

135 FERC ¶ 61,174
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Public Utilities Commission of Nevada and
Sierra Pacific Power Company d/b/a NV Energy

v.

Docket No. RP11-1823-000

Tuscarora Gas Transmission Company,
Respondent

ORDER SETTING COMPLAINT
FOR HEARING UNDER SECTION 5 OF THE NATURAL GAS ACT

(Issued May 24, 2011)

1. This order addresses a complaint (Complaint) filed by Public Utilities Commission of Nevada (Nevada PUC) and Sierra Pacific Power Company (NV Energy) (collectively, Complainants) against Tuscarora Gas Transmission Company (Tuscarora). The Complaint alleges that Tuscarora's current rates are unjust and unreasonable. The Complaint requests the Commission to initiate an investigation pursuant to Natural Gas Act (NGA) section 5 into the rates charged by the respondent Tuscarora for the purpose of determining whether Tuscarora's existing rates for jurisdictional services are unjust and unreasonable and, if so, to establish new just and reasonable rates.
2. The Commission finds that the Complainants have provided adequate information to set the Complaint for hearing and to initiate an investigation into Tuscarora's rates under NGA section 5. The Commission orders Tuscarora to file a full cost and revenue study within 75 days of the date the order is issued.

Background

3. Tuscarora is engaged in the transportation of natural gas subject to the jurisdiction of the Commission pursuant to the NGA. Tuscarora owns and operates an interstate natural gas pipeline system which originates at an interconnection point with existing facilities of Gas Transmission Northwest Corporation near Malin, Oregon, and runs southeast through Northeastern California and Northwestern Nevada. Tuscarora's pipeline system terminates near Wadsworth, Nevada. Along its route, deliveries are

made in Oregon, Northern California and Northwestern Nevada. The pipeline system consists of 240 miles of pipeline and a design capacity of approximately 230 MMcf/d. Tuscarora has three compressor stations with a total of over 17,100 horsepower, and measurement facilities at one receipt point and 16 delivery points. Tuscarora is a general partnership organized and existing under the laws of the state of Nevada.

4. Tuscarora's current rates were established as part of a Commission-approved settlement agreement that became effective June 1, 2006.¹ Tuscarora filed that settlement outside of the context of an existing rate proceeding. The settlement reduced Tuscarora's rates below the level approved in Tuscarora's last section 4 rate case. Article IV of the settlement provided for a rate moratorium period extending from June 1, 2006 to May 31, 2010, during which Tuscarora was prohibited from initiating an NGA section 4 rate case and the settling parties were prohibited from initiating or supporting any rate review of Tuscarora's rates pursuant to section 5 of the NGA. Tuscarora is under no obligation to file a new rate case at any time in the future.

5. The Nevada PUC regulates, in the State of Nevada, public utilities engaged in electric, natural gas, telephone, water, and wastewater services. NV Energy is a local distribution company providing natural gas service to customers in and around Reno, Nevada.

The Complaint

6. Complainants state that in carrying out its responsibility under NGA section 5, the Commission issued Order No. 710 to improve transparency of financial reporting and better reflect current market and cost information.² The Commission stated that the revised forms and reporting requirements, including the revised Form Nos. 2 and 2-A³ would "provide the Commission and pipeline customers with information that will aid their ability to make a reasonable assessment of a pipeline's cost of service." Order No. 710 at P 12.

7. Complainants assert that the purpose of Order No. 710 was to ensure that Form 2 data are sufficient to determine whether to initiate a section 5 proceeding. Thus, analysis of Form 2 data can provide indicators of the rate of return and general profitability of the

¹ *Tuscarora Gas Transmission Co.*, 116 FERC ¶ 61,003 (2006).

² *Revisions to Forms, Statements and Reporting Requirements for Natural Gas Pipelines*, Order No. 710, 73 FR 19389 (Apr. 10, 2008), FERC Stats & Regs ¶ 31,267 (2008), *reh'g and clarification*, Order No. 710-A, 123 FERC ¶ 61,278 (2008).

³ Non-major natural gas pipelines like Tuscarora would file Form 2-A.

pipeline. The Commission in the past two years has initiated section 5 investigations when its analysis of Form 2 data suggested that the pipeline was recovering an excessive rate of return.⁴

8. Complainants assert that their review of Tuscarora's existing rates establishes that those rates are unjust and unreasonable. They base their allegation on the data in Tuscarora's last two Form 2-A filings. Attached to the Complaint is an affidavit of their witness Jeff D. Makhholm (Dr. Makhholm). Dr. Makhholm states that he analyzed the current jurisdictional costs and revenues of Tuscarora, utilizing publicly available Form 2-A data. Dr. Makhholm asserts that Tuscarora's earned returns on equity (ROE) as implied by the Form 2-A data were 22.2 percent for 2008 and 27.2 percent for 2009. Dr. Makhholm states that the methodology he used is comparable to the methodology the Commission used in other proceedings initiating section 5 investigations. Complainants assert that Tuscarora's earned ROEs for the years 2008 and 2009 of 22.2 and 27.2 percent are far outside the zone of reasonableness indicated by recent Commission decisions. Complainants cite to the recent investigations initiated by the Commission where each pipeline's ROE was comparable to Tuscarora's ROE.⁵

9. Complainants assert that this data raises a sufficiently serious question as to the justness and reasonableness of Tuscarora's rates to justify the Commission exercising its discretion to initiate an investigation under section 5.

10. In addition, Complainants state that Dr. Makhholm considered publicly-available information regarding Tuscarora's forward looking costs and revenues. Dr. Makhholm concluded that a review of that information did not suggest that Tuscarora's over-collections will stop, and in fact, with additional depreciation of its rate base, Dr. Makhholm expected Tuscarora's ROE to increase in the future.

⁴ See *Ozark Gas Transmission, LLC*, 133 FERC ¶ 61,150 (2010) (*Ozark*); *Kinder Morgan Interstate Gas Transmission LLC*, 133 FERC ¶ 61,157 (2010), *reh'g granted in part and denied in part*, 134 FERC ¶ 61,061 (2011) (*Kinder Morgan*); *Natural Gas Pipeline Co. of America LLC*, 129 FERC ¶ 61,158 (2009), *reh'g denied*, 130 FERC ¶ 61,133 (2010) (*Natural Gas*); *Northern Natural Gas Co.*, 129 FERC ¶ 61,159 (2009), *reh'g denied*, 130 FERC ¶ 61,134 (2010) (*Northern Natural*); *Great Lakes Gas Transmission Limited Partnership*, 129 FERC ¶ 61,160 (2009), *reh'g denied*, 130 FERC ¶ 61,132 (2010) (*Great Lakes*).

⁵ Citing *Kinder Morgan* (27.10 percent in 2008 and 29.25 percent in 2009), *Great Lakes* (21.83 percent), *Natural Gas* (24.50 percent), *Northern Natural* (24.36 percent) and *Ozark* (27.80 percent in 2008 and 31.01 percent in 2009)

11. Dr. Makhholm stated in his affidavit that Tuscarora's Form 10-K filing with the Securities and Exchange Commission indicated there would be a change in Tuscarora's capital structure since a large tranche of Tuscarora's existing debt was maturing in 2010. He stated that regardless of how the change in capital structure is treated for ratemaking purposes it would not eliminate the over-collections by Tuscarora from its shipping customers.

12. Complainants request that as in other cases initiating NGA section 5 investigations, the Commission set the Complaint for hearing pursuant to the Administrative Law Judges' Track II Hearing Timeline.⁶ Further, Complainants request that the Commission direct Tuscarora to file a cost and revenue study, as it has done in the other section 5 orders, and the study should include actual data for the latest 12-month period available.⁷

13. Finally they request the Commission to grant interim rate relief based upon the Commission's analysis of actual data from Tuscarora's cost and revenue study, subject to further adjustments as may be warranted as a result of the hearing process, as the Commission did in *Southwest Gas Storage Co.*, 47 FERC ¶ 61,286 (1989).

Notices and Responses

14. Notice of the Complaint issued on March 2, 2011, providing for interventions or protests by March 18, 2011. On March 18, 2011 Tuscarora filed an answer. On March 30, 2011, Complainants filed a Motion for Leave to Answer and Answer. The Commission's rules generally do not permit answers to answers. However, the Commission will waive its rule here and accept Complainants' answer since it assisted the Commission in its evaluation of the Complaint. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2010)), all timely filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting

⁶ The Track II Hearing Timeline Complainants refer to is as follows, with all times running from the date of the Commission's order setting the matter for hearing:

Hearing Date	Reply Briefs to ALJ Date	Initial Decision Date
32 Weeks	40 Weeks	47 Weeks

⁷ Complainants state they would not object to permitting Tuscarora to file a separate cost and revenue study which reflects adjustments for changes Tuscarora projects will occur during a time frame which may reasonably be taken into account in this proceeding given the Track II hearing timeline. Complaint at p. 17 n.9.

late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.⁸

Tuscarora's Answer

15. Tuscarora asserts that Complainants have not met their burden to demonstrate that (1) Tuscarora's existing rates are unjust and unreasonable, and (2) their proposed rates are just and reasonable. Moreover, Tuscarora states, even if the Commission were to establish a hearing to address the Complaint, it should deny the other relief requested by Complainants.

16. Tuscarora states that in the past two years the Commission has initiated section 5 investigations against other pipelines based on their Form 2 data but the Commission did not initiate such an investigation against Tuscarora based on the Form 2-A that Tuscarora had filed at that time. Tuscarora argues that Complainants have provided no new information that would suggest that the Commission should revisit that decision not to initiate an investigation against Tuscarora, and therefore, such an investigation would not constitute an efficient use of the Commission's resources. Moreover, Tuscarora argues that Complainants at p. 3 of the Complaint do not even allege that Tuscarora's rates are unjust and unreasonable, merely that the Form 2-A data "raises serious questions" as to whether Tuscarora's rates are just and reasonable.

17. Tuscarora also asserts that the Form 2-A data which Complainants rely upon does not reflect Tuscarora's current financial situation. Tuscarora states that it advised Complainants that its capital structure would be changing, and that the change would have an impact on Tuscarora's ROE. Tuscarora states that in April 2011 it would be submitting its 2010 Form 2-A, and that filing will contain more current data reflecting the change in capital structure. Tuscarora believes this change in capital structure produces a meaningfully different result in Tuscarora's ROE when the data is subjected to the same analysis the Commission used in analyzing other pipelines' Form 2 filings.

18. Tuscarora asserts that it only recently emerged from a settlement rate moratorium, and this fact is another reason that the Commission should exercise its discretion not to investigate Tuscarora's rates based upon the Complaint. Tuscarora notes that no other parties filed in support of the Complaint.

⁸ The following parties filed timely motions to intervene: Shell Energy North America (U.S.) L.P., Plumans Sierra Rural Electric Cooperative, United States Gypsum Co., and Southwest Gas Corp. IGI Resources, Inc., filed a motion to intervene Out-of-Time.

19. Tuscarora argues that even if an investigation is initiated, the Commission must reject the request for interim relief since under NGA section 5 the Commission may not order a change to a pipeline's rates without first holding a hearing.

20. Accordingly, Tuscarora requests the Commission deny the Complaint and all relief requested therein. Tuscarora states that if the Commission orders Tuscarora to submit a cost and revenue study, Tuscarora should be permitted to file a separate cost and revenue study reflecting adjustments for the current period, which Complainants agree should be permitted.

Complainants' Answer

21. Complainants respond that the Commission must reject Tuscarora's contention that since the Commission did not initiate an investigation against Tuscarora while proceeding with investigations against other pipelines, the Commission should adhere to its past decision not to initiate an investigation here. They argue that contention ignores the plain language of NGA section 5 which allows the Commission to initiate an investigation either on its own initiative or upon a complaint.

22. With respect to Tuscarora's contention that "Complainants do not even allege that Tuscarora's rates are unjust and unreasonable, merely that the Form 2-A data 'raises serious questions,'" they respond that while Form 2-A data are adequate to establish that there is "a sufficiently serious question" to justify an investigation, the justness and reasonableness of the pipeline's rates cannot be determined on the basis of Form 2-A data alone. Accordingly the Commission requires the pipeline to file a cost and revenue study at the outset of a section 5 proceeding which will provide further information on which the issues can be determined.

23. Complainants refer to Tuscarora's contention that its capital structure has changed in 2010 so the ROE results for the prior years no longer apply based on Tuscarora's April 2011 Form 2-A filing. Complainants argue that even if Tuscarora's capital structure was changed from 40 percent equity to 70 percent equity, as noted in Dr. Makholm's affidavit, the change in Tuscarora's capital structure "will not eliminate the over-collection by Tuscarora" and "could be addressed in a number of ways, such as the use of a hypothetical capital structure." (Dr. Makholm affidavit P 14).

24. Complainants argue that they are seeking interim relief based upon the results of the cost and revenue study that Tuscarora is to file. Moreover, that relief could be subject to further adjustment as a result of the hearing process.

25. Finally, Complainants restate that they would not oppose permitting Tuscarora to file a separate cost and revenue study which reflects adjustments for changes Tuscarora projects will occur during a time frame which may reasonably be taken into account in

this proceeding given it will be subject to the Track II Hearing Timeline, consistent with the Commission's recent *Kinder Morgan* order.

Discussion

26. Complainants have raised serious questions as to whether Tuscarora's current rates allow it to recover revenue substantially in excess of its costs. For example, the Complainants' analysis of the Form 2-A data Tuscarora filed for the years 2008 and 2009 indicates that Tuscarora's ROE was 22.2 percent for 2008 and 27.2 percent for 2009.

27. In its answer, Tuscarora does not dispute Complainants' allegations concerning the years 2008 and 2009. In addition, Tuscarora does not indicate that there have been any significant changed circumstances on its system since 2009 that would affect the justness and reasonableness of its rates, except for a change in its capital structure. The data in Tuscarora's 2010 Form 2-A shows revenues and costs comparable to the revenues and costs in Tuscarora's 2008 and 2009 Form 2-As.⁹ As the Complainants recognize,¹⁰ and as shown in Tuscarora's recent Form 2-A filing, during 2010 Tuscarora adjusted its capital structure from approximately 30 percent equity to 70 percent equity. However, the Commission does not view this one change, without any other significant change in Tuscarora's costs and revenues, as a sufficient reason not to exercise our discretion to initiate an investigation of Tuscarora's rates under NGA section 5 in light of the unrefuted contentions by Complainants regarding Tuscarora's potential over-recovery of its cost of service. The Commission has long recognized that an equity-rich capital structure increases costs to ratepayers,¹¹ because a pipeline's cost of equity is higher than its cost of debt. Therefore, while the Commission makes no findings in this order concerning the reasonableness of Tuscarora's current capital structure, the Commission finds that this issue, together with all other issues concerning the reasonableness of Tuscarora's rates, warrants investigation at a hearing.

28. We find no merit in any of the other arguments advanced in Tuscarora's answer why the Commission should not initiate an investigation here, regardless of what the data shows. Specifically, the fact that the Commission initiated investigations of other pipelines based upon their 2008 or 2009 Form 2s but did not initiate an investigation of Tuscarora based on Tuscarora's filings in those years is irrelevant to the issues presented by the Complainants here.

⁹ Tuscarora filed its 2010 Form 2-A on April 18, 2011.

¹⁰ Complainants' Answer at 5

¹¹ See *Transcontinental Gas Pipe Line Corp.*, 71 FERC ¶ 61,305 (1995); see also Opinion No. 414-A, 84 FERC at 61,412.

29. Accordingly, for all the reasons outlined above, the Commission will initiate an investigation to examine the justness and reasonableness of Tuscarora's rates pursuant to section 5 of the NGA and set the matter for hearing. Among the issues to be addressed is whether Tuscarora's current capital structure with 70 percent equity, is appropriate, and whether a change should be ordered to produce a just and reasonable rate.

30. As the Commission has done in other cases initiating section 5 investigations of a pipeline's rates, *supra*, n.4, it directs Tuscarora to file a cost and revenue study based on cost and revenue information for the latest 12-month period available. The filing shall be made within 75 days of the date this order issues and include all the schedules required for submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations.¹² Because the Commission is seeking actual cost and revenue information, the Commission provides the following clarification as to the data to be filed by Tuscarora. The information submitted by Tuscarora must exclude any adjustments or projections that may be attributable to a test period referenced in the schedules and statements set forth in section 154.312 of the regulations. Thus, Tuscarora should not file nine months of post-base period adjustment data required by section 154.303(a) at this point in the proceeding. Additionally, because Tuscarora does not have an NGA section 4 burden in this section 5 proceeding and will be filing testimony in response to other parties, Tuscarora does not need to file the Statement P required by section 154.312(v) of the Commission's regulations at this juncture.¹³ However, as we have done in other recent section 5 proceedings, with the cost and revenue study required by this order for the latest 12-month period available, Tuscarora may include a separate cost and revenue study that does reflect adjustments for changes Tuscarora projects will occur during a time frame which may reasonably be taken into account in this proceeding, as established in the following paragraph. Given this expedited hearing schedule, this abbreviated adjustment period should be limited to approximately a four month period after the 12-month base period, to permit the parties to perform discovery and prepare testimony for the hearing based on actual data for this test period.¹⁴

31. Finally, due to the potential for continued over-recovery of revenues, the Commission will establish a date for an initial decision from an administrative law judge. Such a date will expedite the proceeding. We believe that conducting the hearing in this case pursuant to the Administrative Law Judges' Track II Hearing Timeline as

¹² 18 C.F.R. § 154.312 (2010).

¹³ See *Pub. Serv. Comm'n of New York*, 115 FERC ¶ 61,368, at P 6 (2006).

¹⁴ For a detailed explanation why the adjustment period in the section 5 proceeding differs from the adjustment period in a section 4 proceeding see *Kinder Morgan*, 134 FERC ¶ 61,061 at P 34-51.

Complainants requested and Tuscarora is agreeable to, is reasonable, with an initial decision to issue within 47 weeks of the designation of the presiding judge. The Commission will not act on Complainants' request for interim relief based upon the cost and revenue study until after Tuscarora has filed that study.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Natural Gas Act, particularly section 5 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Natural Gas Act, a public hearing shall be held concerning whether Tuscarora's rates are unjust, unreasonable, or otherwise unlawful.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose pursuant to 18 C.F.R. § 375.304, shall, within thirty (30) days of the date of this order, convene a prehearing conference in these proceedings in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference shall be held for the purpose of clarification of the positions of the participants and consideration by the presiding judge of any procedural issues and discovery dates necessary for the ensuing hearing. The Presiding Administrative Law Judge is authorized to conduct further proceedings in accordance with this order and the Commission's Rules of Practice and Procedure.

(C) The Commission directs that the hearing be conducted pursuant to the Track II Hearing Timeline and that an initial decision be issued in this proceeding within 47 weeks of the designation of the presiding judge, as discussed in the body of this order.

(D) Tuscarora shall file a cost and revenue study within 75 days of this order. The filing should include only actual data for the latest 12-month period available as of the date of this order. The filing should include all of the schedules required for the submission of a section 4 rate proceeding as set forth in section 154.312 of the Commission's regulations (18 C.F.R. § 154.312), but not Statement P. With the cost and revenue study Tuscarora may include a separate cost and revenue study which does reflect adjustments for changes Tuscarora projects will occur during a time frame which may reasonably be taken into account in this proceeding, as established in this order.

(E) Any person wishing to become a party to this proceeding must file a notice of intervention or motion to intervene, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214). Such notice or motion must be filed within 30 days of the date of this order. The Commission encourages electronic submission of interventions in lieu of paper using the "Efiling" link

at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

By the Commission. Chairman Jon Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.