131 FERC ¶ 61,230
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Portland Natural Gas Transmission System   Docket No. RP10-729-000

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

(Issued June 11, 2010)

1. On May 12, 2010, Portland Natural Gas Transmission System (Portland) filed tariff sheets[1] to reflect a Natural Gas Act (NGA) section 4 general rate increase, to be effective as soon as the Commission permits, but in no event later than December 1, 2010 following a five month suspension period. Portland's proposed rates will result in an increase in rates of approximately 47 percent relative to those presently in effect. Portland asserts the major reasons for its proposed new rate levels include: 1) revised capital structure and increased return on equity; 2) increased depreciation rates and negative salvage value; and 3) changed billing determinants. For the reasons discussed below, the Commission accepts Portland's proposed tariff sheets listed in the Appendix and suspends them to be effective December 1, 2010, as requested, subject to refund and the outcome of hearing procedures established herein.

Background

2. On April 1, 2008, Portland filed in Docket No. RP08-306-000 a general rate increase pursuant to section 4 of the NGA (2008 Portland rate proceeding), as required by the terms of a settlement agreement approved by the Commission in Portland's previous general rate case in Docket No. RP02-13-000.[2] Portland's rate increase proposed, among other things: 1) the establishment of levelized rates for Portland based on the use of end-of-test period, rather than average, rate base balances; 2) the establishment of a negative salvage allowance for Portland; and 3) the establishment of billing determinants

[1] *See* Appendix.

[2] *Portland Natural Gas Transmission System*, 102 FERC ¶ 61,026 (2003).

satisfying Portland's at-risk condition established in its certificate proceeding.[3] On May 1, 2008, the Commission accepted and suspended Portland's proposed tariff sheets effective September 1, 2008, subject to refund and the outcome of a hearing before an Administrative Law Judge (ALJ).[4]

3. The ALJ held a hearing in that case in July 2009. The issues raised at hearing included not only Portland's levelized rate, negative salvage, and at-risk condition proposals, but also whether Portland's receipt of approximately $120 million in bankruptcy proceeds should be taken into account in calculating Portland's cost of service, revenue requirement, and rates and numerous other issues.[5] The ALJ issued an Initial Decision in Docket No. RP08-306-000 on December 24, 2009. Exceptions were filed on February 22, 2010; opposing exceptions were filed on April 5, 2010. The Initial Decision on Portland's 2008 rate proceeding is currently under consideration by the Commission.

Details of the Filing

4. On May 12, 2010, Portland filed another general rate proceeding pursuant to section 4 of the NGA. In its filing, Portland states that it is seeking an increase in its base transportation rates due to increased business risks which include changes in supply factors, unsubscribed capacity, and changes in the pipeline infrastructure serving Portland's market areas. Portland asserts that its cost of service and determination of rates reflect the costs and throughput for the base period (12 months ended February 28, 2010), as adjusted through the test period ending November 30, 2010. Portland projects that gross plant at the end of the test period will be $492,406,522 relative to the Docket No. RP02-13-000 stipulated gross plant of $492,135,676. Portland projects a total annual cost of service of approximately $86.9 million for the test period; Portland proposes to reduce this cost of service to approximately $81.5 million for purposes of setting the transportation rate for long term FT service, by (1) approximately $2.5 million of representative levels of revenue for IT and PAL services, and (2) approximately $2.9 million rate case credit attributable to avoided costs related to a compressor station that need not be constructed to achieve its previously certificated capacity.

5. Portland is proposing an overall rate of return of 10.60 percent based on a capital structure of 55.58 percent equity and 44.42 percent debt with a return on equity of 13.41 percent and debt cost of 7.093 percent. Portland also proposes to increase its

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[3] *Portland Natural Gas Transmission System*, 123 FERC ¶ 61,108 (2008).

[4] *Id.*

[5] *See Portland Natural Gas Transmission System*, 129 FERC ¶ 63,027, at P 173-222 (2009) (Initial Decision).

depreciation rates based on an average remaining life of 18 years and proposes a .55 percent negative salvage value. Portland states that its rates are based on a Commission certificated capacity of 168,672 Dth/day.[6] Finally, Portland states that it continues to design its rates using the Commission's straight fixed variable method for classifying costs between fixed and variable cost categories and has functionalized and allocated costs consistent with Commission guidelines.

Notice of Filing, Interventions and Protests

6. Public notice of Portland's filing was issued May 8, 2010, with interventions and protests due as provided in section 154.210 of the Commission's regulations.[7] Pursuant to Rule 214,[8] 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 the proceeding or place additional burdens on existing parties. Protests were filed by Canadian Association of Petroleum Producers (CAPP), PNGTS Shippers' Group (Shippers' Group)[9] and National Grid Gas Delivery Companies (National Grid).[10]

7. On June 3, 2010, Portland filed an answer to Shippers' Group's protest and, on June 7, 2010, the Shippers' Group filed an answer to Portland's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

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[6] *Portland Natural Gas Transmission System* 123 FERC ¶ 61,275, *reh'g denied*, 125 FERC ¶ 61,198 (2008).

[7] 18 C.F.R. § 154.210 (2009).

[8] 18 C.F.R. § 385.214 (2009).

[9] PNGTS Shippers' Group consists of Bay State Gas Company, Northern Utilities, Inc., DTE Energy Trading, Inc., H.Q. Energy Services (U.S.) Inc., New Page Corporation, and Wausau Paper Mills, LLC.

[10] National Grid Gas Delivery Companies consist of The Brooklyn Union Gas Company d/b/a National Grid NY; KeySpan Gas East Corporation d/b/a National Grid; Boston Gas Company, Colonial Gas Company, and Essex Gas Company, collectively d/b/a National Grid; EnergyNorth Natural Gas Inc. d/b/a National Grid NH; Niagara Mohawk Power Corporation d/b/a National Grid; and The Narragansett Electric Company d/b/a National Grid.

8. CAPP protests Portland's proposed rates, claiming that the requested ROE is in excess of the range of reasonable allowances generated pursuant to the methodology and policies used by the Commission. In addition, CAPP states that other elements of Portland's cost of service, billing determinants, and related components of the filing have not been justified and should be investigated via hearing procedures.

9. National Grid states that Portland's proposed increase of approximately 47 percent in its maximum Rate Schedule FT reservation rate is unreasonable. National Grid states that Portland is proposing to shift financial responsibility for virtually all of the risks of its business to its long term customers while simultaneously proposing to assess rates that reflect a cost of capital which assumes that Portland bears those risks. National Grid requests the Commission to establish an evidentiary hearing to investigate and consider issues raised by the filing. Specifically, the issues that National Grid asserts should be set for hearing include, but are not limited to: (a) Portland's proposed capital structure and cost of capital and particularly its proposal to assess a cost of equity established at the top of what appears to be an excessive range of returns; (b) Portland's proposed firm and non-firm billing determinants that appear to be inconsistent with the at-risk conditions that were imposed by the Commission at the time Portland was certificated; and (c) Portland's proposal to increase its depreciation and net salvage rates.

10. National Grid states that while each of these proposals is discussed in Portland's testimony, the fact of the matter is that many of the "risks" allegedly faced by Portland are not new or unique to Portland, and/or are a product of Portland's own business decisions. National Grid argues that contractual risks that were voluntarily assumed by Portland should not serve as a basis for increasing customer rates and that Portland should bear the costs associated with those risks. Further, National Grid contends that many of the supply and demand characteristics of the natural gas transportation markets identified in Portland's testimony are hardly a new phenomenon. National Grid states that it was clear that when Portland was built it would be a relatively high cost alternative to other sources of natural gas transportation to the New England market where competitors like Tennessee Gas Pipeline Company and Algonquin Gas Transmission System enjoy a price advantage over Portland. National Grid argues that the "risks" created by this situation do not justify increasing Portland's rates to its long term customers to excessive levels.

11. Further, National Grid argues that the speculative analyses concerning the future sources of natural gas supplies does not provide a sufficient basis to adopt a truncated remaining life estimate and the resulting depreciation rates proposed. National Grid states that Portland has long-term contracts for 150,200 Dth per day of wintertime capacity that do not expire until 2019. Moreover, National Grid asserts that Portland faces some level of business risk associated with its future operations; however, there is no reason to believe that Portland's risks have changed justifying a higher overall cost of capital than that which the pipeline proposed when it was initially considered by the

Commission in 1996.[11] Therefore, National Grid states that Portland's cost of capital should be set at the level of a pipeline that bears average risks.

12. Besides the items discussed above, the Shippers' Group asserts in its protest that Portland's proposal to design levelized rates based on use of end-of-test period rate base balances rather than the average balances which were employed in the rate levelization model accepted for Portland's use in its original certificate should be explored. The Shippers' Group further argues that Portland makes no mention of the fact that it has already recovered in bankruptcy settlements approximately $120 million in compensation for capacity costs it now seeks to shift to other system shippers through its use of such reduced system billing determinants.

13. Moreover, the Shippers' Group states that these issues regarding Portland's system have been recently raised and addressed when the ALJ issued an Initial Decision on each of these issues in Portland's last general section 4 rate proceeding in Docket No. RP08-306-000. The Shippers' Group asserts that the ALJ's Initial Decision on these issues is pending before the Commission and awaiting a final order. The Shippers' Group argues that Commission policy strongly disfavors allowing a party to simply relitigate issues, absent a compelling showing that changed circumstances justify doing so. The Shippers' Group contends that no such circumstances have been presented to warrant Portland's relitigation of the issues already litigated in the Docket No. RP08-306-000 rate case and currently pending before the Commission.

14. The Shippers' Group argues that some of the issues addressed by the extensive evidentiary presentations of the participants and the Initial Decision in Docket No. RP08-306-000 were:

> 1) Whether [Portland] should be permitted to prospectively implement a proposed depreciation rate increase for transmission plant.
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> 2) Is it appropriate for [Portland] to have a negative salvage allowance, and if so, at what level should it be set?
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> 3) What is the appropriate level of ROE for [Portland] and [w]here does [Portland] fall in the "zone of reasonableness" (i.e. average risk or above average risk)?

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[11] In *Portland Natural Gas Transmission System,* 76 FERC ¶ 61,123 (1996), the Commission authorized Portland to utilize a capital structure of 75 percent debt at a cost of 7.69 percent and 25 percent equity at a cost of 14 percent resulting in an overall cost of capital of 9.2675 percent.

> 4) At what level of billing determinants should [Portland's] at-risk condition be set?
>
> 5) How should rate base be computed for use in the levelization process?
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> 6) How should bankruptcy proceeds (Androscoggin and Rumford) received by [Portland] be treated?

The Shippers' Group claims that Portland is seeking to require participants to relitigate many of the very same issues which were the subject of extensive discovery, evidence, cross-examination, briefing and recent analysis by the ALJ. Accordingly, Shippers' Group asserts that, rather than relitigating those issues in this proceeding, the Commission should make the resolution of those issues in this proceeding subject to the final outcome of the Docket No. RP08-306-000 rate case.

15. In reply to the Shippers' Group protest, Portland argues that the Commission should reject Shippers' Group's request that the Commission make the resolution of certain issues in this proceeding subject to the final outcome of the Docket No. RP08-306-000 rate case. Portland states that circumstances on Portland's system have changed compared to those reflected in the Docket No. RP08-306-000 rate case filed over two years ago. Moreover, Portland asserts that it has every right to file a new section 4 rate case regarding the issues objected to by the Shippers' Group. Finally, Portland avers that it is not relevant that these issues played a role in Docket No. RP08-306-000 or even that the ALJ ruled on such issues because the Initial Decision is pending before the Commission and thus is not final.

16. In its answer, the Shippers' Group reiterates its request that the Commission should bar relitigation of issues tried in the Docket No. RP08-306-000 proceedings absent new evidence that materially affects the basis for the Commission's disposition of issues decided in that proceeding. The Shippers' Group asserts, inter alia, that various events that occurred in the last six months to one year that may not have been considered in Docket No. RP08-306-000 may have no bearing on the disposition of a particular issue, for example, the issue of rate base computation using average or levelized rate base.

Discussion

17. The Commission notes that Portland proposes to increase its current FT recourse reservation rate by approximately 47 percent from $27.4017 per Dth to $40.2456 per Dth. The rates proposed by Portland's section 4 filing have not been shown to be just and reasonable. The Commission finds that the instant filing raises issues that need to be investigated further. Accordingly, the Commission will establish a hearing concerning whether Portland's proposed rates are just and reasonable. Issues that may be explored at

the hearing include, but are not limited to, the following: (1) the appropriateness of the proposed cost allocation and rate design; (2) the level of Portland's overall revenue requirement; (3) the appropriateness of the proposed 13.41 percent ROE; (4) the negative salvage value; (5) depreciation, at-risk billing determinants, rate base computation for rate levelization purposes; and (6) treatment of bankruptcy proceeds.

18. We deny the request of the Shippers' Group that we exclude certain issues from the hearing and instead require that the resolution of those issues be based solely on the final outcome of Docket No. RP08-306-000. As Portland states, the rates in this case are based on a test period ending on December 1, 2010, whereas the rates in Docket No. RP08-306-000 are based on a test period which ended over two years earlier on September 30, 2008. For that reason, there would appear to be a legitimate need to litigate in this case any issues which turn on a different test period data or other changed circumstances not reflected in the Docket No. RP08-306 record.[12]

19. In its answer Portland describes various changed circumstances it desires to raise with respect to each of the issues which the Shipper's Group seeks to exclude from the hearing, for example, Portland states that the Phase IV Expansion of Maritimes Pipeline, LCC, has reduced Portland's certificated capacity from 210,840 Dth/d to 168,000 Dth/d since the Docket No. RP08-306 test period.[13] Portland asserts that this change is critically important to the issue of the appropriate level of its at-risk condition. Portland also asserts that this change affects the issue of the treatment of its bankruptcy proceeds, because the reduction in its capacity has eliminated some capacity that it could otherwise have sought to resell to others after the bankrupt shippers left the system. Similarly, Portland seeks to present evidence of changed facts relevant to the other issues identified by the Shipper's Group, including depreciation, negative salvage, and rate of return, and it states that it proposes in this case a different method of levelizing its rate base than was at issue in Docket No. RP08-306-000.

20. We make no finding in this order as to whether any of the new evidence Portland desires to present in this proceeding will in fact justify a different result than we ultimately reach on the similar issues in Docket No. RP08-306-000. We find only that Portland should be given an opportunity to litigate these issues at the hearing in this docket. However, the ALJ may consider whether it is possible to narrow any of the issues to be litigated in this proceeding by making some aspects of them subject to the outcome of Docket No. RP08-306-000.

[12] *Iroquois Gas Transmission System*, 87 FERC ¶ 61,268 (1999), holding that the issue of throughput is a new issue in each rate case and is decided based on data from a test period different from the test period in the previous rate case.

[13] *Portland Natural Gas Transmission System*, 123 FERC ¶ 61,275, at P 29 (2008).

21. Based upon review of the filing, the Commission finds that the proposed transportation rates have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept and suspend the effectiveness of the proposed transportation rates for the period set forth below, subject to the conditions set forth in this order.

22. The Commission's policy regarding rates 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 inconsistent with other statutory standards.[14] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[15] Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff sheets listed in the Appendix, to be effective December 1, 2010, subject to refund and the outcome of the hearing established herein.

<u>The Commission orders</u>:

(A) The tariff sheets listed in the Appendix are accepted and suspended, to be effective December 1, 2010, upon motion by Portland, subject to refund and the outcome of the hearing established herein.

(B) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP10-729-000 concerning Portland'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 (2009), must convene a prehearing conference in this proceeding to be held within twenty (20) days after issuance of this order, in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarifying the positions of the participants and establishing any procedural dates necessary for the hearing. The Presiding

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[14] *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

[15] *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Portland Natural Gas Transmission System
Tariff Sheets Accepted and Suspended, effective November 11, 2010

FERC Gas Tariff
Second Revised Volume No. 1

Eighth Revised Sheet No. 100
Seventh Revised Sheet No. 101
Seventh Revised Sheet No. 102