UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Petition for Initiation of Show Cause Proceedings	))))	Docket No. RP18-415-000

MOTION FOR LEAVE TO ANSWER AND ANSWER
OF THE AMERICAN PUBLIC GAS ASSOCIATION

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"),[1] the American Public Gas Association ("APGA") moves for leave to answer and submits its answer to the answers filed by the Interstate Natural Gas Association of America ("INGAA"), the Kinder Morgan Entities ("Kinder Morgan"), and TransCanada Corporation ("TransCanada") in this proceeding on February 12, 2018.[2]

I. MOTION FOR LEAVE TO ANSWER

The Commission permits the filing of answer to an answer where the filing assists the Commission in its decisionmaking process.[3] In this highly unusual matter, where the Commission needs as much information in a short period as possible to assist in its deliberations concerning the entire interstate pipeline industry, APGA's answer meets this standard because it provides information that will assist the Commission in understanding the issues raised and will

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[1] 18 C.F.R. §§ 385.212, 385.213.

[2] Answer of the Interstate Natural Gas Association of America Opposing the Petition for Initiation of Show Cause Proceedings (Feb. 12, 2018) ("INGAA Answer"); Answer of the Kinder Morgan Entities to the Petition for Initiation of Show Cause Proceedings (Feb. 12, 2018) ("Kinder Morgan Answer"); Motion to Intervene and Answer of TransCanada Corporation (Feb. 12, 2018) ("TransCanada Answer").

[3] *See, e.g., PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,089 at P 12 (2017).

ensure a complete record. Accordingly, APGA respectfully requests that the Commission grant it leave to answer.

II. ANSWER

APGA is a Petitioner in this docket. The purpose of this Answer is to rebut some of the comments of the pipelines briefly so that the record is clear.

A. One-Size-Fits All Is A Strawman

INGAA has adopted a mantra that a one-size-fits-all approach is fatal to the request of the Petitioners—"inconsistent with the applicable statutory framework and inappropriate for interstate natural gas pipelines."[4] But that is not what Petitioners requested. *Everyone understands that this matter is not simple*. Each pipeline has different circumstances of course. The Petitioners did not make a request that all pipelines be treated identically but noted several distinctions that the Commission should consider.

What the Petitioners did request was prompt action, and requiring a compliance filing of most pipelines is an action that will provide the Commission with the information it needs to make further determinations going forward.[5] Petitioners' recitation of the Commission's statutory authority supports the action.

B. Remember the Recourse Rate Shippers

APGA was hopeful that INGAA would offer that its members would be making voluntary filings to reduce the rates of recourse rate shippers. The vast majority of APGA members receive service under recourse rates—fully regulated cost-of-service based maximum rates under tariff. That did not happen, although some pipelines such as Columbia Gas

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[4] INGAA Answer at 2. *See also* Letter of Don Santa to Kevin McIntyre, dated January 30, 2018 ("avoid a one-size-fits-all approach to addressing the reductions in corporate income tax rates").

[5] *Cf.* Motion to Intervene and Comments of Range Resources-Appalachia, LLC (Feb. 12, 2018) ("Range requests that the Commission consider a streamlined mechanism that does not unduly delay implementation of the Tax Act.").

Transmission have taken action already pursuant to settlement obligations to lower recourse rates.[6]

Instead, INGAA, *et al.* kick up a lot of dust about respecting settlements and negotiated rate contracts under *Mobile-Sierra*. <u>This does not concern recourse rate customers that are unprotected by settlement terms</u>. These pipeline shippers appear to be the minority; they are overwhelmingly captive to a single pipeline; and they are the very customers that the Commission is obligated to protect under the Natural Gas Act.[7]

Indeed, Kinder Morgan commented that “around two-thirds of all pipeline and storage revenues are derived from negotiated rate or discounted rate agreements.”[8] While Kinder Morgan was speaking of its own entities only, this appears to be representative of the industry. (TransCanada mentioned that “discounted and negotiated rate contracts [account] for significant volumes.[9]) This demonstrates that correcting the rates of recourse shippers paying max rates will affect the smaller portion of pipeline revenues. Any concern for the financial health of pipelines is therefore dramatically overstated because of the volumes of business done via negotiated and discounted rate contracts. Commission action to correct the recourse rates of pipelines is in the public interest.

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[6] Columbia Gas Transmission filed to reduce its base firm transportation rates by 6.02% on February 5, 2018 to reflect the reduction to the federal corporate income tax rate retroactive to January 1, 2018. Columbia’s filing implements a provision of a 2012 settlement that permitted a modernization cost-tracker. In that settlement, Columbia agreed to revise its rates if the corporate income tax rate changed. *See* Application, Columbia Gas Transmission, LLC, Docket No. RP18-426 (Feb. 5, 2018).

[7] *United Distribution Companies v. FERC*, 88 F.3d 1105, 1123 (D.C. Cir. 1996) (describing the Commission’s “prime constituency” as “captive customers vulnerable to pipelines’ market power”).

[8] Kinder Morgan Answer at 6. “Negotiated rate agreements represent approximately 92% percent of the firm transportation contracts on Gulf Crossing, 36% of the firm transportation contracts on Gulf South, and 32% of the firm transportation contracts on Texas Gas.” Answer Of Boardwalk Pipeline Partners, LP, at 6 (Feb. 12, 2018).

[9] TransCanada Answer at 3.

C. The 1986 Precedent is Inapposite

INGAA (as well as TransCanada), attempting to distinguish the relief requested by the petition, asserts that the Commission did not take "generic mandatory action" in response to the 1986 tax change. INGAA is simply incorrect.

As INGAA notes, Order No. 475 established a procedure to permit electric utilities to voluntarily file for rate decreases to reflect the decrease in the corporate income tax rate.[10] The Commission, however, also made clear in the same order that it intended to undertake a "general review" of *all* utilities that did not voluntarily reduce their rates either through the abbreviated procedure or through general rate changes filings, and that it would, where appropriate, institute formal investigations.[11] In other words, the Commission did, in fact, take a mandatory generic approach in response to the 1986 law – an approach that required every utility to either file or be subject to a potential investigation.

INGAA also correctly notes that Order No. 475 did not apply to natural gas pipelines. As INGAA acknowledges in a footnote, however, pipelines were excluded only because at that time most pipeline rate settlements included tax trackers, which meant that rates would automatically adjust to account for changes in taxes.[12] That of course is not the case today. Moreover, unlike in the 1980s, when pipelines were subject to triennial reviews, today pipelines are not compelled to restate their rates to account for a tax change—ever. As the Commission knows, many pipelines have not had rates restated for many years – some for more than a decade. Accordingly, Commission action today is required.

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[10] *Electric Utilities; Rate Changes Relating to Federal Corporate Income Tax Rates for Public Utilities*, Order No. 475, FERC Stats. & Regs. ¶ 30,752 at p. 30,731, *reh'g denied*, Order No. 475-A, 41 FERC ¶ 61,029 (1987).

[11] *Id.*

[12] INGAA Answer at 17 and n.53 (citing Order No. 475 at p. 30,731 n.3).

D. Any Generic Action Must Address Value of Reduced Taxes For Ratepayers

Should the Commission opt not to address pipeline rates on a case-by-case basis but instead undertake a generic policy or rule directing pipelines how to handle accounting challenges created by the new tax law, the Commission must take into consideration the fact that pipelines' costs fell significantly effective January 1, 2018. If the Commission directs pipelines to adopt new accounting procedures for the Tax Cuts and Jobs Act of 2017, those procedures can compel pipelines to account for their lower costs as of January 1. The amount of the overcollection resulting from the 21% tax rate may be recorded as a regulatory liability. This would be reflected in the Form No. 2. In the next rate case, the pipeline will amortize the regulatory liability account starting on the effective date of its new rates so that ratepayers derive some benefit from the tax rate change, if not timely.[13] The Commission must rule in a way to capture the tax rate differential and the value it creates for ratepayers.

[13] *See Northwest Pipeline LLC*, 160 FERC ¶ 61,008 at P 11 (2017) (Article VI of settlement required pipeline to record a regulatory liability or asset account).

III. CONCLUSION

APGA respectfully requests that the Commission accept its answer and that it grant the Petition for Initiation of Show Cause Proceedings.

Respectfully submitted,

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Dated: February 16, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 16th day of February, 2018.

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