

The Customer Group Motion makes clear that Northern Natural Gas Company (“Northern”) has repeatedly and openly stated its intention to make a section 4 filing on May 28, 2010 (absent termination of this proceeding) (Motion at 3, 11), and it is to remove that threat (and gain some time before the next section 4 filing by Northern) that has prompted the Customer Group Motion (Motion at 4). But for the flawed nature of NGA section 5 itself (under which FERC may not order refunds from and after the date the complaint is initiated), APGA does not believe the subject motion would be before the Commission; rather direct testimony would have been filed and this case would be well on its way to being resolved (either by way of an arms’-length settlement or expedited litigation). That such is not the case is not the fault of the Customer Group, and APGA does not belittle the considerations articulated in the Northern Customer Group Motion for seeking to abandon this proceeding.

B. The Customer Group Motion (at 3) makes the following contention:

Therefore, even assuming the section 5 proceeding were to continue notwithstanding a section 4 filing by Northern, there is no period of time when any rate reduction deemed appropriate by the Commission in the section 5 proceeding actually would be in effect. As a result, the Commission may find that the refund floor in the section 4 filing would be the existing rates, irrespective of the findings made by the Commission in the section 5 proceeding.⁵

^{5/} See *Panhandle v. Southwest Gas Storage Company, et al.*, 120 FERC ¶ 61,207 at PP 25-27 (2007). (In response to the argument that the Commission should waive an initial decision in order to ensure that rates determined in a section 5 proceeding could take effect before rates could become effective subject to refund in a section 4 filing, thereby holding out the potential for a lower refund floor, the Commission responded: “Merely setting a lower refund ‘floor’ is not sufficient reason for waiver of the initial decision in a case as complicated and contentious as this.”)

APGA believes this contention misses the mark on several counts. First, if the Customer Group Motion is denied by the Commission, it is important that the Commission consider ordering that the section 5 proceeding continue on an expedited basis to conclusion, because the outcome of that proceeding will set the appropriate refund floor for the new section 4 filing (and

up the refund ante for Northern if its Section 4 filing is found wanting). Permitting the section 4 filing to upstage the section 5 proceeding – i.e., to render it “moot” – simply plays into the hands of the rate applicant by lessening its refund exposure. The footnote to this point is that if the case for a rate reduction in the section 5 proceeding does not reflect a lower refund floor than would be the case under the settlement in *Northern Natural Gas Company*, Docket No. RP04-155, discussed below, then abandoning the section 5 proceeding may well make sense.

The second point to be made regarding the Customer Group contention is that it seems to overlook the terms of Northern’s settlement in Docket No. RP04-155, in which Northern agreed (in Article II.B) that in its “next general Section 4 rate case, the base rates effective November 1, 2005, minus the rate component for the SLA Annual Amortization as shown on Attachment E of the SLA Settlement (revised December 1, 2004) and as adjusted for the final SLA balance at December 31, 2004, will be used for purposes of establishing the refund floor for such case.”³³ Thus, if Northern makes a section 4 filing that becomes effective before the section 5 proceeding is completed, the refund floor is not premised on the existing rates (as the Customer Group contends) but rather on the base rates effective November 1, 2005 (minus the SLA dollars). That would remain the refund floor unless, upon completion of the section 5 proceeding, a lower refund floor were found to be appropriate by the Commission. Of course, as noted above, if the RP04-155 refund floor is below the revenue level being proposed by Commission staff and/or the customers in the section 5 proceeding, then terminating that proceeding in the face of a section 4 filing does make sense.

The practical question for the customers (and ultimately the Commission) is whether they believe the outcome of a section 4 proceeding will be market area rates above or below the current level. If the outcome is lower rates, then the customers would get refunds dating from

³³ See *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 at P 4 (2005)(Order accepting Settlement).

the effective date of the section 4 filing premised on the refund floor agreed upon in Docket No. RP04-155; if the outcome is higher rates, then the customers would benefit from terminating the section 5 filing and deferring the section 4 filing, as requested by the Customer Group.

* * *

As noted at the outset, APGA is not supporting or opposing the Customer Group Motion; rather, its interest is to ensure that section 5 proceedings are managed in such a fashion that the outcome of such proceedings is based on the merits of the case (versus pipeline gamesmanship). Frankly, APGA does not fault Northern (and other similarly situated pipelines) for using the tactics at their disposal under the NGA to avoid rate reductions; it is up to Congress, not the FERC, to fix the NGA so that the sort of gamesmanship evident in virtually all section 5 proceedings is no longer viable. In the meantime, the Commission must rule on the Customer Group motion in a manner that it believes will benefit the customers of Northern in the long run.

WHEREFORE, APGA respectfully requests that the Commission take the above comments into consideration in ruling on the subject motion.

Respectfully submitted,

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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 12th day of May 2010.

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