

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Natural Gas Pipeline Company of America LLC)))	Docket No. RP10-147-000
--	-------------	-------------------------

**COMMENTS OF THE
AMERICAN PUBLIC GAS ASSOCIATION
ON STIPULATION AND AGREEMENT**

Pursuant to Rule 602 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ the American Public Gas Association (“APGA”) files these comments regarding the Stipulation and Agreement of Settlement (“S&A”) filed with the Commission by Natural Gas Pipeline Company of America LLC (“Natural”) in the subject proceeding on June 11, 2010. APGA takes no position regarding the S&A but rather comments for the purpose of putting this proceeding in proper perspective.

Background

First, APGA congratulates the Commission on initiating the three NGA section 5 complaints against Great Lakes Gas Transmission Limited Partnership (“Great Lakes”), Northern Natural Gas Company (“Northern Natural”), and Natural. All three companies were shown to be over-recovering substantially their legitimate costs of service based on actual data for 2008, and likewise the cost and revenue studies submitted by the three companies, stripped of their largely bogus adjustments, showed the same to be true.

Because Natural Gas Act (“NGA”) section 5 does not provide for the Commission to set a refund-effective date (in contrast to the complaint section of the Federal Power Act, section 206), the almost formulaic strategy of a pipeline confronted with a section 5 complaint

¹ 18 C.F.R. § 385.602.

(regardless of its merits) is to file (or threaten to file) an NGA section 4 rate increase in order to try to moot the section 5 proceeding.² The Commission's May 27 order in *Northern Natural Gas Company*, 131 FERC ¶ 61,178 ("*Northern Natural*"), is testament enough to the effectiveness of this approach - an approach which does not work on the electric side of the FERC house because, since there is a refund-effective date set at the initiation of a section 206 complaint case, the public utility's refund exposure is much greater, and hence the incentive for game-playing is removed; such proceedings proceed on their merits, which is rarely the case under NGA section 5.

Comments

The subject settlement provides for a modest rate reduction on a prospective basis and some relief regarding Fuel Retention Factors, which are positive outcomes. Does it provide for the type of rate reduction or changed Fuel Retention Factors that are warranted by the facts? That is almost an irrelevant question since the S&A is supported or not opposed by virtually all of the customers on the system, FERC staff, and the participating state commissions and since this proceeding is being conducted in the shadow of NGA section 5 (with its known infirmities³). These factors were sufficient in *Northern Natural* to convince the Commission to terminate the proceeding and presumably will be sufficient in this case to convince the Commission to approve the S&A. APGA is not arguing otherwise.

Rather, APGA simply points out that but for the absence of refund authority in NGA section 5, the subject settlement would not be before the Commission in its current form, just as the Customer Group motion in *Northern Natural* and the settlement in *Great Lakes Gas*

² See, e.g., *Panhandle Complainants v. Southwest Gas Storage Company*, 120 FERC ¶ 61,207 (2007); see Customer Group Motion (at 7) in *Northern Natural Gas Co.*, Docket No. RP10-148.

³ See, e.g., FERC Order on Motion To Terminate, *Northern Natural*, *supra*, 131 FERC at P 17 (2010); see also dissent of Chairman Wellinghoff (*mimeo.* at 3) and concurring statement of Commissioner Norris (*mimeo.* at 3-4) in *Northern Natural*, *supra*.

Transmission Limited Partnership, Docket No. RP10-149 would never have been filed. The customers and staff must take what they can get in such proceedings, and what they can get is generally precious little. That does not mean the S&A should not be accepted by the Commission; it only means that until NGA section 5 is amended by Congress to provide the Commission with the same refund authority it has under FPA section 206, it should not expect more favorable outcomes. It certainly does not mean that the Commission should not continue to do its duty, which is to initiate section 5 proceedings whenever the Form 2 data indicates that a pipeline's rates are well above the just and reasonable level.

APGA commends the Commission for its pledge in the May 27 order in *Northern Natural* (at P 17), to “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,” even while at the same time acknowledging, as a basis for the dysfunctional result in that case, that “we lack authority under NGA section 5 to order refunds for the period before a merits decision in the section 5 proceeding.”

Respectfully submitted,

AMERICAN PUBLIC GAS ASSOCIATION

/s/ William T. Miller

William T. Miller
Miller, Balis & O'Neil, P.C.
1015 Fifteenth Street, N.W.
Twelfth Floor
Washington, D.C. 20005
(202) 296-2960

June 21, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the Commission's Rules of Practice and Procedure.

Dated at Washington, D.C. this twenty-first day of June 2010.

/s/William T. Miller
William T. Miller
Miller, Balis & O'Neil, P.C.
1015 Fifteenth Street, N.W.
Twelfth Floor
Washington, D.C. 20005
(202) 296-2960
wmiller@mbolaw.com