

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the amended appli-) Application No. NG-0053
cation of Nebraska Resources Com-)
pany, LLC, Tulsa, Oklahoma, seeking)
a Certificate of Public Convenience) HEARING OFFICER ORDER ON
and Necessity authorizing it to) MOTIONS TO COMPEL
operate as a jurisdictional utility)
in Nebraska and approval of tariff.) Entered: May 20, 2008

BY THE HEARING OFFICER:

On April 17, 2008, Northern Natural Gas Company (Northern) filed a Motion to Compel responses to certain data requests (Northern's Motion). On May 2, 2008, Nebraska Resources Company, LLC (NRC) filed a response. Additionally, Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan) filed comments regarding NRC's filing and Northern's Motion. On May 7, 2008, Cornerstone filed its own Motion to Compel responses to discovery requests (Cornerstone's Motion). NRC filed a response to Cornerstone's Motion and Kinder Morgan's on May 9, 2008. The specific nature of the requests at issue and NRC's objections are outlined more fully below.

Oral argument regarding the pending Motions to Compel was held on May 12, 2008. In the Order Scheduling the Oral Argument, Parties were specifically requested to address the relevance of the discovery requests at issue. It should also be noted that a Protective Order was entered in this matter on February 5, 2008.

O P I N I O N

The Nebraska Supreme Court rules and regulations govern discovery in matters before the Commission.¹ Generally, "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action" and that which "appears reasonably calculated to lead to the discovery of admissible evidence."² Therefore, the scope of the certification proceeding necessarily defines the scope of discovery.

As outlined in the Commission's March 18, 2008 Order, the threshold question remains whether NRC should be granted a Certificate of Public Convenience pursuant to *Neb. Rev. Stat. § 66-1853*, which will include issues of whether the proposed services and facilities are reasonably adequate and sufficient; whether NRC possesses the financial and technical ability to provide the proposed services; and whether sufficient evidence has been provided to address any necessary safety considerations and to show that NRC intends to comply with applicable environmental requirements. The Commission must establish whether the double-piping prohibition remains applicable to NRC's certification, given to the passage of LB 1072 [2008].

¹ Neb. Admin. Code, Title 291, Ch. 1 § 016.11 (1992).

² Rule 26(b)(1) of Nebraska Discovery Rules for All Civil Cases.

If the burden for certification is met, the Commission will determine whether initial rates are just and reasonable as set forth in *Neb. Rev. Stat.* § 66-1825. Additionally, in addressing rates, the Commission will also determine whether it has the authority to approve a negotiated rate for a jurisdictional customer as proposed by NRC in its Application and Comments and any issues related to open access to available capacity.

In evaluating the Motions to Compel, the requests at issue must therefore be reasonably calculated to lead to discoverable evidence relevant to the issues presented above. The requests involved in each Motion to Compel present different issues and will therefore be taken separately.

Cornerstone's Motion

Cornerstone issued discovery requests for all communications, discussions and negotiations between NRC and its affiliate, Seminole. NRC objected to the two discovery requests on the basis that the information sought is "highly sensitive commercial information".

The requests are not relevant to the issues in this proceeding. NRC has represented and has the burden of demonstrating that it will comply with all Commission rules and regulations, and the information sought by Cornerstone does not appear to be relevant to the veracity of that representation. If NRC is granted a certificate of public convenience, Cornerstone would have the opportunity to file a formal complaint against NRC if it believes that NRC violates the affiliate rules and regulation. Therefore, the hearing officer finds that Cornerstone's Motion should be denied.

Northern's Motion

Northern's Motion requests that NRC be compelled to respond to several discovery requests for precedent agreements, market-related information, and financial-related information; to provide more forthcoming responses to certain requests; and to identify an individual subject to cross-examination responsible for each response other than "Counsel". NRC has objected to several discovery requests propounded by Northern on the basis that the information sought is "highly sensitive commercial information" and that the number of requests exceeded fifty as permitted by Nebraska discovery rules.

Subsequent to the oral argument, NRC proposed via electronic mail to all parties that it would provide precedent agreements related to any jurisdictional customers redacted to remove the in-service dates. Further NRC stated that will also provide all parties with a specific individual who is responsible for the responses to various discovery responses which were previously identified as "counsel". Responses to NRC's proposal were received from Kinder Morgan and Northern via electronic mail indicating that NRC's proposal was insufficient.

NRC has proposed to identify specific individuals responsible for those that previously listed "counsel". Therefore, Northern's Motion with respect to this issue is granted, and NRC is compelled to provide such information.

NRC also objected on the basis that Northern exceeded the maximum number of permissible interrogatories. Rule 33 of the Nebraska Discovery Rules for All Civil Cases states, "Unless otherwise permitted by the court for good cause shown, no party shall serve upon any other party more than fifty interrogatories." However, it is common practice before the Commission in matters of this scope that parties frequently serve and respond to more than fifty interrogatories without seeking leave of the Commission. NRC has not asserted that responding to the additional requests is overly burdensome. In light of the breadth of the issues presented by the present application, good cause exists for permitting greater than fifty interrogatories.

Northern has stated that responses provided by NRC to request numbers 10, 19, 20, and 21 are "vague or non-responsive" and has asked that the Commission require NRC to "provide complete and detailed answers" to the questions and be "specific and forthcoming in its data responses to all intervenors."³ It is unclear from Northern's Motion as to what additional information Northern is seeking in response to Request No. 10. With respect to Request Nos. 19, 20, and 21, NRC responded that it does not possess the information sought. Therefore, NRC is not obligated to respond further to Request Nos. 10, 19, 20, and 21.

With respect to the remaining data requests, Northern and Kinder Morgan have stated in their pleadings and during oral argument that the financial and marketing related information sought by Northern's Motion is relevant to the financial and technical ability of NRC to provide the proposed service and whether the proposed facilities and service are reasonably adequate and sufficient. However, no intervenor has explained how the specific requests relate to those issues.

The scope of this proceeding is not open-ended as to the general issues it presents and cannot be used as a vehicle for the procurement of proprietary information which may not be relevant to the certification process. It is not the role of the Commission in this certification process to ensure that the proposed services and facilities will be profitable or to approve every aspect of the proposed services and facilities or NRC's business plan. The standard set forth in the SNGRA represents a threshold inquiry.

Furthermore, many of the requests at issue relate to the Applicant's future plans for expansion. If NRC obtains a certificate, it will not be required, just as any other jurisdictional utility, to submit projects for Commission approval. The difficulty in assessing

³ Northern's Motion, pg. 2-3.

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the relevance of the information sought by Northern is at least in part due to NRC's proposal that the pipeline to be constructed is subject to dual jurisdiction by both the Commission and FERC. Nothing herein is intended to indicate any opinion on the propriety of that proposal. The Commission can speak only to the scope of its jurisdiction as outlined in NG-0051/PI-130 and the March 18, 2008 order in the present matter. However, in evaluating the Motion, the hearing officer has considered the sensitive nature of the information, the existence of a protective order, and the relevance of the information sought as it relates to the scope of the Commission's inquiry.

For the reasons stated herein, Northern's Motion is sustained in part and denied in part. Generally, NRC shall provide all fully executed precedent agreements for jurisdictional customers, including any "anchor shippers" which are receiving a rate that NRC is proposing be regulated by the Commission. NRC is not required to provide any precedent agreements which are in-process or not yet fully executed or information related to negotiations. NRC is not required to provide agreements with high-volume ratepayers who are not receiving a rate subject to Commission regulation.

However, it should be noted that any documents or data not produced in response to Northern's data requests may not be relied upon by NRC at hearing in meeting its burden of proof in this matter. In order to clarify the Hearing Officer's order, Appendix A is attached hereto and incorporated herein by this reference outlining to which of Northern's data requests NRC is obligated to respond.

O R D E R

IT IS THEREFORE ORDERED by the Hearing Officer that the Motion to Compel filed by Northern Natural Gas Company is granted in part and that Nebraska Resources Company shall respond consistent with the terms of this order and Appendix A attached hereto.

IT IS FURTHER ORDERED that the Motion to Compel filed by Cornerstone Energy, LLC d/b/a Constellation NewEnergy-Gas Division CEI, LLC is denied.

MADE AND ENTERED at Lincoln, Nebraska, this 20th day of May, 2008.

BY: 

Hearing Officer

APPENDIX A

001. Please provide all precedent agreements Applicant has entered into with "anchor shippers" or any other shippers as described on page 15 of the application.

Hearing Officer Ruling: NRC is required to provide all fully executed precedent agreements for jurisdictional customers, including any "anchor shippers" or high-volume users which are receiving a rate which NRC is proposing be regulated by the Commission. NRC may redact the in-service date for each agreement.

002. Provide all precedent agreements signed by at least one but not all parties. For each of these precedent agreements, explain the current status of the agreement, why the agreement is not fully executed, whether Applicant expects the agreement to be fully executed at some point, and if so, when.

Hearing Officer Ruling: NRC is not required to respond.

003. For each precedent agreement that Applicant provides in response to NNG-1-001 and NNG-1-002, (a) identify the anticipated in-service date, firm volume, and receipt and delivery location, including the name of the ultimate end use market to be served under the agreement. (b) State whether the shipper and/o the ultimate end use market is currently receiving gas service. (c) If the shipper is currently receiving gas service, identify: the name of the LDC providing service, if applicable, and the name of the interstate pipeline currently providing service to the LDC, shipper or ultimate end user. (d) Describe the current status of the market to be served (e.g., currently operating, expansion underway, anticipated construction or anticipated expansion) and the applicable firm volume. (e) Identify the specific recourse rate offered to the shipper and explain the basis for the calculation of such rate. (f) State whether each shipper is creditworthy and provide all documentation for such statement.

Hearing Officer Ruling: NRC is required to respond to subsection (e), and is not required to respond to the remainder of the request.

004. Describe the contract security and/or construction security that all shippers described on page 15 of the application have agreed to provide. Provide all documentation regarding these agreements.

Hearing Officer Ruling: NRC is not required to respond.

005. For markets listed as potential to be served by Applicant that do not have precedent agreements, please provide the market, location, in-service date, volume, and status of the market.

Hearing Officer Ruling: NRC is not required to respond.

007. Provide any market data, in-service dates, volumes, projected rates, or agreements related to the additional capacity to be built

for the proposed pipeline extension to Norfolk as part of the Phase II extension described on page 17 of the application.

Hearing Officer Ruling: NRC is not required to respond.

021. Elkhorn Valley Economic Development Council provided a letter dated August 31, 2007 in Docket No. NG-0051/PI-130 in which it made the following statement. "The communities of Wayne and Laurel have had similar experience with both Kinder Morgan and Northern Natural Gas." Please supply all information you have been provided and describe what you have been told by the Elkhorn Valley Economic Development Council or other parties about the situation referred to in this statement.

Hearing Officer Ruling: NRC is not required to respond.

024. Please explain the phrase "...based on flexibility to utilize the Lateral in a variety of configurations in the future . . ." as stated on page 37, as the statement relates to the KMITG Lateral. List the various configurations that are contemplated and the market changes that would result from those configurations.

Hearing Officer Ruling: NRC is not required to respond.

028. Please explain how reliability of service will be improved with an additional source of gas supplies, as stated on page 49. Identify each instance of improved reliability of service that will occur and provide all documentation in support.

Hearing Officer Ruling: NRC is not required to respond.

061. (a) Does Seminole Energy Services, LLC have sufficient cash on hand to make a 50% equity infusion into Applicant to support the projected debt financing? If so, provide all support. (b) If not, how does Applicant plan to acquire equity financing for the pipeline? (c) Is an agreement to obtain such an equity infusion from the Stephens Group, LLC or another investor already in place? (d) If so, please provide a copy of that agreement. (e) If not, please provide a summary of the terms that you believe will be required to obtain such a commitment.

Hearing Officer Ruling: NRC is not required to respond.

065. If no debt financing commitments or agreements are currently in place, please indicate the type of lending institution that you would expect to utilize for long-term debt funding and the terms under which you would expect to obtain financing.

Hearing Officer Ruling: NRC is not required to respond.