

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2015-00041

September 21, 2015

NORTHERN UTILITIES, INC. d/b/a UNITIL
Proposed Cost of Gas Factor
for May 2015 – October 2015

ORDER ON DELIVERY
SERVICE REFUND

VANNOY, Chairman; MCLEAN and WILLIAMSON, Commissioners

I. SUMMARY

The Commission requires Northern Utilities d/b/a/ Unitil (Northern) to return the refund from Portland Natural Gas Transmission System (PNGTS) to Delivery Service customers or their designated marketers in a one-time lump-sum cash refund based on the historic period during which refund-eligible rates were charged by PNGTS under Federal Energy Regulatory Commission (FERC) regulations, as calculated in this record, and with applicable interest. Northern should make this refund as soon as possible but no later than two-weeks after the issuance of this Order. Northern shall also make a compliance filing showing the calculation and amount of the refund by marketer and for any individual Delivery Service Customer that paid the Capacity Assignment Rate during the period that rates subject to refund were charged during the PNGTS 2010 case before the FERC.

II. PROCEDURAL HISTORY

A. Brief Procedural History

On February 17, 2015, pursuant to 35-A M.R.S. § 4703 and Chapter 430(2) of the Commission's Rules, Northern filed its proposed Cost of Gas Factor (CGF) for the 2015 summer gas usage period. On April 9, 2015, Northern filed an update to its proposed CGF filing which included its proposal to return the rate refund received from PNGTS over a 3-year period due to the size of the refund. On May 12, 2015, we issued an Order in this docket determining that the PNGTS refund should be flowed back to Sales Service customers over a 3-year period through the calculation of the demand rate and that the refund should be flowed back in decreasing proportions of 50%, 30% and 20%. The decreasing proportionate amounts over the 3-year period counter-balanced allowing Northern to apply the short-term borrowing rate to the unrefunded balance. In our May 12th Order, we deferred decision on how, and the period over which, the PNGTS refund should be returned to Delivery Service customers and the marketers who supply them until further discovery was completed in this proceeding.

On May 12, 2015, the Hearing Examiners issued a Procedural Order seeking detailed information on how Northern billed the demand costs charged by PNGTS to Delivery Service customers and the marketers that served them during the period in

which PNGTS charged higher rates subject to refund under its pending FERC rate case proceeding, RP10-729. On May 29, 2015, Northern filed its responses to the Procedural Order information request. The Commission Staff and Global Montello Group Corporation, and Sprague Operating Resources LLC (Global/Sprague) each issued additional data requests to which Northern responded. A technical conference was held on July 16, 2015, during which parties further examined the issues related to the PNGTS refund. At that conference, both the Office of the Public Advocate (OPA) and Global/Sprague indicated that they wanted the opportunity to file direct testimony on the issue. The Hearing Examiner set a filing date of July 21, 2015, which both parties met. Northern and Global/Sprague both issued data requests on the direct testimony to which the witnesses responded. On July 28, 2015, a technical conference was held to further investigate the positions put forth in the intervenor testimony.

On August 3, 2015, the Hearing Examiners issued an Examiner's Report recommending that Northern return the PNGTS refund to the Delivery Service customers' marketers and individual Delivery Service customers who self-purchase gas supply. The August 3rd Examiner's Report recommended that the refund be made through a reduction in the Delivery Service demand costs over a 3-year period, also in declining increments of 50%/30%/20%.

On August 3, 2015, the OPA filed Exceptions to the Examiner's Report stating its agreement with, and support for, the Examiner's recommendation to require Northern to distribute the PNGTS refund to Delivery Service customers and their marketers as a credit to the demand rate over a 3-year period. The OPA stated that this method of distributing the refund is the most fair to all of Northern's customers, follows Commission precedent in previous refund cases involving Northern, and promotes rate stability.

On August 4, 2015, Northern filed a letter responding to the Examiner's Report stating that Northern believes that the Examiner's recommendation is reasonable and provides for a fair methodology for returning the PNGTS refund to Delivery Service customers.

On August 5, 2015, Global/Sprague filed Exceptions to the Examiner's Report stating that the Examiner's recommendation not to return the refund in a one-time payment to marketers and Delivery Service customers that self-purchase gas supply is arbitrary, unreasonable, and not supported by the evidence adduced during this phase of the proceeding.

B. Procedural Issues Regarding Energy Express Inc.

On August 5, 2015, Energy Express, Inc. d/b/a Metromedia Energy, Inc. (Energy Express) filed a late Petition to Intervene. In its August 5th Petition, Energy Express stated that it "understands that this petition comes at the eleventh hour; however, Energy Express did not recognize the severity or impact of the Commission staff's contemplated course of action until the Examiner's Report dated August 3, 2015 was issued." Energy Express further requested that, if its Petition to Intervene were granted,

the Commission consider its Exceptions. Prior to filing its August 5th Petition, counsel for Energy Express sent an email to the parties in this case notifying them of Energy Express' intentions. In a responsive email, counsel for Northern strenuously objected to Energy Express' stated intention and asserted that Energy Express' petition would be "grossly delinquent" and "entirely inappropriate."

The Hearing Examiners granted Energy Express' August 5th Petition, subject to the condition that Energy Express must accept the record and procedural schedule as they currently stand, and allowed Energy Express to file Exceptions to the Examiner's Report. The Examiners also cautioned that Energy Express should not attempt to introduce new evidence into the record of this proceeding through its Exceptions and the Commission may assign appropriate and due weight to the statements made in Energy Express' late-filed submission in this matter.

On August 6, 2015, Energy Express filed its Exceptions to the Examiner's Report. In those Exceptions, Energy Express disagreed with the Examiner's conclusions. Energy Express stated that the Commission is required under 35-A § 1309 to order Northern to issue Energy Express a direct refund as reparation for Northern having charged an excessive rate and that a direct refund to marketers is the simplest and fairest solution. Energy Express also noted that three key facts were established in this proceeding: 1) Northern can easily identify the amount of the refund due each marketer; 2) the fairest solution for marketers is to issue direct refunds; and 3) the risk of double recovery by certain Delivery Service customers is minimal. Energy Express argued that there is no guarantee that marketers would recover the amounts they had paid in past years under the Examiner's Report's recommended forward-looking refund methodology. Energy Express cautioned that this mismatch would result in a windfall for some marketers while others would be short-changed. Energy Express stated that its unique situation provides the clearest example of the shortcomings of the recommended result in the Examiner's Report. Energy Express participated in the market throughout the PNGTS rate case, thereby paying Northern a higher capacity assignment rate, but in September 2014, Energy Express exited the Maine market. In its Exceptions, Energy Express argued that if the Commission now decides to issue the refund prospectively through lower rates, Energy Express would forgo the entire amount it was overcharged. Energy Express contended that this would be an unfair result, especially considering that the exact dollar amount that Energy Express overpaid is not in dispute. On August 6, 2015, the OPA filed an Objection to Energy Express' Exceptions asserting that Energy Express' Exceptions had introduced new information into the record in violation of the Hearing Examiner's direction. Accordingly, OPA moved to strike the Energy Express' Exceptions pursuant to the Maine Rules of Civil Procedure, Rule 12(f). Northern also filed a letter supporting the OPA's objections.

On August 7, 2015, Energy Express filed a response to the OPA's Objection asserting that it did not introduce any new evidence into this proceeding. Energy Express pointed out that it is named on the list of marketers that were charged the higher capacity assignment rate that Northern provided in response to EXM-007-002. Northern's response also showed that Energy Express exited the market, effective October 1, 2014. Energy Express also observed that Northern has already calculated

the amount overpaid by each marketer for each year that the higher capacity assignment rate was in effect. Northern's Response to EXM-007-004 & Attachments 1-5.

The Commission deliberated these issues on August 11, 2015.

III. BACKGROUND AND POSITIONS OF THE PARTIES

A. Issues Raised in this Docket

The FERC Order concluding PNGTS's 2010 rate case, RP10-729, resulted in a substantial refund to Northern, estimated at \$22 million, with approximately 52% allocable to Maine customers. Two issues related to the calculation and return of the refund were addressed in our May 12, 2015 Order in this docket. First, the Commission found that the method for the allocation of the refund amount between the Maine and New Hampshire Divisions was reasonable. Second, the Commission determined that the refund should be returned to Sales Service customers over a 3-year period, at the rate of 50%, 30% and 20% per year with any non-refunded balances earning a return at Northern's short-term interest rate. The Commission deferred decision on the question of how to implement the refund to Delivery Service customers due to the objections of Global/Sprague to the Company's proposal. The Commission decides these issue herein.

B. Parties' Proposed Refund Methodologies

1. Northern's Proposal for the Delivery Service Refund

Northern proposed to return the refund to all customers, including Delivery Service customers over a 3-year period as an offset to demand costs. Northern argued that, by doing so, the refund would be returned in a manner similar to how the higher PNGTS demand costs were charged to those customers. Demand costs are included in the calculation of the Maine Division Capacity Assignment Rate charged to capacity assigned Delivery Service customers or their supplying marketers. The incorporation of the refund in the Capacity Assignment Rate would reduce the charge by offsetting estimated demand costs by the amount of the refunds in each upcoming Winter Period.

Northern argued that its proposed method for return of the PNGTS refund to customers is consistent with the direction given by the Commission in past Orders addressing PNGTS litigation costs and refunds and with the 2013 refund from PNGTS's 2008 rate case, RP08-306, which was based on the facts and issues present in that docket at that time.¹ Specifically, the PNGTS refund was to be returned to customers

¹ See, *Northern Utilities, Inc. d/b/a Unitil, Proposed Cost of Gas Factor, 2011 – 2012 Peak Period*, Docket No. 2011-00279; *Northern Utilities, Inc. d/b/a Unitil, Request for Approval of 2013 – 2014 Peak Cost of Gas Factor*, Docket No. 2013-00417; and *Northern Utilities, Inc. d/b/a Unitil, Proposed Changes to Northern's Retail Choice Program and Northern Utilities, Inc. d/b/a Unitil, Request for Approval of Cost of Gas Filings*, Docket Nos. 2014-00132 and 2014-00247.

in the same manner in which the costs were incurred, as offsets to demand costs in proportion to the Off-Peak and Peak rate allocations. In these Orders, the Commission found that the return of the refund in this manner results in all parties who paid the higher PNGTS demand costs during the 4-year pendency of the proceeding getting the benefit of the refund through reduced future demand rates, in the case of Sales customers, and in reduced capacity assignment charges for Delivery Service customers and the marketers that supply commodity to them.² The Commission determined for the Sales Service refund in this case, where there is a particularly large refund to distribute, that a 3-year refund period achieves more stable rates during and after the refund period than would the 12-month cost of gas offset directed by Chapter 430.

The Examiner's Report supported Northern's proposed treatment of the refund but would have required the PNGTS refund to be returned over the 3-year period in declining increments of 50%, 30% and 20%, similar to how the refunds were to be treated for Sales Service customers. As with the Sales Service refund, tapering the refund proportions over the 3-year period would avoid large rate jumps, return most of the refund in the two earlier years to reduce the time ratepayers must wait to recoup this benefit, and counter balance the use of a short-term interest rate by Northern on the held-over amounts rather than a higher carrying cost that might be more appropriate for a longer-term transaction.

2. Global/Sprague and Energy Express

Global/Sprague contended that the refund methodology in the Examiner's Report is unreasonable, unduly complex and will not refund the correct amounts to the correct parties. Global/Sprague further argued that the Examiner's recommended refund methodology resolves neither the OPA's nor Staff's purported concerns about ensuring that the refund was returned to customers, not marketers, because a credit to the demand charge is only, in fact, a refund to marketers. Global/Sprague requested that the Commission find that refunding marketers in a one-time payment is appropriate in light of regulatory policy, law and economic theory, will encourage competitive markets, will not harm customers, and is therefore just and reasonable.

² Chapter 430 addresses supplier refunds to be included as an adjustment to the cost of gas rate and not as part of the calculation of the Delivery Service or Capacity Assignment rate. If so interpreted, this calculation would not return any monies directly to Delivery Service customers or their marketers as it would be outside the calculation of the estimated demand costs for the upcoming period. Because Chapter 430 predates the development of capacity assignment and neither the Settlement in Docket No. 2005-00087 establishing capacity assignment nor Northern's Delivery Service Terms and Conditions address how supplier refunds to this group of customers should be handled, the Commission's past handling of the PNGTS refund was meant to address the oversight and ensure that all customers get benefits from the refunds. No party objected to the Commission's Orders directing the method that was used.

Alternatively, Global/Sprague requested that the Commission direct Northern to apply the PNGTS refund as a prospective credit to Capacity Assignment demand rates over a 12-month period with interest in accordance with Northern's terms and conditions of service and Chapter 430 of the Commission's Rules. Global/Sprague also maintained that no waiver of Chapter 430 should be granted if Global and Sprague's one-time refund payment proposal is not adopted as good cause for a waiver of the Rule to allow a 3-year refund period for Delivery Service customers and their marketers has not been demonstrated.

Global/Sprague argued that the refund should be returned to marketers serving Delivery Service customers equivalent to the charges that were paid based upon the Delivery Service customers' historic assigned TCQ because, they contend, the marketers were the entities that actually paid the higher Capacity Assignment Rate and not the Delivery Service customers. Global/Sprague contended that the contractual charges between them and their customers were set based on market and service cost considerations including the capacity assignment demand charge in effect at the time the contract was established. Therefore, the amount recovered by the marketers from customers may have differed from the amounts charged to the marketers by Northern. Global/Sprague and Energy Express argued that Northern's proposed method of returning the refund through a reduction in demand costs in future rate periods will not refund the actual amounts paid by the marketers due to differences in the marketers' future customer load from their actual customer load during the period the higher PNGTS rates were in effect. In addition, Energy Express notes that it would receive none of the refund under Northern's forwarding looking demand charge proposal because it has now ceased offering service in Maine.

Global/Sprague argued that the marketers bore the price risk of serving capacity assigned Delivery Service customers, paid Northern's Capacity Assignment Rate, and now should reap the benefit of a lump-sum refund of the amount that Northern has received under the FERC order. The marketers argued that the amounts that they were charged by Northern during the time the PNGTS's FERC rate case was pending, and the amounts each marketer should be refunded, have been calculated by Northern and should be returned in lump sum to each marketer. Global/Sprague argued that refund amounts based on historic usage and charges will accurately reflect the proportion of higher PNGTS costs that were borne by the marketers or the capacity assigned Delivery Service customers they served during the 4-year period. However, Global/Sprague indicated that their contractual pricing terms can vary for each customer and Global/Sprague have not confirmed on this record the extent to which the higher PNGTS costs were already recovered by the marketers from those customers under their contractual terms. In response to ODR-003-001 and ODR-004-001, Global and Sprague, respectively, estimated that none of its customer contracts would require it to specifically refund any dollars back to its customers, although both indicated that if there were contracts that required such refunds the contract management would ensure compliance with those provisions.

IV. DISCUSSION AND DECISION

The Commission confronts a variety of refunds in the rate-making process, both with natural gas utilities and across the spectrum of regulated utilities, including water and electricity. How to fairly and equitably return refunds to those who paid the charge typically involves consideration of large, traditionally-regulated classes of customers. This exercise typically also relates to refunds that have accrued over long periods of time in the past during which numerous changes in the particular customers making up the class have occurred. In many cases, the per-customer refund amount is relatively small, but this amount, multiplied across the class, results in a total amount that is quite large.

The case before us presents a different set of circumstances than what the Commission has faced to date. Because this case raises new issues that have not been raised in previous refund proceedings, the Commission held this docket open to consider and rule on these new aspects. Specifically, the refund here would be for Delivery Service customers that have elected to take supply from competitive marketers, rather than the utility. These marketers act as the agents for the Delivery Service customers in handling the capacity assignment resources they are allocated under Northern's Terms and Conditions and also make their own arrangements for supplying these customers. These Delivery Service customers enter private, unregulated contracts with marketers that establish the terms of the Delivery Service customers' service and the prices for it. Therefore, these customers are purchasing supply in the competitive market at prices negotiated with the marketers. This is a very different model of service than the regulated cost-of-service model that governs the utilities' Sales Service classes, that include many customers with variable usage, which makes individual refunds for those classes administratively impracticable. Consistent with the precedent cited in the Examiner's Report, we approved a 3-year phased 50%/30%/20% refund as a credit to demand charges in future cost of gas factor rates for the Sales Service classes. While that standard refund treatment is appropriate for classes with numerous customers, it is not necessarily appropriate for the Delivery Service customers that seek individual refunds here.

In contrast to the Sales Service classes, the total number of customers who directly paid these PNGTS transportation charges to Northern as part of Northern's Delivery Service charge is quite small. The amounts accruing to them for refund are, however, quite large – in the order of hundreds of thousands of dollars for some marketers. In addition, Northern has historical billing information and can, without accounting difficulties, calculate the actual money owed to each party. This provides the opportunity to directly address the question of equity in a very straightforward manner. Direct payment can be made based on historical billing.

Promptness in returning the refund ensures that the effects of time are minimized. That is, acting sooner ensures that the refunds actually go to the marketers who were affected, with less opportunity for churn into or out of the small customer group. There is no certain benefit to anyone identified in arguments of the proponents from delayed, or phased return of the refund amounts over 3 years. In fact, one could

as easily argue that 4, or 5 years, would have more presumed impact on the adjustment but all this extension would accomplish is that of this group of seven marketers who were affected, there might be one or two (of the original) marketing customers remaining after several years, and then the economic benefit of refund would have been dissipated.

A further critical distinguishing feature, as described above, is that Global/Sprague and the other marketers serving capacity assigned Delivery Service customers are entities that operate in a competitive market and serve capacity-assigned Delivery Service customers under privately negotiated contractual arrangements over which the Commission has limited, if any, regulatory access or control. The Commission's role in regulating utilities is to establish reasonable rates and safe and adequate service for core utility customers. OPA argued that the Commission's function and focus should be to adhere to regulatory principles that ensure stable and reasonable rates and service structures for all Sales and Delivery Service customers. While the Commission agrees with these tenants of the regulatory process, the Commission is not charged with addressing the risk balance between certain customers and their competitive suppliers which are served under terms negotiated privately.

The question is raised in the record that, under the marketer's historic refund approach, the refund will not necessarily flow to the end users of the gas. We believe that, if one takes a long view of the competitive market, the value of such refunds does reach the end user. The marketers offer a blended competitive energy product to their end users. The marketers take risk in the products they offer and cover that risk with various hedging strategies. They operate in a competitive market, not a regulated cost-of-service market. They offer their customers value and absorb risks that their customers prefer not to take. The end user, if they do not like the products offered to them by marketers, have every opportunity to take a cost-of-service type rate by opting for Sales Service. Those who do not take Sales Service clearly see value in the energy products marketers are offering.

The Commission should not impose a traditional regulatory cost-of-service model refund solution that is suited to large, ill-defined ratepayer classes on this well-defined group of Delivery Service ratepayers given that they have selected the competitive service option. Regulatory certainty is important for those customers that take traditional bundled Sales Service, but is not as applicable to those customers who avail themselves of the options that the competitive market has to offer. The competitive option is, by its nature, a model based on private, contractual arrangements whose balance of risk and reward is unregulated. The Commission must adhere to regulatory principles where they apply, and avoid application of directed outcomes where the Commission has authorized a market-based option as available to natural gas consumers. The Commission decides here not to impose a regulatory solution on a free market arrangement which was voluntarily entered into by these Delivery Service customers and which is distinguished from the service arrangement between a regulated LDC and its Sales Service customers.

Consequently, after careful review of the several proposed ways to provide a refund to marketers and individual Delivery Service customers who self-purchased gas commodity in this case, and the very limited Commission precedent offered by earlier refunds to larger traditionally-regulated classes of customers, the Commission concludes that it is best to facilitate the prompt refund of the amount received by Northern to this small group of customers and their marketer agents.

A. Migration from Delivery Service to Sales Service During 3-Year Sales Refund Period

During this proceeding, parties expressed a concern that returning the PNGTS refund to the marketers over a 1-year period while returning the refund to Sales Service customers over a 3-year period could result in some customers moving from Delivery Service to Sales Service to reap the benefit of the refund twice. In response to EXM-005-002, Northern stated that it believes that any Delivery Service customer, other than the Portsmouth Naval Shipyard (a particularly large Delivery Service customer which recently migrated to Sales Service), that switches to Sales Service will have made that decision for reasons other than the PNGTS refund. The Commission accepts that this could be the case for many Delivery Service customers, but recognizes that reduced Sales Service cost of gas rates could play a role in such a decision.

While there is a chance that Delivery Service customers could switch to Sales Service in an attempt to achieve a double refund, the risk is small and any policies or procedures put into place to prevent such switching could be excessively burdensome for Northern to implement and may unfairly tie the hands of Delivery Service customers who have evaluated all alternatives in their gas supply and want to switch for other business reasons. Furthermore, Northern indicated that it can calculate the Capacity Assignment Rate on a going-forward basis to reflect any differences in how the refund is handled for Delivery Service and Sales Service customers, to assure that the Capacity Assignment Rate is not reduced going forward under a decision to issue a one-time refund to Delivery Service customers and their marketers.

V. CONCLUSION

The Commission directs Northern to refund to Delivery Service customers and their marketers as a one-time payment as calculated in this proceeding. The Commission also grants a waiver of Chapter 430 to allow the return of the PNGTS refund as a one-time payment to Delivery Service customers and their marketers, rather than over a 1-year period as required by the Rule.

Accordingly, the Commission

ORDERS

1. That Northern Utilities, Inc. d/b/a Unitil shall calculate the difference in the Capacity Assignment Rate paid by marketers and individual Delivery Service customers who self-purchased gas commodity during the period the PNGTS 2010 rates subject to refund were charged and the final rates approved by the

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.