

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. RP10-148-003

(Issued November 2, 2010)

Attached is the separate statement by Chairman Wellinghoff dissenting to an order issued on October 29, 2010, in the above-referenced proceeding, *Northern Natural Gas Company*, 133 FERC ¶ 61,111 (2010).

Kimberly D. Bose,  
Secretary.

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WELLINGHOFF, Chairman, dissenting:

Certain industrials have filed for rehearing of the Commission's order terminating the section 5 proceeding. The Commission should grant rehearing.

The Commission instituted this section 5 proceeding on November 19, 2009 based on Form 2 data for 2008 that showed that Northern may be substantially over-recovering its cost of service, causing Northern's existing rates to be unjust and unreasonable. In the underlying order, the majority's decision to terminate the proceeding was based on the assertion by the Customer Group that recent data shows that Northern has experienced a significant decrease in its Field Area revenues since 2008 with no offsetting increase in Market Area revenues, and speculation about Northern's intention to file to increase its rates by 30 percent or more. I dissented because the majority ignored evidence that Northern continues to significantly over recover its cost-of-service and Northern's likely inability to support a rate increase.

Neither the Customer Group, nor Northern in its answer supporting the motion to terminate, provided any updated cost-of-service information with which to compare the updated revenue information. However, the cost information currently before the Commission suggests that, even taking into account the asserted drop in its Field Area revenues, Northern is continuing to substantially over-recover its cost-of-service. Using the data provided by the Customer Group in its motion to terminate, Northern's total revenues for the period April 2009 through March 2010 from both the Field and Market areas, and Storage, were \$600,156,618.<sup>1</sup> Trial Staff's analysis of Northern's Form No. 2 for calendar year 2009 shows that, using an estimated ROE of 12 percent, Northern's total reported cost-of-service was \$543,299,674.<sup>2</sup> Therefore, assuming the accuracy of the cost

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<sup>1</sup> Appendix A, page 2.

<sup>2</sup> Staff Exhibit No. 1 to Staff's Opposition to Customer Motion to

information reported by Northern in its 2009 Form No. 2 and no significant change in Northern's cost-of-service during the first quarter of 2010,<sup>3</sup> Northern's revenues during the April 2009 through March 2010 period over-recovered its cost of service by \$56,856,944.

Moreover, the record contains other testimony contending that Northern's actual cost-of-service is substantially below that claimed in its 2009 Form No. 2, suggesting the possibility of an even larger over-recovery by Northern. For example, in its testimony filed on May 20, 2010, Trial Staff contended that Northern's cost of service should be set at \$472.1 million.<sup>4</sup> That is nearly \$100 million less than Northern's estimate that its total revenues for the year August 2009 through July 2010 would be \$570,942,194. Similarly, Indicated Shippers filed testimony on May 20, 2010, contending that Northern's cost-of-service was only \$502,201,272,<sup>5</sup> or nearly \$70 million less than its estimated revenues.

While there may have been some change in Northern's revenue from the data on which the majority relied in instituting this proceeding, that change did not negate the reason this proceeding was instituted. Thus, the underlying premise supporting initiation of the section 5 has not been clearly refuted. In the absence of compelling evidence that rates are no longer unjust and unreasonable, the Commission should not terminate a section 5 proceeding.

The Customer Group suggested that Northern's agreement to delay any section 4 rate filing by at least eleven months if the section 5 proceeding was terminated provided an additional reason to grant their Motion. The Motion noted in particular the possibility that Northern's section 4 filing would include a proposal to modify its existing rate design and cost allocation method in order to shift from zoned rates<sup>6</sup> to a single system-wide postage rate. Based on the

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Terminate (May 12, 2010).

<sup>3</sup> Northern's cost-of-service as reported in its 2009 Form 2 was a reduction of about \$15 million from the cost of service reported in its 2008 Form 2.

<sup>4</sup> Direct Testimony of Kenneth A. Sostick, P. 5 ("I conclude the total Cost of Service, based on the twelve months ended October 31, 2009, for NNG is \$472,147,581.") The witness pointed out that this was a reduction of \$120,083,773 from the cost-of-service that Northern filed in its Cost and Revenue Study for the twelve months ended July 31, 2009.

<sup>5</sup> See Prepared Direct and Answering Testimony of Elizabeth H. Crowe, Exhibit No. IS-4 at 1.

<sup>6</sup> Currently, Northern designs its rates by establishing a total-combined

information currently before the Commission, Northern's cost-of-service could not justify a rate increase. Any increase in rates would need to be predicated primarily on a change in rate design. However, Article II.C of the 2005 settlement of Northern's last rate case provides that any such rate design changes proposed by Northern in its next section 4 rate will only be implemented prospectively after a Commission order on the merits of the proposal.<sup>7</sup> Therefore, no change in rate design can take effect until all participants and the Commission have had a full opportunity to carefully consider such a proposal and the Commission finds that Northern has satisfied its section 4 burden to show that such a change is just and reasonable.

Finally, the Customer Group asserted that the "refund floor in the [new] section 4 filing would be the existing rates, irrespective of the findings by the Commission in the section 5 proceeding."<sup>8</sup> However, this assumed that the Commission would take no action in the section 5 proceeding before the end of the suspension period in the section 4 rate case, and that, if the Commission did not act in the section 5 proceeding until after that date, the Commission's merits holding in the section 5 proceeding could not establish a lower refund floor in the section 4 proceeding at least on a prospective basis. Those assumptions are not necessarily correct. The Customer Group also overlooked the terms of Northern's settlement of its last rate case, in which Northern agreed (in Article II.B) that in its next general section 4 rate case, "the base rates effective November 1, 2005, minus the rate component for the SLA Annual Amortization as shown on Attachment E of the SLA Settlement (revised December 1, 2004) and as adjusted for the final SLA balance at December 31, 2004, will be used for purposes of establishing the refund floor for such case."<sup>9</sup> Thus, if Northern made a section 4 filing that became effective before the section 5 proceeding was completed, the refund floor would not have been premised on the existing rates (as the Customer Group contends) but rather on the base rates effective November 1, 2005 (minus the SLA dollars).

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transmission cost-of-service for its Field and Market Area facilities. It then uses various measures to allocate this cost-of-service between the Field and Market Areas. The Customer Group states that, in Northern's last rate case, this methodology allocated approximately 78 percent of Northern's fixed costs to the Market Area. Customer Group Motion at 14 and n. 18.

<sup>7</sup> *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 (2005) ("any such rate design changes shall be proposed in its next general rate case for prospective implementation only, pursuant to a Commission order on the merits...")

<sup>8</sup> Customer Group Motion at 3.

<sup>9</sup> *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 at P 4 (2005).

I recognize that a primary concern of the Customer Group was that NGA section 4 would permit Northern to move any proposed rate increase into effect, subject to refund, after a five-month suspension, and thereby render any Commission action in the section 5 proceeding moot. The Customer Group described the fundamental unfairness of its situation as follows:

Northern's position concerning the filing of a section 4 proceeding did not come as a surprise to the Customer Group. Although section 5 challenges to a pipeline's rates have been rare, there are two well established strategies available to pipelines for resisting, or at least postponing a section 5 rate decrease. One strategy is to seek to delay a final order in the section 5 proceeding as long as possible because rate relief is prospective only. [...]

The other strategy relies on a pipeline's right to initiate, or announce the intention to initiate, a section 4 proceeding in hopes of trumping the section 5 investigation. This is the situation that has confronted the Customer Group from the day the Investigative Order issued.

As a general matter, the lack of refund authority under section 5 of the NGA allows the regulated community to defeat the purpose of section 5 at least in some circumstances. This is not the case under the Federal Power Act (FPA). The Commission must establish a refund effective date for a section 206 proceeding and has the authority to order refunds for the period ending 15 months after the refund effective date. Thus, the incentive for game-playing is removed and the Commission can determine on the merits that a public utility's rates are just and reasonable. For this reason, I support legislative changes providing for NGA refund authority paralleling that provided to the Commission in the FPA.

Accordingly, the Commission should grant rehearing, and reinstitute the section 5 proceeding. For these reasons, I respectfully dissent from today's order.

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Jon Wellingshoff  
Chairman