

M I N U T E S

SPECIAL COMMITTEE ON JUDICIARY

August 23, 1976

Members Present

Senator J. C. Tillotson, Chairman
Representative Dave Heinemann, Vice-Chairman
Senator Vincent Moore
Representative Fred Lorentz
Representative Philip Martin
Representative Neal Whitaker
Representative Richard Brewster

Staff Present

Walter Smiley, Kansas Legislative Research Department
Art Griggs, Revisor of Statutes' Office

Conferees

Mr. Dean Borth, Meade, Kansas
Mr. Ches Barstow, Rush, Colorado
Mr. C. M. Boyer, Kinsley, Kansas
Mr. Ron Goodnight, Lakin, Kansas
Mr. Steve Morris, Hugoton, Kansas
Mr. Wylie Gore, Elkhart, Kansas
Mr. Bernie Nordling, Hugoton, Kansas
Mr. Gene Shore, Johnson, Kansas
Mr. Ron Ebansen, Northwest Kansas Irrigation Assoc.
Mr. Dean Rohrer, Hugoton, Kansas
Mr. Roland Jackard, Sublette, Kansas
Mr. George Sims, Mobil Oil
Mr. Butch Pyle, Greensburg
Mr. Robert Schroeder, Amoco Production Company
Mr. Herbie Clawson, Haskell County

Morning Session

Proposal No. 26 - Natural Gas for Irrigation

The Chairman called the meeting to order at 10:00 a.m. and made a few opening remarks.

The first conferee was Mr. Dean Borth. He reported that he pays \$129 per day for propane to run one irrigation pump on 320 acres. He said that his contract with Northern Natural Gas Company allows a domestic gas tap, but Northern has defined irrigation as an industrial purpose, which means that Mr. Borth cannot have a gas tap for irrigation. He noted that the Federal Power Commission (FPC) told him to use an alternate fuel. Because irrigation is considered an industrial use of gas, Mr. Borth noted that his irrigation costs amounted to \$2.50 per bushel of corn and at that rate, and at present corn prices, he has to make 51 bushels per acre to break even.

In response to a question, Mr. Borth said that he pumps 2,200 gallons of water per minute from a depth of 240 feet. He further noted that he signed his existing contract in 1966.

Mr. Ches Barstow was the next conferee. He said that he owns some land in Edwards County which has gas production. He stated that his contract allows the use of gas on his own land for "development," but the gas company has refused to allow a gas tap. Mr. Barstow noted that the company has claimed that its gas is interstate only.

The next conferee was Mr. C. M. Boyer, who said that a gas line constructed expressly for irrigation purposes crossed his land, and the easement he granted the company allows gas taps as needed for agricultural purposes. Mr. Boyer noted that Kansas-Nebraska Natural Gas Company had refused to hook up a new irrigation well earlier this year, claiming the gas was unavailable. As a solution, Mr. Boyer said he hooked up his own gas well. In his view, Kansas-Nebraska is violating an easement agreement. In response to a question, Mr. Boyer said he had taken no legal action as yet. Mr. Boyer said that he will send the Committee a copy of his contract and his easement, along with responses from Kansas-Nebraska Natural Gas.

Mr. Ron Goodnight appeared before the Committee and said that in 1967 the company paid 13¢ per thousand cubic feet (mcf) for natural gas at the wellhead, yet he had to pay 35¢ per mcf to purchase gas produced on his own land. He also had to pay a \$350 installation charge plus a \$60 per year service charge. In August, 1976, his service charge increased to \$180 per year. Mr. Goodnight said that he now pays about 24¢ per mcf for natural gas.

Mr. Goodnight supported the idea of renegotiating contracts on deeper zones of gas production. He said that in the 1930's, the Hugoton gas field was estimated to have a life of 20 years, and was dedicated to interstate use for the life of the field. Since the field has lasted longer than the initially projected 20 years, Mr. Goodnight thought contracts originally negotiated for the life of the field should be renegotiated.

Mr. Steve Morris commented on the different rates paid by farmers for natural gas. He said that he pays 75¢ per mcf to Panhandle Eastern. He said he could purchase gas from Mobil for about 24¢ per mcf. He noted that companies explain this disparity by referring to expanded services provided by the companies which require a higher price. Fueling one engine to irrigate 80 acres costs him about \$40 per day, when he must purchase gas at 75¢ per mcf. Mr. Morris said that historically Mobil has been more cooperative in providing hook-ups and in giving the wellhead price, but the farmer must agree to certain conditions in order to obtain a Mobil lease. According to Mr. Morris, Panhandle Eastern will provide no further gas taps even though gas wells are located on the farmer's property. He noted that gas companies vary as to tapping policies; often the companies reserve judgement about allowing a tap until the FPC acts. Thus, the company awaits an FPC decision so, in Mr. Morris' view, the company stalls.

Mr. Bernie Nordling noted that the Federal Power Commission sets the priorities for curtailment, not the priority of use, and these are set only after a hearing. He noted that the FPC has jurisdiction over the sale of natural gas for resale in interstate commerce. The FPC has no jurisdiction over wellhead taps for irrigation purposes, according to Mr. Nordling. He noted that Mobil, Amoco, and Cities Service Oil all continued to hook up irrigators. He reinforced the view that the companies do vary in hooking up irrigators, due to edginess over FPC decisions.

Mr. Gene Shore was the next conferee. He submitted a copy of an article from the Guymon, Oklahoma Daily Herald of August 17, 1976. (See Attachment 1.) The clipping lists proposed customers of Northern Natural Gas who were recently refused hook-ups by the FPC. Mr. Shore cited this as evidence of the need for legislation to allow farmers with gathering lines on their property or with gas wells to hook up irrigation pumps to such gas supplies. Less than 2 percent of the total natural gas produced in Kansas is used for irrigation purposes, according to Mr. Shore.

In reference to deeper zones, Mr. Shore recalled that at the last meeting someone noted that gas may not be found at deeper levels. He noted that in his area, gas is found at 2,400 to 2,500 feet below the surface. He noted that about 30 deep wells were drilled in the Panoma Council Grove gas field, and only one was found to be dry. Mr. Shore felt that a 25-year period should be sufficient for companies to develop the deeper zones.

Mr. Wylie Gore spoke of the jobs created due to irrigation and feedlots. He also noted that when he asked a gas company to develop a lease on a deep zone which he held, the company said there was no gas there. When he asked the company to release the lease, they complied. Mr. Gore further noted that in the 1930's, when many of the contracts were originally negotiated, the gas companies paid 4¢ to 7¢ per mcf. Presently, they are paying about 14¢.

Mr. Bernie Nordling spoke on S 3422, sponsored by Senators Pearson and Bentsen, which would deregulate natural gas at the wellhead. He noted that this bill was assigned to a committee chaired by Representative Dingel of Michigan, and that this Committee recommended the control of the wellhead price as well as controlling both interstate and intrastate gas. Mr. Nordling noted that President Ford supports deregulation of natural gas, as does the FPC.

Mr. Nordling cited FPC Opinion No. 699, which affects the sale of interstate gas from wells drilled after January 1, 1973. He noted that this opinion raised the price on such gas to 53¢ per mcf for the major companies; the small companies were allowed 130 percent of the majors' price. Mr. Nordling also cited FPC Opinion No. 749, which set the price on gas produced from wells drilled prior to January 1, 1973. As of July 1, 1976, this gas will sell for 29.5¢ per mcf. Certain leases would be allowed a price of 18¢ per mcf. Mr. Nordling said that this opinion has been appealed to the Federal Court of Appeals. He noted that the U.S. Supreme Court had refused to review the FPC's jurisdiction to set prices, specifically referring to FPC Opinion No. 699.

FPC Opinion No. 770 (issued July 27, 1976) affects wells brought into production since January 1, 1975, and sets the price of gas from such wells at \$1.42 per mcf. Mr. Nordling noted that there is a temporary restraining injunction against the enforcement of Opinion 770.

A Committee member asked about S 2125, sponsored by Senator Kennedy, which would provide federal funds to consumer groups for litigation before federal and state regulatory bodies. Mr. Nordling opposed this bill, and discussed the costs of appearing before the FPC.

Mr. Ron Ebansen, Northwest Kansas Irrigation Association, stated that the National Irrigators' Organization is combating the curtailment of irrigators. In response to a question, Mr. Ebansen said that a few years ago, 100 percent of all irrigation wells in Northwest Kansas used natural gas to fuel the pumps. Kansas-Nebraska Natural Gas no longer hooks up irrigation pumps, so he said that probably 70 to 80 percent of the water wells are currently fueled by natural gas. He noted that if the price of natural gas is deregulated, most irrigation farmers would probably go out of business.

Afternoon Session

Mr. Dean Rohrer was the next conferee. He said that he had received a letter from Mobil Oil Company saying that it would cancel irrigators gas taps at any time. Mr. Rohrer noted that there are no alternate fuel sources for irrigators.

Mr. Roland Jackard noted that the eminent domain law has been abused by gas companies. He said that the companies will use land regardless of the landowner's wishes, citing the eminent domain law as their authority.

Mr. Lawrence Wallace noted that Panhandle Eastern pays the royalty owner 13.5¢ per mcf for natural gas, and it charges the irrigator 75¢ per mcf, yet the gas never leaves the farm. He said that over a year's time this amounts to a \$96,000 mark-up (price paid by the farmer over the price paid to the royalty owner). Mr. Wallace said that he pays about \$5.00 per acre for gas alone for prewater a field and the price drops to about \$4.00 per acre for subsequent watering on a Panhandle gas tap.

Mr. Frank Shore noted that it costs the farmer about 50¢ more per bushel to produce corn using diesel fuel than if he used natural gas. In response to a question, Mr. Shore noted that in the Pecos Valley, gas selling for \$1.80 per mcf forced farmers out of the cotton market. He noted that prices would not go this high before Kansas irrigators were forced out of the market.

Mr. Bernie Nordling noted that no court case or federal statute covers the period of dedication of a gas field, although the FPC says that once a field is dedicated it is eternally dedicated.

The next conferee was Mr. George Sims, Mobil Oil. He cited several problems Mobil has had with the FPC. He noted that many gas companies have to pay for the entire cost of their system from the wellhead price of natural gas. He noted that unless Panhandle Eastern charged Mr. Wallace (a previous conferee) 75¢ per mcf, Panhandle could sell him no gas at all, due to an FPC ruling. Speaking personally, Mr. Sims felt the problem to be one of new markets and old contracts.

In response to a question, Mr. Sims noted that different prices among the different companies are due to differing contract provisions.

Mr. Sims noted that 860 billion cubic feet of natural gas are produced per year in Kansas, while 640 bcf are used in Kansas. The difference is exported. Approximately 50 percent of natural gas produced in the Hugoton field is consumed in Kansas, although all Hugoton gas is dedicated for interstate use.

As a consequence of the "El Paso decision," irrigation was designated in category 2 for curtailments. This is viewed, he said, as "extraordinary relief." Mobil and Panhandle have classified irrigation as using less than 50 mcf's per day, which gives irrigation a number one priority for curtailment by those companies.

Mr. Frank Shore interjected that irrigators would be satisfied with either a number one or a number two priority for natural gas for irrigation purposes. He reiterated that irrigators do not have a viable alternate fuel supply available.

The next conferee was Senator Don Christy, who spoke from a prepared statement. (See Attachment II).

Mr. Butch Pyle pointed out that five gas transmission lines cross one farm, and none of the companies involved would provide a new hook up for an irrigation well. This meant that he had to purchase diesel fuel at a substantially higher price than natural gas.

Mr. Robert Schroeder, Amoco Production Company, said in reference to deeper zones that when gas was selling for 12.5¢ per mcf, Amoco could not afford to drill new wells. They began to drill in 1973, he said, because gas was selling for 42¢ per mcf. At the present price of 53¢ per mcf, Mr. Schroeder said Amoco will drill all the wells it can.

The next speaker was Mr. Herbie Clawson. He emphasized the need for natural gas by grain dryers and feedlots. He cited an occasion when Panhandle Eastern refused to give him a gas tap in exchange for pipeline right-of-way. Panhandle condemned the land through its eminent domain powers and purposely moved the right-of-way to the center of his property. He said the case went to federal court in Wichita, where he was awarded \$46 per rod for the right-of-way. Mr. Clawson thought that the landowner needs the right to tap a gas pipe crossing his property.

Following some discussion concerning "allowables" (a limitation set by the Kansas Corporation Commission on the amount of natural gas to be sold per well per month), it appeared that land owners might have a tap on a pipeline and still not be able to obtain gas. In this case, the "allowables" would operate against the landowner.

In response to a question, Mr. Schroeder said that Amoco is producing gas from deeper zones. He said that Amoco has drilled 410 wells in the past four years in the Council Grove field. Seven of these wells were dry. He said that Amoco has drilled three wells in deeper zones since 1973, and all were dry.

The Chairman thanked all present for their attendance, and adjourned the meeting.

Subsequent to the meeting, Mr. Bernie Nordling made available to the Committee copies of FPC Opinion No. 773, (see Attachment 3) which is discussed in the Guymon Herald clipping.

Prepared by Walt Smiley

Approved by Committee on:

Nov 16, 1976
Date



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'No Growth' Decision Can Still Be Fought

By GARY LOBAUGH
Herald Staff Writer

The Federal Power Commission's denial to grant service to 52 proposed customers on the Northern Natural Gas Co. line probably is not over yet as the FPC has left the door open for appeals to their "no growth" order.

The FPC said in an order dated October 8, 1975 that "at a later date if any of the proposed customers who were denied service should desire to submit evidence to the commission that they are right-of-way grantors with a contractual right of service, who acted in good faith on such agreement and are currently without an alternate

fuel capability, the commission will reopen hearings."

Included on the list of 52 proposed customers that will

most likely be affected by the FPC's recently announced continued denial of service by Northern Natural to the new

customers are 33 applications for irrigation gas, nine for residential heat, six for crop drying, three for feed lot use and one for commercial heat.

The FPC's "no growth" decision last Friday means that these 52 applications for tie ons to the Northern Natural line have been denied unless these 52 customers can prove to the FPC that the denial for service would be detrimental to them. If they can show that in their pipeline easement with Northern Natural, that they granted the right-of-way in consideration for a future tie on with the line, Allen Harris, Assistant State Attorney General, said.

Already one of the proposed customers to the Northern Natural line in Oklahoma has appeared before the FPC and proven that the denial would be detrimental and was granted a tie on. Harris said.

Lloyd E. Tucker appeared before the FPC in October of 1975 when it appeared that he would be denied a tie on with the line and proved to the FPC that it would be detrimental to him to switch to another fuel after he

See DECISION Page 10

Proposed Customers

The proposed customers who were refused a tie on to the Northern Natural line by the Federal Power Commission include:

KANSAS

- Aeschliman, Ezra J.
- Benedict, Claude
- Chmelka, G.C.
- Claar, Ralph
- Clawson, Mary
- Cook, Maye L.
- Cow Country Equip.
- Dick, Frank L.
- Enlow, Elmer A. No. 1
- Enlow, Elmer A. No. 2
- Hammer, Jay C.
- Hammer, Robert D.
- Hawes, Ed
- Heitschmidt, Bobby C.
- Hendricks, William J.
- Henkle, Richard L.
- Huelskamp, Leroy
- Jackson, Doyle
- Jueneman, Paul E.
- Keefer Farms No. 1
- Keefer Farms No. 2
- Keesecker, Willis
- Knoll, Clarence
- Koehn, Andy
- McCaustland, Inc.
- McClure, Frank
- Parrish, Robert E.

- Irrigation
- Res. Heat
- Feed Lot
- Irrigation
- Irrigation
- Irrigation
- Com. Heat
- Irrigation
- Irrigation
- Irrigation
- Irrigation
- Res. Heat
- Res. Heat
- Irrigation
- Irrigation
- Irrigation
- Crop Dryer
- Irrigation
- Irrigation
- Crop Dryer
- Irrigation
- Crop Dryer
- Irrigation
- Irrigation
- Crop Dryer

FPC's recently announced for irrigation... for residential heat... for crop drying... three for feedlot... and one for commercial...
 Included on the list of 52 conditional denial of service by proposed customers that will Northern Natural to the new

Proposed Customers

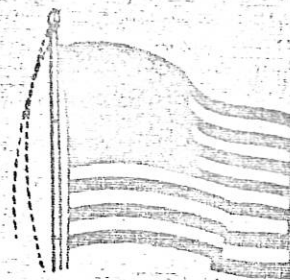
The proposed customers who were refused a tie on to the Northern Natural Gas by the Federal Power Commission include:

Aeschliman, Erv J.	Irrigation
Benedict, Charles	Res. Heat
Chmelka, Frank	Feed Lot
Clear, Fred	Irrigation
Clauson, A. J.	Irrigation
Cook, Mayo L.	Irrigation
Cow Country Eng'g	Com. Heat
Dick, Frank L.	Irrigation
Enlow, Elmer A. No. 1	Irrigation
Enlow, Elmer A. No. 2	Irrigation
Hammer, Jay W.	Irrigation
Hammer, Robert D.	Irrigation
Hawes, Ed	Irrigation
Heitschmidt, Bobby C.	Res. Heat
Hendricks, William J.	Res. Heat
Henkle, Richard L.	Irrigation
Huelskamp, Leroy	Irrigation
Jackson, Doyle	Irrigation
Jueneman, Paul E.	Crop Dryer
Keefer Farms No. 1	Irrigation
Keefer Farms No. 2	Irrigation
Keesecker, Willis	Crop Dryer
Knoll, Clarence	Irrigation
Koehn, Andy	Crop Dryer
McCautland, Inc.	Irrigation
McClure, Frank	Irrigation
Parrish, Robert E.	Crop Dryer
Pheips, Gerald	Crop Dryer
Rich, Thomas W.	Irrigation
S Bar Ranch	Feed Lot
Sessler, Charles W.	Irrigation
Shaw Ranch & Feedlot	Irrigation
Wedel, Delton	Irrigation
Wells, Howard	Res. Heat
Widows, Gilbert	Res. Heat
W-W Feeders	Feed Lot
OKLAHOMA	
Barby, Lloyd R.	Res. Heat
Bunch, Robert	Res. Heat
Hageman, William	Res. Heat
Harell, B.W.	Irrigation
Hiner, Jack	Irrigation
Hiner, H.J.	Irrigation
Jeffus, Worth	Crop Dryer
Kile, Terry	Irrigation
Little, Fred R.	Irrigation
Lotspeich, Troy	Irrigation
Priest, Olen	Res. Heat
Rowley, Edgar	Irrigation
White, Edgar W.	Irrigation
TEXAS	
Orlana, Lunsin	Irrigation
San J. No. 1	Irrigation
San J. No. 2	Irrigation

customers are... for irrigation... for residential heat... for crop drying... three for feedlot... and one for commercial...
 The FPC's "tie-out" decision last Friday... these 52 applications... to the Northern Natural... have been denied... customers can prove to the... that the denial... be detrimental... can show... present...
 Lloyd R. Barby... before the FPC... 1975 when it... would be denied... line and proved to the... it would be detrimental... switch to another...
 See DECISION Page

Alvin D. Clawson 3-20-77
P.O. # 1
Savannah, Ga. 31707

HERALD



Oklahoma 73942

Tuesday, August 17, 1976

1 Section, 10 Pages

To Northern Natural

FPC Issues 'No Growth' Decision In Gas Case

By GARY LOBAUGH
Herald Staff Writer

The Federal Power Commission issued a "no growth" decision to irrigators and grain dryers on the Northern Natural Company line, according to Len Harris, assistant State Attorney General. The FPC's decision no. 733 on

the Northern Natural case no. CP 75-333, only allows Northern Natural to add on customers from whom Northern Natural purchases right-of-way grants when the irrigation gas or grain drying fuel is part of the consideration of the right-of-way grant, according to Harris.

All other proposed customers were denied taps, Harris said.

"This no growth decision will affect a large volume of people, especially in the cattle feed industry," Harris said.

"Out of the 52 proposed new taps for customers along the Northern Natural line, only 11 are denied taps because of right-of-way easements and they were in Kansas," Harris said.

But Harris pointed out, that if these 41 customers do not have a stipulation in their easements with Northern Natural stating that they granted a right-of-way to receive gas from Northern Natural, there could be some problems.

Harris said that if the right-of-way grantors received the key to their easement and mentioned in the contract that they could request gas at a future date, Northern Natural could deny their request.

Harris said that they will have to look at all 41 of the easements to see if the right-of-way grantor is to receive gas as a consideration for the easement.

"This decision adversely affects irrigators and grain dryers in the Oklahoma, Texas and Kansas area and the Attorney General's office is consulting with the Kansas Attorney General's office about an appeal to the Federal Circuit Court in the District of Columbia," Harris said.

"We have 30 days to appeal the decision and I anticipate there will be an appeal," Harris added.

"I feel that this disastrous decision could leave some irrigators and grain dryers with idle investments or force them to turn to other fuels which they cannot afford," Harris said.

The FPC's decision does mean that irrigators on the Northern Natural line cannot request more gas, it means that Northern Natural cannot grant taps to new customers unless the right-of-way easement stipulates that as part of the consideration for the easement, Northern Natural will supply the right-of-way grantor with gas.

Don Christy
Scott City, Kansas
August 23, 1976

MEMBERS OF THE JUDICIARY COMMITTEE

My name is Donald Christy, resident of Scott City, Kansas, and State Senator. I not only own irrigated land that uses 6 irrigation wells but look after other irrigated land that has 3 wells. Three of my wells, and two of those I look after are on natural gas. Three of my wells, and one under management contract are electric. Those on electric are where gas is unavailable.

I am an agricultural engineer of some repute having been recognized by the Mid-Central Section of that society and having served on a U.S.D.A. Agricultural Engineering Committee of A.R.S. I also was asked by the Water Resources Section of the American Society to make a presentation.

I would like to bring out a few points that I believe pertinent.

1. The amount of gas used for irrigation in Kansas has been estimated to be 2% of the Kansas gas production. This is such a small amount that industry and homes should be able to easily reduce their consumption by that amount thus maintaining the present life expectancy of our gas supply.

Much more important, the use of gas for irrigation need not compete for gas during extremely cold weather when schools and factories may be called on to close down due to lack of gas.

2. I asked that K.S.U. make an irrigation energy efficiency study that would relate the energy used to increase irrigated corn production in the corn belt as compared to the equivalent additional production under irrigation in Western Kansas. The use of irrigation, which included the extra fertilizer, extra farm operations, extra harvest cost, extra drying costs, and extra hauling costs, produces twice as much corn per unit of energy as produced in the corn belt by expanding the acreage. Consequently, gas used for irrigation is more than offset by a reduction in the use of other imported fuels.

3. The right to obtain gas from a well on the land or from pipelines across the land has two problems on which I have not heard testimony.

(A) the pipeline may already be overloaded. We have lines in this area that are now badly overloaded. More wells would cause others on the line to stop.

(B) when the line capacity is adequate, a second well needed to maintain the water right, a property right, will not use more total gas than one well. The gas usage per acre foot of water pumped is about the same whether one or many wells are used. In other words, one well pumped over a long irrigation season uses about the same amount of gas as two wells of comparable capacity used half as many hours.

4. Few people realize the fuel delivery problem created by converting from gas to diesel. It might be possible to use the natural gas pipe lines to deliver diesel fuel to the pumps, but until all pumps on the line are converted, all the diesel fuel would have to be hauled.

I have estimated that it would take 225 to 250 millions gallons of diesel to run the irrigation well and one million gallons of fuel to supply the trucks that deliver the fuel.

5. The energy used to produce the raw material and manufacture the diesel engines, the required tanks and trucks needed to replace the present natural gas engines would result in extreme waste of fuel already expended to produce the gas engines that have years of life left. I have an engine that has been on a well almost 30 years (1948). Three years ago I replaced a motor that was installed in 1948.

Don Christy
Page three

6. A lease when made indicates that the lessor intends to use the property efficiently and for the mutual benefit of both parties. It is no more fair to the owner for the lessor to hold the lease to all minerals by producing from one horizon than it would be for a farmer to lease a quarter section of farm land, then hold the whole quarter by farming only 40 acres.

1,200,000 acres

1,800,000 acre feet

43,560 Cubic feet per acre

62.4# per cubic feet.

200 foot lift divided 1.98×10^6 HP Hrs.

Divided 500 million HP Hrs.

$$\frac{175}{25} \times .7 = \text{Engine Eff. } .25 \times \text{Pump Eff. } 7$$

$2,857 \times 10^6$ HP Hrs. divided 12 HP Hrs. per gallon = 235-250 million gallons per year diesel fuel.

750 gallons per truck load fuel. 300,000 truck loads fuel at 14 miles per round trip at 4 miles per gallon on the delivery truck this is about

1,000,000 gallons of fuel used to deliver the fuel to the irrigation wells.

ATTACHMENT III

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

OPINION NO. 773

Northern Natural Gas Company) Docket No. CP75-333

OPINION AND ORDER
MODIFYING INITIAL DECISION

Issued: August 13, 1976

DC-51

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Northern Natural Gas Company) Docket No. CP75-333

OPINION NO. 773

APPEARANCES

David B. Ward, Charles A. Case, Jr., F. Vinson Roach, Daniel B. O'Brien, Jr., and Patrick J. McCarthy for Northern Natural Gas Company

Bennell R. Fullerton for the Federal Power Commission

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Richard L. Dunham, Chairman;
Don S. Smith, John H. Holloman III,
and James G. Watt.

Northern Natural Gas Company) Docket No. CP75-333

OPINION NO. 773

OPINION AND ORDER
MODIFYING INITIAL DECISION

(Issued August 13, 1976)

This proceeding involves an application under Section 7(c) of the Natural Gas Act by Northern Natural Gas Company for a certificate of public convenience and necessity authorizing the construction and operation of 52 sales measuring stations in the States of Kansas, Oklahoma and Texas. Of the 52 measuring stations involved 41 are proposed to be used for delivery of gas to customers who have granted Northern right-of-way easements for its pipelines across their properties. The proposed sales would be made through the Peoples Natural Gas Division of Northern in the States of Kansas and Texas, and to Southern Union Gas Company and Clajon Gas Company in the States of Oklahoma and Texas. The proposed uses of the gas are for rural dwellings, small commercial offices, irrigation pumping engines, crop drying equipment and feed processing equipment.

By order issued September 3, 1975, the Commission set this matter for formal hearing and such hearing was held on October 8, 1975. The only parties to appear at the hearing were Northern and the Commission Staff Counsel. The only timely petition for intervention was filed by Terra Chemicals International Inc. which originally requested a hearing but later withdrew that request. In its order of September 3, 1975, setting this case for hearing, the Commission specifically directed that a record be made regarding the end-uses involved, the availability of alternate fuels, Northern's supply sources, the impact on existing customers and how this service would advance the public convenience and necessity while existing customers are being curtailed.

On January 12, 1976, Administrative Law Judge Graham W. McGowan issued an initial decision which denied all of the applications except for one delivery point covering a right-of-way sale to a residential customer who had acted in good faith to his detriment in building a new home in reliance on his agreement with Northern. The Administrative Law Judge put forth the possibility of reopening the case for specific evidence as to other right-of-ways grantors who had acted to their detriment in relying on an agreement to obtain gas service from Northern. In reaching his decision to deny the proposed services, the Administrative Law Judge indicated that the case presented one central issue which was "should the Commission allow a pipeline in curtailment to add on new customers?" The Judge answered this question in the negative, regardless of the priority of the proposed new customers or the amount of gas involved.

Exceptions to the Judge's decision were filed by Northern Natural Gas Company and in addition a number of persons who had not previously been parties to the case, petitioned to intervene late with a request that they be allowed to present arguments to the Commission in this case. By order issued on March 24, 1976, the Commission permit the State of Oklahoma and the Lehigh Portland Cement Company to intervene late and to file briefs in this proceeding. Late interventions have also been filed by the State of Kansas, the State of Texas, The Southern Union Gas Company, The Eveleth Taconite Company and several manufacturing companies collectively referred to as "The Brick People". All of the parties seeking late intervention have filed briefs either endorsing exceptions or opposing exceptions of the other parties. Generally the Judge's decision is supported by the Commission Staff, the Eveleth Taconite Company and The Brick People. The Judge's decision is opposed by the States of Oklahoma, Kansas and Texas as well as Northern Natural and the Southern Union Gas Company. We shall by this order allow those interventions which have not yet been approved and we have taken into consideration the various briefs filed by all intervenors in reaching our decision in this case.

In general, we agree with the conclusion of the Administrative Law Judge, that a pipeline presently curtailing existing customers should not be authorized to attach new customers regardless of the priority of use to which the new customers

would put any natural gas which they receive. In the absence of some compelling public interest consideration, existing customers should not be cut off in order that new customers may receive service who had never previously received natural gas deliveries. In addition we agree with the Judge that the de minimis nature of the proposed new service cannot be controlling since one de minimis approval after another can accumulate to the point where there is a substantial effect on the other customers of the pipeline. We further agree with the Judge that the availability of alternate fuels is not controlling where the customers' facilities for using gas or other fuels have not yet even been installed and no determination on either an absolute or economic basis can be made.

We believe the forgoing discussion generally covers many of the arguments set forth by the parties opposing the Judge's decision to deny the proposed services. The one additional factor present in this case as recognized by the Judge is that many of these proposed customers are right-of-way easement grantors who allowed Northern to construct lines across their properties in reliance upon Northern's agreement to provide them with gas in return for such easements. The Judge approved the service in the one situation where the case was clear that the grantor had relied upon Northern's agreement but he apparently did not believe the evidence was sufficient to find that this was the case with the other right-of-way grantors and therefore went no further than to leave open the record to make such a showing.

We believe that it is generally to the benefit of all the customers of the pipeline to encourage construction of facilities for obtaining new gas supplies and transporting gas through easement arrangements such as those which exist in this case. Those parties who have opposed the proposed service in this case have also indicated that they would not object to approval of service to those customers who had granted right-of-way easements in reliance on obtaining service as part of the agreement. We shall, therefore, authorize that part of the service proposed by Northern covering service to right-of-way easement grantors where a part of the consideration for the right-of-way was in fact the receipt of gas from Northern.

There is no question on the record of this proceeding that all of the right-of-way customers would use this gas for high priority purposes. There is also a very small amount of gas involved in relation to Northern's entire system. The benefits to be derived by allowing Northern to serve those persons who have granted right-of-way easements in return for service offset any detriment to other customers which may be caused by approving these sales. In fact, the benefits to all the customers of the pipeline may well exceed any such detriment through allowing Northern to construct necessary lines to obtain new gas supplies and serve existing areas. In allowing Northern to provide service to its right-of-way easement grantors we shall provide that in accepting such certification Northern shall file under oath a statement for each customer to the effect that in fact such customer is a right-of-way easement grantor and that as a partial consideration for the easement gas service was promised to the grantor. This will eliminate the need for reopening the proceeding as proposed by the Administrative Law Judge.

The Commission further finds:

(1) Applicant, Northern Natural Gas Company is a natural gas company within the meaning of the Natural Gas Act.

(2) The facilities described in the application in this proceeding are proposed to be used in the transportation and sale of natural gas in interstate commerce subject to the jurisdiction of the Commission and a construction operation thereof by Applicant are subject to the requirements of Subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicant is able and willing properly to do the acts, perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The construction and operation of the facilities authorized herein are required by the public convenience and necessity.

The Commission orders:

(A) A certificate of public convenience and necessity is issued to Northern Natural Gas Company authorizing the proposed facilities and services to right-of-way customers who have granted easements to Northern as part of the agreement to allow Northern to construct facilities across their lands. All other facilities proposed in the application in this proceeding are denied.

(B) The certificate granted by Paragraph (A) and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission regulations under the Natural Gas Act and in particular the terms and conditions set forth in Paragraphs A, C3, C4, E and F of Section 157.20 of the Commission's Regulations.

(C) The construction authorized herein shall be completed and the facilities placed in actual operation as provided by Section 157.20b of the Commission's Regulations within twelve months from the date of this order.

(D) In accepting this certificate, Northern shall specify which facilities proposed are necessary to serve right-of-way easement grantors and shall also file a statement under oath that each grantor to be served in fact did agree to the right-of-way easement for consideration in part of gas service by Northern through the distributors as set forth in the application.

(E) The State of Kansas, the State of Texas, Southern Union Gas Company, Eveleth Taconite Company and the group referred to as "The Brick People", are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; provided, however, that the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene; and, provided, further, that the admission of said intervenors shall not be construed as a recognition by the Commission that they may be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

(S E A L)

Kenneth F. Plumb,
Secretary.