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 Nos. IN07-7-001 and
IN07-18-001

ORDER DISMISSING
REQUEST FOR REHEARING AS MOOT

(Issued July 19, 2007)

1. In this order, the Commission dismisses a request for rehearing filed on May 21, 2007, by Nornew Energy Supply, Inc. (Nornew) in the above-captioned proceeding. Nornew sought rehearing of the Commission's April 19, 2007 Order [1]which rejected Nornew's assertion that it was not required to file a 2005 FERC Form No. 2-A, a 2005 CPA Certification for FERC Form No. 2-A, and FERC Form No. 3-Q for the first three quarters of 2005 and the first two quarters of 2006 because its total transportation volumes for one year, 2005, were less than 200,000 Dth, the threshold volume requirement for nonmajor natural gas companies.[2] Nornew's request for rehearing argues that the Commission's interpretation of the filing requirements is in error and that it should not have been required to make the filings. Nornew states that it has now filed the required 2006 FERC Form No. 2-A and FERC Form No. 3-Qs, but seeks rehearing for the purpose of ensuring that neither Nornew nor other similarly situated nonmajor pipelines are held to be in noncompliance for "a clearly intended filing exemption."[3] Inasmuch as Nornew has complied with the Commission's filing requirements and the

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[1] *Order Terminating Proceedings, Directing Further Filing, and Referring Matter to Office of Enforcement,* 119 FERC ¶ 61,054 (2007) (April 19 Order).

[2] The filing requirements for FERC Form No. 2-A state that a natural gas company that does not meet the filing threshold for FERC Form No. 2, *i.e.*, a major pipeline company defined as one whose combined transportation and storage volumes exceed 50 million Dth in each of the three previous calendar years, must file the FERC Form No. 2-A if its total gas sales or volume transactions exceed 200,000 Dth in each of the three previous calendar years.

[3] *See* Request for Rehearing of Nornew Energy Supply, Inc. at 3.

April 19 Order, the request for rehearing is dismissed as moot. However, in light of Nornew's misinterpretation of the Commission's filing requirements, we will comment briefly on the issue raised.

Background

2. The Commission's April 19 Order addressed the responses of various companies to the Commission's Show Cause Order advising Nornew and others of their delinquency with respect to the Commission's financial forms reporting requirements.[4] Nornew was deficient in filing both annual and quarterly financial reports, as well as the CPA Certification required for FERC Form No. 2-A. On March 9, 2007, Nornew filed a request for an extension of time to file its 2005 FERC Form No. 2-A, 2005 CPA Certification for FERC Form No. 2-A, and FERC Form No. 3-Q for the first three quarters of 2005 and the first two quarters of 2006.[5] Shortly thereafter, Nornew made a second filing in which it argued that it should not be required to file a FERC Form No. 2-A for 2005 because its throughput for that year fell below the 200,000 Dth threshold.[6]

The April 19 Order

3. On April 19, 2007, the Commission issued an order which terminated the show cause proceedings with respect to some companies, directed other companies to make additional filings, and referred one matter to the Office of Enforcement. Among other things, the April 19 Order granted Nornew's request for an extension of time, but rejected Nornew's assertion that it is not required to file a FERC Form No. 2-A for 2005 because its transportation volumes for 2005 were less than 200,000 Dth.[7] The Commission stated that Nornew, as a nonmajor pipeline, must follow the requirements of section 260.2, 18 C.F.R. § 260.2, which state that each natural gas company not meeting the filing threshold for FERC Form No. 2, but having total gas sales or volume transactions

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[4] *Compliance with Financial Forms Filing Requirements*, 118 FERC ¶ 61,107 (2007) (Show Cause Order).

[5] *See* Request for Extension of Time to Submit FERC Forms 2-A and 3-Q of Nornew Energy Supply, Inc.

[6] *See* Answer to Show Cause of Nornew Energy Supply, Inc., filed on April 16, 2007.

[7] Nornew's Answer to the Show Cause Order claimed that Nornew's total throughput for 2005 was 99,540 Dth; for 2004, 425,390 Dth, and 2003, 309,785. *See* Answer at 2.

exceeding 200,000 Dth in each of the three previous calendar years, must file an annual FERC Form No. 2-A. The Commission stated that an exemption from the reporting requirement is granted only when the volume transactions fall beneath the 200,000 Dth level for three consecutive years, not when the volume transactions fail to meet the threshold for only one year.[8] Further, the Commission stated that Part 201 of the Commission's regulations, 18 C.F.R. Part 201, states that "changes in classification shall be made when the volume for each of the three immediately preceding years exceeds the upper limit, or is less than the lower limit of the classification previously applicable to the natural gas company."[9]

<u>Request for Rehearing</u>

4. In its rehearing request, Nornew argues that the language of § 260.2, which states that a natural gas company having total gas sales or volume transactions exceeding 200,000 Dth in each of the three previous calendar years must prepare and file with the Commission the FERC Form No. 2-A, means that if a nonmajor pipeline falls below the 200,000 Dth threshold for one of the three years, it qualifies for an exemption from filing FERC Form No. 2-A because it has not exceeded the threshold in each of the three previous calendar years.[10] Nornew asserts that there is "no room for interpretation of the language of this regulation" and that "each" clearly means all three years. Further, Nornew states that the language of the General Instructions in Part 201 of the Commission's regulations, which explain the classification of natural gas companies, applies only to a change from major to nonmajor and is distinct from the filing requirements of § 260.2 of the regulations.

<u>Discussion</u>

5. The Natural Gas Act (NGA) requires regulated natural gas companies to keep such accounts and to file such annual reports and other periodic and special reports as the Commission may prescribe "as necessary or appropriate for purposes of administration" of the act and to furnish such information as the Commission may order.[11] Pursuant to these statutory provisions, the Commission developed accounting regulations, the Uniform System of Accounts (USofA), to facilitate the Commission's ratemaking

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[8] April 19 Order at P 9.

[9] *Id*.

[10] Nornew's Request for Rehearing at 2.

[11] *See* sections 8 and 10 of the Natural Gas Act, 15 U.S.C. §§717g and 717i (2000).

responsibilities. The General Instructions in Part 201 of the Commission's regulations classify jurisdictional natural gas companies as "major" or "nonmajor" based on the volumes of gas sold or transported in each of the three previous years. A major natural gas company is defined as one whose combined gas sold for resale and gas transported or stored for a fee exceeds 50 million Mcf and a nonmajor is defined as a company whose total gas sales or volumes transactions exceed 200,000 Mcf in each of the three previous years. A regulated company's classification determines its accounting and reporting burden and rate filing requirements. Contrary to Nornew's assertion, the classification determination set forth in the USofA must be read in conjunction with Part 260 of the regulations which delineate the relevant filing requirements.

6. General Instruction 1.C. states that the class to which a natural gas company belongs is originally determined by its annual gas volumes in each of the last three consecutive years. In the case of a newly established entity, projected data is the basis for the classification.[12] On March 29, 2001, Nornew sought an extension of time to file FERC Form No. 2-A for the year 2001. Nornew explained that it was a newly certificated interstate pipeline and that although its volumes were below the 200,000 Dth threshold for calendar year 2001, a partial year of service, it projected that its volumes would exceed the threshold in future years. Nornew's projection established Nornew's classification as a nonmajor pipeline required to file the annual FERC Form No. 2-A. In order for Nornew to change its classification, whether to a major or to a non-filer status, Nornew must have three consecutive years of volumes above or below the threshold.

7. The three year requirement is intended to show a trend by which pipeline reporting and filing requirements can be measured. Although Nornew makes a colorable argument regarding the proper interpretation of the regulation, its interpretation is incorrect and, if the Commission were to adopt Nornew's interpretation, it would result in administrative disorder. Under Nornew's interpretation, natural gas companies would be able to unilaterally change the filing requirements applicable to them potentially every year. This is precisely the outcome the regulations establishing the classification methodology sought to avoid. In effect, Nornew's interpretation would result in a subset of nonmajor natural gas companies by exempting natural gas companies from filing based only on a one year change in volumes. This interpretation is not consistent with Part 201 of the Commission's regulations.

8. While Nornew's interpretation of the regulation's filing requirements is in error, Nornew has complied with the Commission's orders by filing the 2005 and 2006 FERC Forms No. 2-A, together with FERC Form No. 3-Q for the same period. Accordingly, we dismiss Nornew's request for rehearing as moot.

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[12] 18 C.F.R. Part 201, General Instructions.

<u>The Commission orders</u>:

Nornew's request for rehearing is dismissed as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.