fulfilled, what facilities will need to be constructed and at what price.[17]

18. The Consumer-Owned Shippers request that the Commission reject Southern Star's proposed CRM arguing that Southern Star's "modernization surcharge" would add $88 million per year to its rate base over each of the next six years, which the Consumer-Owned Shippers state is an increase of approximately 50% over Southern Star's current

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[16] KCC Protest at 13.

[17] *Id.*

$1.1 billion rate base in six years.[18] The Consumer-Owned Shippers state that this proposal is not the transitional, temporary, catch-up funding for unanticipated capital costs resulting from new safety and environmental initiatives envisioned by the Commission's Modernization Policy Statement.[19] The Consumer-Owned Shippers state that Southern Star's proposal is structurally flawed and wholly inconsistent with Commission policy and regulatory mandates and further argue that Southern Star's failure to propose any periodic review of the base rates over a 7-year period should be a sufficient justification in itself to reject Southern Star's proposal.[20] Finally, the Consumer-Owned Shippers argue that Southern Star's Eligible Facilities Plan does not address the regulatory requirements that the Commission's Modernization Policy Statement was intended to address.

19. Atmos Energy, PSCo, the Consumer-Owned Shippers, KCC and Spire Missouri all express concerns regarding the Winter Storage Inventory changes to Southern Star's tariff under Rate Schedule FSS. These Protestors express concerns regarding the timing of the proposed Winter Storage Inventory changes noting that the end of the suspension period, November 1, 2021, occurs during the winter heating season. Atmos and KCC request that the Commission reject the proposed variable maximum Winter Storage Inventory requirements without prejudice. PSCo states that Southern Star's currently-effective tariff does not require customers to reduce their storage inventories to specified levels on certain dates.[21] PSCo, the Consumer-Owned Shippers and KCC argue that Southern Star has not presented any evidence that customers have failed to appropriately draw down their storage inventories each year; nor has Southern Star alleged operational problems or that its storage fields have suffered any physical harm or damage as a result of customers' actions. PSCo also states that it is concerned that the proposal to empty out the storage reserves on the proposed dates could cause reliability issues, particularly after the supply shortages experienced during the extreme cold weather event in February 2021.[22]

20. KCC further states that the proposed Winter Storage Inventory revisions appear to be unduly discriminatory against Rate Schedule FSS shippers because the seasonal maximum inventory provisions applicable to Southern Star's market-based rate storage

[18] The Consumer-Owned Shippers Protest at 7.

[19] *Id.* at 5.

[20] *Id.* at 9.

[21] PSCo Protest at 15.

[22] *Id.*

services provided under Rate Schedules FS1 and IS1 offer greater flexibility.[23] KCC states that section 3(e) of the FS1 and IS1 Rate Schedules contain no Mid-Winter storage inventory limitations.[24] KCC states that if the Commission does not reject the proposal, it should sever the issue and set it for technical conference so the issue can be resolved prior to the November 1, 2021 effective date of the proposed tariff sheets, or at the latest, January 15, 2022, the date that shippers could be subject to having their gas confiscated as a result of being subject to the Mid-Winter seasonal maximum inventory limitations.[25]

21. Spire Missouri states that Rate Schedule FSS storage played a major role in maintaining service during the February 2021 Winter Storm Uri and avers that Southern Star should have conducted a study to demonstrate the impact the new inventory limitations would have had on service reliability during the coldest days of Winter Storm Uri before proposing the tariff changes.[26] Spire Missouri states that, following the events of Winter Storm Uri, Southern Star committed to updating its tariff in light of the operational issues that occurred on its system, following review by Southern Star customers, however Southern Star has not yet provided tariff updates nor has it addressed the deficiencies that were demonstrated by Winter Storm Uri.[27] Spire Missouri states that the proposed storage inventory limitations raise significant issues concerning the cost and usefulness of the storage service noting that for customers that hold very large storage entitlements, the obligation to reduce their storage inventory in mid- to late March to meet the new inventory limitations provides an incentive to reduce their overall storage contract quantity.[28]

V. <u>Discussion</u>

22. Our preliminary analysis indicates that Southern Star's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Southern Star's filing raises issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearings ordered below. Accordingly, we will establish hearings to explore the issues raised by the filing, including, but not limited to cost of service,

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[23] KCC Protest at 19.

[24] *Id*.

[25] *Id*. at 20.

[26] Spire Missouri Protest at 9.

[27] *Id*. at 13.

[28] *Id*. at 10.

depreciation, rate of return, cost allocation and rate design, billing determinants, and the various tariff changes. Furthermore, Southern Star's *pro forma* Preferred Case proposal also raises issues appropriately considered at hearing. Therefore, both rate proposals will be examined at hearing.

A. <u>Paper Hearing Procedures to Address Winter Storage Inventory Changes</u>

23. Protestors raise a number of concerns with Southern Star's proposed Winter Storage Inventory provisions. Therefore, we accept and suspend, subject to refund and the outcome of a paper hearing the tariff records associated with the proposed variable Winter Storage Inventory provisions.[29] Given potential timing concerns, as raised by shippers, we find that a paper hearing is the most appropriate venue to explore this issue. The paper hearing will examine the effects of the proposed variable maximum Winter Storage Inventory requirements on Southern Star's existing Rate Schedule FSS shippers, its storage inventory balances, and its system integrity.

24. We invite the parties to file additional comments within 30 days of the date of this order to brief issues raised by Southern Star's Winter Storage Inventory proposal in light of the existing record and pleadings. Issues to be addressed include, but are not limited to, financial impact, reliability concerns and the evidentiary need for the proposed variable Winter Storage Inventory requirements. Reply comments will be due 15 days after the initial comment deadline.

B. <u>Hearing Procedures</u>

25. For the reasons stated above, we (a) accept and suspend, subject to refund and the outcome of a hearing, the Primary Case tariff records listed in appendix A, to be effective upon motion November 1, 2021; and (b) set the proposed language of the *pro forma* tariff records for the Preferred Case for hearing, as discussed in the body of this order.

26. Southern Star must adhere to section 154.303(c)(2) of the Commission's regulations which provides that at the end of the test period, the pipeline must remove from its rates costs associated with any facility that is not in service or for which certificate authority is required but has not been granted.[30]

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[29] The following tariff records are associated with the Southern Star's Winter Storage Inventory provisions; [Sheet No. 134, , 4.0.0] and [Sheet No. 134A, , 0.0.0].

[30] 18 C.F.R. § 154.303(c)(2).

C. Suspension

27. Based upon a review of the filing, we find that Southern Star's proposed tariff records set forth in appendix A have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, and as described in this order, we accept such tariff records for filing and suspend their effectiveness for five months, to be effective upon motion November 1, 2021, subject to refund and the outcome of the hearings established herein.

28. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[31] The Commission has recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.[32] Such circumstances do not exist here. Therefore, we exercise our discretion to suspend for the maximum period of five months the proposed tariff records listed in appendix A, to take effect upon motion on November 1, 2021, subject to refund and the outcome of the hearings established herein.

The Commission orders:

(A) The tariff records referenced in appendix A are accepted and suspended for five months, to be effective upon motion November 1, 2021, subject to refund and the outcome of the hearing and paper hearing procedures established herein, as discussed in the body of this order.

(B) The proposed changes contained in the Preferred Case *pro forma* tariff records are set for hearing, as discussed in the body of this order.

(C) A paper hearing shall be held regarding Southern Star's proposed changes to its Winter Storage Inventory provisions under Rate Schedule FSS, as discussed in the body of this order. The parties may file additional comments, within 30 days of the date of this order, to respond to the proposed Winter Storage Inventory provisions as discussed in the body of this order. Reply comments will be due 15 days after the initial comment deadline.

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[31] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[32] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

(D) 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 the NGA, particularly sections 4, 5, 8, 9, and 15 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the NGA (18 C.F.R. Chapter I), a public hearing shall be held to determine the justness and reasonableness of Southern Star's proposed tariff records, as discussed in the body of this order.

(E) 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 (2020), shall, within 45 days of the date of the Presiding Administrative Law Judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426, or remotely (by telephone or electronically), as appropriate. Such a conference shall be held for the purpose of establishing a procedural schedule. The Presiding Administrative Law Judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Upon its motion to place suspended rates into effect, Southern Star must remove facilities not in service before the effective date.

(G) Given that the circumstances caused by the COVID-19 pandemic may disrupt, complicate, or otherwise change the ability of participants to engage in normal hearing procedures, the Chief Judge is hereby authorized to set or change the dates for the commencement of the hearing and the issuance of the initial decision as may be appropriate.

By the Commission. Commissioner Chatterjee is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A

Southern Star Central Gas Pipeline, Inc.
FERC NGA Gas Tariff
Tariff Provisions

Tariff Records Accepted and Suspended, to be Effective Upon Motion November 1, 2021, Subject to Refund and the Outcome of Hearing Procedures:

Sheet No. 2, , 6.0.0
Sheet No. 8, Statement of Rates for Transp. and Other Related Services, 7.0.0
Sheet No. 9, , 6.0.0
Sheet No. 10, , 6.0.0
Sheet No. 11, , 8.0.0
Sheet No. 12, , 6.0.0
Sheet No. 12A, , 4.0.0
Sheet No. 316, Modernization Cost Recovery Mechanism (CRM), 2.0.0
Sheet No. 317, , 1.0.0
Sheet No. 318, , 1.0.0
Sheet No. 319, , 1.0.0
Sheet No. 320, , 1.0.0
Sheet No. 321, , 1.0.0

Tariff Records Accepted and Suspended, to be Effective Upon Motion November 1, 2021, Subject to the Outcome of the Paper Hearing:

Sheet No. 134, , 4.0.0
Sheet No. 134A, , 0.0.0

Appendix B

List of Commenters and Protestors, and their Abbreviations

Kansas Gas Services, a Division of ONE Gas, Inc.

Atmos Energy Corporation (Atmos Energy)

Liberty Utilities (Midstates Natural Gas) Corp (Midstates), The Empire District Gas Company (Empire Gas) and The Empire District Electric Company (Empire Electric)

City Utilities of Springfield, Missouri (City Utilities), Kansas Municipal Gas Agency (KMGA), Midwest Energy, Inc. (Midwest), Missouri Joint Municipal Electric Utility Commission (MJMEUC), and National Public Gas Agency (NPGA) (collectively, the Consumer-Owned Shippers)

Public Service Company of Colorado (PSCo)

Kansas Corporation Commission (KCC)

Spire Missouri Inc. (Spire Missouri)

Missouri Public Service Commission (MoPSC)