

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Colorado Interstate Gas Company

Docket Nos. RP98-54-036
RP98-54-037

NOTICE OF DECISION TO
CEASE REFUND COLLECTION EFFORTS
AND ORDER DIRECTING SERVICE

(Issued May 23, 2003)

1. Take notice that for the reasons set forth below, the Commission will cease its efforts to collect certain overdue ad valorem tax reimbursement refunds in the above-captioned cases, specifically the refunds owed by the first sellers listed in the attached Appendix.
2. On April 2, 2003, the Commission issued an Order Granting Rehearing in Part and Denying Rehearing in Part (Rehearing Order)¹, in response to a request for Rehearing and Clarification by Colorado Interstate Gas (CIG). Among other things, the order required that CIG provide a list within 15 days of working interest owners from the Notice Order Appendix still owing refunds to CIG. On April 17, 2003, CIG filed that list, along with an explanation of why the Commission should cease collection efforts or extinguish the claims of various other first sellers. This order ceases efforts on first sellers identified by CIG in its 15 days response.

Background

¹ 103 FERC ¶ 61,012 (2003).

3. In Public Service Company of Colorado v. FERC (Public Service),² the United States Court of Appeals for the District of Columbia Circuit upheld the Commission's decision that Kansas ad valorem taxes were improperly added to the maximum lawful prices under the Natural Gas Policy Act (NGPA), and ordered first sellers/producers to make refunds of reimbursements for certain ad valorem taxes for the period from October 1983 through June 1988. On September 10, 1997, the Commission issued an order (Procedural Order)³ establishing procedures for producers to make refunds to the pipelines and for the pipelines to flow the refunds through to their customers.

4. In compliance with the Procedural Order, CIG sent Statements of Refunds Due to producers setting forth the amount of refund that CIG claimed was owed by each producer. CIG subsequently received additional information affecting the refund liability of individual working interest owners and made revisions to its original refund figures. Many working interest owners challenged the amount claimed to be owed.

5. To address these challenges, CIG held settlement discussions and filed a Stipulation and Agreement of Settlement (settlement) with the Commission. The filed settlement set forth agreed upon refund amounts for each working interest owner reflecting reductions from the full amount owed as an inducement to settlement. The settlement refund amounts were listed in Appendix A to the settlement, and producers could choose whether to join the settlement. In addition, the settlement provided that working interest owners with refund obligations less than \$25,000 were released entirely from their refund obligations. Many first sellers joined the settlement, but some chose not to join. On November 21, 2000, the Commission approved the settlement.⁴ However, as shown by CIG's July 11, 2002 Statement of Refunds Due, while many first sellers joined the settlement, some chose not to join and continue to owe refunds.

6. On January 2, 2003, the Commission issued an order (Refund Order) identifying first sellers still owing refunds in the Refund Order Appendix, based on CIG's July 11, 2002 Statement of Refunds Due, the amounts owed, and extending the settlement's refund reduction provisions to persons making payment. The Refund Order specified that parties must pay, or make arrangements to pay, within 30 days of the order. The Refund Order directed CIG to seek recovery of the full refund amount from persons not taking the

²91 F.3d 1478 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997).

³Public Service Co. of Colorado, et al., 80 FERC ¶ 61,264 (1997), reh'g denied, 82 FERC ¶ 61,058 (1998).

⁴93 FERC ¶ 61,185 (2000), reh'g denied, 94 FERC ¶ 61,151 (2001).

requested action and to report to the Commission within 120 days of the order on steps it has taken.

7. On the same date, the Commission issued an order (Notice Order) in the CIG ad valorem tax refund proceeding, as well as the refund proceedings of other pipelines. That order provided notice of the Commission's decision to cease refund collection efforts on first sellers identified in the Notice Order Appendix, representing either working interest owners that did not enter the applicable pipeline settlements, even though entering the settlement would have relieved them of their liabilities, or first sellers that were deceased, bankrupt, dissolved or without a successor in interest. The Notice Order Appendix included a number of working interest owners owing refunds to CIG.

8. On February 3, 2003, CIG filed a request for rehearing and clarification of the Refund Order and Notice Order. Among other things, CIG indicated that the Notice Order had incorrectly found that the refund amounts owed by certain first sellers were less than the settlement's \$25,000 threshold for refund liability. Therefore, CIG asserted that the Commission had incorrectly relieved those first sellers of refund liability on the basis of the settlement's \$25,000 refund threshold. However, CIG indicated that most of these first sellers nevertheless qualified for cease efforts because of death, bankruptcy or lack of a successor in interest. The April 2, 2003 order granted rehearing on this issue. In recognition of CIG's statement that most of the entities listed in the Notice Order qualify for ceasing efforts to recover the refunds on other grounds, the Commission directed CIG to provide within 15 days a list of these working interest owners that still owe refunds.

Discussion

9. In compliance with the Commission's April 2 Order, CIG filed the instant report on April 17, 2003 recommending that the Commission cease refund collection efforts against certain parties identified in the report, and extinguish altogether claims against certain other identified parties. CIG recommended that the collection efforts cease in cases where the first seller had died and the estate was closed, its refund obligation is less than the settlement's \$25,000 refund threshold, or all efforts to contact the seller had failed. CIG recommended extinguishment of refund liabilities in cases where the first seller had paid or the person against whom the refund was claimed was actually just an agent of the first seller or was only a royalty interest owner. These parties are listed in the attached Appendix.

10. The Commission has reviewed CIG's representation as to the status of parties and compared these with previous filings and reports. Based on that review, the Commission accepts CIG's recommendations to cease refund collection efforts and extinguish claims as shown in the attached Appendix.

11. This action will reduce the administrative burden of the Commission's ongoing refund collection efforts, thereby enabling the Commission to focus available resources on cases in which the refund recovery benefits are the greatest.

Conclusion

12. The Commission hereby gives notice that the Commission is ceasing further collection efforts and extinguishing claims with respect to the refunds owed to CIG by the first sellers listed in the attached Appendix. To the extent CIG has a current address for the first sellers identified in the attached Appendix, we shall direct CIG to serve a copy of this notice/order upon its respective first sellers, to ensure that they are notified of the Commission's action.

13. The Commission has reviewed CIG's instant report and will accept the report as final.

The Commission orders:

(A) Within 7 days of the date of this notice/order, CIG must serve a copy of this notice/order upon its respective first sellers, consistent with the discussion of this order.

(B) CIG's instant report is hereby accepted by the Commission as their final report.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

Colorado Interstate Gas Company

Cease Collection Efforts Group

Phoenix Resources
Osborn Jr., WB Estate
Barrett III, MT
Barrett, W O
Osborn Oil Company
Morehouse, DT, Trust
Osborn III, WB
Townsend III, RF
Nathan Appleman Co.,
Cadajah Helmerich Patterson
KEDCO Income Partnership
OMECO Assignees
Prudence E. White, Trust
Peggy Lou Michaelis
C.R. Smith
Warrior Oil Company
First Sellers represented by Beymer & Beymer
First Sellers for which Union Bank of Wichita served as a nominee
First Sellers represented by Thunderbird Drilling Company

Extinguish Claims Group

Lario Oil and Gas
Union Bank of Wichita
Thunderbird Drilling Co.
Beymer & Beymer
CEB Inc.
Circle S. Land Co.
Ivan & Stena Nicholas