BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Formal Complaint of the Nebraska Public Advocate, seeking a determination that Kinder Morgan, Inc. and/or its successor in interest, SourceGas Distribution, LLC improperly implemented, billed and received payment for interim and final rates in NG-0036 for which customers are entitled to a credit or refund from Kinder Morgan, Inc. and/or SourceGas Distribution, LLC.	)	Application No. FC-1327
	)	ORDER ISSUING FINDINGS ON ORAL ARGUMENT ISSUES
	)	Entered: November 20, 2007

BY THE COMMISSION:

On July 6, 2007, a formal complaint was filed with the Nebraska Public Service Commission (Commission) by the Nebraska Public Advocate ("Complainant" or "PA") against Kinder Morgan, Inc. ("Kinder Morgan") and SourceGas Distribution, LLC, ("SourceGas"), as Kinder Morgan, Inc.'s successor in interest, (together "Respondents"). Both SourceGas and Knight Inc., ("Knight"), the successor in interest of Kinder Morgan, filed timely answers to the Complaint.

The Complaint alleges that Respondents incorrectly implemented interim and final rates in connection with SourceGas' recently concluded rate case[1] by charging ratepayers at the new rates for usage that occurred prior to the effective date of the rate but for which billing did not occur until after the effective date. The Public Advocate argues that both interim and final rates should have been applied to usage occurring on or after the effective date of the rate and to the extent that the change in rates occurred during a billing cycle, usage for the period should have been prorated between the old and new rates.

Respondents contend that SourceGas properly implemented the interim and final rates pursuant to the settlement entered into in NG-0036, the filed tariff and language of the Act and that prorating was not required. The Public Advocate filed this Complaint seeking refunds for ratepayers of any increases collected by SourceGas on gas service rendered before the effective date of the interim rates and final rates.

[1] *See* Application No. NG-0036, *In the Matter of the Application of Kinder Morgan, Inc., Lakewood, Colorado, seeking approval of a general rate increase.* Order Approving Stipulation (December 27, 2006).

At the planning conference held on August 13, 2007, the following threshold legal questions were raised: whether the SourceGas was a proper party to the complaint; whether the Commission has the authority to order the relief sought by the complaint; and if the Commission ordered refunds, whether such order would constitute improper retroactive ratemaking. Therefore, the Hearing Officer determined that oral arguments on these issues would be necessary. The parties filed pre-oral argument briefs and the oral arguments were held on October 30, 2007 at the Commission.

O P I N I O N S A N D F I N D I N G S

Proper Party

The jurisdictional utility that sought, received and implemented the rate increase at issue in this complaint was Kinder Morgan, now known as Knight.[2] Subsequently, Kinder Morgan transferred its jurisdictional utility assets and its Nebraska Certificate of Convenience to SourceGas. The transfer was approved by the Commission in an order issued on February 27, 2007.[3] Therefore, SourceGas now owns and operates the jurisdictional utility that provides service to ratepayers in Nebraska.

The State Natural Gas Regulation Act ("Act") provides that a jurisdictional utility, or a natural gas public utility, is subject to the jurisdiction of the Commission.[4] The Act further defines natural gas public utility as any entity that owns, controls, operates, or manages any equipment, plant, or machinery for conveying natural gas in Nebraska.[5] Knight, formerly Kinder Morgan, no longer owns, controls, operates, or manages any equipment to convey natural gas in Nebraska.

While Kinder Morgan was the jurisdictional utility providing natural gas service in September of 2006 and January of 2007 when the interim and then final rates at issue in this complaint were entered, SourceGas is the successor in interest of Kinder Morgan's jurisdictional utility. SourceGas assumed

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[2] *Supra,* Application No. NG-0036.
[3] *See* Application No. NG-0039, *In the Matter of the joint application of Kinder Morgan, Inc., Houston, Texas; KM Retail Utilities Holdco LLC, Houston, Texas; Source Gas Distribution LLC, Lakewood, Colorado, Source Gas Holdings LLC, Stamford, Connecticut; and Source Gas LLC, Stamford, Connecticut; seeking approval of (1) the proposed transfer of Kinder Morgan, Inc.'s Nebraska Certificate of Convenience and utility assets to Source Gas Distribution LLC; and (2) the proposed change of control of Source Gas Distribution LLC from Kinder Morgan, Inc. to Source Gas LLC.* Approved (February 27, 2007).
[4] *Neb. Rev. Stat.* § 66-1802(10) (Reissue of 2003).
[5] *Neb. Rev. Stat.* § 66-1802(11) (Reissue of 2003).

the obligations and assets of Kinder Morgan. SourceGas is the entity billing and collecting from customers for natural gas service provided, and is therefore, the entity in the position to implement any remedy found appropriate by the Commission. Any issues arising concerning the jurisdictional utility SourceGas now owns and operates should be correctly addressed by SourceGas. We find SourceGas is the proper party to the Complaint. The Commission takes no position on any private remedies or actions that SourceGas may or may not be legally entitled to pursue against Knight.

Commission Authority

The Respondents argue that the Commission does not have the authority under the Act to order refunds or credits to ratepayers in the event that it finds that a jurisdictional utility has overcharged or over-collected from ratepayers. We disagree. The Act gives the Commission broad authority and jurisdiction to regulate natural gas public utilities. The Act provides:

> The commission shall have ***full*** power, authority, and jurisdiction to regulate natural gas public utilities and ***may do all things necessary and convenient*** for the exercise of such power, authority, and jurisdiction.[6] (Emphasis added).

Further, the Act elaborates and provides:

> The State Natural Gas Regulation Act and all grants of power, authority, and jurisdiction in the act made to the commission shall be ***liberally construed***, and all incidental powers necessary to carry into effect the provisions of the act are expressly granted to and conferred upon the commission.[7] (Emphasis added).

The Commission is charged under the Act with regulating natural gas public utilities. To conclude that the Commission lacks the power, authority, or jurisdiction to order a jurisdictional utility to refund or credit customer accounts upon a finding that an incorrect amount was charged to a customer, is contrary to the clear intent of the Act. We find therefore, that the Commission has authority under the Act to grant the relief sought by the Public Advocate in this matter.

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[6] *Neb. Rev. Stat.* § 66-1804(1). (Reissue of 2003).
[7] *Neb. Rev. Stat.* § 66-1804(2). (Reissue of 2003).

Retroactive Ratemaking

The Complaint alleges that Kinder Morgan incorrectly implemented rate changes when it implemented interim and final rates in connection with its recently concluded rate case.[8] SourceGas in its answer to the Complaint states that Kinder Morgan implemented the rate changes according to its tariff, now adopted by SourceGas, and did not prorate the changes on customer bills. For example, customers billed on or after January 1, 2007, were charged the newly approved rates effective January 1, 2007. Portions of some customer bills issued in January reflected charges for gas service rendered in December, but the new rate was applied to the entire bill. Customer bills issued in January reflect the current tariff rates, irrespective of when the gas service was rendered to the customer.

The PA argues that any gas service rendered by the utility prior to the effective date of the rate change should be charged at the prior rate. Therefore, the PA filed this Complaint seeking refunds for ratepayers of any increases collected by SourceGas on gas service rendered before the effective date of the interim rates and final rates. The Respondents assert that issuing a refund in connection with implementation of the interim or final rates in NG-0036 constitutes retroactive ratemaking, and would effectively after-the-fact revise the rates approved by the Commission in NG-0036. They argue that to grant the relief sought by the PA would amount to the Commission subsequently finding that the rate approved in NG-0036 was now unreasonable.

We find that scrutinizing the method by which a rate change is implemented is not retroactive ratemaking. The Commission by considering the implementation of a new rate is not challenging or reconsidering whether the rate itself is just and reasonable. The rate approved under NG-0036 is not at issue. The method employed by the utility to implement the rate increases, is the issue before us.

We also note that Kinder Morgan’s failure to prorate the rate increases to account for customer gas usage prior to the effective date is unfair retroactive application of rates. Customers used gas in August and December relying on the rates as then contained in Kinder Morgan’s tariff. Customers consumed gas in reliance upon the fact that delivery rates were those in effect on the day of usage, and after the gas was consumed by

[8] *Supra,* Application No. NG-0036.

the customer, Kinder Morgan implemented a rate increase and charged a higher rate for gas retroactively.

Effective Date of Rate Changes

Central to the issues of this Complaint is the interpretation of language under the Act concerning when rates go into effect.

Regarding interim rates, the Act provides,

> The jurisdictional utility's filed rates may ***be placed into effect*** as interim rates, subject to refund, upon the adoption of final rates, ninety days after filing with the commission.[9] (Emphasis added).

Regarding final rates, the comprehensive settlement agreement and stipulation (Settlement Agreement) entered into by the PA and Kinder Morgan and ultimately approved by the Commission in NG-0036, includes the following language,

> It is agreed that the new rates established pursuant to this Settlement Agreement shall ***become effective*** on January 1, 2007.[10] (Emphasis added).

SourceGas interprets the language of the Act and the Settlement Agreement as the rate change becoming effective when applied to bills issued on or after the effective date. They argued that the Act does not preclude them from *charging* customers before the effective date, as long as the rate change is not instituted in the billing system before the effective date. Further, SourceGas advocates that neither the Act nor the Settlement Agreement expressly requires the prorating of customer bills when new rates become effective. Finally, SourceGas points to its implementation of prior rate changes and states that non-prorating of customer bills has been its standard practice in the past.

The PA interprets the language of the Act and the Settlement Agreement as allowing no change to the rate for services provided until the effective date of the new rate. He argues services rendered prior to the effective date of the new

[9] *Neb. Rev. Stat.* § 66-1838(10)(b). (Reissue of 2003).
[10] *See supra,* Application No. NG-0036, Stipulation and Agreement of Settlement, p. 6, (November 28, 2006).

rate, must be charged at the old rate. Not prorating resulted in an unintended windfall for the utility.

The language set forth in section 66-1838(10)(b), "rates may be placed into effect," is plain and unambiguous.[11] The same can be said concerning the language in the Settlement Agreement "shall become effective". The word "effect" in this context means the quality or state of being operative or in operation.[12] The new rates were to be placed into operation on January 1, 2007. Charging the new rate for services rendered before the effective date, is putting the new rates in operation prior to the effective date. The plain meaning and common understanding of the word "effect" requires that the new rate not be operating or charged to customers before the effective date. To find otherwise would be contrary to common sense and plain meaning.

The Act does not expressly direct prorating of customer bills when new or interim rates are implemented. However, we find that a reasonable interpretation of the plain language of the Act would indicate that the new rate can not be charged, implemented, or effective for natural gas service rendered prior to the approved effective date. SourceGas's current tariff may not provide for the prorating of customer bills when a new rate is implemented, nevertheless, a tariff can and must be in compliance with the law. Even assuming that SourceGas's, then Kinder Morgan's, tariff provisions were complied with by the utility, the compliance by a utility with its own tariff provisions is not a justification for not complying with provisions of the Act. Our interpretation of the statutory language does not turn on a utility's tariff language.

The Commission also notes that the Nebraska Act when it was drafted in the Nebraska Legislature was modeled on Kansas law.[13] The Commission's Kansas counterpoint, The Kansas Corporation Commission (KCC), in interpreting the Kansas Natural Gas Law, requires that any adjustments during a billing month in which a change in rates or tariffs becomes effective must be prorated.[14] While Kansas law and KCC decisions are neither authoritative nor controlling to the Commission, we do find the interpretation and practices of the State upon which Nebraska's Act is modeled, instructive and illustrative.

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[11] *Neb. Rev. Stat.* § 66-1838(10)(b). (Reissue of 2003).
[12] *See* Merriam Webster's Collegiate Dictionary, 367 (10th Ed. 1994) and Oxford American Dictionary, Heald Colleges Edition, 274 (1980).
[13] 98th Leg. 1st Sess. at 3047 (floor debate LB 790, March 27, 2003)(statement of Sen. Landis).
[14] *See* Kansas Corporation Commission, *Electric, Natural Gas and Water Billing Standards*, Section 1, Part D(1)(b), effective July 24, 2007.

The Commission next turns to SourceGas's argument that non-prorating of customer bills when rates are changed has been the standard practice of its predecessors in interest in Nebraska, a practice they continued when implementing the rate changes under the most recent rate case in NG-0036.[15] We do not find the fact that a utility did not prorate the implementation of rate changes in the past persuasive as to the proper practice for implementation of rate changes under the Act. Kinder Morgan's prior rate cases were conducted under the provisions of the Municipal Natural Gas Act (MNGA) which was replaced with the current Act in 2003. The MNGA did not contain language similar to "placed into effect" as is employed in the current Act. Instead concerning new rate implementation, the MNGA stated,

> The utility shall, within thirty days of the date of the final action, unless it takes timely action to initiate judicial review, implement the rates established by the action of the municipality."[16]

We cite the repealed statutory language to emphasize that the language was changed by the Legislature with the passage of the Act, and the "placed into effect" language was added. It could be argued that prorating rate changes should have been done under a reasonable interpretation of the MNGA, however, that is moot at this point. Therefore, even if not prorating rate changes by a utility was reasonable under the MNGA, the past practices of a utility under the MNGA are not relevant to our current inquiry into the interpretation of the Act as it applies today. We therefore find that past practices of SourceGas and its predecessors under the MNGA are irrelevant to our current interpretation of the Act.

Retrospective Relief

We now address another argument raised by the Respondents. The Respondents argue that the PA must prove that the rates shown in its tariff are unjust and unreasonable, and only then would the Commission be able to order that the rates be changed, and only on a prospective basis. They argue ordering refunds as the PA seeks would constitute retrospective relief, which is prohibited under the Act. The Respondents rely on a section of the Act that gives the Commission upon investigation and hearing of a formal complaint against a utility alleging unreasonable or unjust rates or terms and conditions of service, the authority to:

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[15] *Supra,* Application No. NG-0036.
[16] *Neb. Rev. Stat*. §19-4616. Repealed. Laws 2003, LB 790, § 77.

> Establish, and to order substituted therefore, to be effective **as of the date of the order**, such rates or terms and conditions of service as the commission determines to be just, reasonable, and necessary.[17] (Emphasis added).

The Respondent's use of this section of the statute is not on point to the situation at issue in this docket. The Respondents mischaracterize what the Complainant is alleging. Nowhere is it alleged that Kinder Morgan, now SourceGas's, *rates* are unreasonable, unjustly discriminatory, or unduly preferential. The issue before us is whether the rates were *implemented* in a manner consistent with the Act. Arguably the portion of section 66-1811(5) more on point is the next portion after the section cited by the Respondents dealing with services performed by the utility, not its rates. Section 66-1811(5) goes on to provide:

> If it is found that any term or condition of service, ***practice***, or act relating to any service performed or to be performed by such utility is in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unduly preferential.[18] (Emphasis added).

We find however, that even this section, while correctly addressing the practice of the utility and not its rates, is still not on point to the current issue before us. To characterize overcharging customers for gas service as a mere *practice* of the utility is incorrect. Kinder Morgan violated the plain meaning of effective date in the Act[19] and in the order of the Commission approving the Settlement Agreement.[20] The Commission is not simply scrutinizing a questionable practice by a utility and ordering that utility to change its practice to be more equitable or reasonable. This Commission is considering whether Kinder Morgan wrongly implemented rates, harming customers and benefiting itself and its successor in interest.

We find that this Commission, with the broad power and authority granted by the Act, is able to remedy past wrongs. Section 66-1811, also contains the following language:

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[17] *Neb. Rev. Stat.* § 66-1811(5). (Reissue of 2003).
[18] *Id.*
[19] *Neb. Rev. Stat.* § 66-1838(10)(b). (Reissue of 2003).
[20] *See supra,* Application No. NG-0036, Order Approving Stipulation, (December 27, 2006).

> The commission shall have power to require jurisdictional utilities to make such improvements and do such acts as are or may be required by law to be done by any such utility, ***including refunds as authorized by law.***[21] (Emphasis added).

Clearly the Act does not contemplate a prohibition against retroactive relief as argued by the Respondents. A refund, by its very nature, is a retrospective remedy, ordered after the fact when an incorrect amount is collected or charged by a utility. Therefore, to erroneously interpret section 66-1811 as prohibiting the Commission from granting retrospective relief would strip the Commission of the ability to protect ratepayers from unfair practices, a result contrary to the clear intent of the Act.

Interim and Final Rates

The PA requests that the Commission find that Kinder Morgan incorrectly implemented both the interim rate increase on September 1, 2006, and the final rates on January 1, 2007. The PA seeks customer refunds of any money collected by Kinder Morgan for gas service rendered before the effective dates of the rate changes. SourceGas in its answer to the complaint and oral arguments states that to issue such an order with the relief requested by the PA would violate the terms of the Settlement Agreement and constitute an impermissible collateral attack on the NG-0036 Order.

Concerning the interim rates implemented by Kinder Morgan on September 1, 2006, this Commission declines to reexamine the implementation of those rates. The PA and Kinder Morgan entered into a binding and comprehensive Settlement Agreement that was then jointly submitted to the Commission for approval.[22] The Settlement Agreement was a generic or "black box" settlement, meaning it contained the final terms agreed upon by the parties, but no justification or rationale behind the agreed upon terms. The Commission was provided with no justification of any of the terms agreed upon the parties and therefore has no knowledge as to what, if anything was contemplated by the parties concerning implementation of the interim rates. In the NG-0036 order approving the Settlement Agreement, we expressed our concerns with the "Black Box" agreement process,

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[21] *Neb. Rev. Stat.* § 66-1811(3). (Reissue of 2003).
[22] *See supra,* Application No. NG-0036, Stipulation and Agreement of Settlement, (November 28, 2006).

> This type of settlement makes the Commission's review of the terms of the Stipulation extremely difficult. In the future, the Commission expects more detailed rationale and justification to be filed with a settlement agreement.[23]

We can, therefore, only be guided by the terms of the Settlement Agreement submitted to us. According to the Settlement Agreement, no refund is due customers for interim rates charged by Kinder Morgan. The Settlement Agreement states,

> The Parties acknowledge that Kinder Morgan's interim rates were established at an overall revenue level that is less than the revenue increase reflected in the settled rates. Accordingly, ***no refund is required*** pursuant to the Act.[24] (Emphasis added).

The PA and Kinder Morgan agreed that no refunds would be issued to customers in relation to the interim rates charged by Kinder Morgan. The Settlement Agreement is silent as to how the interim rates were implemented. The parties simply agreed that what had been collected by Kinder Morgan would not be refunded. Therefore, we find that the interim rates collected from customers by Kinder Morgan in connection with the most recent rate case, NG-0036, are not subject to refunds.

The Commission now turns to the consideration of the final rates implemented by Kinder Morgan on January 1, 2007. The Settlement Agreement simply contained the date, upon which the new rates would be effective.[25] Kinder Morgan assumed that implementation of the new rate approved by the Commission in NG-0036, under the authority of the Act, could be accomplished in the same manner as they had previously employed under the MNGA. However, the guidance of this Commission was not sought by Kinder Morgan or SourceGas as to the interpretation of the Act language. Therefore, we find that the implementation method employed by Kinder Morgan to implement the rate changes approved under NG-0036 shall be subject to scrutiny by the Commission. The Commission shall proceed with an evidentiary hearing to

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[23] *See supra,* Application No. NG-0036. Order Approving Stipulation, p. 5, (December 27, 2006).
[24] *See supra,* Application No. NG-0036, Stipulation and Agreement of Settlement, p. 11, (November 28, 2006).
[25] *Id.* at p. 6.

determine the remaining issues regarding the implementation of the January 1, 2007 final rates by Kinder Morgan.

Lastly, we address an argument put forth concerning the $8.25 million annual revenue increase approved by the Commission in NG-0036. SourceGas claims that if the Commission orders it to issue refunds as sought by the PA that the Respondents would suffer an estimated revenue deficiency for calendar year 2007. SourceGas argues that the Commission would be denying it the $8.25 million annual revenue increase approved by the Commission. First, we point out that the Commission in NG-0036 gave SourceGas the *opportunity* to earn an estimated $8.25 million annually, we did not *guarantee* that Kinder Morgan would earn that specific increased amount in any calendar year. Secondly, the $8.25 million revenue increase is a fiction used for the purposes of calculating rates and is based on assumptions made in the test year employed during the rate case. Nothing in the NG-0036 order or Settlement Agreement required that Kinder Morgan actually make $8.25 million more in revenue in 2007 or any other year. Finally, nothing in this order alters SourceGas's ability to collect the $8.25 million revenue increase. However, the ability of SourceGas to collect its revenue increase authorized by the Commission does not include collecting money from customers in error. We find that attempting to collect increased rates from ratepayers for gas consumed prior to the effective date of the rate increase is collecting in error and contrary to the provisions of the Act.

Conclusion

The Commission is charged under the Act with balancing the interests of ratepayers with those of the jurisdictional utilities. The Commission has been given broad authority and liberal power to discharge its duties under the Act. This includes the authority to make ratepayers whole in the event they are overcharged by a jurisdictional utility. We decline to further consider the interim rate implementation by Kinder Morgan on September 1, 2006, however, we will proceed to evidentiary hearing concerning the implementation of the final rates by Kinder Morgan on January 1, 2007.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that it has the authority and jurisdiction to order refunds to ratepayers in the event over-collection by a jurisdictional utility occurs.

IT IS FURTHER ORDERED that the consideration by the Commission of how a rate change is implemented does not constitute retroactive ratemaking.

IT IS FINALLY ORDERED that the Commission shall proceed with an evidentiary hearing on a date to be determined concerning the amount of refund due to ratepayers as a result of the erroneous implementation of the January 1, 2007 rate change by SourceGas Distribution LLC, f/k/a Kinder Morgan, Inc.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of November, 2007.

NEBRASKA PUBLIC SERVICE COMMISION

COMMISSIONERS CONCURRING:

Chairman:

ATTEST:

Executive Director

DISSENT OF COMMISSIONER FRANK LANDIS

I fully concur with the majority's decision to require utilities to prorate changes in rates on usage occurring on or after the effective date of the change. Such a requirement is clearly sound public policy. However, the retroactive application of such a requirement is improper under the State Natural Gas Regulation Act and basic equitable principles, and I, therefore, must respectfully dissent.

A critical issue of the Complaint is the import of the phrase "placed into effect" on rate implementation[26]. The impact of that phrase can lead to varying applications and it is unfortunate that the question of application in this case was not directly addressed at that time of settlement. Moreover, the filing of the Complaint itself is evidence that each party negotiated and agreed to the settlement based upon their differing interpretations of the phrase.

According to the undisputed record, Kinder Morgan, has, in the past, implemented rates in the same manner by charging new rates in any bill issued on or after the effective date, without regard to when the usage occurred. Nothing in the Act, Commission rules and regulations, or Commission orders defines "placed into effect". Kinder Morgan's interpretation of the statutory language could be considered reasonable in light of its past practices and the fact that it had implemented interim rates in this case in the same fashion without objection. Absent a specific violation of an agreement between the parties in the settlement agreement, violation of a statute, violation of an order or a violation of a rule, Kinder Morgan did not act unlawfully or improperly in implementing rates in this manner.

The Act specifically provides that upon the filing and investigation of a complaint,

> If it is found that any term or condition of service, ***practice***, or act relating to any service performed or to be performed by such utility is in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unduly preferential, or otherwise in violation of any of the provisions of the act or of any of the laws of the State of Nebraska, the commission may ***substitute*** therefore by order such other terms and conditions of service, ***practice***, service, or act as it determines to be just,

[26] *Neb. Rev. Stat.* § 66-1838(10)(b). (Reissue of 2003).

> reasonable, and necessary, ***to be effective as of the date of the order***.[27]

The majority finds Kinder Morgan's practice of rate implementation unreasonable and substitutes a proration practice. I agree that prorating is the appropriate method as a matter of public policy.

However, applying this new revelation retroactively, clearly violates the plain language of § 66-1811(5) and sets an ill-advised precedent for this Commission. Although the majority has found that Kinder Morgan's interpretation of § 66-1838 is unlawful, such a finding must be made in the context of the Act in its entirety. It is imperative that § 66-1811(5) and § 66-1838 be read so as to give full force and effect to each section.

Further, the stipulation of the parties and our December 22, 2006 order established an annual revenue requirement increase of $8.25 million. The rates approved by the Commission and agreed to by the parties were designed, without proration, to allow SourceGas the opportunity to recover its approved $8.25 million increase. It is reasonable to assume that had SourceGas known that this Commission would require rates to be prorated, it would have negotiated higher rates to meet its revenue requirement. Therefore, for the last eleven months, ratepayers have enjoyed lower rates than they otherwise would have paid under a proration scheme.

If the substituted proration principle were applied prospectively, neither the utility nor the ratepayer would receive a windfall.

To impose proration retroactively is contrary to law in light of Kinder Morgan's reasonable interpretation of the statute and reliance on past practices. Furthermore, ordering refunds will deprive SourceGas the opportunity to earn its approved annual revenue requirement thereby frustrating the effect and intent of our December 29, 2007 order.[28]

BY:

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Frank Landis

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[27] Neb. Rev. Stat. § 66-1811(5) (emphasis added).
[28] See Neb. Rev. Stat. § 66-1825(3).