

120 FERC ¶ 61,207  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Panhandle Complainants

Docket No. RP07-34-000

v.

Southwest Gas Storage Company

Southwest Gas Storage Company

Docket No. RP07-541-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO  
REFUND, ESTABLISHING HEARING PROCEDURES, AND CONSOLIDATING  
PROCEEDINGS

(Issued August 31, 2007)

1. On August 1, 2007, Southwest Gas Storage Company (Southwest Gas) filed a revised tariff sheet<sup>1</sup> pursuant to section 4 of the Natural Gas Act (NGA) proposing to change its Rate Schedule FSS and ISS storage rates. Southwest Gas proposes an effective date of September 1, 2007, for its tariff sheet.
2. The Commission accepts and suspends for five months Southwest Gas's revised tariff sheet to become effective February 1, 2008, subject to refund and the outcome of a hearing established by this order. We also, for the reasons discussed below, consolidate Southwest Gas's section 4 rate proceeding in Docket No. RP07-541-000 with the ongoing, related section 5 complaint proceeding in Docket No. RP07-34-000.

**Background**

3. Southwest Gas is a natural gas storage company providing jurisdictional storage services pursuant to a certificate the Commission issued on May 7, 1980.<sup>2</sup> Southwest

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<sup>1</sup> Twentieth Revised Sheet No. 5 to its FERC Gas Tariff, First Revised Volume No. 1.

<sup>2</sup> 11 FERC ¶ 61,145 (1980); amended, 19 FERC ¶ 62,299 (1982).

Gas currently provides service under Rate Schedules FSS and ISS. Panhandle Eastern Pipe Line Company (Panhandle) is currently Southwest Gas's sole customer, holding a long-term firm contract of about 61 Bcf of annual storage. Panhandle is also an affiliate of Southwest Gas. Panhandle currently pays Southwest Gas about \$45 million annually for storage services under that contract. Southwest Gas's current rates became effective on October 1, 1989, when the Commission approved them as part of a settlement in a section 5 proceeding initiated by the Commission.<sup>3</sup> A subsequent settlement approved by the Commission in 1998, and filed as part of a certificate proceeding whereby Panhandle abandoned certain storage facilities to Southwest Gas, kept Southwest Gas's rates unchanged.<sup>4</sup>

4. On October 25, 2006, the Panhandle Complainants<sup>5</sup> (Complainants) filed a complaint against Southwest Gas in Docket No. RP07-34-000, alleging that Southwest Gas's rates were unjust and unreasonable. The Complainants requested that the Commission, pursuant to section 5 of the NGA, grant the following relief: (1) an immediate rate reduction based on an analysis of Southwest Gas's current costs and revenues that the Complainants provided in their pleadings; and, (2) an evidentiary hearing in order to investigate the need for further reductions and to establish revised rates on a permanent basis. The Complainants also requested that, should the Commission decline to grant summary relief based on the information included in their pleadings, the Commission direct Southwest Gas to file a full cost and revenue study, and determine appropriate interim rate relief based on the Commission's analysis of that study.

5. On December 21, 2006, the Commission issued an Order Setting Complaint for Hearing,<sup>6</sup> establishing hearing procedures to investigate Southwest Gas's rates under section 5 of the NGA. In that order, the Commission rejected a summary rate reduction based on the cost and revenue data included in the Complainants' pleadings, but instead directed Southwest Gas to file a cost and revenue study within 45 days of the date the order issued.<sup>7</sup> The Commission also held that "if the cost and revenue study filed by

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<sup>3</sup> 48 FERC ¶ 61,422 (1989).

<sup>4</sup> 85 FERC ¶ 61,328 (1998).

<sup>5</sup> The Panhandle Complainants are American Forest & Paper Association, American Iron and Steel Institute, American Public Gas Association, Anadarko Petroleum Corporation and Anadarko Energy Services Company, Citizens Utility Board of Illinois, ConocoPhillips Company, ExxonMobil Gas & Power Marketing Company, Independent Petroleum Association of America, and Process Gas Consumers Group.

<sup>6</sup> 117 FERC ¶ 61,318 (2006).

<sup>7</sup> Southwest Gas subsequently requested, and the Commission granted, a one-month extension of time to file its cost and revenue study.

Southwest Gas in response to this order does not support its existing rates, the Commission will order an immediate rate reduction down to the level its cost and revenue study does support.” The Commission noted that such action would be consistent with Commission action in Southwest Gas’s previous section 5 proceeding.<sup>8</sup>

6. Southwest Gas filed its cost and revenue study on February 20, 2007. The study included all necessary schedules and exhibits that the Commission required. Southwest Gas provided cost and revenue data for the twelve-month base period ending November 30, 2006, which it stated was the most recent twelve-month period for which it had complete information. Southwest Gas’s cost and revenue study reflected a \$63.95 million cost of service, and its corresponding illustrative rates reflected increases from its currently effective rates for all services. Southwest Gas stated that since its cost and revenue study fully supported its existing rates, no immediate rate reduction was appropriate.

7. Protesters expressed strong objection to two costs included in Southwest Gas’s cost and revenue study. The first was Southwest Gas’s purchase of 6.5 MMDth of third-party storage capacity and related transportation services for \$16.5 million. The second was its purchase of 3 MMDth of new base gas for \$22.5 million. Southwest Gas included both these costs as post-base period adjustments, because Southwest Gas proposed these costs as part of its certificate application that it filed with the Commission on January 26, 2007, in Docket No. CP07-69-000. This certificate filing is still pending Commission action. Protestors also express concerns that Southwest Gas’s cost and revenue study also reflected a 100-percent equity capital structure.

### **Details of Filing**

8. In the instant section 4 filing, Southwest Gas proposes to modify its rates for jurisdictional storage service under Rate Schedules FSS and ISS. In general, Southwest Gas proposes to increase its Rate Schedules FSS capacity charge from \$0.3419 per Dth to \$0.4057 per Dth; decrease its Rate Schedule FSS deliverability charge from \$2.8496 per Dth to \$2.8421 per Dth; increase its Rate Schedule FSS injection and withdrawal charges from \$0.0015 per Dth to \$0.0137 per Dth; and increase its Rate Schedule ISS inventory charge from \$0.1145 per Dth to \$0.1385 per Dth. Southwest Gas states that it made this filing to incorporate into its storage rates the current operating conditions related to the pending partial abandonment of a portion of its North Hopeton Storage Field and the replacement of that lost capacity with third party storage service, which Southwest Gas states will allow it to continue to meet its contractual obligations.

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<sup>8</sup> 48 FERC ¶ 61,422 (1989).

9. Southwest Gas bases its rates on a proposed \$50.45 million cost of service, an increase from the \$44.22 million cost of service that Southwest Gas states underlies its currently effective rates. Southwest Gas calculates its cost of service using the twelve-month base period ending April 30, 2007, incorporating adjustments made during a test period ending January 31, 2008. Southwest Gas's cost of service includes \$20.25 million in operation and maintenance expenses, \$5.37 million in depreciation expenses, \$10.26 million in taxes, and \$14.74 million in return. Southwest Gas's proposed cost of service also includes \$176,718 in revenue credits. Southwest Gas states that its cost of service includes the acquisition of additional North Hopeton base gas and the reclassification of existing base gas. Southwest Gas also proposes to lower its depreciation rates from 3.60 percent to 1.95 percent.

10. Southwest Gas proposes a \$141.57 million rate base, an increase from the \$140.10 million rate base it states underlies its currently effective rates. Southwest Gas proposes an overall rate of return of 10.41 percent, which includes a proposed 13 percent return on equity. Southwest Gas proposes to design its rates using a capital structure of 60.15 percent equity and 39.85 percent debt.

11. Southwest Gas calculates its proposed storage rates using a billing determinant capacity of 60,917,892 MMBtu, an increase from the 56,988,737 MMBtu underlying its currently effective rates; using a deliverability capacity of 8,676,060 MMBtu, an increase from the 8,130,684 MMBtu underlying its currently effective rates; and an injection/withdrawal of 74,322,954 MMBtu, an increase from the 56,988,737 MMBtu underlying its currently effective rates. Southwest Gas states it is controlling expenses and taking a conservative approach to its rate proposal, while striving to match cost incurrence with cost causation.

### **Notice**

12. Notice of Southwest Gas's section 4 filing in Docket No. RP07-541-000 was issued on August 6, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. §154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214, all timely filed motions to intervene and any 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 this proceeding or place additional burdens on existing parties. The Complainants in the Docket No. RP07-34-000 complaint proceeding and Missouri Public Service Commission (MoPSC) filed timely protests. The Michigan Public Service Commission (Michigan PSC) and the Kansas Corporation Commission (KCC) filed protests out-of-time. The Complainants also filed a Renewed Motion for Interim Rate Relief and Request for Expedited Action in Docket No. RP07-34-000, which we address below. Southwest Gas filed an answer.

Generally, the Commission does not permit answers to protests (*see* 18 C.F.R. § 385.213 (2007)). However, the Commission will accept Southwest Gas's answer as it assists in fully considering the proposal. We discuss all protests and Southwest Gas's answer below.

### **Discussion and Suspension**

13. Protesters raise numerous concerns with Southwest Gas's section 4 rate filing. Many of these concerns involve cost of service items, such as Southwest Gas's proposed: (1) rate of return; (2) level of off-system capacity costs; (3) general operation and maintenance expenses; (4) proposed annualization of increases in labor expenses to reflect merit increases; (5) proposed increases in storage supervision and engineering costs; and, (6) cost adjustments.

14. The Commission shares the concerns that the protesters raise. Based upon a review of the filing, we find that Southwest Gas has not shown its proposed rates to be just and reasonable, and the proposed rates may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we accept Southwest Gas's proposed tariff sheet for filing and suspend its effectiveness for the period set forth below, to become effective February 1, 2008, subject to the conditions set forth in this order. Further, we find that Southwest Gas's proposed rate modification raises issues that require further investigation at a hearing before an Administrative Law Judge. Therefore, we will set all issues in the subject filing for hearing.

15. 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.<sup>9</sup> It is recognized, however, that shorter suspensions may be warranted in circumstances where suspensions for the maximum period may lead to harsh and inequitable results.<sup>10</sup> Such circumstances do not exist here. Accordingly, the Commission will suspend Southwest Gas's revised tariff sheet for five months and will permit the rates to take effect February 1, 2008, subject to refund and subject to the conditions set forth in the body of this order and the ordering paragraphs below.

16. Protesters raise additional issues with Southwest Gas's filing that warrant discussion.

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<sup>9</sup> *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

<sup>10</sup> *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

### **Summary Rejection**

17. Various protesters ask that the Commission summarily reject Southwest Gas's section 4 rate application on certain grounds. The Complainants ask the Commission to summarily reject the rate application since it is not in compliance with 18 C.F.R. § 154.7(a)(6)(2007), which requires, among other things, that all tariff filings must include a summary statement "comparing the cost of service, rate base and throughput underlying each change in rate made to the tariff or executed service agreement compared to the same information underlying the last rate found by the Commission to be just and reasonable." Specifically, the Complainants argue that, in the instant filing, Southwest Gas compares its cost of service, rate base, and throughput to those underlying the rates that the Commission approved in Southwest Gas's settlement in Docket No. CP97-237-000, in 1998. The Complainants argue, however, that the rates set forth in that settlement are not Commission-approved. They assert that the last Southwest Gas rates the Commission determined to be just and reasonable were those approved by the Commission in Docket No. RP89-60-000, and the parameters underlying these rates are those that Southwest Gas should have used for its comparisons. The Complainants cite three orders where the Commission rejected filings for not complying with section 154.7(a)(6) of the Commission's regulations,<sup>11</sup> and contend that the Commission should likewise reject the instant filing.

18. In its answer, Southwest Gas argues that no summary rejection is appropriate since its section 4 rate filing is neither "patently deficient in form nor a substantive nullity."<sup>12</sup> Southwest Gas also argues that the Commission's authority to reject a section 4 filing is limited to those rare instances where "the facts are not in dispute and the [proposed] new tariff contravenes valid and explicit...regulations or policy,"<sup>13</sup> which is not the case with the instant filing. Southwest Gas states that its filing fully complies with the requirements for such filings specified in section 4 of the NGA and in Part 154 of the Commission's regulations, and that its filing is neither defective in form nor substantively deficient. Southwest Gas argues that the cases the Complainants cite do not support the extraordinary request that the Commission reject the instant section 4 rate filing, addressing each one individually. Finally, Southwest Gas asserts that the Commission has never rejected a comprehensive section 4 general rate filing on the basis of a proper

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<sup>11</sup> *Viking Gas Transmission Co.*, 110 FERC ¶ 61,172 (2005); *Natural Gas Pipeline Co.*, 96 FERC ¶ 61,207 (2001); and, *Great Lakes Transmission, L.P.*, 95 FERC ¶ 61,110 (2001).

<sup>12</sup> *Municipal Light Boards v. Federal Power Commission*, 450 F.2d 1341, 1345 (D.C. Cir. 1971).

<sup>13</sup> *United Gas Pipe Line Co. v. Federal Power Commission*, 551 F.2d 460, 463 (D.C. Cir. 1977).

quantified summary relied on to compare the cost of service, rate base, and throughput contained in the new filing with the same information underlying the currently effective rates.

19. KCC also asks for summary rejection of Southwest Gas's rate application. KCC asserts that Southwest Gas's instant section 4 rate filing is nothing more than an attempt to circumvent the ongoing section 5 complaint proceeding. KCC contends that Southwest Gas is exploiting consumers and manipulating the rules by filing a section 4 rate change application during a complaint.

20. We reject parties' requests that the Commission summarily reject Southwest Gas's rate change application. Southwest Gas filed a comprehensive section 4 rate application in compliance with section 154 of the Commission's regulations. The Commission understands that there are disagreements between certain parties as to what rates Southwest Gas should be comparing its proposed cost of service, rate base, and throughput to (i.e., what was the last Southwest Gas rate that the Commission found to be just and reasonable). The disagreement over this issue, however, does not provide an adequate basis for summarily rejecting Southwest Gas's rate application. Instead, parties may further explore this comparison at the hearing we are establishing in this order. The Commission understands, however, that the section 4 filing appears as an outgrowth of the section 5 complaint proceeding, which supports their being in unison, as discussed below.

### **Consolidation**

21. In the alternative to rejection, the Complainants and KCC request that the Commission consolidate Southwest Gas's section 4 rate application with its ongoing section 5 complaint proceeding. We agree with this recommendation. Consolidating the two proceedings will reduce the administrative burden for Commission staff and parties, saving time and resources. Consolidation will also provide the most efficient and effective forum to handle issues common to both proceedings. Accordingly, the Commission will consolidate Southwest Gas's section 4 rate proceeding in Docket No. RP07-541-000 with its section 5 complaint proceeding in Docket No. RP07-34-000. The Administrative Law Judge in the consolidated proceeding will determine the most efficient method for proceeding with the hearing of the consolidated cases.

**Renewed Motion for Interim Rate Relief and Request for Expedited Action**

22. On August 13, 2007, the Complainants filed a Renewed Motion for Interim Rate Relief and Request for Expedited Action in Docket No. RP07-34-000.<sup>14</sup> The Complainants argue that Southwest Gas's section 4 rate filing in Docket No. RP07-541-000 should not moot its section 5 complaint proceeding. The Complainants contend that natural gas shippers lack any statutory right to refunds in connection with complaint proceedings, and the Commission, through prompt and effective action, must ensure that section 5 remains a viable alternative to correct unjust and unreasonable rates and terms and conditions of service by implementing interim rate relief for Southwest Gas's shippers.

23. As noted earlier, the Complainants express concerns over certain costs included in Southwest Gas's cost of service filed in Docket No. RP07-34-000, including its purchase of 6.5 MMDth of third-party storage capacity and related transportation services, and its purchase of 3 MMDth of new base gas, both of which it incorporated as post-base period adjustments. The Complainants also assert that Southwest Gas does not support its use of 100-percent equity capitalization and its proposed 13.25-percent return on equity. The Complainants state that, in order for Southwest Gas to defeat a motion for interim rate relief, it must demonstrate that: (1) post-base period adjustments are permitted by the Commission in a section 5 proceeding; (2) Southwest Gas can defend its rates based on post-base period acquisition of upstream capacity for which Southwest Gas is at risk; and, (3) Southwest Gas may use a 100-percent equity capital structure for purposes of its cost and revenue study. The Complainants assert that Southwest Gas cannot defend any of these positions. Accordingly, the Complainants request that the Commission grant their Motion for Interim Rate Relief and Request for Expedited Action on an expedited basis, preferably by August 31, 2007, and not later than the effective date of the new rates proposed in Docket No. RP07-541-000.

24. We deny the Complainants' request for interim rate relief. As discussed above, we are consolidating Southwest Gas's instant section 4 rate filing in Docket No. RP07-541-000 with its ongoing section 5 complaint proceeding in Docket No. RP07-34-000, since this will provide the most efficient and effective forum to handle issues common to both proceedings. Staff's initial review finds that Southwest Gas's section 4 rate application supports its currently effective rates if the Commission approves Southwest Gas's purchase of base gas and off-system capacity in the Docket No. CP97-69-000 proceeding. Accordingly, no immediate interim rate relief is warranted at this time, and any modifications to Southwest Gas's rates will be implemented as a result of the

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<sup>14</sup> The Complainants filed an original motion for rate relief on March 5, 2007, contending that Southwest Gas's cost and revenue study was not in compliance with the Commission's December 21, 2006 order since it included costs outside the base period.

consolidated hearing established in this order. However, should the Commission deny Southwest Gas its costs of purchasing base gas and off-system capacity in the certificate proceeding, we will revisit the issue of interim rate relief.

### **Motion for Omission of Initial Decision**

25. On August 13, 2007, MoPSC included with its intervention and protest in Docket No. RP07-541-000 (the section 4 case), a Motion for Omission of Initial Decision in Docket No. RP07-34-000 (the section 5 case). MoPSC wants the Commission to act on the section 5 complaint filing before it takes action on the instant section 4 rate filing. It states that waiver of the initial decision in the section 5 case is appropriate in order to ensure that just and reasonable rates, presumably below the current existing rates, are in effect for Southwest Gas prior to the section 4 rates becoming effective, thus providing a lower “floor” for refunds should any ultimately be ordered in the section 4 case. It argues that unless the Commission acts on the section 5 case before the section 4 rates take effect, it may be argued that the section 5 case is rendered moot. MoPSC states that its position is that the section 5 proceeding will not be rendered moot regardless of the date of any Commission action reducing rates. However, MoPSC contends that the Commission need not resolve this legal issue at this time. MoPSC suggests that the Commission waive the initial decision of the Administrative Law Judge, and issue an order, prior to the date the section 4 rates go into effect, to be effective on the issuance of such order so as to avoid any further delays associated with any compliance filing that may be ordered. MoPSC’s motion is supported by the KCC and the Michigan PSC.

26. On August 22, 2007, Southwest Gas filed an answer to MoPSC’s Motion for Omission of Initial Decision, requesting that the Commission deny MoPSC’s motion. Southwest Gas asserts that MoPSC’s motion does not conform to the Commission’s requirements for granting waiver of an initial decision, as set forth in 18 C.F.R. § 385.710 (2007) (Rule 710). According to Southwest Gas, Rule 710 requires that any motion to waive an initial decision must specify: (1) whether any participant in the hearing waives any procedural right; (2) whether all participants concur in the request to waive the initial decision; (3) the reasons that waiver of the initial decision is in the interest of parties and the public interest; (4) whether any participant desires an opportunity for filing briefs; and, (5) whether any participant desires an opportunity for oral argument before the presiding officer, the Commission, or an individual Commissioner. Southwest Gas states that MoPSC has not satisfied these requirements in its motion request.

27. We deny MoPSC’s request to waive the initial decision in the section 5 complaint proceeding. Considering the complexity of the issues being tried by the Administrative Law Judge, MoPSC has provided no compelling reason or justification for omission of the initial decision in this case. The parties have jointly submitted to the presiding judge a 28-page listing of issues, which delineates the positions of the parties as to each issue. This listing alone shows that there are substantial issues of fact in which the parties have

substantial disagreement. These issues are best resolved in a trial-type setting. Merely setting a lower refund “floor” is not a sufficient reason for waiver of the initial decision in a case as complicated and contentious as this. Southwest Gas’ current rates will be the subject of the consolidated section 4 and section 5 investigation, and it is those rates which will ultimately be subject to adjustment, if any.

28. Further, we agree with Southwest Gas that MoPSC’s Motion for Omission of Initial Decision does not conform to the requirements of Rule 710 of the Commission’s regulations, except to the extent that the rationale for the motion may be said to address the third requirement listed above – that waiver might be in the public interest. Moreover, it is our policy that waiver of the initial decision will typically not be granted unless there is agreement for such waiver by all parties to the proceeding, which is not the case here. Southwest Gas specifically states that it does not agree to waiver of the initial decision. Nor do we believe such an agreement could reasonably be expected, given the contentious nature of the issues before the Administrative Law Judge.

### **Form No. 2 Revisions**

29. In its protest, KCC raises concerns with the Commission’s Form No. 2.<sup>15</sup> Specifically, KCC asserts that Form No. 2 is the only basis upon which shippers can determine whether a pipeline is over-earning its return, but the Form No. 2s only include minimal information which makes it difficult for shippers to make such determinations. KCC urges the Commission to amend its Form No. 2 to require substantial information which would allow shippers to examine pipeline revenue comprehensively, or in the alternative, require pipelines to file a rate basis more often.

30. We will not order any changes to the Commission’s Form No. 2, since it is outside the scope of the instant filing. However, in its Notice of Inquiry regarding the Assessment of Information Requirements for FERC Financial Forms, issued on February 15, 2007, in Docket No. RM07-9-000,<sup>16</sup> the Commission solicited comments regarding the need for revisions to the Commission’s reporting requirements for FERC Form Nos. 1, 1-F, 2, 2-A, 3-Q, 6, and 6-Q. Any modifications to the Commission’s Form No. 2 to make jurisdictional pipelines’ accounting and financial information more transparent to shippers will be made in that proceeding.

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<sup>15</sup> The Commission’s Form 2 is an annual report each jurisdictional pipeline must file that includes certain financial and accounting information.

<sup>16</sup> 118 FERC ¶ 61,108 (2007).

The Commission orders:

(A) The revised tariff sheet in Docket No. RP07-541-000 is accepted and suspended, to become effective February 1, 2008, subject to refund and conditions and subject to the outcome of the hearing established in this proceeding.

(B) Pursuant to the authority of the NGA, particularly sections 4, 5, 8 and 15, a public hearing will be held in Docket No. RP07-541-000 concerning the lawfulness of Southwest Gas's filing.

(C) 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, must convene a prehearing conference in this proceeding to be held within twenty (20) days after this order issues, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426. The prehearing conference will be held for the purpose of establishing a procedural schedule. 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.

(D) This proceeding is consolidated with the ongoing section 5 complaint proceeding against Southwest Gas in Docket No. RP07-34-000. The Presiding Administrative Law Judge in the consolidated proceeding is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

(E) We deny the Panhandle Complainants' Renewed Motion for Interim Rate Relief and Request for Expedited Action in Southwest Gas's section 5 complaint proceeding in Docket No. RP07-34-000.

(F) We deny Missouri Public Service Commission's Motion for Omission of Initial Decision in Southwest Gas's section 5 complaint proceeding in Docket No. RP07-34-000.

By the Commission. Commissioner Wellinghoff dissenting in part with a separate statement attached.

( S E A L )

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

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Panhandle Complainants

Docket No. RP07-34-000

v.

Southwest Gas Storage Company

Southwest Gas Storage Company

Docket No. RP07-541-000

(Issued August 31, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

The Commission has previously stated that the Panhandle Complainants have raised serious questions as to whether Southwest Gas's revenue is substantially in excess of its costs.<sup>1</sup> Because I believe that the Panhandle Complainants have adequately demonstrated that certain cost items at issue in this proceeding are inconsistent with Commission policy, I would grant their request for an interim rate reduction.

The Panhandle Complainants include customers of Panhandle and producers, marketers, and consumers of gas shipped by Panhandle.<sup>2</sup> On October 25, 2006, the Panhandle Complainants filed a complaint that requested an immediate rate reduction based on the analysis of Southwest Gas's rates provided in their pleading, as well as an evidentiary hearing to investigate the need for further rate reductions. As support for the interim rate relief request, the Panhandle Complainants included in their pleading a cost and revenue study (Crowe Study) using publicly available data, including data from Southwest Gas's Form 2-A. The Crowe Study calculates Southwest Gas's cost of service to be \$28.6 million and its annual revenues to be \$45.0 million.

On December 21, 2006, we issued an order that established hearing procedures to investigate Southwest Gas's rates under section 5 of the NGA. In that order, we denied the interim relief request based on the cost data provided in the Crowe Study, but we also

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<sup>1</sup> 117 FERC ¶61,318 at P 17 (2006) (December Order).

<sup>2</sup> Panhandle Eastern is currently Southwest Gas's sole customer, holding a long-term firm contract for about 61 Bcf of annual storage. Southwest Gas is a wholly-owned subsidiary of Panhandle Eastern.

directed Southwest Gas to file a cost and revenue study.<sup>3</sup> In support of that directive, we stated that we were “simply requiring the company to file information we need to carry out our responsibilities under NGA section 5 to ensure that rates are just and reasonable ...”<sup>4</sup> We further stated that “if the cost and revenue study filed by Southwest Gas in response to this order does not support its existing rates, the Commission will order an immediate rate reduction down to the level its cost and revenue study does support.”<sup>5</sup>

In response to our directive, Southwest Gas filed its cost and revenue study on February 20, 2007. The Panhandle Complainants, in turn, filed a motion for interim rate relief that identified a number of concerns about Southwest Gas’s cost and revenue study. First, the Panhandle Complainants argue that Southwest Gas cannot include the costs associated with a certificate filing that is pending before the Commission because post-base period adjustments are not permitted by either the pipeline<sup>6</sup> or customers<sup>7</sup> in a section 5 proceeding. Second, they argue that Southwest Gas’s use of a 100 percent equity capital structure is inconsistent with Commission policy. On August 13, 2007, the Panhandle Complainants renewed their request for interim relief.

As stated above, I believe that the Panhandle Complainants have adequately demonstrated that these cost items are inconsistent with Commission policy. First, the cost and revenue study that Southwest Gas filed in response to the December Order included costs associated with a pending certificate application. The Commission’s regulations require that rates placed into effect exclude the costs associated with any facilities that will not be placed in service by the end of the test period, or for which certificate authorization has not been granted by the end of the test period.<sup>8</sup> The rationale is simply that assets associated with such costs are not used and useful during the test period. Similarly, in a section 5 proceeding, a pipeline’s current rates cannot be justified with costs that have not been incurred or approved because those costs are at issue in a pending certificate filing. Therefore, in light of the Commission’s recognition that such

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<sup>3</sup> December Order at P 18, 20.

<sup>4</sup> *Id.* at P 18.

<sup>5</sup> *Id.* at P 20.

<sup>6</sup> *Pub. Serv. Comm’n of New York v. National Fuel Gas Supply*, 115 FERC ¶ 61,368 at P 6 (2006).

<sup>7</sup> *Indicated Shippers v. Sea Robin Pipeline Co.*, 79 FERC ¶ 61,072 at 61,359-60, *reh’g denied*, 81 FERC ¶ 61,146 at 61,656 (1997), *reh’g denied*, 82 FERC ¶ 61,217 (1998).

<sup>8</sup> 18 C.F.R. § 154.303(c)(2) (2006).

data was necessary to ensure just and reasonable rates, I would exclude these costs and grant the Panhandle Complainants' motion for interim relief.

Second, the Commission has found equity ratios of 90 percent and above to be "atypical" on several occasions when it reviewed proposed capital structure.<sup>9</sup> Those findings support the Panhandle Complainants' contention that Southwest Gas's use of a 100 percent equity capital structure is inconsistent with Commission policy.

Finally, I am concerned that the Commission's rejection of interim rate relief under the circumstances of this case will discourage customers from availing themselves of our complaint process. As parties to this proceeding have correctly observed, the complaint process is important to the Commission fulfilling our responsibilities under the NGA of ensuring that rates are just and reasonable.<sup>10</sup>

For these reasons, I respectfully dissent in part.

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Jon Wellinghoff  
Commissioner

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<sup>9</sup> See, e.g., *Williams Natural Gas Co.*, 84 FERC ¶ 61,080 at 61,356 (1998), *order on reh'g*, 86 FERC ¶ 61,323 (1999), *vacated in part on other grounds*, *Missouri Pub. Serv. Comm'n v. FERC*, 215 F.3d 1 (D.C. Cir. 2000); *Gateway Pipeline Co.*, 55 FERC ¶ 61,488 at 62,677 (1991) ("Gateway's claimed capitalization of 100% equity is atypical and unduly costly to the ratepayer since equity is a much more costly form of capital than debt.").

<sup>10</sup> See, e.g., Answer in Support of Complainant's Renewed Motion for Interim Rate Relief of the Missouri Public Service Commission, Aug. 17, 2007, at 1-2.