

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company

Docket No. RP10-148-000

(Issued June 2, 2010)

Attached is the statement by Commissioner Norris 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.

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NORRIS, Commissioner, *concurring*:

I strongly support the Commission's use of its authority under section 5 of the Natural Gas Act (NGA) where our review of the data in FERC Form No. 2 reveals that an interstate natural gas pipeline company's rates may not be just and reasonable. Based on the cost and revenue data it reviewed in the Form No. 2 for 2008 submitted by Northern Natural Gas Company (Northern) and two other pipelines, the Commission wisely chose to initiate investigations of the rates of those companies under NGA section 5.¹

However, under the current structure of NGA sections 4 and 5, there may be rare cases where the facts and circumstances have changed from those that the Commission relied on in initiating an investigation in such a manner that it may be in the best interests of interstate natural gas pipeline customers to consider whether that investigation should continue. This proceeding is one of those rare cases. For that reason, I support the decision in this order to terminate the section 5 investigation initiated in this proceeding.

No party disputes that Northern's system has undergone significant changes since the Commission first initiated the instant proceeding. For example, as our order notes, Northern has experienced a significant decline in Field Area revenues since 2008.² This revenue decline can be reasonably linked to the completion of the eastern extension of the Rockies Express Pipeline, which appears to have led to declining demand for transportation on that portion of Northern's system.³ Moreover, over the prior six months ending May 3, 2010, the receipt point where Northern's Field Area and Market Area intersect has traded higher on average than

¹ *Northern Natural Gas Co.*, 129 FERC ¶ 61,159 (2009); *Natural Gas Pipeline Co. of America LLC*, 129 FERC ¶ 61,158 (2009); *Great Lakes Gas Transmission Limited Partnership*, 129 FERC ¶ 61,160 (2009).

² *Northern Natural Gas Company*, 131 FERC ¶ 61,178, at P 15 (2010).

³ *Id.*

the Market Area receipt point interconnecting with the Northern Border Pipeline, suggesting that demand (and thus revenues) is unlikely to increase in the near term.⁴

These changes suggest that new rates for Northern's customers, based on more recent data and test period, are much less likely to be lower than the existing rates. In confronting this uncertainty, an overwhelming majority of the customers on the Northern system have decided they prefer to avoid such risk, and urged the Commission to in effect settle this proceeding in exchange for the certainty of stable rates until November 1, 2011. These customers are local distribution companies on Northern's system that "have a public utility obligation to provide service at the lowest reasonable rates and are answerable to their respective state commissions in this regard."⁵

Many of their state commissions have in fact weighed in, stating that they prefer the certainty provided by a rate moratorium. The Iowa Utilities Board, the Minnesota Public Utilities Commission (Minnesota PUC), the Michigan Public Service Commission, the Kansas Corporation Commission, and the Minnesota Office of Energy Security (a consumer advocate) do not oppose Northern Customer Group's motion to terminate this proceeding. In fact, each of these entities recognizes the benefits that will flow to customers if the NGA section 5 proceeding is terminated. "[S]ubstantial consumer benefits would flow from a moratorium on any rate filing by Northern"⁶ "[T]here would be significant benefits to customers from a moratorium on any Section 4 filing by Northern."⁷ "[A] rate moratorium is in the public interest."⁸

Recognizing that a vast majority of Northern's customers and their state commissions have identified a substantial potential risk to their interests if this investigation continues, and in the face of their overwhelming support for terminating this proceeding, I support our decision in this order. I do not believe that the Commission should continue this investigation to the potential detriment of Northern's customers.

⁴ Customer Group May 5, 2010 Motion at 11, n.14.

⁵ Customer Group May 14, 2010 Answer at 3.

⁶ Kansas Corporation Commission May 6, 2010 Answer at 1.

⁷ Iowa Utilities Board May 12, 2010 Answer at 1.

⁸ Minnesota PUC May 13, 2010 Answer at 1; Minnesota Office of Energy Security May 11, 2010 Answer at 1.

Our fundamental duty under the NGA is to ensure that interstate natural gas pipeline rates are just and reasonable. Satisfying this statutory standard requires that we strike a balance between the customer's interest in keeping rates low and the pipeline's interest in achieving a sufficient return on its investment. Once a proceeding is initiated under NGA section 5, the Commission may only fix a *lower* rate prospectively. Where circumstances have changed and the evidence suggests that a lower rate may not be realized, and that in fact there is a possibility that rates could increase through a contemporaneous NGA section 4 filing, achieving the certainty of no rate increase is a just and reasonable outcome.

Moreover, as the Customer Group notes, Northern was under no obligation to delay filing a general section 4 rate case, and could do so at any time. Northern's commitment to delay filing a section 4 rate case provides valuable certainty in this regard, and also gives the parties additional time to analyze the changes in demand on Northern's system and attempt to reach an accommodation on rate design going forward. In the meantime, the Commission will continue to closely monitor Northern's costs and revenues reported in its FERC Form No. 2 filings.

No one should read this order to suggest that the Commission will no longer exercise its NGA section 5 authority to initiate investigations where warranted. Quite to the contrary, our decision clearly states that we will "remain vigilant in reviewing the data submitted by interstate natural gas pipelines in FERC Form No. 2 to carry out its responsibilities under the NGA to ensure just and reasonable rates."⁹ I am committed to ensuring that natural gas customers pay just and reasonable rates and will support future NGA section 5 investigations where I believe the evidence calls into question whether an interstate pipeline's rates are just and reasonable.

Unfortunately, because the NGA does not provide for refunds, the Commission can only offer prospective relief to customers that may have been paying unjust and unreasonable rates in the past. This statutory structure effectively allows a pipeline to delay or derail an NGA section 5 proceeding through the filing of an NGA section 4 rate case. In this way, the NGA is different from Federal Power Act (FPA) section 206,¹⁰ which gives the Commission refund authority. This case provides a clear example of why Congress needs to remedy

⁹ *Northern Natural Gas Company*, 131 FERC ¶ 61,178 at P 17.

¹⁰ 16 U.S.C. § 824e (2006).

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the lack of parity between the NGA and FPA and provide the Commission with refund authority under NGA section 5.

For these reasons, I concur.

John Norris

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