

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of SourceGas) Application No. NG-0060
Distribution LLC, Lakewood,)
Colorado, seeking approval of a)
general rate increase.) ORDER APPROVING
) RECALCULATED RATES AND
) REFUND PLAN
)
) Entered: March 29, 2011

BY THE COMMISSION:

On July 2, 2009, SourceGas Distribution LLC ("SourceGas" or "Company"), of Lakewood, Colorado, filed an application seeking approval of a general rate increase. On March 9, 2010, the Nebraska Public Service Commission ("Commission") entered an order granting in part the above-captioned general rate application ("Rate Order").

On March 18, 2010, SourceGas filed a Motion to Suspend Rate Order pending appeal. On March 19, 2010, the Public Advocate filed a Motion for Clarification and Reconsideration of Order Granting Application in Part or, in the Alternative, for Rehearing. Prior to oral argument on the pending motions, SourceGas filed a Petition for Review of the Rate Order with the District Court on March 30, 2010. Subsequently, on April 8, 2010, the Public Advocate filed a Petition for Review of the Rate Order with the District Court.

While the Petitions for Review were pending, the Commission filed a Motion for Remand for Limited Purposes with the District Court ("Remand Motion"). The Remand Motion filed by the Commission sought to correct the test period revenues as contained on Attachment E to the Commission's Rate Order. The Commission sought specifically to make a correction to properly reflect the weather normalizing adjustment to test period revenues adopted by the Commission. The Motion contained Exhibit J with a Revised Attachment E.

On January 31, 2011, the District Court entered orders in both Appeals sustaining the Commission's order with respect to the Public Advocate's appeal and affirming in part and reversing in part the Commission's order with respect to the SourceGas appeal ("Appeal Orders"). The District Court's order on Source-Gas' appeal allows an additional \$2.4 million in allocated expenses and common costs and an additional \$566,821 related to high volume and agricultural ratepayers. The District Court also accepted the revised Attachment E contained in the Commission's Remand Motion, adopting the Commission's adjustment to the Company's test period total operating revenues from \$36,708,962 to \$35,627,440.

On February 25, 2011, SourceGas filed its Compliance Tariff and Refund Plan with the Commission which included a proposal to recalculate the rates adopted by the Commission in the Rate Order to reflect the additional revenue ordered by the District Court and a refund plan. A technical conference regarding the Compliance Tariff and Refund Plan was held on March 7, 2011.

A hearing on the recalculated rates and the refund plan was held on March 22, 2011, in the Commission hearing room.

E V I D E N C E

Mr. Jerrad Hammer, the Manager of Regulatory Affairs for SourceGas, testified on behalf of SourceGas in support of its proposed rate recalculation and refund plan. Mr. Hammer testified to two proposals for rate recalculation to produce the increase in annual revenues consistent with the District Court Order. Both proposals used the weather normalization figure contained on Attachment E to Exhibit J of the Remand Motion adopted by the District Court in the Appeal Orders and the Company's Pro Forma Adjusted billing determinants adopted by the Commission in the Rate Order. One proposed rate recalculation keeps the monthly customer charge at the level established by the Commission in the Rate Order, increasing the first tier distribution charge to \$0.5000 per therm and the second tier distribution charge to \$0.1195 per therm.¹ The second proposed rate recalculation increases the customer charge and distribution charges by approximately equal percentages of 11.5 percent.²

In its initial Compliance Tariff and Rate Refund Plan filed with the Commission, SourceGas sought to recover additional rate case expenses above those approved by the Commission in the Rate Order and certain other incremental costs associated with the rate refund plan. Subsequently, Mr. Hammer testified that the Company reconsidered those requests and withdrew the proposal to recover additional rate case expenses and rate refund plan costs through the refund process.³

SourceGas states the refund amount due customers will continue to accumulate through the last day before the final rates become effective, estimated to be March 31, 2011.⁴ The actual amount of the refund will not be known until that time. SourceGas states the final refund amount will be figured on a

¹ See Hearing Exhibit No. 15.

² See Hearing Exhibit No. 13.

³ Hearing Transcript p. 30, line 15 - p. 31, line 12. (Hereinafter "TR page: line number")

⁴ See Hearing Exhibit No. 1, p. 7.

customer-specific basis and will include interest calculated on a monthly basis at the Nebraska Judicial Rates. SourceGas estimates the total refund as of February 28, 2011, to be approximately \$5,780,011 million.⁵

The Company estimates most customers will be entitled to a refund. All amounts will be prorated and show as a credit on existing customers' bills.⁶ Customers no longer with SourceGas eligible for a refund will receive checks, unless the amount due is less than \$3.00.⁷ Mr. Hammer stated SourceGas proposes to make all reasonable efforts to locate former customers, including submitting letters to former customers to verify their address prior to sending checks in an attempt to reduce returns.⁸ For approximately 550 customers that would have paid more under the final rates, SourceGas proposes to debit the amount not collected by the Company to the Gas Supply Cost Adjustment Account. Refunds calculated for customers on a fixed price option will be remitted to the gas supplier. Any unclaimed refunds will be put into the Gas Supply Cost Adjustment Account after 12 months.⁹

Mr. Michael Arndt testified on behalf of the Public Advocate. Mr. Arndt proposed using data submitted by the Company during discovery to the Public Advocate to revise the weather normalization figure.¹⁰ The data included in the discovery response to the Public Advocate was not a part of the record in the rate case proceeding in Docket No. NG-0060.

The Public Advocate requests adoption of a rate structure whereby the revenue increase ordered by the District Court in the Appeal Orders would be equally distributed between the tier one and tier two distribution charges, keeping the monthly customer charge at the level approved by the Commission in the Rate Order.¹¹

Mr. Arndt further stated the billing determinants used by the company were not correct and so no refund could be calculated until correct billing determinants were determined. Mr. Arndt proposed using the Company's unadjusted billing determinants or billing determinants included by the Commission's consultants which were not included in the record. Mr. Arndt offered no comment on the rate refund plan beyond stating absent utilizing different billing determinants that those used by the

⁵ Hearing Exhibit No. 6, Appendix H.

⁶ Hearing Exhibit No. 5, p. 7, 10.

⁷ Id. at p. 10.

⁸ TR 28:11-22.

⁹ Hearing Exhibit No. 5, p. 10-11.

¹⁰ Hearing Exhibit No. 18, p. 15 and Hearing Exhibit No. 22.

¹¹ Id. at p. 18 and Hearing Exhibit No. 29.

Company, any determination of a refund and interest would be pure speculation.¹²

The Public Advocate also called Ms. Laura Demman, the Director of the Commission's Natural Gas Department. The Public Advocate questioned Director Demman regarding the work of the Commission's consultants during the pendency of the rate case proceeding in Docket No. NG-0060. Director Demman stated that the Commission had retained the services of consultants and that those consultants had performed different calculations directed by the Commission and staff during closed deliberations by the Commission on the SourceGas Rate Case proceeding.¹³ Director Demman testified that the Commission's consultants prepared work papers with input by Commission Staff and the Commission.¹⁴ When questioned by the Public Advocate, Director Demman confirmed that the work papers of the Commission's consultants were not made available to the parties of the Rate Case proceeding.¹⁵

FINDINGS AND CONCLUSIONS

Rate Recalculation

Following the Order of the District Court, SourceGas is entitled to an annual revenue increase of \$4,841,216.¹⁶ To reflect the revenue increase ordered by the District Court, rates set by the Commission in its March 9, 2010 Order Granting Application in Part must be recalculated. The District Court did not give specific direction as to how the rates should be recalculated; however, the Court affirmed the rate design in the Commission's Rate Order.

Billing Determinants

SourceGas proposed to recalculate rates and determine refunds by utilizing the pro forma adjusted billing determinants approved by the Commission in the Rate Order.

The Public Advocate disagreed with the Company's use of the pro forma adjusted billing determinants, instead proposing the use of the Company's unadjusted billing determinants, or in the alternative, billing determinants that the Public Advocate argues the Commission's consultants used.

¹² Id. at 19.

¹³ TR 89:10 - 90:1.

¹⁴ TR 97:16 - 98:5.

¹⁵ TR 96:15-18.

¹⁶ Hearing Exhibit No. 5, Appendix A

The Commission's Rate Order provides:

With the exception of the items specifically addressed herein, the Commission grants SourceGas' Application subject to the adjustments and limitations discussed below.¹⁷

The Commission did not otherwise address billing determinants in the Rate Order. Therefore, the billing determinants proposed by the Company were approved by the Commission. The Public Advocate appears to assume the Commission's consultants used different billing determinants than those adopted by the Commission. Regardless of the recommendation of the Commission's consultants to the Commission, the Rate Order adopted the billing determinants as adjusted by the Company.

Finally, the District Court in the Appeal Orders made specific modifications to the Commission's decision which did not include the billing determinants adopted by the Commission. The District Court further stated, "In all other respects this court concludes that the Order of the Commission in this matter is supported by competent evidence and is affirmed."¹⁸

The Commission finds no merit to the Public Advocate's proposal to adopt different billing determinants than those adopted by the Commission in the Rate Order and affirmed by the District Court in the Appeal Orders. The Commission therefore finds that SourceGas pro forma adjustments used by the Company in its rate restructuring and refund plan proposal should be approved.

Applicable Weather Normalization Figures

The District Court modified the Commission's original order by adopting the "30-year weighted average of NOAA weather data as defined by the revised Attachment E contained as a part of Exhibit J of the Remand Motion."¹⁹

SourceGas proposes to recalculate rates using the average 30-year weather normalization adjustment methodology and figure adopted by the District Court. During the testimony of Mr.

¹⁷ *In the Matter of SourceGas Distribution LLC, Lakewood, Colorado, seeking approval of general rate increase*, Application No. NG-0060, Order Granting Application in Part, p. 2 (March 9, 2010).

¹⁸ Hearing Exhibit No. 2, p. 21.

¹⁹ *SourceGas Distribution, LLC vs. The Nebraska Public Advocate, et al.*, District Court of Lancaster County, Nebraska, CI10-1233, Order on Appeal, p. 33 (January 31, 2011).

Hammer, he clarified that his calculations provide equal weight to data for each of the years included in the 30-year average of NOAA weather data that is calculated by the Company.²⁰

The Public Advocate proposes to revise the weather normalization figure on Attachment E contained in the Remand Motion. Mr. Arndt advocated using data submitted to the Public Advocate during discovery to calculate a different weather normalization adjustment than that adopted by the District Court.

The Commission finds that the figure and methodology adopted by the District Court must be used in recalculating rates, to carry out the directive of the District Court. The data requests that the Public Advocate seeks to use were not part of the record in the underlying case and thus, could not have been used by the Commission to calculate a weather normalization adjustment. To do so now would be contrary to the Order of the District Court. Therefore, the rate recalculation performed by SourceGas in its proposed rate structure and refund plan using the average 30-year weather normalization adjustment methodology and figure adopted by the District Court is hereby adopted.

Rate Design for Recalculated Rates

SourceGas proposes that the Commission either: 1) retain the monthly customer charges at the levels established by the Commission in the Rate Order, increasing the first tier distribution charge to \$0.5000 per therm and the second tier distribution charge to \$0.1195 per therm; or 2) increase all customer and distribution charges by approximately equal percentages of 11.5 percent.

The Public Advocate proposes to keep the monthly customer charges at the levels approved by the Commission in the Rate Order and equally distribute the increase in revenues between the Tier One and Tier Two distribution charges.

The Commission finds that rates should be recalculated to retain the rate design structure affirmed by the District Court by applying the ordered revenue increase equally among the categories of rates for each class of ratepayers. The rates outlined in Exhibit 13 offered by SourceGas most closely match the rate design affirmed by the District Court. The Commission approves recalculated rates as follows:

²⁰ Hearing Tr. p. 53:22-54:7.

	<u>Residential</u>	<u>Small Commercial</u>	<u>Large Commercial</u>
Customer Charge	\$12.25	\$14.50	\$44.60
Tier 1			
Distribution Charge	\$0.4220	\$0.4220	\$0.4220
Tier 2			
Distribution Charge	\$0.1208	\$0.1208	\$0.1208

Refund Plan

Jurisdictional utilities have the right, pursuant to the State Natural Gas Regulation Act (the Act), to implement interim rates pending the resolution of their general rate applications.²¹ "If the rate filing is not certified by the commission for negotiations, the jurisdictional utility's filed rates may be placed into effect as interim rates, subject to refund, upon the adoption of final rates, ninety days after filing with the commission."²²

SourceGas' approach to its refund plan is consistent with the provisions of other refund provisions approved by the Commission, most recently in a case filed by Black Hills Energy.²³

The Public Advocate's witness testified that no refund could be calculated without obtaining the Commission consultants' workpapers, and offered no other alternatives to the Company's refund plan.

The Commission finds that the refund plan as proposed should be approved.

Tariff Revisions

No later than thirty (30) days after the effective date of rates, SourceGas shall file a revised tariff as required by Neb. Rev. Stat. § 66-1838(16).

²¹ Neb. Rev. Stat. Sec. 66-1801 et seq. (2010 Supp.).

²² Sec. 66-1838(10)(b).

²³ *In the Matter of Black Hills/ Nebraska Gas Utility Company, LLC, seeking a General Rate Increase for Black Hills Energy's Rate Areas One, Two and Three (Consolidated)*, Application No. NG-0061, Order Approving Refund Plan (November 30, 2010).

O R D E R

IT IS THEREFORE ORDERED by the Commission that rates as set forth in this order and the refund plan as proposed by Source Gas be, and are hereby, approved.

IT IS FURTHER ORDERED that no later than thirty (30) days after the effective date of rates, SourceGas shall file a revised tariff as required by *Neb. Rev. Stat. § 66-1838(16)*.

MADE AND ENTERED at Lincoln, Nebraska this 29th day of March, 2011.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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O R D E R

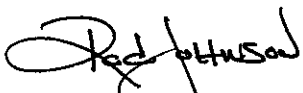

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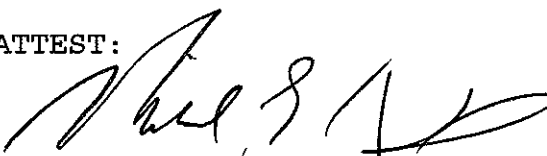
COMMISSIONERS CONCURRING:

//s// Frank E. Landis
//s// Tim Schram


Chairman

ATTEST:


Executive Director