

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. RP10-148-000

(Issued May 28, 2010)

Attached is the statement by Commissioner Spitzer concurring to an order issued on May 27, 2010, in the above referenced proceeding, *Northern Natural Gas Company*, 131 FERC ¶ 61,178 (2010).

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. RP10-148-000

(Issued May 28, 2010)

SPITZER, Commissioner, *concurring*:

On November 19, 2009, the Commission initiated an investigation under Section 5 of the Natural Gas Act (NGA)¹ against Northern Natural Gas Company (Northern) and two other interstate natural gas pipelines.² I supported the November 19 orders and I wrote separately to express my views on the historical and economic context of the rate reviews and to encourage the parties to consider whether settlement discussions could accelerate the resolution of these proceedings.

On May 5, 2010, the Northern Customer Group (Customer Group) “consisting of shippers that hold a majority of the firm transportation and storage capacity” on Northern filed a motion to “Terminate Section 5 Proceeding and Request for Shortened Comment Period” (Customer Group Motion). In response, many parties, including but not limited to, state public service commissions, municipalities and local distribution companies, filed answers in support of or not opposing the Customer Group Motion. The American Public Gas Association took no position on the Customer Group Motion. Commission Staff, the Indicated Shippers and the Industrials filed answers in opposition to the Customer Group Motion.

I support the order to terminate the NGA § 5 proceeding. This termination order, however, should not be read as a lack of resolve on the Commission’s part as to the November 19 orders. Nor should it be read as a retreat from our obligations under NGA § 5.³ The fact is that we are not terminating the NGA § 5

¹ 15 U.S.C. § 717d.

² *Northern Natural Gas Co.*, 129 FERC ¶ 61,159 (2009), *reh’g denied*, 130 FERC ¶ 61,134 (2010).

³ Under NGA § 5, the Commission may initiate an investigation and “any state, municipality, State commission, or gas distributing company” has the

proceeding in a vacuum. Based on a review of the evidence presented in the case to date, the Customer Group “believes it is now readily apparent that the [NGA § 5] investigation of Northern’s rates, if allowed to proceed, likely will result in an increase in customer rates at an earlier point in time than would be the case if the proceeding were terminated now.”⁴ Further, the Customer Group indicates that “Northern has agreed not to file [an NGA § 4] rate increase before on or about May 1, 2011 and not to move higher rates into effect prior to November 1, 2011.”⁵ I will hold Northern to its commitments and I recognize that many of its shippers and state commissions rely on such commitments.⁶

I acknowledge arguments against terminating the NGA § 5 proceeding. The parties’ representations before the Commission, however, demonstrate such action is in the best interest of the ratepayers.⁷ A variety of shippers that hold an

opportunity to file a complaint against a pipeline. Nonetheless, under NGA § 4, the Commission can neither compel nor preclude a pipeline from filing a rate case.

⁴ See Customer Group Motion at 2.

⁵ See Customer Group Motion at 4; “Answer of Northern Natural Gas Company in Support of Motion to Terminate Section 5 Proceeding” at 4 (May 12, 2010) (“Northern confirms that, if the Commission terminates this proceeding as requested in the Motion, with no conditions, Northern will not file [an NGA § 4] case to place new rates into effect prior to November 1, 2011.”).

⁶ Northern’s prior settlement did not obligate it to make an NGA § 4 filing. In an NGA § 4 filing, unlike under NGA § 5, Northern will bear the burden of proof as to the justness and reasonableness of its proposed rates.

⁷ Indeed, many of these same parties, who described themselves as “shippers that would be the immediate beneficiaries of any potential rate reduction,” requested a delay in the procedural schedule so they could reach “tentative conclusions with respect to the litigation advantages/risks, posed by the [NGA § 5] proceeding or with respect to the litigation risks, if any, that would be posed by Northern’s filing of [an NGA § 4] proceeding at this time.” See “Expedited Motion of Sponsoring Parties for One Month Extension of Procedural Schedule” at 3 (March 26, 2010). Following this extension, several parties completed their review of Northern’s cost and revenue study and “the record compiled to date” and proffered that “termination of the [NGA § 5] investigation, coupled with Northern’s agreement to a moratorium on the filing of [an NGA § 4] rate increase, is consistent with the goals of [NGA § 5], is a fair and reasonable resolution of this proceeding, and is in the public interest.” Customer Group Motion at 9.

overwhelming majority of firm capacity on the pipeline (*i.e.*, 96 % of the firm capacity)⁸ as well as numerous state commissions with the responsibility of protecting ratepayers from excessive rates have evaluated the data before them and have indicated that they would rather terminate the NGA § 5 proceeding and achieve rate certainty amidst economic uncertainty in return for foregoing a new NGA § 4 rate proceeding at this time.

Notably, these shippers and state commissions are not left unprotected by the termination of the NGA § 5 proceeding. The parties and the Commission will have the opportunity to review the justness and reasonableness of Northern's rates in any subsequent NGA § 4 rate case. The record shows that these parties determined that "another year of rate certainty at current rates and a guaranteed delay in the need to contest a[n NGA §] 4 filing is of significant value."⁹ Moreover, the Commission retains the ability to re-initiate an NGA § 5 proceeding.¹⁰

The order granting the Motion to Terminate reflects the reality that the determination of just and reasonable rates requires that we accommodate changed circumstances and new information. The facts underlying the presumed return on

⁸ See "Response of Northern Natural Gas Company to Answers Filed to Motion to Terminate Section 5 Proceeding" at 2 (May 14, 2010) (Objections filed by two groups "that represent less than four percent of the entitlement on Northern's system.").

⁹ See, *e.g.*, *Northern Natural Gas Co.*, 131 FERC ¶ 61,178 at P 15 (2010) ("Neither Trial Staff nor Indicated Shippers contest the Customer Group's assertions concerning the decrease in demand for transportation in Northern's Field Area and its likely continuation."); "Answer of the Kansas Corporation Commission to the Motion of the Northern Customer Group to Terminate Proceeding" at 1 (May 6, 2010) ("substantial consumer benefits would flow from a moratorium on any rate filing by Northern that would revise the cost allocation methodology underlying Northern's currently effective rate design"); "Answer of the Minnesota Office of Energy Security to the Motion of the Northern Customer Group to Terminate Proceeding" at 1 (May 11, 2010) (the entity who is statutorily "charged with the duty to advocate for the public interest both on a state and federal level" maintained that "a rate moratorium is in the public's interest.").

¹⁰ I continue to believe that competition works best where the prices for essential services accurately reflect the costs associated with providing those services. *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299 at P 210 (2004).

equity have changed. The shippers clearly balanced the speculative and transitory rate relief under this proceeding against the downside risk of a May 28, 2010 NGA § 4 case with a current test year and rates effective in 2010.¹¹ The NGA affords the Commission and other parties the right to bring an NGA § 5 proceeding at any time. Moreover, Northern has a statutory right under NGA § 4 to file a rate case. Consequently, the shippers are well within their rights to bring this Motion, and the evidence in the record suggests the Commission should not subject the affected parties to prospective risk by rigidly ignoring facts arising subsequent to November 2009.

Given these unique circumstances and the record before us, I conclude it is appropriate to give due weight to the request of the shippers and state commissions regarding the termination of the NGA § 5 proceeding. These entities are responsible for either protecting retail customers or paying the rates under review. The termination action provides Northern's shippers and state commissions with rate certainty for another year and the opportunity to review Northern's rates in a future rate proceeding.

Therefore, I support the Order to grant the Motion to Terminate.

Marc Spitzer
Commissioner

¹¹ See Customer Group Motion at 9 (“termination of the [NGA § 5] investigation, coupled with Northern’s agreement to a moratorium on the filing of [an NGA § 4] rate increase, is consistent with the goals of [NGA § 5], is a fair and reasonable resolution of this proceeding, and is in the public interest.”).