

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) Application No. NG-0036
Application of Kinder Morgan,)
Inc., Lakewood, Colorado,) ORDER APPROVING STIPULATION
seeking approval of a general)
rate increase.)
) Entered: December 27, 2006

BY THE COMMISSION:

On June 2, 2006, Kinder Morgan, Inc. ("Kinder Morgan") filed its Application for Approval of a General Rate Increase (the "Application") in the above-captioned docket, accompanied by all pre-filed testimony, work papers, exhibits and other information required by this Commission's applicable Rules and Regulations. Notice of the Application was published on June 6, 2006, in The Daily Record, and the 30-day protest and formal intervention period expired on July 7, 2006.

The Public Advocate and Public Alliance for Community Energy (ACE) formally intervened, and Aquila, Inc. d/b/a Aquila Networks (Aquila) informally intervened. The Public Advocate and Kinder Morgan entered a Stipulation and Agreement of Settlement (Stipulation), filed November 28, 2006, to resolve issues regarding the Application and requested approval of the stipulation by the Commission. The specifics of the Stipulation are outlined in more detail below.

Due to numerous ratepayer comments and complaints regarding Kinder Morgan's Application, the Commission conducted an additional series of hearings in this matter on November 29 and 30, 2006 and December 6, 7 and 8 in Coleridge, Albion, Wood River, Clay Center, Gering, Ogallala, McCook, and Holdrege, Nebraska during which Kinder Morgan and the Public Advocate presented evidence regarding both the Application and the provisions of the Stipulation. The final portion of the hearing on this matter was held at the Commission on December 18, 2006.

BACKGROUND

Based upon a test year ending December 31, 2005, Kinder Morgan sought an increase in its rates for residential and commercial ratepayers of \$11,054,241 per year. Kinder Morgan proposed having an opportunity to earn an overall rate of return of 12.9%. The proposed change in rates did not affect agricultural or interruptible customers. Kinder Morgan identified three (3) primary factors necessitating an increase in rates: increases in the costs of providing natural gas to its customers; demographic shifts in Kinder Morgan's rate areas leading to a loss of customers and reduction in natural gas

consumption due to higher efficiency appliances; and competitive pressures from other fuel sources such as electricity.

As permitted by Neb. Rev. Stat. § 66-1838(10)(a), Kinder Morgan instituted interim rates constituting 70% of the requested increase effective September 1, 2006 pending resolution of its Application, with the remaining 30% of the increase to become effective on June 1, 2007. The institution of interim rates resulted in the Commission receiving in excess of 3000 ratepayer comments and complaints regarding Kinder Morgan's Application.

The parties, in particular the Public Advocate, engaged in discovery including the exchange of approximately 155 data requests. The Public Advocate with the assistance of a consultant conducted a review of Kinder Morgan's filing and completed an on-site field audit of Kinder Morgan's financial records identifying several possible adjustments. Based upon its review, the Public Advocate proposed a revenue requirement of \$6.8 million with an overall rate of return of 9.9%.

In an effort to resolve issues presented by the Application, Kinder Morgan and the Public Advocate engaged in settlement negotiations resulting in the Stipulation at issue. Kinder Morgan and the Public Advocate filed the Stipulation with the Commission and jointly recommended approval.

In addition to the review conducted by the Public Advocate, the Commission, assisted by its staff and its own consultant, conducted an independent assessment of the Application and subsequent information provided through the course of discovery and the Stipulation filed by Kinder Morgan and the Public Advocate.

The Stipulation specifically addresses the following issues. Kinder Morgan's eleven (11) rate areas would be merged to form a single rate area for the state of Nebraska with uniform rates throughout. The Agreement further establishes an annual revenue requirement of \$8.25 million. The proposed customer charge and volumetric distribution charges would become effective on January 1, 2007, with a phasing in of higher customer charges and a concomitant reduction of the volumetric distribution rates. Kinder Morgan would establish a new small commercial class of customers.

The customer charges as proposed would be as follows:

	Eff. 01/01/2007	Eff. 04/01/2008	Eff. 04/01/2009
Residential Class	\$6 per month	\$8 per month	\$10 per month
Small Commercial Class	\$8 per month	\$10 per month	\$12 per month
Large Commercial Class	\$18 per month	\$20 per month	\$22 per month

The proposed volumetric distribution charges would be adjusted as follows:

	Eff. 01/01/2007	Eff. 04/01/2008	Eff. 04/01/2009
Residential Class			
Tier 1 (<=20 therms)	\$0.3500/therm	\$0.3500/therm	\$0.3500/therm
Tier 2 (>20 therms)	\$0.1943/therm	\$0.1515/therm	\$0.1086/therm
Small Commercial Class			
Tier 1 (<=40 therms)	\$0.3500/therm	\$0.3500/therm	\$0.3500/therm
Tier 2 (>40 therms)	\$0.1515/therm	\$0.1300/therm	\$0.1086/therm
Large Commercial Class			
Tier 1 (<=80 therms)	\$0.3500/therm	\$0.3500/therm	\$0.3500/therm
Tier 2 (>80 therms)	\$0.1118/therm	\$0.1102/therm	\$0.1086/therm

Kinder Morgan would continue to collect the costs of administering the Choice Gas Program (Supplier Fee) from the supplier as is currently done. This fee includes the administrative costs associated with the Choice Gas Program and the Commodity-related bad debt costs and are not included in the proposed revenue requirement. The Supplier Fee would remain the same through May 31, 2007, adjusted annually thereafter.

The Stipulation further permits Kinder Morgan to establish the HEAT program as described in its application except that only the actual costs of rebates granted will be collected by Kinder Morgan from ratepayers. Kinder Morgan, not the ratepayers, will bear the cost of administering and advertising the program. The HEAT program would provide rebates to ratepayers for the installation of more efficient appliances.

Finally, the Stipulation provides that Kinder Morgan will not seek another general rate increase before June 1, 2009.

DISCUSSION

The Act specifically provides authority for the Public Advocate and other parties in a proceeding to enter into stipulations "as a means of improving the quality of resulting decisions in a highly technical environment and *minimizing the cost of regulation.*" Neb. Rev. Stat. § 66-1831 (2003 Supp.)

As required by the State Natural Gas Regulation Act, the Commission must look to the terms of the Agreement to determine whether the settlement is reasonable in light of the whole record, consistent with law and in the public interest. See, e.g., Neb. Rev. Stat. §66-1801 to §66-1857. Section 66-1825 of the Act sets forth specific statutory rate application review requirements, which the Commission has fully considered in this proceeding.

As mentioned previously, the pre-filed testimony submitted by the Public Advocate indicates that some increase in Kinder Morgan's rates is warranted. The Public Advocate, however, proposed that Kinder Morgan was entitled to an increased revenue requirement of \$6.8 million rather than the \$11.05 million sought by Kinder Morgan. The proposed revenue requirement in the Agreement is \$8.25 million, an amount approximately \$2.8 million less than the 11.05 million sought by Kinder Morgan. It must be noted that although the Public Advocate had addressed many issues in Kinder Morgan's Application, at a full hearing all issues would be examined by the Commission. Depending upon the evidence presented at hearing, the outcome may not have been decided in favor of the Public Advocate's position.

Phase-in of Customer Charge

It is important to note that the phased increases in the Customer Charge in April 2008 and April 2009 do not represent additional increases in revenue to Kinder Morgan. Each time the Customer Charge increases as specified above, the second tier volumetric charge is simultaneously reduced. This represents a shift in how revenues are collected, not an additional overall increase.

Lack of Refund to Customers

Pursuant to Neb. Rev. Stat. § 1838(10)(a), "filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates sixty days after the filing with the commission...."

According to the settlement, no refund is due to customers for the interim rates charged from September through December, 2006. The phased-in revenue increase that Kinder Morgan initially proposed was unique; generally, a utility will seek to put a full increase into effect as soon as possible under law. Kinder Morgan only implemented 70% of their rate increase, which resulted in a \$7.7 million increase. The settlement allowed for an increase of \$8.25 million.

Kinder Morgan's approach saved consumers money¹ during the period that interim rates were in effect, but it caused confusion about the refund issue, especially because of the significant difference in the customer charge. A customer who paid a \$13.50 customer charge from September through December, upon learning that a \$6 customer charge is the final rate, might be expecting to receive a refund of \$7.50 for each month that interim rates were in effect. That is not the case, because the consumption-based distribution charges are also part of the equation. Since the interim distribution rates paid by customers were lower than the settled interim distribution rates, in the final analysis, Kinder Morgan did not earn more than they should have during the interim rate period. Therefore, no refund is due.

Format of Settlement

The Stipulation filed by Kinder Morgan and the Public Advocate is commonly referred to as a "black box", or generic, settlement, which is an accepted practice in the settlement of utility cases. Specific justification for the proposed revenue requirement is not part of the Agreement.

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. By conducting a thorough review of all available information and weighing the expense and potential outcome of a full hearing, the Commission was able to achieve satisfaction that the present Stipulation was reasonable. However, in future rate cases, it is expected that specific support for the reasonableness of a settlement, particularly the revenue requirement, will be provided.

Complaints about Customer Service

Additionally, although not an issue to be addressed in this Application, the Commission received numerous ratepayer complaints regarding Kinder Morgan's customer service. As a regulated entity, Kinder Morgan receives the benefit of a less risky rate of return; however, its obligation to provide its customers with quality customer service is not diminished. The Commission intends to open an investigatory docket to examine the complaints received in this proceeding.

¹ According to statement of Ben Breland, Vice President of Rates and Certificates for Kinder Morgan, the residential customer charge for the full increase would have been \$15.50 (Tr. p. 262:2-14).

Effect of Order

As noted in the Stipulation, the Settlement is made pursuant to Nebraska law, the Agreement shall become binding on the parties upon its execution and is intended to relate only to specific matters referenced therein. No party to the Settlement shall be deemed to have approved, accepted, agreed or consented to any ratemaking principle, any method of cost of service determination, any method of cost allocation or the resolution of any specific issue that may underlie or be implied by the provisions of the Stipulation (or the Schedules attached thereto) or be prejudiced or bound thereby in any other current or future proceeding before the Commission.

This Settlement represents a negotiated settlement of the issues in this proceeding settled in a manner which is in the public interest. The public policies advanced by the settlement and approved by this Order, including the HEAT program and method for calculating refunds, do not establish binding precedent on the Commission for future rate cases. The Commission will continue to monitor programs established and modifications may be made in future rate cases or other proceedings.

Conclusion

The role of the Commission under state law is to balance the interests of the company with the interests of the consumer. Considering the expense and uncertain outcome of a full hearing, the Stipulation strikes an appropriate balance and is in the public interest.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Stipulation is approved.

MADE AND ENTERED at Lincoln, Nebraska, this 27th day of December, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION
COMMISSIONERS CONCURRING:

Chairman:

ATTEST:

Executive Director