

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Kinder Morgan, Inc., ) Application No. NG-0023.1  
Lakewood, Colorado, seeking to implement )  
supply cost adjustment associated with )  
Other Services Charge applicable to )  
Nebraska Rate Schedules CGS (Choice Gas ) ORDER  
Service), ACGS-NSS (Agricultural Choice )  
Gas Service Non-Seasonal Service), and )  
ACGS-SS (Agricultural Choice Gas Service )  
Seasonal Service). ) Entered: June 21, 2005

BY THE COMMISSION:

On January 18, 2005, pursuant to Neb. Rev. Stat. § 66-1854, Kinder Morgan, Inc., filed a proposed Plan of Action regarding its 2005 Annual Gas Supply Cost Adjustment associated with Other Services Charge applicable to Nebraska Rate Schedules CGS (Choice Gas Service), ACGS-NSS (Agricultural Choice Gas Service Non-Seasonal Service), and ACGS-SS (Agricultural Choice Gas Service Seasonal Service).

Notice of the application was published in the Daily Record, Omaha, on February 3, 2005. On February 4, 2005, the Public Advocate filed a Petition for Formal Intervention. The Petition for Formal Intervention was granted on February 23, 2005.

On May 24, 2005, the Commission entered an order in Docket No. NG-0023 suspending the operation of the proposed tariff changes related to the Other Services Charge implicated by the Plan of Action.

Hearing on this matter was held on June 10, 2005, in the Commission Library with a videoconference link to McCook, Nebraska.

## EVIDENCE

The State Natural Gas Regulation Act, Neb. Rev. Stat. §§ 66-1801 et seq. (2003 Reissue) (the Act), established two categories of customers, jurisdictional and high-volume. "High-volume ratepayers" are defined as a ratepayer whose average daily natural gas consumption equals or exceeds 500 Therms per day. Neb. Rev. Stat. § 66-1802(7). These high-volume ratepayers negotiate directly with jurisdictional utilities for their natural gas service.

Prior to the passage of the Act, certain ratepayers (Waiver Customers) had been considered high-volume ratepayers.<sup>1</sup> However, due to the new consumption threshold set forth in the Act, these particular ratepayers were no longer considered to be "high-volume". Subsequently, the Nebraska Legislature enacted LB499, which permitted the Commission to

<sup>1</sup> See Commission Order dated April 27, 2004 in Docket No. NG-0022. These customers include: Baldwin Filters-Gothenburg, Bethphage Mission (Mosaic), Cabela's, Christian Homes Inc., Dinklage Feed Yards - Alliance, Ideal Linen Supply, IMAC, IPSCO Tubulars Inc., Krone Digital, Nebraska Aluminum Casting, Orthman Manufacturing, Panhandle Feeders, and the Youth Rehabilitation & Treatment Center - Geneva. (Waiver Customers) Since entry of the waiver, Nebraska Aluminum Casting's natural gas consumption has increased to a level, which now fits within the definition of "high-volume ratepayers".

waive the definition of "high-volume ratepayer" for these specific ratepayers until June 1, 2007.

On April 27, 2004, the Commission granted a waiver of the definition of "high-volume ratepayer" to the Waiver Customers. Due to Kinder Morgan's April 2, 2004 deadline for indicating the upstream transportation needed for the current year, Kinder Morgan was required to acquire the necessary upstream transportation for the Waiver Customers prior to the passage of LB499. The Commission previously found that Kinder Morgan acted reasonably in acquiring the additional capacity based upon the status of the law at the time. Kinder Morgan allocated the costs of the additional upstream transportation to all ratepayers and made a good faith effort to release the additional capacity for the upcoming twelve-month period commencing June 1, 2004, in order to reduce the costs to ratepayers. Kinder Morgan has retained the additional capacity for the Waiver Customers in anticipation of them becoming jurisdictional ratepayers in 2007. The additional capacity results in approximately \$218,529 in annual costs.

Daniel Watson, President of the Retail Business Unit for Kinder Morgan, testified in support of Kinder Morgan's Plan of Action. Mr. Watson testified that the firm capacity purchased by Kinder Morgan to meet the needs of the Waiver Customers is necessary for several reasons. The availability of firm capacity is shrinking due to construction of ethanol plants in Nebraska and other growth. Capacity on two of the nine segments of the interstate pipeline system necessary to serve the Waiver Customers is fully subscribed. Kinder Morgan is concerned that if the capacity is released, it will be unable to acquire the necessary capacity to serve the Waiver Customers in 2007. Furthermore, Mr. Watson testified that although the Waiver Customers have negotiated interruptible capacity, their service is not truly interruptible due to the lack of electronic flow controls. Therefore, Mr. Watson testified that the additional capacity is necessary to maintain the integrity of the system and to ensure service to jurisdictional ratepayers on peak days. Mr. Watson further testified regarding how Kinder Morgan determines the Maximum Daily Delivery Quantity for its customers, which is the amount of capacity that Kinder Morgan acquires to ensure that it has sufficient capacity available to serve all customers. Kinder Morgan remains committed to trying to release the capacity and to offset the costs to ratepayers. Last year, Kinder Morgan was able to release capacity offsetting the \$228,000 cost of the capacity by \$60,000.

Mr. Watson also testified that in order to make the Waiver Customers truly interruptible, flow control equipment would have to be installed at each customer site at a cost of approximately \$38,000 each. This cost would be borne by the Waiver Customers. He stated that this cost in addition to the current \$200 per month service charge make that option more costly for the Waiver Customers than the purchase of the additional capacity. Kinder Morgan has also offered to allow the Waiver Customers to switch to the Choice Program.

Kinder Morgan had originally proposed allocating one-third of the costs to the Waiver Customers and two-thirds of the costs to the jurisdictional customers during the year commencing June 1, 2005. During the year commencing June 1, 2006, Kinder Morgan proposed allocating two-thirds to the Waiver Customers and one-third to the jurisdictional customers. Kinder Morgan and the Public Advocate reached a settlement that would propose an allocation of 70 percent of the costs to the Waiver Customers and 30 percent to the jurisdictional customers during the year commencing June 1, 2005. During the following year, 80 percent of the costs would be allocated to the Waiver Customers with the remaining 20 percent allocated to jurisdictional ratepayers.

Dr. Charles Cicchetti, an economist, also testified on behalf of Kinder Morgan. Dr. Cicchetti stated that the retention of the additional capacity was prudent. He also testified that both the Plan of Action initially proposed and the settlement agreement represented fair and reasonable methods for allocating the costs associated with the additional capacity purchased. It was his opinion that based upon the benefits received by the jurisdictional ratepayers and the Waiver Customers, the settlement was probably a "fairer" option. He further testified that there was no inappropriate subsidization between the two classes of ratepayers.

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

Pursuant to Neb. Rev. Stat. 66-1825(7), a jurisdictional utility is entitled to recover the cost of all "operating expenses," including "the quantity and type of purchased services regulated by the Federal Energy Regulatory Commission," that are "prudently incurred." The Commission has reviewed Kinder Morgan's proposed Other Service Charge and Plan of Action under this legal standard.

In addition, the Commission observes that Neb. Rev. Stat. § 66-1854(4), which applies to gas supply cost adjustment (GSCA) rate schedules, establishes the identical "prudently incurred" standard for such rate schedules. Although Kinder Morgan's proposed Other Service Charge is a part of its GSCA rate schedule, this proceeding is not an "annual review" of the GSCA under Section 66-1854. However, in any annual review subsequently conducted under section 66-1854 for Kinder Morgan's GSCA and the Other Service Charge addressed in this proceeding, the issue of whether the upstream pipeline capacity costs recovered through the Other Services Charge are "prudently incurred" costs during the time period that is the subject of this docket should be considered *res judicata*, under both Sections 66-1825(7) and 66-1854, unless the Commission orders otherwise.

The Commission notes that allowing an operating expense to be adjusted through Kinder Morgan's GSCA is considered here due to the limited, unique circumstances created by the passage of LB499.

The Commission must first determine whether Kinder Morgan's purchase and retention of firm capacity necessary to serve the Waiver Customers during the years commencing June 1, 2005 and June 1, 2006 is prudent. Assuming the expense is found to be prudent, the Commission must then determine how the associated costs should be allocated between the Waiver Customers and jurisdictional ratepayers.

Evidence suggests that firm capacity to serve the Waiver Customers may be unavailable when the waiver expires. Furthermore, the additional firm capacity maintains the integrity of the natural gas system and protects the current jurisdictional ratepayers on peak days. The record further indicates that the installation of flow control devices to allow for truly interruptible service to the Waiver Customers during this transitional period does not appear to be a cost effective option.

The Commission therefore finds that the costs associated with the retention of the additional capacity for the Waiver Customers during the years commencing June 1, 2005 and June 1, 2006 are prudent.

Evidence provided by Kinder Morgan and the Public Advocate demonstrates that the additional capacity provides a benefit to both the jurisdictional ratepayers and the Waiver Customers. The Commission finds that in light of the benefits, the allocation presented in the settlement agreement should be approved.

The Commission intends to open an investigation to explore less costly and more efficient alternative rate design options for ratepayers similar to the Waiver Customers. The Commission's approval of the settlement agreement between the Public Advocate and Kinder Morgan is granted with the expectation that Kinder Morgan will make a good faith effort to participate in the investigation and explore reasonable options to serve these ratepayers.

Kinder Morgan shall also make a good faith effort to release the additional capacity to reduce costs to ratepayers. Kinder Morgan shall also, within 15 days of the end of any calendar month, recalculate the Other Services Charge to reflect any proceeds received from releasing the excess capacity and file with the Commission the resulting adjustment to the charge. The Commission recognizes that such sales will likely not fully recover the cost of the excess capacity.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the costs incurred to retain additional capacity to serve the Waiver Customers as defined herein are prudent.

IT IS FURTHER ORDERED that the settlement agreement regarding the allocation of the costs is approved.

IT IS FINALLY ORDERED that Kinder Morgan shall make a good faith effort to release the additional capacity and that within 15 days of the end of any calendar month, Kinder Morgan shall recalculate the Other Service Charge to reflect the impact of all revenues received from releasing the upstream capacity and file with the Commission the resulting adjustment.

MADE AND ENTERED at Lincoln, Nebraska, this 21st day of June, 2005.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director