

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

April 3, 2013

OFFICE OF THE CHAIRMAN

The Honorable Ron Wyden  
Chairman  
Committee on Energy and Natural Resources  
United States Senate  
Washington, D.C. 20510

Dear Chairman Wyden:

Thank you for your March 6, 2013 joint letter regarding the Federal Energy Regulatory Commission's (FERC or Commission) jurisdiction under section 5 of the Natural Gas Act (NGA), 15 U.S.C. § 717d (2006). As you mention, beginning in 2009, the Commission has exercised its authority under section 5 to initiate investigations to ensure that rates charged by ten interstate natural gas pipeline companies remain just and reasonable. I appreciate your interest in our efforts in this regard. With regard to whether the Commission has the authority to require pipelines to periodically show cause that their rates are just and reasonable, the Commission can not require the filing of rate cases, but does have the authority to require the filing of information necessary to investigate rates. Following and attached is additional information on our section 5 authority in general and the individual cases.

Section 4 of the NGA, 15 U.S.C. § 717c (2006), provides an interstate natural gas pipeline company with the right to file an application with the Commission to change its jurisdictional rates at any time. Such applications are generally referred to as a section 4 rate case. The Commission cannot compel a pipeline to file a section 4 rate case, nor can it preclude it from filing a section 4 rate case for any reason, including the presence of a NGA section 5 complaint. However, there have been instances where, in an agreement to settle a section 4 rate case, a pipeline has agreed to bind itself to file a section 4 rate case at a particular time, and/or has agreed to a rate moratorium, but, again, the Commission itself does not have the authority to compel or prohibit a pipeline from filing a section 4 rate case.

The United States Court of Appeals for the District of Columbia Circuit has ruled that the FERC has authority under NGA section 5 to order hearings to determine whether a given pipeline is in compliance with FERC's rules, and under NGA sections 10 and 14, 15 U.S.C. §§ 717i and 717m (2006), to require pipelines to submit needed information for the FERC to make its NGA section 5 decisions. *See Interstate Natural Gas Assn' of*

*America v. FERC*, 285 F.3d 18, 38 (D.C. Cir. 2002). Consequently, pursuant to NGA section 5, the FERC on its own or pursuant to a complaint filed by another person<sup>1</sup> may challenge a natural gas company's existing rates, terms or conditions as not being just and reasonable or as being unduly discriminatory or preferential. Upon determining a rate, term, or condition is not just and reasonable or is unduly discriminatory or preferential, the FERC must specify a new rate, term or condition that is just and reasonable and not unduly discriminatory or preferential to be used prospectively. 15 U.S.C. § 717d (2006). Under NGA section 5, the FERC or the complainant has the burden of showing the existing rate, term, or practice is unjust or unreasonable and that the proposed rate, term, or condition is just and reasonable and not unduly discriminatory or preferential. *See, e.g., Transcontinental Gas Pipe Line Corp. v. FERC*, 518 F.3d 916, 918 (D.C. Cir. 2008).

Sections 10(a) and 14(a) of the NGA, 15 U.S.C. §§ 717i(a) and 717m(a) (2006), respectively, authorize the Commission to require pipelines to submit information to carry out the Commission's responsibility under NGA section 5 to ensure that the pipeline's rates are just and reasonable. Section 10(a) permits the Commission to require any and all reports that are "necessary or appropriate to assist the Commission in the proper administration of [the NGA]." Section 10(a) also permits the Commission to "prescribe the manner and form in which such reports shall be made, and require from such natural gas companies specific answers to all questions upon which the Commission may need information." Similarly, section 14 permits the Commission "to investigate any facts, conditions, practices, or matters which it may find necessary or proper ... to aid in the enforcement of the provisions of this chapter." Thus, while FERC does not have the authority to require pipelines to file periodic section 4 rate cases, it does have the authority to require pipelines to file information pertaining to their existing rates and the basis for those rates.

The Commission has exercised its authority under these sections to require interstate natural gas pipeline companies to file annually, in a "Form 2," detailed cost and revenue information. As you note, in 2008, the Commission revised the Form 2

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<sup>1</sup> The statutory text of NGA section 5 only gives a "State, municipality, State commission, or gas distributing company" the right to file a complaint. However, FERC has ruled that a complaint brought by an entity other than one expressly enumerated in NGA section 5 is interpreted as a request for the Commission to institute an investigation, which is solely within the Commission's discretion. *See Panhandle v. Southwest Gas Storage Co.*, 117 FERC ¶ 61,318, at P 21 (2006), *citing General Motors Corp. v. FPC*. 613 F.2d 939 (D.C. Cir. 1979).

requirements to improve the cost and revenue information provided by interstate natural gas pipeline companies to assist the Commission and interested persons in determining whether pipeline rates remain just and reasonable. While the information in the Form 2 permits FERC to determine whether to initiate an NGA section 5 proceeding to investigate whether a natural gas pipeline's current rates are unjust and unreasonable, the United States Court of Appeals for the District of Columbia Circuit has repeatedly emphasized that the Commission cannot place the burden on the pipeline to show that its current rates are just and reasonable. See *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578-9 (D.C. Cir. 1993), and cases cited therein. Rather, NGA section 5 requires the Commission or a complainant to bear the burden of showing that the pipeline's current rates are unjust and unreasonable.

Against this background, as you point out, since 2009 the FERC has initiated ten NGA section 5 rate proceedings to investigate whether rates charged by natural gas pipelines are just and reasonable. You have requested for each NGA section 5 proceeding the following information (a) a brief description, (b) the original FERC-approved rate of return, (c) whether the pipeline offered any discounts for services, (d) timeline and resolution of each proceeding, whether by settlement or otherwise and (e) changes in rates for various customer classes. The attached Appendix provides detailed information on each of the resolved, FERC-initiated NGA section 5 proceedings.

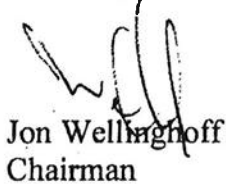
In sum, the FERC-initiated NGA section 5 proceedings have lasted about eight to ten months from the date the Commission initiated the NGA section 5 action to the date the Commission approved a final order in the proceeding. The proceedings generally have resulted in a variety of benefits to the pipeline's customers, including changes in rates. The results in individual cases have varied in terms of the financial savings achieved given that, in most cases to date, the shippers on the pipeline, the pipeline, and the Commission's administrative litigation staff have settled.

In addition to the FERC-initiated NGA section 5 proceedings since 2009, on February 28, 2011, the Public Utilities Commission of Nevada and Sierra Pacific Power Company (NV Energy) filed a NGA section 5 complaint against Tuscarora Gas Transmission Company (Tuscarora) contending Tuscarora's rates were not just and reasonable. Using FERC Form 2-A data, NV Energy estimated that Tuscarora's earned returns on equity were 22.2% for 2008 and 27.2% for 2009. On May 24, 2011, the Commission set the matter for hearing before an Administrative Law Judge. *Public Utils. Comm'n of Nevada and Sierra Pacific Power Co. d/b/a/ NV Energy v. Tuscarora Gas Transmission Co.*, 135 FERC ¶ 61,174, at P 8 (2011). Tuscarora filed an uncontested settlement with FERC on December 23, 2011. The Commission approved the uncontested settlement on March 9, 2012. *Public Utils. Comm'n of Nevada and Sierra Pacific Power Co. d/b/a/ NV Energy v. Tuscarora Gas Transmission Co.*, 138

FERC ¶ 61,166 (2012). The uncontested settlement lowered transportation rates by 18% for 2006 settling parties and 32% for 2006 non-settling parties.

Again, I appreciate your interest in our continuing efforts to ensure that rates charged by interstate natural gas pipeline companies remain just and reasonable. If I can be of further assistance in this matter, please do not hesitate to contact me.

Sincerely,



Jon Wellinghoff  
Chairman

Enclosure

***Natural Gas Pipeline Company of America LLC – 2009-10 investigation***

- Last FERC-approved overall rate of return: pretax 15.0% (May 1996).
- Estimated earned return on equity of 24.5% (pretax 24.5%) on a \$1.37 billion rate base as of 2008.
- Discounts offered: Yes, on approximately 42% of throughput as of 2008.
- FERC section 5 investigation initiated November 19, 2009 (129 FERC ¶ 61,158 (2009)). Uncontested settlement filed with FERC on June 11, 2010. FERC approved settlement on July 29, 2010 (132 FERC ¶ 61,082 (2010)).
- Settlement lowered transportation rates by approximately 8%, storage rates by 3% and fuel retention rates by 45%.

***Northern Natural Gas Company - 2009-10 investigation***

- Last FERC-approved overall rate of return: pretax 13.2% (March 2005).
- Estimated earned return on equity of 24.4% (pretax 21.7%) on a \$1.8 billion rate base as of 2008.
- Discounts offered: Yes, on approximately 52% of throughput as of 2008.
- FERC section 5 investigation initiated November 19, 2009 (129 FERC ¶ 61,159 (2009)). Northern Customer Group filed with FERC requesting that the proceeding be terminated on May 5, 2010. FERC terminated the proceeding on May 27, 2010 (131 FERC ¶ 61,178 (2010)).
- No change in rates.

***Great Lakes Gas Transmission Limited Partnership – 2009-10 investigation***

- Last FERC-approved rates of return: pretax 14.1% and return on equity 13.3% (March 1992).
- Estimated earned return on equity of 20.8% (pretax 20.8%) on a \$787 million rate base as of 2008.
- Discounts offered: Yes, on approximately 37% of throughput as of 2008.
- FERC section 5 investigation initiated November 19, 2009 (129 FERC ¶ 61,160 (2009)). Uncontested settlement filed with FERC on May 21, 2010, FERC approved settlement on July 15, 2010 (132 FERC ¶ 61,041 (2010)).
- Settlement lowered transportation rates by approximately 8% and provided for a revenue sharing mechanism.

***Kinder Morgan Interstate Gas Transmission LLC (KMIGT) – 2010-11 investigation***

- Last FERC-approved overall rate of return: pretax 13.7% (November 1999).
- Estimated earned return on equity of 29.3% (pretax 13.7%) in 2009 and 27.1% in 2008 on \$395 million rate base as of 2009.
- Discounts offered: Yes, on approximately 33% of throughput as of 2009.
- FERC section 5 investigation initiated November 18, 2010 (133 FERC ¶ 61,157 (2010)). Uncontested settlement filed on May 5, 2011, FERC approved the uncontested settlement on September 22, 2011 (136 FERC ¶ 61, 201 (2011)).
- Settlement did not result in changes to the transportation rates. However, the settlement reduced KMIGT's stated fuel rates by approximately 27%.

***Ozark Gas Transmission L.L.C. – 2010-11 investigation***

- Last FERC-approved overall rate of return: not stated in settlement (October 2000).
- Estimated earned return on equity of 31.0% (pretax 27.2%) in 2009 and 27.8% in 2008 on \$128 million rate base as of 2009.
- Discounts offered: Yes, on approximately 52% of throughput as of 2009.
- FERC section 5 investigation initiated November 18, 2010 (Docket No. RP11-1495, 133 FERC ¶ 61,158 (2010)). Uncontested settlement filed on April 29, 2011, FERC approved the uncontested settlement on August 4, 2011 (136 FERC ¶ 61,079 (2011)).
- Settlement did not lower transportation rates but did impose a revenue sharing mechanism for revenues in excess of \$35.5 million per year.

***Bear Creek Gas Storage Company L.L.C. (Bear Creek) – 2011-12 investigation***

- Last FERC-approved overall rate of return: not stated in settlement (June 1989).
- Estimated earned return on equity of 29.2% (pretax 27.3%) in 2010 and 22.4 in 2009 on a \$104 million rate base as of 2010.
- Discounts offered: No, Bear Creek did not offer any discounts in 2010.
- FERC section 5 investigation initiated November 17, 2011 (137 FERC ¶ 61,134 (2011)). Uncontested settlement filed with FERC on June 22, 2012, FERC approved the uncontested settlement on August 15, 2012 (140 FERC ¶ 61,129 (2012)).
- Settlement resulted in an approximate 24% reduction of Bear Creek's revenue requirement that is charged through affiliate companies.

***MIGC LLC - 2011-12 investigation***

- Last FERC-approved rates of return: pretax 12.8% and return on equity 12.0% (May 1995).
- Estimated earned return on equity of 57.1% (pretax 49.2%) in 2010 and 47.4% in 2009 on a \$23 million rate base as of 2010.
- Discounts offered: Yes, on approximately 100% of throughput as of 2010.
- FERC section 5 investigation initiated November 17, 2011 (137 FERC ¶ 61,135 (2011)). Initial Decision Terminating the Proceeding at the request of FERC Trial Staff filed with FERC on May 16, 2012 (139 FERC ¶ 63,012 (2012)). Initial Decision became final order on June 25, 2012 (139 FERC ¶ 61,251 (2012)).
- No change in rates.

***ANR Storage Company – 2011-12 investigation***

- Last FERC-approved return on equity: 12.3% (January 1990).
- Estimated earned return on equity of 153.7% (pretax 128.4%) in 2010 and 130.4% in 2009 on a \$16 million rate base as of 2010.
- Discounts offered: No, ANR Storage did not offer any discounts in 2010.
- FERC section 5 investigation initiated November 17, 2011 (137 FERC ¶ 61,136 (2011)). Uncontested settlement filed with FERC on June 8, 2012, FERC approved the uncontested settlement on August 21, 2012 (140 FERC ¶ 61,134 (2012)).
- Settlement resulted in an approximate 33% reduction in ANR Storage's revenue requirement.