123 FERC ¶ 61,259
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.

Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity — Docket No. PL07-2-001

ORDER DISMISSING REQUEST FOR
REHEARING OR RECONSIDERATION

(Issued June 13, 2008)

1. On April 17, 2008, the Commission issued a Policy Statement concerning the composition of proxy groups used to determine gas and oil pipeline returns on equity using the Commission's Discounted Cash Flow (DCF) model.[1] After several rounds of comments and a technical conference, the Commission adopted a policy under which it would: (1) permit inclusion of master limited partnerships (MLPs) in the proxy group used to determine pipeline returns on equity;[2] (2) not limit the distributions to be used in the DCF model to the book earnings of the MLPs to be included in the proxy group;[3] (3) continue to rely on the Institutional Brokers Estimated System (IBES) for the short-term component of its DCF model;[4] (4) limit the long-term growth component of the DCF model to fifty percent of long term gross domestic product;[5] and (5) make no

[1] *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008) (Policy Statement).

[2] *Id.* P 49-52.

[3] *Id.* P 57-63 and Appendix B.

[4] *Id.* P 75, 82.

[5] *Id.* P 93, 96, 106.

modification to the current weighting of two-thirds and one-third of the short-term and long-term growth components, respectively.[6] The Commission also stated it would not explore other methods at this time,[7] and that the Policy Statement would govern gas and oil pipeline rate proceedings now before the Commission for which there had been no final determinations on return on equity issues.[8]

2. The Commission stated that it was making no findings at this time as to which particular corporations and/or MLPs should be included in the gas or oil proxy groups. The Commission further stated that it leaves that determination to each individual rate case. In order to determine the most representative possible proxy group in those cases, the Commission directed the parties to provide as much information as possible regarding the business activities of each firm they propose to include in the proxy group. This information was required so that the Commission could review and apply the Policy Statement in the context of individual proceedings.

3. One party, the American Public Gas Association (APGA), filed a request for rehearing or for reconsideration.

<u>Summary of APGA's Request</u>

4. APGA contends that in adopting the Policy Statement the Commission failed to engage in reasoned decision making for several reasons. AGPA asserts that the use of MLPs in the DCF analysis will improperly increase ROEs for interstate pipelines at the expense of natural gas consumers. Among other things, it argues that the Commission erred in allowing an MLP's full distributions to be used in the DCF model without any adjustment to exclude distributions in excess of the MLP's book earnings. Although APGA does not contest the Policy Statement's finding that capping the MLP distributions to be included in the DCF model is inconsistent with the fundamental nature of that model,[9] APGA asserts that the DCF calculations in Appendix A of the Policy Statement for selected MLPs and corporations show that, under the Commission's approach, the natural gas pipeline MLP ROEs average about 100 basis points above the average ROE of the corporations. APGA asserts that this empirical evidence suggests that, regardless of the Commission's theoretical concerns about the earnings cap, the Policy Statement will increase natural gas pipeline ROEs. APGA contends that the Policy Statement

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[6] *Id.* P 113.

[7] *Id.* P 53.

[8] *Id.* P 116.

[9] APGA rehearing request at page 6.

provides no justification for such an increase. For example, it argues that higher returns are not required to attract capital for the building of infrastructure. APGA accordingly requests that the Commission grant rehearing of the conclusions in the Policy Statement, or if the Commission refuses to grant rehearing on the grounds that a Policy Statement is at issue, that the Commission grant reconsideration and revise its rulings.

Discussion

5. The purpose of the Policy Statement was to explore and advise interested parties on the methodology and criteria to be applied in making ROE determinations for gas and oil pipelines, including the standards for determining the most representative possible proxy group to be used in a particular pipeline rate case. The Policy Statement also conveyed the Commission's intent to evaluate specific proxy group and ROE proposals based on the facts relevant to a particular pipeline and to address any concerns regarding the Policy Statement on a case-by-case basis.[10] Accordingly, the Policy Statement is not a final action of the Commission but an expression of policy intent. As the U.S. Court of Appeals for the District of Columbia Circuit has held, a statement of policy "is not finally determinative of the issues or rights to which it is addressed;" rather, it only "announces the agency's tentative intentions for the future."[11] Therefore, the parties are not aggrieved by the revised policy statement, and rehearing does not lie.[12]

6. Therefore, the Commission declines to address the issues APGA has raised in its request for rehearing or reconsideration, but will consider such issues in the context of the specific cases in which they apply. The Commission notes that it has set a number of proceedings for expedited paper hearing that will afford the interested parties that opportunity.[13]

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[10] *Id.* P 51, 116.

[11] *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33, 38 (D.C. Cir. 1974).

[12] *See Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines*, 75 FERC ¶ 61,024, at 61,076 (1996), *citing, American Gas Association v. FERC*, 888 F.2d 136 (1989); *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295 (1989), *order on reh'g*, 48 FERC ¶ 61,122, at 61,442 (1989).

[13] *Cf. Kern River Gas Transmission Company*, 123 FERC ¶ 61,056 (2008) (Opinion No. 486-A) at P 188-90; *SFPP, L.P.*, 123 FERC ¶ 61,116, at P 1, 12 (2008).

<u>The Commission orders</u>:

APGA's request for rehearing or reconsideration is dismissed for the reasons stated in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.