

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,) Application No. NG-0030/
on its own motion, seeking to) PI-98
conduct an investigation of the)
alternative rate design for) ORDER CLOSING DOCKET
commercial and industrial)
ratepayers.)
) Entered: January 11, 2006

BY THE COMMISSION:

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

The Nebraska Public Service Commission (Commission), on its own motion, opened the above-captioned docket to investigate alternative rate design options for certain commercial and industrial ratepayers on June 21, 2005. Notice of the investigation was published in The Daily Record, Omaha, Nebraska on June 22, 2005. A Petition for Intervention was timely filed on July 22, 2005, by the Public Advocate. A Workshop on this matter was conducted on November 29, 2005.

The State Natural Gas Regulation Act, *Neb. Rev. Stat.* §§ 66-1801 et seq. (2003 Reissue) (the Act), created two categories of ratepayers, jurisdictional and high-volume. A "high-volume ratepayer" is 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 are permitted to negotiate directly with jurisdictional utilities for their natural gas service. *Neb. Rev. Stat.* § 66-1810.

Prior to the passage of the Act, certain ratepayers (Waiver Customers) had been considered high-volume ratepayers.¹ The previous law, *Neb. Rev. Stat.* § 19-4604, provided that "[a] utility may negotiate price and other contract terms with customers whose natural gas requirements exceed fifty thousand cubic feet per day." Because the units in the previous law and the Act are virtually equivalent, the only difference is the addition of the "average daily consumption" test created in the Act. It appears that the provisions of the previous law were applied to the Waiver Customers such that the threshold was not met by an average, but rather may have been met on a given day or days when consumption was at its highest. The Act clarifies that consumption must be measured by use of an average for

¹ The Waiver 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.

purposes of determining high-volume ratepayer status; therefore, the Waiver Customers no longer qualify to be considered high-volume ratepayers.²

In 2004, the Nebraska Legislature passed Legislative Bill 499, which permitted the Commission to waive the definition of "high-volume ratepayer" for the Waiver Customers. The bill was codified in the Act in *Neb. Rev. Stat. § 66-1850(7)* (2003 Reissue). The bill also included a lapse provision for the waiver authority of June 1, 2007. On April 27, 2004, pursuant to *Neb. Rev. Stat. § 66-1850 (7)*, the Commission granted a waiver of the definition of "high-volume ratepayer" to the Waiver Customers.

With the lapse date on the waiver provision approaching, the Commission opened this docket to consider possible courses of action in regard to the Waiver Customer's status under the Act. The Commission considered the comments submitted by interested parties and the information presented and discussed at the workshop. The Commission finds that no regulatory options are available to address the current situation. The statutory authority given to the Commission by the Legislature to grant waivers will lapse in June of 2007 and no longer be available as an option under Nebraska law.

The two main legislative options for consideration are 1) making the waiver authority permanent; or 2) creating a new class of ratepayer by either redefining "high-volume ratepayer" to lower or modify the threshold usage requirement or by defining a new class of ratepayer.

The Commission first considered the option of making the waiver provision permanent for the Waiver Customers. This would in effect "grandfather" the current Waiver Customers into the definition of high-volume ratepayer and allow them to remain in their current position. However, this option raises some troubling constitutional issues. One issue is that this option could potentially create a closed class in violation of the Nebraska State Constitution. See, *Neb. Const. Art. III, Sec. 18*. We are reluctant to advocate a course of action that is likely unconstitutional. In any event, grandfathering this specific group would be fundamentally unfair to similarly situated businesses that may be formed after the passage of the Act and would not have the benefit of grandfathered status. Further,

² Subsequent to the opening of this docket, Nebraska Aluminum Casting's natural gas consumption increased to a level sufficient to classify them within the Act's definition of "high-volume ratepayer."

most of these businesses are corporate entities; therefore, the grandfathered status of these businesses could potentially last into perpetuity. We find this is most likely not a viable option.

The next course of action considered by the Commission was to create a new class of ratepayer under the Act. This could be accomplished in one of two ways. The threshold usage requirement to be considered a "high-volume ratepayer" could be lowered or modified to include the Waiver Customers or a new class of ratepayer could be carved out to include the Waiver Customers.

Creating a new class of ratepayer somewhere between the jurisdictional ratepayer and the high-volume ratepayer or redefining "high-volume ratepayer" would expand the pool of customers eligible for classification as high-volume ratepayers, which could potentially create serious policy concerns. Namely, providing such customers the benefits of high-volume status on Kinder Morgan's system compromises the reliability of service to other customers. Jurisdictional customers are served with primary firm upstream transportation. These customers receive first priority for gas transport and have adequate capacity to serve their needs on peak days. Information provided at the workshop indicated that the Waiver Customers generally have transportation service that is subject to interruption. For the Waiver Customers that provide human needs, such as nursing homes, this practice is troubling. There is no requirement under the Act for customers receiving interruptible service to provide sufficient back-up systems should the gas supply be temporarily suspended. The jurisdictional utilities are put in an untenable position of requesting a shut off of gas supply by human needs customers during peak usage times, which could result in a nursing home facility or youth center not having heat during the coldest times of the year. This is simply not acceptable in our view.

Further, the threshold usage requirement created by the Act is substantially similar to the requirement under the prior regulatory framework. The Commission does not have any evidence that the consumption level is inappropriate or unclear.

In conclusion, we find the possible courses of action open to the Commission at this juncture are not justifiable or prudent to pursue. The policy established by the Legislature

with the creation and passage of the State Natural Gas Regulation Act is, in our opinion, sound. While we sympathize with the Waiver Customer's position, we find no compelling arguments requiring the Commission to take action to circumvent or modify the policy enacted by the Legislature.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that investigation into the above-captioned docket be closed and no further action be taken on this matter.

MADE AND ENTERED at Lincoln, Nebraska, this 11th day of January, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director