

129 FERC ¶ 61,159
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Northern Natural Gas Company

Docket No. RP10-148-000

ORDER INSTITUTING INVESTIGATION AND SETTING MATTER FOR
HEARING PURSUANT TO SECTION FIVE OF THE NATURAL GAS ACT

(Issued November 19, 2009)

1. As discussed in more detail below, based upon our review of publicly available information on file with the Commission, it appears that Northern Natural Gas Company (Northern) may be substantially over-recovering its cost of service, causing Northern's existing rates to be unjust and unreasonable. Therefore, the Commission will initiate an investigation, pursuant to section 5 of the Natural Gas Act (NGA), to determine whether the rates currently charged by Northern are just and reasonable and set the matter for hearing. The Commission directs Northern to file a full cost and revenue study within 45 days of the issuance of this order.

I. Background

2. Northern operates an interstate natural gas pipeline system extending from the Permian Basin in Texas to the upper Midwest. Northern's system includes 15,141 miles of natural gas pipeline. Its Market Area has an operational capacity of 5.3 billion cubic feet per day, and its Field Area has an operational capacity of 2.0 billion cubic feet per day. Northern's system includes five natural gas storage facilities with a total firm and operational capacity of 73 billion cubic feet. Northern provides service to 76 utilities and numerous end-users.

3. Northern's current transportation and storage rates were established as part of a settlement filed by Northern on March 25, 2005, and subsequently approved by the Commission on June 20, 2005.¹ The settlement established base rates effective November 1, 2003, and permitted annual adjustments to the base rates through November 1, 2006. Northern's total cost of service underlying its currently effective rates is approximately \$481.0 million. The components of the settlement cost of service

¹ See *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 (2005).

include, among other things, an estimated pre-tax return of \$188.9 million. Article II(A) of Northern's settlement included a rate moratorium that prevented Northern from effectuating new base rates under NGA section 4 before November 1, 2007. Northern recovers its system's fuel requirements and lost and unaccounted for gas pursuant to a tracking and true-up mechanism set forth in sections 53A of its General Terms and Conditions (GT&C).

II. Discussion

4. In March 2008, the Commission issued Order No. 710,² a Final Rule to change the forms and reporting requirements for interstate natural gas pipelines to enhance the transparency of financial reporting and better reflect current market and cost information relevant to interstate natural gas pipelines and their customers. The revised forms included FERC Form No. 2 (Form 2), the annual report for major natural gas companies, and FERC Form No. 3-Q (Form 3-Q), the quarterly financial report of natural gas companies, electric utilities and licensees. The Commission stated that the revised forms and reporting requirements would provide, in greater detail, the information the Commission needs to carry out its responsibilities under the NGA to ensure just and reasonable rates. The Commission required major interstate pipelines to use the revised Form 2 in making their annual reports for calendar year 2008.

5. In April 2009, Northern filed its Form 2 for 2008. Upon review of the cost and revenue information in that form, the Commission is concerned that Northern's level of earnings may substantially exceed its actual cost of service, including a reasonable return on equity. Using the cost and revenue information provided by Northern in its 2008 Form 2, the Commission developed a cost of service with an estimated 12.00 percent return on equity³ and compared this to Northern's actual revenues.⁴ The total revenue reported by Northern, as adjusted, is \$726,083,362, and the cost of service calculated by the Commission is \$558,727,906. The difference between Northern's reported revenues

² *Revisions to Forms, Statements, and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 31,267 (2008), *reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 (2008).

³ In this order, we make no finding as to what would constitute a just and reasonable return on equity for Northern. That is among the issues set for hearing by this order and should be decided consistent with the Commission's Policy Statement in *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity*, 123 FERC ¶ 61,048 (2008).

⁴ The details of the Commission's cost and revenue analysis are contained in the Appendix.

and the Commission calculated cost of service indicates an over recovery of \$167,355,456 for 2008, resulting in an estimated return on equity, net of income taxes, of about 24.36 percent.

6. The Commission finds that, based upon its preliminary analysis, Northern's currently effective tariff rates may be unjust and unreasonable. The Commission's analysis indicates that Northern's currently effective tariff rates may allow Northern to recover revenue substantially in excess of its costs of service. Accordingly, the Commission will initiate an investigation to examine the justness and reasonableness of Northern's rates pursuant to section 5 of the NGA, and set the matter for hearing.

7. As the Commission has done in other cases initiating section 5 investigations of a pipeline's rates,⁵ it directs Northern to file a cost and revenue study within 45 days of the date this order issues. The cost and revenue study required by this order should include actual data for the latest 12-month period available as of the date of this order. The filing should include all the schedules required for submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations,⁶ with one exception. Because Northern does not have a NGA section 4 burden in this section 5 proceeding and will be filing testimony in response to other parties, Northern does not need to file the Statement P required by section 154.312(v) of the Commission's regulations at this juncture.⁷ In addition, Northern does not need to file nine months of post-base period adjustment data required by section 154.303(a) at this point in the proceeding.⁸

8. Finally, due to the potential of continued over-recovery of revenues, the Commission will establish a date for an initial decision from an administrative law judge. Such a date will expedite the proceeding. We believe that conducting the hearing in this case pursuant to the Administrative Law Judges' Track II Hearing Timeline is reasonable, with an initial decision to issue within 47 weeks of the designation of the presiding judge.

⁵ See *Panhandle Complainants v. Southwest Gas Storage Co.*, 117 FERC ¶ 61,318 (2006); *Pub. Serv. Comm'n of New York v. National Fuel Gas Supply Corp.*, 115 FERC ¶ 61,299 (2006).

⁶ 18 C.F.R. § 154.312 (2009).

⁷ See *Pub. Serv. Comm'n of New York*, 115 FERC ¶ 61,368 at P 6 (2006).

⁸ See *Id.*

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Natural Gas Act, particularly section 5 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Natural Gas Act, a public hearing shall be held concerning whether Northern's rates are unjust, unreasonable, or otherwise unlawful.

(B) 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, shall, within thirty (30) days of the date of this order, convene a prehearing conference in these proceedings 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 clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure.

(C) The Commission directs that the hearing be conducted pursuant to the Track II hearing timeline and that an initial decision be issued in this proceeding within 47 weeks of the designation of the presiding judge, as discussed in the body of this order.

(D) Northern shall file a cost and revenue study within 45 days of this order. The filing should include actual data for the latest 12-month period available as of the date of this order. The filing should include all of the schedules required for the submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations (18 C.F.R. § 154.312), except Statement P.

(E) Any person wishing to become a party to this proceeding must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Such notice or motion must be filed within 30 days of the date of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "eFiling" link

at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

By the Commission. Commissioner Spitzer concurring with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

NORTHERN NATURAL GAS CO.	Form 2 Reference	Line	Amount
Rate Base			
Gas Plant in Service	p. 110; ln. 2	1	\$3,134,820,686
Accumulated Depreciation	p. 110; ln. 5	2	(\$1,217,912,878)
Gas Stored Underground			
Account 117.1 (Base Gas)	p. 220; ln. 5, col. b	3	\$27,575,472
Account 117.2 (System Balancing)	p. 220; ln. 5, col. c	4	\$41,211,532
Working Capital			
Prepayments	p. 230a; ln. 6	5	\$3,119,745
Materials and Supplies	p. 111; ln. 45	6	\$30,216,604
ADIT			
Account 190	p. 235; ln. 7, col. k, as adjusted on p. 552.1	7	\$16,318,997
Account 282	p. 275; ln. 7, col. k, as adjusted on p. 552.1	8	(\$320,936,055)
Account 283	p. 277; ln. 7, col. k, as adjusted on p. 552.1	9	(\$14,591,633)
Regulatory Assets	p. 232; ln. 40, col. g	10	\$117,605,644
Regulatory Liabilities	p. 278; ln. 45, col. g	11	(\$13,819,424)
Total Rate Base		12	\$1,803,608,690
Capital Costs			
Cost of Debt	p. 218a; col. d	13	6.21%
Allowed Rate of Return on Equity		14	12.00%
Capitalization			
Debt	p. 218a; col. c	15	54.49%
Equity	p. 218a; col. c	16	45.51%
Weighted Cost of Debt		17	3.38%
Weighted Cost of Equity		18	5.46%
Total Return		19	8.84%
Cost of Service			
Return		20	\$159,529,712
Composite Income Tax (39.37%)		21	\$63,959,969
Other Taxes	p. 114; ln. 14, col. c	22	\$42,734,388
Depreciation	p. 337; ln. 12, col. h	23	\$54,598,756
O&M			
Production & Gathering	p. 317; ln. 30	24	\$439,351
Net Storage Costs	p. 322; ln. 177 (less ln. 106)	25	\$35,701,549
Net Transmission Costs	p. 323; ln. 201 (less ln. 184)	26	\$123,524,621
A&G	p. 325; ln. 270	27	\$78,239,560
Total Cost of Service		28	\$558,727,906
Operating Revenue			
ACA Revenues	p. 300; ln. 21, col. d	29	\$2,108,514
Exclude Sales for Resales (Act. 480-484)	p. 301; ln. 4, col. f	30	(\$36,823,958)
Other Revenues	p. 301; ln. 21, col. f	31	\$768,686,196
Exclude Commercial & Industrial Sales	p. 301; ln. 2, col. f	32	(\$8,243,251)
Account 495	p. 308; ln. 11 (adjusted)	33	\$355,861
Total Adjusted Revenue		34	\$726,083,362
Cost Over (Under) Recovery		35	\$167,355,456
Estimated Return on Equity*		36	24.36%

* (12% Rate of Return on Equity (\$98,498,678) + Cost Over Recovery Net of Income Taxes (\$101,460,082)) / Equity Rate Base (\$820,822,314)

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Natural Gas Pipeline Company of
America LLC

Docket No. RP10-147-000

(Issued November 19, 2009)

SPITZER, Commissioner, concurring:

I generally support our initiation of an investigation under Section 5 of the Natural Gas Act (NGA)¹ against Natural Gas Pipeline Company of America (Natural). I am writing separately, however, to express my views on the historical and economic context of this review and to encourage the parties to consider whether settlement discussions could accelerate the resolution of this proceeding.

In 1992, the Commission issued Order No. 636.² That order ushered in an open access, competitive interstate natural gas market. American consumers have benefitted greatly from these reforms. While we placed increased emphasis on competition and market forces, pipeline rate proceedings remain linked to cost of service. Pipeline capacity and gas storage are critical components of natural gas markets. Since Order No. 636, interstate pipelines have added over 98.1 billion cubic feet per day (Bcf/d) of new pipeline capacity and over 854 Bcf/d of storage capacity with over 35,922 MMcf/d of deliverability.

¹ 15 U.S.C. § 717d.

² *Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipeline After Partial Wellhead Decontrol*, Order No. 636, FERC Stats. & Regs. Regulations Preambles January 1991 – June 1996 ¶ 30,939, *order on reh'g*, Order No. 636-A, FERC Stats. & Regs. Regulations Preambles January 1991 – June 1996 ¶ 30,950, *order on reh'g*, Order No. 636-B, 61 FERC ¶ 61,272 (1992), *notice of denial of reh'g*, 62 FERC ¶ 61,007 (1993), *aff'd in part and vacated and remanded in part sub nom., United Distribution Co. v. FERC*, 88 F.3d 1105 (D.C. Cir. 1996) (per curiam) *cert. denied*, 520 U.S. 1224 (1997), *order on remand*, Order No. 636-C, 78 FERC ¶ 61,186 (1997), *order on reh'g*, Order No. 636-D, 83 FERC ¶ 61,210 (1998) (collectively, Order No. 636).

Our actions today are not intended to upset the post-Order No. 636 competitive market framework of natural gas pipeline regulation. Nor does this proceeding signal a departure from our policies of encouraging natural gas infrastructure. Rather, competition works best where the prices for essential services accurately reflect the costs associated with providing those services.³

Part of the bargain struck in Order No. 636 was that interstate natural gas pipelines are no longer required to file periodic rate cases.⁴ Under NGA § 4,⁵ the Commission can neither compel nor preclude a pipeline from filing a rate case. Nonetheless, the Commission may initiate an investigation and “any state, municipality, State commission, or gas distributing company” has the opportunity to file a complaint against a pipeline under NGA § 5.

During its review of the sufficiency of FERC Form No. 2 (Form 2), the Commission heard from many shippers that Form 2 did not contain enough information to provide a basis for a NGA § 5 complaint. We therefore revised Form 2 “to provide a level of information that would enhance the ability of the Commission and the pipeline customers to assess the justness and reasonableness of pipeline rates.”⁶ We recognized, however, that the new information would not “affect the burden of proof in [NGA §] 5 proceedings. A party filing a [NGA §] 5 complaint would still have the burden to show why the information in the Commission's financial forms support an allegation that the pipeline's existing rates are unjust and unreasonable.”⁷ When we overhauled the Form 2, we also suggested that

³ *Transcontinental Gas Pipe Line Corp.*, 106 FERC ¶ 61,299 at P 210 (2004).

⁴ *See Dominion Cove Point LNG, LP*, 118 FERC ¶ 61,006 at P 18-19 (2007); and *Public Service Comm'n of the State of New York v. FERC*, 866 F.2d 487, 492 (D.C. Cir. 1989).

⁵ 15 U.S.C. § 717c.

⁶ Revisions to Forms, Statements & Reporting Requirements for Natural Gas Pipelines, Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats. & Regs. ¶ 1,267 (2008), *reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 at P 16 (2008).

⁷ Order No. 710 at P 12.

the Commission would monitor pipeline submissions and evaluate a pipeline's cost of service.⁸

Today, we take the unprecedented step, post-Order No. 636, of initiating an NGA § 5 investigation against Natural, Great Lakes Gas Transmission Limited Partnership, and Northern Natural Gas Company. We do not lightly undertake these proceedings. Although we recognize that pipeline rates remained stable in nominal dollars and in real dollars perhaps declined; by Staff's calculation, each of the three pipelines before us has an estimated return on equity that requires further scrutiny. Moreover, none of these pipelines is under an obligation to file a rate case in the future.

I recognize that a rate case may be costly for all parties, may create uncertainty during a lengthy litigation process, and may not always result in a rate reduction. Although the Commission bears the initial burden in this proceeding, I nevertheless believe that it may be in the best interest of the pipelines, its shippers, and the Commission to resolve this dispute expeditiously and consensually, rather than through litigation.⁹ Indeed, reaching a settlement could provide just and reasonable rates more rapidly than through a long and tedious litigation process. Consequently, I would have preferred to have held the hearing in abeyance for a short period of time pending settlement discussions pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. Nonetheless, I note that participants are free to negotiate amongst themselves or to "file a motion requesting the appointment of a settlement judge with the presiding officer,

⁸ *Id.* ("The requested data is designed to provide the Commission and pipeline customers with information that will aid their ability to make a reasonable assessment of a pipeline's cost of service. Greater transparency is essential to the Commission's oversight responsibilities and, as implemented here, will not affect the burden of proof in section 5 proceedings.")

⁹ The Commission has long encouraged the consensual resolution of proceedings by settlement. *See Columbia Gas Transmission Corp., et al.*, 64 FERC ¶ 61,366 (1993). *See also United Municipal Distributors Group v. FERC*, 732 F.2d 202 (D.C. Cir. 1984), *aff'g United Gas Pipeline Co.*, 22 FERC ¶ 61,094 (1983), *reh'g denied*, 23 FERC ¶ 61,101 (1993).

or if there is not presiding officer for the proceeding, with the Commission,”¹⁰ during the ambitious Track II hearing schedule.

For these reasons, I respectfully concur in the Order.

Marc Spitzer
Commissioner

¹⁰ 18 C.F.R. § 385.603(c) (2009).