

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of Nebraska	)	Application No. NG-0053
Resources Company, LLC, Tulsa,	)	
Oklahoma, seeking a Certificate	)	
of Public Convenience and	)	ORDER GRANTING CERTIFICATE
Necessity authorizing it to	)	AND APPROVING INITIAL RATES
operate as a jurisdictional	)	WITH MODIFICATIONS
utility in Nebraska and approval	)	
of tariff.	)	Entered: September 9, 2008

BY THE COMMISSION:

On January 15, 2008, Nebraska Resources Company, LLC, (NRC) filed an application seeking a Certificate of Public Convenience and Necessity (Application) authorizing it to operate as a jurisdictional utility in Nebraska and approval of tariff. Notice of the Application was published in the Daily Record, Omaha, Nebraska on January 17, 2008.

Petitions for Formal Intervention were filed by Cornerstone Energy, LLC d/b/a Constellation NewEnergy-Gas Division (Cornerstone); the Public Advocate, NorthWestern Corporation d/b/a NorthWestern Energy (NorthWestern); SourceGas Distribution LLC (SourceGas); Northern Natural Gas Company (Northern); and Kinder Morgan Interstate Gas Transmission LLC (Kinder Morgan). Petitions for Informal Intervention were filed by Aquila, Inc. d/b/a Aquila Networks (Aquila)<sup>1</sup> and the Nebraska Natural Gas Access and Supply Coalition (NNGAS). (Collectively referred to throughout as "Intervenors").

Hearing on this matter was held on June 30 through July 2, 2008.

E V I D E N C E

NRC is a wholly-owned subsidiary of Seminole Energy Services Company, LLC (Seminole).<sup>2</sup> NRC proposes to construct a pipeline to provide transportation service to local distribution companies, in particular Aquila, Inc., as well as high-volume users such as ethanol plants along the pipeline route.<sup>3</sup> The pipeline will originate at the Trailblazer Pipeline and will extend north to Aurora and north and east through to Columbus,

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<sup>1</sup> Due to a recent acquisition, Aquila is now known as Black Hills. However, for ease of reference to the record, Black Hills will continue to be referred to as Aquila throughout this order.

<sup>2</sup> Exhibit No. 3, p. 12; Exhibit No. 5, 10:6.

<sup>3</sup> See Exhibit No. 3

Nebraska.<sup>4</sup> Originally, a second lateral was to be built from the KMITG pipeline east to Aurora (KMITG Lateral). However, NRC has entered into an agreement with Aquila, which is now constructing the KMITG lateral, and that segment is no longer part of the services proposed in this Application.<sup>5</sup>

NRC has also stated that it is considering a future extension of the pipeline from Columbus to Norfolk and has reserved approximately 20,000 Dth of the capacity in Zones 1 and 2 for a period up to 24 months to serve possible demand in Norfolk.<sup>6</sup> Several letters of support were received into the record from individuals and entities in the Norfolk area expressing support for the pipeline.<sup>7</sup>

NRC has proposed a pro forma tariff which sets recourse rates and sets out certain features for "anchor shippers". NRC defines an "anchor shipper" as "shippers that executed a firm transportation service agreement with NRC for a term of ten consecutive years or more at recourse or negotiated rates."<sup>8</sup>

During the course of the hearing on this matter, several witnesses testified in support of the application as well as on behalf of Intervenor. Mr. Dan Frey submitted testimony in support of NRC's Application generally regarding the public convenience standard; construction, operation and management; market data; and state and federal regulatory compliance.<sup>9</sup> Mr. Scott Dicke testified regarding the proposed pipeline route and NRC's efforts to comply with environmental requirements.<sup>10</sup> Mr. John Poarch provided testimony regarding the engineering, design, and capacity of the pipeline.<sup>11</sup> Evidence regarding revenues and expenses related to the proposed project was presented by Mr. Jay House.<sup>12</sup> Additional evidence regarding depreciation rates, the pro forma tariff, rate design, and cost of service was provided by Mr. Bruce Warner<sup>13</sup> and Mr. Larry Thompson<sup>14</sup>. Additionally, Dr. Jon Ogur provided testimony

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<sup>4</sup> Id.

<sup>5</sup> A formal complaint has been filed with respect to the KMITG lateral and is currently pending before the Commission in Docket No. FC-1331.

<sup>6</sup> Exhibit No. 3, p. 47 and Exhibit P.

<sup>7</sup> Exhibit Nos. 150-173.

<sup>8</sup> Exhibit 3, p. 47.

<sup>9</sup> Exhibit Nos. 5-18.

<sup>10</sup> Exhibit Nos. 19-22.

<sup>11</sup> Exhibit Nos. 23-30.

<sup>12</sup> Exhibit No. 31.

<sup>13</sup> Exhibit Nos. 40-50, 52 and 57.

<sup>14</sup> Exhibit Nos. 33-35.

regarding FERC policy and experience with respect to negotiated and recourse rates.<sup>15</sup>

Mr. Gary Krumland testified on behalf of the Natural Gas Access and Supply Coalition.<sup>16</sup> Mr. Richard Haubensak testified on behalf of Cornerstone with respect to its concerns regarding NRC's compliance with affiliate rules and regulations.<sup>17</sup> Mr. Daniel Watson testified on behalf of SourceGas<sup>18</sup>. Mr. Royce Ramsay testified on behalf of Northern with respect to the design, construction and operation of NRC's proposed pipeline; its proximity and duplication of Northern's facilities; and certain safety-related issues.<sup>19</sup> Mr. Randy Holstlaw testified on behalf of KMITG regarding the location of its facilities and the nature of its services in offered in the area in which NRC proposes to construct its pipeline.<sup>20</sup> Mr. Robert F. Harrington testified on behalf of KMITG regarding the rates to be charged by NRC and the recovery of the billing determinants related to the excess capacity reserved for the Norfolk expansion.<sup>21</sup> Finally, Mr. William Glahn testified via video recording regarding various rate issues on behalf of the Public Advocate.<sup>22</sup>

#### Rulings on Objections

Several objections to exhibits and testimony were made during the hearing upon which the Hearing Officer reserved ruling.

Objections were made to portions of Exhibit No. 5, Direct Testimony of Mr. Frey and Portions of Exhibit No. 18, Mr. Frey's Rebuttal Testimony,<sup>23</sup> Exhibit No. 17. The objections are generally on the basis that NRC did not provide the precedent agreements for high-volume ratepayers and therefore, could not rely on the information in support of its Application, consistent with the Hearing Officer's Order on Motions to Compel.<sup>24</sup> The sections relate to general statements regarding high-volume ratepayers. With respect to these sections, the objections are overruled.

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<sup>15</sup> Exhibit Nos. 37-39.

<sup>16</sup> Exhibit Nos. 60-69.

<sup>17</sup> Exhibit Nos. 140-144.

<sup>18</sup> Exhibit Nos. 80-86.

<sup>19</sup> Exhibit Nos. 120-135.

<sup>20</sup> Exhibit Nos. 92-111.

<sup>21</sup> Exhibit Nos. 90-91.

<sup>22</sup> Exhibit Nos. 182-186.

<sup>23</sup> The specific objections were to the following pages and line numbers: Exhibit No. 5, 19:15-10; Exhibit No. 18, 2:19-21; 5:10-13; and 17:10-11.

<sup>24</sup> Hearing Officer Order on Motions to Compel, Application NG-0053 (May 20, 2008).

Similar objections were made to other sections of Exhibit No. 18<sup>25</sup>, Exhibit No. 32, Exhibit No. 175 and Exhibit No. 176 which relate generally to revenue generated by high-volume users. With respect these sections, the objections are sustained.

Objections were raised to portions of Exhibit 18; Exhibit 92, Direct Testimony of Randy Holtslaw; Exhibit 52, Rebuttal Testimony of Bruce Warner; Exhibit No. 90, Direct Testimony of Robert Harrington; Exhibit No. 92, Direct Testimony of Randy Holtslaw; Exhibits 100 through and including 102, maps depicting KMITG systems <sup>26</sup>, due to the fact that they relate to the KMITG lateral which is no longer part of this Application, but is now the subject of a separate complaint.<sup>27</sup> Objections to Exhibits 100 through and including 102 are overruled and the maps will be given the weight they deserve. The objections to the remaining exhibits are sustained.

Objections to Exhibit Nos. 15, 51, 59, 182, and 185 are overruled. Exhibit No. 3 is admitted into evidence subject to those objections which are sustained herein or any objections sustained during hearing on this matter.

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

Due to the absence of rules and regulations governing applications for certificates of public convenience to operate as a jurisdictional utility, the Commission issued an order defining the scope of the hearing on NRC's Application.<sup>28</sup> Three questions are presented: whether NRC has met its burden of proof to obtain a certificate of public convenience as a jurisdictional utility; whether rates proposed by NRC are just and reasonable; and whether the proposed facilities violate duplicative piping restrictions.

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<sup>25</sup> The specific objections were made to the following pages and line numbers: Exhibit No. 18, 13:5-7, 12-21; 14:13-18, and 22-23.

<sup>26</sup> The specific objections were to the following pages and line numbers: Exhibit No. 18, 18:7-12, 18-20; 36:5-7; Exhibit No. 92, 6:19-21; 8:4-15; 13:8-10; 14:9-10; and 15:10-21; Exhibit No. 52, 12:1-14:2; Exhibit No. 90, 12:1-19; 13:1-9; 14:7-8; Exhibit No. 92, 6:19-21; 8:4-15; 13:8-10; 14:9-10; and 15:10-21

<sup>27</sup> See Docket No. FC-1331.

<sup>28</sup> See *Order Setting Schedule and Defining Scope of Hearing*, Application NG-0053 (March 18, 2003).

Public Convenience

"[N]o jurisdictional utility shall transact business in Nebraska until it has obtained a certificate from the commission that public convenience will be promoted by the transaction of the business and permitting the applicants to transact the business of a jurisdictional utility in this state."<sup>29</sup>

In evaluating NRC's Application, the Commission must determine whether NRC has demonstrated that it will be able to "furnish reasonably adequate and sufficient service and facilities for the use of any and all products or services rendered, furnished, supplied, or produced by" NRC.<sup>30</sup> Such an inquiry presents a broad public interest standard which necessarily includes a demonstration of financial stability, technical ability to provide the service, assurance that all safety considerations are addressed, and a showing that efforts have been made to comply with environmental regulations.

a. Public Convenience Generally

Although the applicable statute in this matter does not require a showing of "necessity", a determination regarding public convenience must include some element of demand for the proposed services.

NRC has a ten-year commitment for service from its anchor shipper, Aquila at a negotiated rate. Additionally, NRC has provided general market information outlining the potential for economic development in the ethanol industry in the area surrounding the corridor.<sup>31</sup>

With the exception of its relevance to the sizing of the line to allow for additional capacity for future expansion, evidence regarding the need for capacity in the Norfolk area was not relied upon in determining that the NRC's application would be in the public convenience. Additionally, the individual needs of specific high-volume users with whom NRC may have precedent agreements were not relied upon. Instead, consistent with the broad nature of the public interest standard, the Commission has examined the potential for economic development in the area generally and the fact that additional natural gas capacity in the region is a necessary condition to that

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<sup>29</sup> Neb. Rev. Stat. § 66-1853(1).

<sup>30</sup> See Neb. Rev. Stat. § 66-1853(3) and *Order Setting Schedule and Defining Scope of Hearing*, Application NG-0053 (March 18, 2003).

<sup>31</sup> Exhibit No. 17.

development. Based upon the record, the Commission finds that general demand for the services proposed by NRC exists.

b. Financial and Technical Ability

To demonstrate that NRC possesses the financial stability and technical ability to provide the proposed services, NRC relies upon Seminole's financial history and technical experience.

Intervenors argue that the pipeline is not financially viable. Northern contends that due to NRC's position that any service to high-volume ratepayers will be governed by a future FERC certificate, revenues from service to high-volume ratepayers should not be considered in evaluating the economic feasibility of the proposed project; that ratepayers do not receive lower rates as a result of the proposed project or improved reliability or additional sources of natural gas supply; that Seminole will not be responsible for any of the debt of NRC once the project receives its financing; and that there is insufficient regulatory oversight for NRC to protect ratepayers.

Furthermore, in asserting that NRC's application should be denied, SourceGas contends that NRC has not demonstrated an actual public demand for the proposed service; that NRC has no assets, employees or operational history; and NRC has not yet secured financing for the project. SourceGas further asserts that Seminole has no experience with the operation of a public utility and questions the economic viability of the project based upon the ten-year contracts with Seminole and Aquila and the expected revenues and expenses during that period.

The Commission recognizes that NRC is a new entity with no prior operations. As a result, the evidence regarding its technical and financial ability is necessarily based upon information relating to its parent, Seminole. Such reliance by a wholly-owned subsidiary upon its parent company is appropriate under these circumstances. Seminole is an established natural gas provider managing significant natural gas infrastructure as well as providing service to commercial, industrial, and residential customers. NRC also presented evidence regarding the qualifications of particular individuals who will be provided by Seminole to staff NRC should a certificate be granted.

With respect to its financial stability, Seminole has significant financial resources and has invested resources toward the success of this venture. It is true that NRC has not

yet secured its financing. However, evidence was presented to demonstrate that it has a plan<sup>32</sup> and knowledgeable personnel in place in order to secure financing once certification is complete.

Substantial evidence was presented that the proposed project may not be profitable due to the reduced negotiated rates offered to anchor shippers. Profitability of any given business venture is affected by any number of variables, both within and outside of a company's control. However, in examining whether the entity has the financial ability to provide the proposed services, the Commission need not determine that the project as proposed will be profitable. The Commission recognizes that there are inherent risks in the proposal of what has been termed a "greenfield" project but the Commission must balance the risks with the potential benefits that would flow to the region.

The Commission finds that NRC has presented sufficient evidence demonstrating that it shall have the necessary technical expertise and financial ability to provide the proposed services.

c. Sufficiency of Service and Facilities

NRC has demonstrated that the facilities that it intends to construct will be sufficient to satisfy service to its jurisdictional customer as well as allow for future expansion to Norfolk.

d. Safety Considerations and Compliance with Environmental Regulations

NRC has stated that it intends to fully comply with all Department of Transportation safety requirements. Although Northern provided some testimony regarding safety issues, the Commission finds that NRC provided sufficient evidence to demonstrate that it will comply with all state and federal safety regulations.

With respect to compliance with environmental regulations, NRC has provided substantial information to demonstrate its intention and efforts to comply with state and federal environmental regulations. The Commission finds that the information provided by NRC is sufficient evidence that it is taking steps

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<sup>32</sup> Exhibit No. 15.

to comply with all applicable state and federal environmental regulations.

e. Compliance with Affiliate Rules

Cornerstone Energy has argued that NRC has failed to comply with existing rules regarding affiliates and has requested that certain conditions be placed on any certificate granted to NRC. Mr. Haubensauk testified that Cornerstone is concerned that Seminole may have an unfair advantage in marketing gas to customers served on the pipeline due to their relationship with NRC.<sup>33</sup> Mr. Haubensauk further expressed concern that current affiliate rules and regulations are not specific enough to protect non-affiliates in these circumstances.<sup>34</sup> The Commission finds that as a jurisdictional utility, NRC is bound by the same affiliate rules which apply to all jurisdictional utilities. To place any additional restrictions or requirements on NRC would be inappropriate. The concerns expressed by Cornerstone would be best addressed in the context of a future rule and regulation proceeding so that any changes in affiliate rules would apply equally to all jurisdictional utilities.

f. Conclusion Regarding Public Convenience

The Commission finds that NRC has provided sufficient evidence to demonstrate that the public convenience would be served by permitting NRC to operate as a jurisdictional utility.

Rates

With the exception of the items specifically addressed herein, the Commission approves NRC's proposed rates subject to the limitations and adjustments adopted below.

a. Recourse Rate and Negotiated Rate Authority

NRC proposes to offer in its Tariff a recourse rate which is based upon the estimated costs of providing the proposed service. The recourse rate would be available to any jurisdictional customer. However, jurisdictional customers would be able to negotiate a rate other than the recourse rate.

Every rate made, demanded, or received by any natural gas public utility shall be just and reasonable. Rates shall not be unreasonably preferential or discrimina-

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<sup>33</sup> Exhibit No. 140, 3:1-3.

<sup>34</sup> Exhibit No. 140, 3:24-4:6.



tory and shall be reasonably consistent in application to a class of ratepayers. Rates negotiated with agricultural ratepayers and high-volume ratepayers in conformity with the State Natural Gas Regulation Act shall not be considered discriminatory.<sup>35</sup>

In addition to being just and reasonable, rates regulated by the Commission must be cost-based and must take into consideration "the public need for adequate, efficient, and reasonable natural gas service."<sup>36</sup>

The Act also permits the Commission, "consistent with general regulatory principles", to authorize "(2) mechanisms for the determination of rates by negotiation...."<sup>37</sup> Based upon this statutory authority, the Commission finds that it has the jurisdiction to approve a negotiation alternative.

The Commission recognizes the need for "greenfield" projects such as that proposed by NRC to have some flexibility to secure commitments from anchor shippers in order for such projects to be viable. Likewise, such anchor shippers who are willing to commit to such projects are accepting a certain level of risk in doing so. In this context, the Commission finds that permitting NRC to offer a recourse rate which is cost based but retain the flexibility to negotiate with anchor shippers should be approved. However, such approval is not without limits.

NRC's ability to negotiate is limited to only those anchor shippers who commit to a ten-year continuous contract prior to the pipeline providing service to any ratepayer. The Commission further finds NRC shall only have authority to enter into any additional contracts based on a negotiated rate until the conclusion of its general rate case as required below. It shall submit its negotiation method for further approval at the time that the general rate case is filed. Any contract existing at that time shall not be disturbed by the Commission, however, the Commission reserves the right to discontinue NRC's ability to negotiate future contracts or extensions with any anchor shippers.

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<sup>35</sup> Neb. Rev. Stat. § 66-1825(1).

<sup>36</sup> See § 66-1825(3) stating "The commission, in the exercise of its power and duty to determine just and reasonable rates for natural gas public utilities, shall give due consideration to the public need for adequate, efficient, and reasonable natural gas service and to the need of the jurisdictional utility for revenue sufficient to enable it to meet the cost of furnishing the service, including adequate provisions for depreciation of its utility property used and useful in rendering service to the public, and to earn a fair and reasonable return upon the investment in such property."

<sup>37</sup> Neb. Rev. Stat. § 66-1855.

In order to be a cost-based rate as required by SNGRA, the recourse rate being offered to all jurisdictional customers must be imputed to NRC for ratemaking purposes. Any difference between the recourse rate and that charged to anchor shippers shall be borne by NRC and not by other jurisdictional ratepayers through the recourse rate.

b. Cost of Service

"Cost of service shall include operating expenses and a fair and reasonable return on rate base, less appropriate credits."<sup>38</sup>

"In determining a fair and reasonable return on the rate base of a jurisdictional utility, a rate-of-return percentage shall be employed that is representative of the utility's weighted average cost of capital including, but not limited to, long-term debt, preferred stock, and common equity capital."<sup>39</sup>

"The Commission must allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and must fix the rate of return in accordance with *Neb. Rev. Stat.* §§ 66-1825(3) and (5)."<sup>40</sup> In evaluating each case, the Commission "must consider the utility's cost of capital, which is the weighted average of the cost of the various classes of capital used by the utility".<sup>41</sup>

The classes of capital include debt and equity. "The cost of equity capital must be based upon a fair return on its value."<sup>42</sup>

1. Capital Structure

Both NRC and the Public Advocate<sup>43</sup> agreed that the capital structure should be 50% debt and 50% equity. According to the Public Advocate, a 50/50 capital structure falls within the range of the structure approved by FERC in recent new pipeline cases.<sup>44</sup> We agree that that a 50/50 capital structure is appropriate.

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<sup>38</sup> § 66-1825(4).

<sup>39</sup> § 66-1825(5).

<sup>40</sup> § 005.05A.

<sup>41</sup> § 005.05A2.

<sup>42</sup> § 005.05A2(b).

<sup>43</sup> Exhibit No. 186, 7:4-7; 11:6.

<sup>44</sup> Exhibit No. 186, 11:6-9.

## 2. Cost of Equity Capital

NRC witness Mr. Warner testified that FERC has a history of approving a 14 percent rate of return on equity, for the purpose of encouraging development of "greenfield" pipeline projects,<sup>45</sup> and that the Commission should apply the same rate to NRC.

On behalf of the Public Advocate, Mr. Glahn recommended a 13 percent rate of return on equity, based upon a review of recent FERC pipeline project approvals which include, but are not limited to, "greenfield" projects.<sup>46</sup>

NRC argues that the Public Advocate's recommendation regarding use of both "greenfield" and non-"greenfield" projects for cost of equity analysis is inconsistent with his use of only "greenfield" projects for cost of debt analysis. We agree, and find NRC's evidence on this issue more persuasive. Therefore, we determine the cost of equity to be 14 percent as proposed by NRC.

## 3. Cost of Debt Capital

"The cost of debt capital is the actual cost of debt."<sup>47</sup>

NRC proposed that the rate for cost of debt should be 9%, based upon estimates from lenders.<sup>48</sup>

The Public Advocate's witness Mr. Glahn proposed 7.77% cost of debt, based upon a study of comparable companies that have recently issued debt in the market.<sup>49</sup> This figure matches the average of the debt cost approved by the FERC for "greenfield" projects cited by NRC.<sup>50</sup>

NRC attempted to discredit Mr. Glahn's study, taking issue with the comparability of the companies Mr. Glahn selected. Specifically, Mr. Warner testified that the companies in Mr. Glahn's analysis are "very large diversified companies that have various big business segments," and thus not comparable to NRC, which would be a "single-use pipeline, gas pipeline, with no storage, not gathering processing, very short pipeline."<sup>51</sup>

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<sup>45</sup> Tr. 878:9-18.

<sup>46</sup> Exhibit Nos. 72, 73 and 186, 8:16-23.

<sup>47</sup> § 005.05A2(a).

<sup>48</sup> Exhibit No. 15.

<sup>49</sup> Exhibit No. 186, 7:4-7; 9:17-11:2; Exhibit Nos. 71 and 72.

<sup>50</sup> Exhibit No. 186, 10:19-11:2.

<sup>51</sup> Tr. 874:22-875:4 (Warner).

Based upon evidence supplied by NRC regarding projects approved by FERC during 2007 and 2008, including evidence on the size of the project and the FERC-approved return on equity, it does not appear that there is a correlation between risk and project size.<sup>52</sup>

Both NRC and the Public Advocate acknowledge that use of actual costs, when they are known, is preferable. NRC proposes that the Commission require it to re-file its initial rates 60 days prior to placing the pipeline in service, using actual cost of debt.<sup>53</sup>

Because financing will not be secured until after the certification, we must determine an appropriate proxy for "actual cost of debt." We find that NRC's use of estimates is subjective and is an insufficient substitute for actual costs. Some question remains as to the comparability of the companies selected by Mr. Glahn to NRC, his methodology is superior and results more credible than NRC's.

Additionally, though the proposal to re-file rates within 60 days of prior to the commencement of service would allow use of actual cost of debt, it would be tantamount to single-issue ratemaking, wherein only one of a multitude of costs is adjusted in a vacuum. Additionally, though NRC appears to expect that the Commission would allow automatic pass-through of its debt costs without scrutiny, the Commission would necessarily be required to evaluate whether such costs would be reasonable, necessary and prudently incurred. In such a situation, Inter-venors should be allowed an opportunity to submit evidence relevant to the filed costs. Sixty days may not be adequate for this review. Due to concerns about single-issue ratemaking and the time required for reviewing any submitted costs, the Commission finds that such an evaluation should take place in NRC's next rate case.

For these reasons, we adopt the Public Advocate's recommendation that NRC's "recourse rates" be based on an assumed cost of debt of 7.77 percent.

c. Cost of Norfolk Capacity and Credit of Interruptible Revenues

NRC has reserved 20,000 Dth of capacity for up to 24 months for the potential Phase II expansion to Norfolk. The reserved

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<sup>52</sup> Exhibit No. 57. See also Post-Hearing Reply Brief of the Public Advocate, pg. 6 and Appendix 1.

<sup>53</sup> Tr. 880:5-23 (Warner).

capacity will be made available for sale as short-term service. NRC has proposed that the billing determinants be excluded from those used to establish the initial rates. As a result, the initial rates now proposed are slightly higher than they would be if the volumes for the reserved capacity were included, causing current ratepayers to bear costs of service for future expansion of service to Norfolk.

The Public Advocate contends that none of the cost associated with the additional capacity should be included in initial rates.

The additional capacity will result in benefits to both the ratepayers and NRC. Planning and engineering a pipeline to account for future expansion is appropriate under the present circumstances. NRC has identified possible demand in the Norfolk region. The additional capacity will be a catalyst for economic development within the entire pipeline corridor which will benefit the region as a whole. However, the company also has the opportunity to sell the additional firm capacity on a short-term, interruptible basis.

Therefore, the Commission finds that during the two-year period prior to the expansion to Norfolk, the ratepayers and NRC shall share equally in the cost of the 20,000 Dth of reserved capacity. Rates shall be calculated accordingly. However, in order to offset some of the cost to ratepayers, the Commission finds the following with respect to interruptible revenues.

NRC shall calculate a rate for both the 50/50 split of the excess capacity and the rate representing no recovery of excess capacity costs. Using these two rates, NRC can determine how much more revenue the regulated ratepayers are paying for the excess capacity.

Ratepayers shall receive the benefit of 100 percent of interruptible rate revenues until the increased revenues due to the excess capacity costs have been offset.

After the impact of the excess capacity costs on ratepayers has been offset by interruptible rate revenues, NRC would retain 100 percent of any additional interruptible rate revenues until it has offset the cost of excess capacity costs not recovered in the approved rate.

Any additional interruptible rate revenues should be split between ratepayers and NRC, with ratepayers receiving 90 percent and NRC receiving the remaining 10 percent of the interruptible revenues.

Such revenue credits shall be shown as a rider on NRC's tariff, and shall be updated no less than every six (6) months.

#### General Conditions of Certificate

NRC shall file a general rate case pursuant to the Act, no later than thirty six (36) months after it begins to render service. NRC shall provide notice to the Commission of the date on which its first ratepayer begins to receive service.

NRC shall file a tariff in compliance with this order. Should NRC require clarification regarding any portions of this order, it shall file a written motion seeking such clarification.

#### Jurisdiction

The parameters of the "Hinshaw Exemption", which exempts certain pipelines from the NGA, are central to this Application. The exemption states:

Any person engaged in or legally authorized to engage in the transportation in interstate commerce or the sale in interstate commerce for resale, of natural gas received by such person from another person within or at the boundary of a State if all the natural gas so received is ultimately consumed within such State, or to any facilities used by such person for such transportation or sale, provided that the rates and service of such person and facilities be subject to regulation by a State commission.<sup>54</sup>

Furthermore, the exemption goes on to state that such matters are "matters primarily of local concern and subject to regulation by the several States" and "[a] certification from such State commission to the Federal Power Commission that such State commission has regulatory jurisdiction over rates and service of such person and facilities and is exercising such jurisdiction shall constitute conclusive evidence of such regulatory power or jurisdiction."

Having approved NRC's Application as set forth herein, the Commission is bound, not only by state but also federal law, to exercise its full jurisdiction with respect to NRC and its rates, services and facilities as permitted by the Act. Although NRC has repeatedly asserted that the Commission has no

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<sup>54</sup> 15 U.S.C. § 717(c).

jurisdiction regarding certain aspects of its proposed services, rates, and facilities due to its intention to seek a partial certificate from FERC, no such certificate has yet been issued. Therefore, we decline to adopt the hybrid jurisdiction proposed by NRC in this application. The Commission makes no determination regarding the authority or propriety for FERC to issue a partial certificate as described by NRC in this matter, nor do we determine whether any such certificate would, or theoretically could, preempt state jurisdiction.

We believe the proper question for FERC to consider is whether this Commission's regulation over the service and rates of a jurisdictional utility to a high-volume ratepayer is sufficient for purposes of a Hinshaw Exemption, in light of the ability of a utility to offer negotiated rates and services without Commission approval. It would seem that if the FERC found that such regulation was insufficient, the Hinshaw Exemption would not apply.

It is the Commission's position that if a pipeline falls within the Hinshaw Exemption, it is subject to the jurisdiction of the state in which it is located and the utility must comply with all applicable state statutes and regulations. The exercise of the Commission's jurisdiction under these circumstances is not optional, but is instead a statutory obligation. Similarly, a utility is not free to either subject itself to the Commission's jurisdiction or not. It must instead, comply fully with applicable state law and Commission regulations in all respects unless specifically preempted by federal law or FERC action.<sup>55</sup>

#### Duplicative Piping

The decision to examine the duplicate piping issue within the present proceeding was intended to promote administrative and regulatory efficiency rather requiring a certification process followed by a formal complaint proceeding on the proposed services and facilities.

If NRC had failed to meet its burden of proof regarding its application for a certificate, the question of whether the facility is duplicative would be moot. Having already determined that NRC has met its burden regarding the certificate of

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<sup>55</sup> See *In the Matter of the Commission, on its own motion, to investigate jurisdictional issues pertaining to construction and operation of a natural gas pipeline within the state of Nebraska by Nebraska Resources Company, LLC, or any other entity*, Docket NG-0051/PI-130, Order (October 30, 2007).

convenience, we must now consider whether its project as proposed violates the duplicative piping prohibition.

Except as otherwise expressly authorized in the State Natural Gas Regulation Act, no person, public or private, shall extend duplicative or redundant natural gas mains or other natural gas services into any area which has existing natural gas utility infrastructure or where a contract has been entered into for the placement of natural gas utility infrastructure.<sup>56</sup>

This prohibition does not apply "to the extension by a jurisdictional utility of a transmission line connecting to distribution facilities owned or operated by a jurisdictional utility, a city, or a metropolitan utilities district or to serve city-owned electric generating facilities located within the boundaries of a city within which the jurisdictional utility extending the transmission line provides natural gas service to customers."<sup>57</sup> A "transmission line" is defined as "a pipeline, other than a gathering pipeline, distribution pipeline, or service line, that transports natural gas."<sup>58</sup>

It is undisputed that the proposed pipeline constitutes a "transmission line". However, the exception for transmission lines is not without limits.

Nothing in this section shall be construed to authorize a jurisdictional utility to extend a transmission line to a high-volume ratepayer with an existing source and adequate supply of natural gas that is located outside the area in which that jurisdictional utility has existing natural gas utility infrastructure.<sup>59</sup>

Although the Commission has found that the transmission line proposed by NRC falls within the exception, insufficient information exists at this time to determine whether any extension to a particular high-volume ratepayer would violate the duplicate piping prohibition. To the extent that a situation involving service to a particular high-volume ratepayer may present issues of duplicate piping in that such ratepayer has an existing source and adequate natural gas supply, such must be resolved in a later complaint.

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<sup>56</sup> Neb. Rev. Stat. § 66-1852(1) (2008).

<sup>57</sup> Neb. Rev. Stat. § 66-1852(3) (2008).

<sup>58</sup> Neb. Rev. Stat. § 66-1852(6) (2008).

<sup>59</sup> Neb. Rev. Stat. § 66-1852(7) (2008).



NRC has pointed to the Commission's decision in Docket No. FC-1325, *SourceGas v. Panhandle Feeders, Inc.* in support of its contention that the Commission is preempted from applying the duplicate piping prohibition to the existing pipeline as any service to high-volume ratepayers would be regulated by a future FERC certificate. That decision is distinguishable from the present situation in that it involved an interstate pipeline constructing a bypass to an end-user. The present pipeline is a Hinshaw Pipeline which is a matter of primarily local concern and therefore subject to state regulation. As previously stated, the Commission intends to fully exercise its jurisdiction as required by the Act.

ORDER

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that NRC's application is granted consistent with the terms and limitations set forth herein.

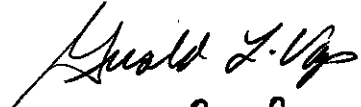

IT IS FURTHER ORDERED that the pipeline proposed by NRC falls within the exception to the duplicate piping prohibition at Neb. Rev. Stat. § 66-1852(6); however, any questions which may arise regarding duplicate piping to a particular ratepayer who may have an existing source and adequate natural gas source subject to Neb. Rev. Stat. § 66-1852(7) shall be resolved in a future proceeding.

MADE AND ENTERED at Lincoln, Nebraska, this 9th day of September, 2008.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

  
Chair

//s//Anne C. Boyle

//s//Frank E. Landis

ATTEST:

  
Executive Director