

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application	)	Application No. NG-0036
of Kinder Morgan, Inc.,	)	
Lakewood, Colorado, seeking	)	
approval of a General Rate	)	
Increase.	)	
In the Matter of the joint	)	Application No. NG-0039
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,	)	ORDER OVERRULING OBJECTIONS
Stamford, Connecticut; seeking	)	AND UPHOLDING ASSESSMENTS
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.	)	
In the Matter of Kinder Morgan,	)	Application No. NG-0040
Inc., Houston, Texas; KM Retail	)	
Utilities Holdco LLC, Houston,	)	
Texas; Source Gas Distribution	)	
LLC, Lakewood, Colorado, seeking	)	
approval of asset transfer of	)	
jurisdictional utility assets.	)	
	)	Entered: September 23, 2008

BY THE COMMISSION:

SourceGas Distribution LLC (SourceGas) is a jurisdictional utility operating a local distribution company in Nebraska. On March 30, 2007, SourceGas acquired the jurisdictional utility assets and Nebraska certificate of convenience of Kinder Morgan, Inc. (Kinder Morgan). The transfer was approved by the Commission in an order issued on February 27, 2007.<sup>1</sup> Therefore, SourceGas now owns and operates the jurisdictional utility that provides service to ratepayers in Nebraska.

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<sup>1</sup> 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).

On July 1, 2008, the Commission entered the following assessment orders against SourceGas for costs of the Public Advocate: Assessment Order No. HS-0013, for invoices dated January 17, 2007 and February 23, 2007, for costs associated with Docket No. NG-0036, totaling \$1,044.10; Assessment Order No. HS-0006, assessing SourceGas for an invoice dated February 23, 2007, for costs associated with Docket No. NG-0039, totaling \$5,560.00; and Assessment Order No. HS-0005, assessing costs to SourceGas for an invoice dated February 23, 2007, for costs associated with Docket No. NG-0040, totaling \$2,120.00.

On July 16, 2008, SourceGas filed objections to each of the above-referenced assessment orders, pursuant to *Neb. Rev. Stat. § 66-1844(1)* (Reissue of 2003). A hearing on the objections to the assessments was held on August 26, 2008, in the Commission Hearing Room.

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

The State Natural Gas Regulation Act (Act) states,

Within fifteen days after the date of the mailing of any notice of assessment under sections 66-1840 and 66-1841, the jurisdictional utility against which assessment has been made may file with the commission objections setting out in detail the ground upon which such objector regards such assessment to be excessive, erroneous, unlawful, or invalid. The commission, after notice to the objector, shall hold a hearing in accordance with rules and regulations adopted and promulgated pursuant to section 75-110. The commission shall determine if the assessment or any part of the assessment is excessive, erroneous, unlawful, or invalid and shall render an order upholding, invalidating, or amending the assessment. An amended assessment shall have in all respects the same force and effect as though it were an original assessment.<sup>2</sup>

SourceGas raised one main objection to all three assessments, which has been termed the "proper party" issue. When the invoices underlying the assessments were issued, and on

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<sup>2</sup> *Neb. Rev. Stat. § 66-1844(1)* (Reissue of 2003).

the dates that the work was performed and/or the expenses were incurred, SourceGas did not possess a certificate of public convenience and did not operate a jurisdictional utility in Nebraska. Kinder Morgan was the jurisdictional utility that was the party to the above-captioned dockets. SourceGas asserts that the assessments are excessive, erroneous, unlawful and invalid because Kinder Morgan, not SourceGas is the proper party to bear the costs of the Public Advocate services in the above-captioned dockets.

Related to the proper party issue, SourceGas also raised the issue that Kinder Morgan, not SourceGas, received the initial notices of assessment in the above-captioned dockets as the jurisdictional utility involved in the dockets, and therefore SourceGas did not receive proper notice of the assessments.

SourceGas raised no objections to the amount of the assessments nor did SourceGas raise any claims that the services were not performed or the amounts charged for the services underlying the assessments were excessive or unreasonable. Therefore, the only issue before us is whether SourceGas is a proper party to be assessed for the costs associated with the disputed assessment orders.

The Act gives the Commission broad authority and jurisdiction to regulate natural gas public utilities. The Act 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.<sup>3</sup> (Emphasis added).

The Commission is charged under the Act with regulating natural gas public utilities and jurisdictional utilities and such utilities are subject to the jurisdiction of the Commission.<sup>4</sup> One of the authorities expressly given to the Commission is the ability to assess utilities under its jurisdiction for the expenses incurred by the Commission, including the services of the Public Advocate.<sup>5</sup>

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<sup>3</sup> Neb. Rev. Stat. § 66-1804(2). (Reissue of 2003).

<sup>4</sup> Neb. Rev. Stat. § 66-1802(10) (Reissue of 2003).

<sup>5</sup> See Neb. Rev. Stat. § 66-1840 and Neb. Rev. Stat. § 66-1832 (Reissue of 2003).

There is no question that SourceGas was not a jurisdictional utility at the time the work was performed for the Public Advocate invoices underlying the assessments. However, we do not find these facts to be determinant of the issue before us. SourceGas applied jointly with Kinder Morgan to this Commission to acquire Kinder Morgan's Nebraska certificate of authority and Nebraska distribution system.<sup>6</sup> With the granting of that application and the consummation of the acquisition with Kinder Morgan, SourceGas assumed the rights, privileges, responsibilities, and obligations of a jurisdictional utility in Nebraska.

SourceGas acquired not only the right to collect revenues from ratepayers pursuant to the order issued by the Commission in the Kinder Morgan rate proceeding, Docket No. NG-0036,<sup>7</sup> but also the obligations and responsibilities of an incumbent jurisdictional utility. SourceGas assumed service obligations to the ratepayers of Kinder Morgan, now SourceGas, and the regulatory obligations to the Commission.

SourceGas would have this Commission allow them to reap the benefits of an incumbent jurisdictional utility with the revenue making opportunities afforded them under NG-0036, without assuming the corresponding obligation to pay the costs of the NG-0036<sup>8</sup> rate case. SourceGas cannot have it both ways. With the acquisition of a certificate of authority to provide natural gas service in Nebraska, SourceGas became subject to the jurisdiction of this Commission and subject to Commission rules, regulations and orders, including assessment orders. To find otherwise would make regulation by the Commission untenable after a change of control of any jurisdictional utility. The new utility could simply argue that any orders, outstanding issues or open dockets, that preceded the change of control and were directed toward the former utility, did not apply to them. Clearly, that is erroneous. SourceGas as the current jurisdictional utility operating in Nebraska is a proper party to be assessed under the above-captioned dockets.

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<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> *Supra*.

Concerning notice of the assessments, as a co-applicant with Kinder Morgan in Docket Nos. NG-0039 and NG-0040, SourceGas was a party and therefore received initial notice of the assessment issued under those dockets. Further, due diligence performed by SourceGas prior to the acquisition of Kinder Morgan's Nebraska assets and authority would have put SourceGas on notice that assessments were being issued against then Kinder Morgan in relation to the recently concluded rate proceeding, NG-0036, just weeks before. Notices of the specific assessments at issue in the above-captioned proceeding were issued as per the Act to SourceGas.<sup>9</sup> Therefore, we find the notice argument without merit.

We find SourceGas, as a jurisdictional utility and the successor in interest to Kinder Morgan is a proper party to be assessed in the above-captioned dockets. Therefore, the objections should be overruled and the Assessment Orders at issue in the above-captioned dockets, upheld.



O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Objections to Assessments filed by SourceGas Distribution, LLC, should be overruled and Assessment Orders Nos. HS-0013, HS-0006, and HS-0005 in Docket Nos. NG-0036, NG-0039 and NG-0040, respectively, should be upheld.


MADE AND ENTERED at Lincoln, Nebraska, this 23rd day of September, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

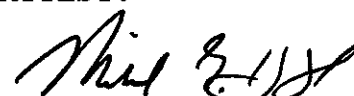
COMMISSIONERS CONCURRING:

//s// Anne C. Boyle  
//s// Frank E. Landis

  
Chair:

ATTEST:

  
Executive Director

<sup>9</sup> Neb. Rev. Stat. § 66-1840(1) (Reissue of 2003).