

121 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Nornew Energy Supply, Inc.

Docket No. CP07-393-000

Nornew Energy Supply, Inc.

Docket Nos. CP01-94-006 and
TS04-258-001
(Not consolidated)

ORDER DECLARING EXEMPTION UNDER SECTION 1(c) OF THE NATURAL
GAS ACT, APPROVING ABANDONMENT, RESCINDING CERTIFICATES, AND
TERMINATING PROCEEDINGS AS MOOT

(Issued October 4, 2007)

1. On May 25, 2007, Nornew Energy Supply, Inc. (Nornew) filed an application pursuant to sections 1(c) and 7(b) of the Natural Gas Act (NGA) requesting an order from the Commission declaring that the company and its facilities and services will be exempt from Commission regulation under section 1(c) of the NGA and approving the abandonment of its facilities and services. In its application, Nornew asserts that to the extent that the Commission grants the requested abandonment authority, the issues pending in Docket No. CP01-94, et al. are moot. As discussed below, we will grant Nornew's abandonment request and terminate the pending proceedings in Docket Nos. CP01-94-006 and TS04-258-001, subject to condition.

Background

2. On January 16, 2002, the Commission issued an order granting Nornew the necessary certificate authorization to operate facilities and transport natural gas for the Board of Public Utilities of Jamestown, New York (Jamestown) to Jamestown's Samuel A. Carlson Generating Station.¹ The January 16 Order also granted Nornew a Part 284 blanket certificate to perform open-access service and a Part 157 certificate to perform certain routine construction activities. Nornew's certificated facilities include an approximately 26-mile long pipeline and appurtenant facilities. The pipeline commences at an interconnection with Tennessee Gas Pipeline Company and Nornew's non-jurisdictional gathering affiliate, Norse Pipeline LLC, near Mayville, New York and ends at Jamestown's generating station in Jamestown, New York. Finally, the January 16 Order accepted Nornew's proposed pro forma tariff sheets subject to Nornew filing actual tariff sheets with certain revisions within 30 days of the order and required Nornew to replace its existing Gas Facilities Lease Agreement with Jamestown with a Transportation Service Agreement (service agreement) within 60 days of the order.

3. On February 19, 2002, Nornew submitted its compliance filing and subsequently on March 4, 2002, filed a corrected version of the tariff sheets correcting certain formatting errors. Nornew requested and was granted an extension of time to file the service agreement with Jamestown until 30 days after an order accepting Nornew's tariff.² On August 29, 2006, the Commission issued an order³ rejecting the tariff sheets submitted on February 19, 2002, as moot, and accepting the corrected tariff sheets submitted on March 4, 2002, effective on March 17, 2002, subject to Nornew making a number of further revisions to its proposed tariff to align it with Commission regulations and policies.⁴ The August 29 order also granted Nornew's September 24, 2004 request, in Docket No. TS04-258-000, for waiver of the Standards of Conduct requirements in

¹*Nornew Energy Supply, Inc.*, 98 FERC ¶ 61,018 (2002) (January 16 Order), *order denying reh'g and clarification*, 99 FERC ¶ 61,123 (2002).

²*Notice of Extension of Time*, Docket No. CP01-94-000, *et al.* (March 13, 2002).

³*Nornew Energy Supply, Inc.*, 116 FERC ¶ 61,192 (2006) (August 29 Order).

⁴*See* August 29 Order at P 44 through P 63.

Order No. 2004,⁵ to permit Nornew to combine any tariff revisions necessary to implement the Standards of Conduct with any further tariff filing in Docket No. CP01-94, *et al.*

4. On September 28, 2006, Jamestown filed a request for reconsideration or, in the alternative, rehearing of the August 29 Order asserting, among other things, that Nornew's proposed penalty provisions were unjust and unreasonable. On October 30, 2006, the Commission issued a tolling order, granting rehearing for the limited purpose of further consideration of Jamestown's rehearing request.

5. On several occasions, the Commission has extended the deadline for Nornew to file the compliance filing required by the August 29 order and has further extended the deadline for Nornew to file its service agreement with Jamestown.⁶

Proposal

6. In its application, Nornew explains that although it receives all of the gas it transports within the State of New York, and the gas it transports is consumed within the State of New York, it did not previously qualify for the Hinshaw exemption because the New York Public Service Commission (NYPSC) did not regulate its rates as required by section 1(c) of the NGA. Further, Nornew states that at the time of its certificate application, it anticipated providing transportation to customers other than Jamestown. However, because it has not transported natural gas for other customers, and in light of

⁵*Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *see Standards of Conduct for Transmission Providers*, Order No. 690, 72 Fed. Reg. 2,427 (Jan. 19, 2007), FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, 72 Fed. Reg. 14235 (Mar. 27, 2007), FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers*, Notice of Proposed Rulemaking, 72 Fed. Reg. 3,958 (Jan. 29, 2007), FERC Stats. & Regs. ¶ 32,611 (2007).

⁶The most recent notice granted an extension of time until 30 days after issuance of a Commission order addressing Nornew's abandonment request in Docket No. CP07-393-000. *Notice of Extension of Time*, Docket No. CP01-94-001, *et al.* (May 30, 2007).

the burden and expense of the Commission's regulatory program, Nornew states that it sought from the NYPSC an order asserting jurisdiction over Nornew's rates, terms and conditions of service, and facilities. Nornew states the NYPSC asserted jurisdiction over Nornew's rates, services, and facilities by order issued on March 27, 2007.⁷

7. In light of the NYPSC's order, Nornew asserts that it now meets the requirements of a Hinshaw pipeline under section 1(c) of the NGA. Thus, Nornew requests that the Commission grant authorization under section 7(b) of the NGA for Nornew to abandon its certificated facilities and transportation services and blanket certificates and declare that Nornew is exempt from NGA jurisdiction under section 1(c) of the NGA. Nornew states that it will continue to operate its facilities and provide service to Jamestown; however, the rates, terms and conditions of Nornew's services and facilities use to provide such services shall be regulated by the NYPSC.

8. In Exhibit E of its application, Nornew refers to its outstanding obligation in Docket No. CP01-94, *et al.* to file a revised tariff and to file a service agreement with Jamestown. Nornew asserts that in the event the Commission grants the requested abandonment, the outstanding compliance filing would be rendered moot.

Interventions

9. Notice of Nornew's application in Docket No. CP07-393-000 was published in the *Federal Register* on June 4, 2007 (72 Fed. Reg. 32843). Jamestown and National Fuel Gas Distribution Corporation filed timely motions to intervene. Timely unopposed motions to intervene are granted by operation of Rule 214(c) of the Commission's Rules of Practice and Procedure.⁸

10. Jamestown filed comments stating that it takes no position as to whether Nornew qualifies under the Hinshaw exemption in section 1(c) of the NGA. However, Jamestown takes issue with Nornew's statement in Exhibit E of its application that in the event the Commission grants the abandonment requested by Nornew, the pending compliance filing in Docket Nos. CP01-94, *et al.* would be moot. Jamestown states that granting the abandonment request would not moot the issues raised in its request for rehearing of the August 29 Order addressing Nornew's proposed tariff.

⁷Case 06-G-1484, *Nornew Energy Supply, Inc.*, Order Providing for Lightened Regulation (issued and effective March 27, 2007). The NYPSC order is attached in Exhibit Z-1 of the application.

⁸18 C.F.R. § 385.214(c) (2007).

Discussion

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11. Under section 1(c) of the NGA, known as the Hinshaw amendment, the NGA does not apply to a pipeline that engages in interstate sales or transportation of natural gas or to the facilities the pipeline uses for such transportation or sales, if it receives such natural gas from another person within or at the boundary of a state, the gas is ultimately consumed within that state, and the facilities, rates and services of the pipeline are subject to regulation by a state commission. Pipelines exempt under NGA section 1(c) are commonly referred to as “Hinshaw pipelines.”

12. Congress enacted the Hinshaw amendment because it recognized that when a pipeline operating in one state sells and transports gas within that state for consumption within that state, the pipeline’s services, rates, and facilities are more appropriately a matter of local concern, regardless of whether the gas was produced in that state or delivered to the in-state pipeline by an interstate pipeline. By including regulation by a state authority as a criterion for the Hinshaw exemption, NGA section 1(c) avoids the possibility of a regulatory gap.

13. We find that, upon regulation by the NYPSC, Nornew’s current facilities and services will meet the requirements for exemption from Commission jurisdiction under NGA section 1(c). The facilities are operated wholly within New York, all of the gas transported through the facilities is received from another person and consumed in New York, and the facilities, rates, and services will be subject to regulation by the NYPSC.

14. In view of the above considerations and our findings below regarding Nornew’s NGA jurisdictional services for Jamestown, we find that the public convenience and necessity permit Nornew to abandon the NGA certificates issued by the Commission for Nornew’s facilities and services. No party has protested Nornew’s abandonment request. Nornew will continue to provide service to Jamestown at rates subject to review by the NYPSC.

15. Nornew’s abandonment authority will become effective on the date that it files to cancel its FERC gas tariff consistent with Part 154 and section 250.2 of the Commission’s regulations. As of the date of such tariff filing, Nornew will no longer operate any facilities for the transportation of natural gas in interstate commerce. Thus, Nornew’s Part 157 and Part 284 blanket certificates will be rescinded effective on the date of such tariff filing.

16. We conclude that the approval of the abandonment will not constitute a major federal action significantly affecting the quality of the environment.

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17. On August 13, 2007, Commission staff issued a data request directing Nornew to explain how it intends to resolve issues related to the terms and conditions of service that are subject to its required compliance filing from March 17, 2002, until the effective date of the abandonment (retroactive period). In its response, Nornew proposes that the lease agreement with Jamestown, its only customer, be applicable to all deliveries up to the date of abandonment. Further, Nornew states that it will not impose any penalties on Jamestown for the retroactive period and there will be no retroactive changes in gas quality, operational flow orders, operational balancing agreements, or unauthorized delivery charges.

18. On August 21, 2007, Jamestown responded to Nornew's data response stating that without taking any position as to the accuracy of the analysis contained in Nornew's submission, Jamestown agrees that if the Commission were to confirm that the lease agreement governs the service to Jamestown during the retroactive period and the Commission were to grant the abandonment request, all issues related to the justness and reasonableness of Nornew's tariff, including the issues raised by Jamestown in its rehearing request, would be moot.

19. We will approve Nornew's proposal that the lease agreement govern service for the retroactive period. Nornew's only customer, Jamestown, supports this proposal. Additionally, this proposal will ensure that Jamestown will not incur any penalties for the retroactive period and will avoid the expense of Nornew filing a compliance tariff and service agreement to be effective for this limited retroactive period. Accordingly, we find that Nornew's obligation to file a compliance filing and service agreement, as well as issues raised on rehearing in Docket Nos. CP01-94-006 and TS04-268-001, are moot and we will terminate those proceedings.

20. The Commission on its own motion received and made as part of the record in this proceeding all evidence submitted, including the application and exhibits supporting the sought authorizations, and after consideration of the record,

The Commission orders:

Effective on the date Nornew files a tariff sheet to cancel its FERC tariff:

- (1) the facilities and services of Nornew, as described herein, qualify for exemption from Commission regulation under NGA section 1(c);
- (2) Nornew is granted permission and approval under NGA section 7(b) to abandon the facilities and services described herein;

- (3) Nornew's Part 157 and Part 284 blanket certificates are rescinded; and
- (4) the pending proceedings in Docket Nos. CP01-94-006 and TS04-258-001 are terminated as moot.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.