

132 FERC ¶ 61,089
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Granite State Gas Transmission, Inc.

Docket No. RP10-896-000

ORDER ACCEPTING, REJECTING, AND SUSPENDING TARIFF SHEETS
SUBJECT TO REFUND AND CONDITIONS AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued July 30, 2010)

1. On June 29, 2010, Granite State Gas Transmission, Inc. (Granite State) filed tariff sheets¹ to reflect a Natural Gas Act (NGA) section 4 general rate increase, to be effective August 1, 2010. Granite State asserts that it has not filed to increase its base transportation rates since its last general rate case in 1997. In addition to proposing revised rates, Granite State is proposing new tariff language and a new surcharge mechanism to collect certain capital costs incurred during the period from January 1, 2011 through December 31, 2013. Granite State states this Capital Cost Surcharge will recover the depreciation expense and a pre-tax return associated with certain capital additions.

2. For the reasons discussed below, the Commission accepts and suspends Granite State's First Revised Sheet Nos. 15, 16, and 17 to be effective January 1, 2011, subject to refund and conditions and the outcome of hearing and settlement judge procedures established herein. Further, the Commission rejects Original Sheet Nos. 143A and 143B, Granite State's proposed Capital Cost Surcharge, as discussed below.

Background

3. Granite State, a subsidiary of Unitil Corporation (Unitil), operates an 87 mile pipeline extending from Essex, Massachusetts, through New Hampshire to just northwest of Portland, Maine. Granite State has three receipt points and thirty-four delivery points and has no on-system storage or compressor stations. Since its last rate case in 1997,

¹ See Appendix.

Granite State has been owned by two different parent companies, NiSource, Inc., and Unitil.²

Details of the Filing

Rate Increase

4. Granite State asserts that it is seeking the increase in its base transportation rates due to an increase in total cost of plant and rate base, increased operation and maintenance expenses, and decreases in firm contract demand and total throughput. Granite State provides a table comparing the cost of service, rate base, and throughput underlying the instant filing with the same information underlying the last rate found just and reasonable by the Commission in the 1997 Settlement.³

	INSTANT FILING	1997 SETTLEMENT
Cost of Service	\$5,398,790	\$4,095,700
Rate Base	\$18,318,487	\$5,289,069
Throughput	1,336,800 Dt	2,312,904 Dt

5. Granite State proposes an overall rate of return of 8.81 percent based on a capital structure of 39.84 percent common equity, 0.42 percent preferred stock and 59.75 percent long-term debt with a return on equity of 11.5 percent, return on preferred stock of 6.62 percent and debt cost of 7.02 percent. Granite State also proposes depreciation rates based on an average remaining life of 35 years and is not proposing a negative salvage rate. Granite State asserts that its rates are based on the firm transportation contractual amounts expected to be in place at the end of the test year.

Capital Cost Surcharge

6. Granite State is also seeking approval to add a Capital Cost Surcharge provision in a new section 33 to its General Terms & Conditions to recover by a reservation surcharge the costs associated with three categories of eligible costs. The categories consist of costs: 1) to replace 6 miles of deteriorated pipe between Exeter and Greenland, NH; 2) to comply with the Integrity Management High Consequence Area requirements of the U.S.

² Unitil acquired ownership of Granite State on December 1, 2008.

³ The Commission approved an uncontested settlement of the rate case in an unpublished letter order issued on October 20, 1997 in Docket No. RP97-8-005.

Department of Transportation Pipeline and Hazardous Materials Safety Administration; and 3) associated with the New Hampshire Department of Transportation's Little Bay Bridge Crossing Project which will require Granite State to relocate its pipe that is currently located on one of the bridges. Granite State estimates that the total cost of the three categories of costs will be \$12.7 million.⁴

7. Granite State asserts that the surcharge is intended to recover the pre-tax return and depreciation expenses related to these capital expenditures and, if it is not permitted to recover these costs through a surcharge, it will need to file several new section 4 rate cases over the next few years to do so. Granite State further asserts that such filings would be expensive and time-consuming for Granite State, its customers, and the Commission.

Notice of Filing and Interventions

8. Public notice of Granite State's filing was issued July 8, 2010. Interventions and protests were due on or before July 12, 2010. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), 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. The Maine Public Advocate takes the position that, due to the size of Granite State's proposed rate increase including the proposed Capital Cost Surcharge, the Commission should suspend the effectiveness of the rate change for the maximum period provided by law and set Granite State's filing for hearing.

Discussion

9. We believe that Granite State's proposed rate changes raise issues which are best addressed in a hearing. Accordingly, the Commission accepts Granite States' proposed First Revised Sheet Nos. 15, 16, and 17 for filing and suspends their effectiveness for the period set forth below, to become effective January 1, 2011, subject to refund and conditions and the outcome of hearing and settlement judge procedures established herein. The Commission finds that these proposed tariff sheets raise issues that require further investigation at a hearing before an Administrative Law Judge. The 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 the overall revenue requirement; (3) the appropriateness of the proposed 11.50 percent return

⁴ Granite State notes that \$2.1 million of costs associated with the replacement of the deteriorated pipe between Exeter and Greenland and approximately \$1.5 million of the U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration costs are included in its proposed rates.

on equity and capital structure; (4) the level of the depreciation rates; and (5) the billing determinants.

10. Granite State has also proposed a Capital Cost Surcharge tracking mechanism to recover capital costs which it asserts are needed to: (1) ensure system reliability, (2) comply with current federal law and regulations pertaining to pipeline safety and integrity, and (3) relocate portions of its system.⁵ Granite State further asserts that because the capital investment associated with these items will be significant in relation to its rate base and because such expenditures do not involve the addition of any new billing units, absent a tracker, such expenditures would require Granite State to file several new rate cases over the next few years, in order to recover the costs.⁶

11. The Commission has previously found that capital costs of the type Granite State seeks to include in its Capital Cost Surcharge, including costs incurred to comply with the requirements of the Pipeline Safety Improvement Act of 2002 and pipeline relocation costs, should not be included in such surcharges.⁷ The Commission stated that pipelines commonly incur capital costs in response to regulatory requirements intended to benefit the public interest, and recovering those costs in a tracking mechanism is contrary to the requirement, in section 284.10(c)(2),⁸ to design rates based on estimated units of service.⁹ While Commission policy and regulations do not permit Granite State to recover these costs through a surcharge tracking mechanism, Granite State is entitled to seek recovery of these costs, with a just and reasonable return, through general NGA section 4 rate proceedings. Therefore, the Commission rejects Granite State's proposed Capital Cost Surcharge.

⁵ Prepared Direct Testimony of Mark H. Collin at 11.

⁶ Prepared Direct Testimony of Mark H. Collin at 12.

⁷ *Florida Gas Transmission Co.*, 105 FERC ¶ 61,171, at P 47-48 (2003) (*Florida Gas*), distinguishing such capital costs from security-related costs which may be included in a surcharge mechanism under the policy set forth in *Extraordinary Expenditures Necessary to Safeguard National Energy Supplies*, 96 FERC ¶ 61,299 (2001). Granite State cites, e.g., *Florida Gas Transmission Co.*, 109 FERC ¶ 61,320 at P 19-23 (2004), *Equitrans, L.P.*, 121 FERC ¶ 61,199 (2007), and *El Paso Natural Gas Co.*, 120 FERC ¶ 61,208 (2007) as approving trackers which support its proposal. However, these tariff provisions were approved as the result of settlements in those proceedings which do not establish Commission policy.

⁸ 18 C.F.R. § 284.10(c)(2) (2010).

⁹ *Florida Gas* at P 47.

12. While we are setting the rate issues discussed above for trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before the hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding, otherwise the Chief Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

13. Based upon review of the filing, the Commission finds that First Revised Sheet Nos. 15, 16, and 17 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 these tariff sheets for the period set forth below, subject to the conditions set forth in this order.

14. 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.¹² 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.¹³ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend First Revised Sheet Nos. 15, 16, and 17, to be effective January 1, 2011, subject to refund and the conditions set forth in the body of this order and the ordering paragraphs below.

¹⁰ 18 C.F.R. § 385.603 (2010).

¹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov/legal/adr/avail-judge.asp).

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

¹³ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

The Commission orders:

(A) First Revised Sheet Nos. 15, 16, and 17 are accepted and suspended, to be effective January 1, 2011, subject to refund and conditions and the outcome of the hearing and settlement judge procedures established in this proceeding.

(B) Original Sheet Nos. 143A and 143B are rejected.

(C) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, a public hearing is to be held in Docket No. RP10-896-000 concerning the lawfulness of Granite State's proposed rates. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish

procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Granite State Gas Transmission, Inc.
FERC Gas Tariff, Fourth Revised Volume No. 1

Tariff Sheets Accepted and Suspended, effective January 1, 2011

First Revised Sheet No. 15

First Revised Sheet No. 16

First Revised Sheet No. 17

Tariff Sheets Rejected

Original Sheet No. 143A

Original Sheet No. 143B