

STATE OF NEW HAMPSHIRE
before the
PUBLIC UTILITIES COMMISSION

DG-15-090

NORTHERN UTILITIES, INC.
2015 Summer Period Cost of Gas
Adjustment

MOTION FOR REHEARING OF
ENERGY EXPRESS, INC.
d/b/a METROMEDIA ENERGY, INC.

Energy Express, Inc. d/b/a Metromedia Energy, Inc. (“Energy Express”) hereby moves for a rehearing in this matter pursuant to RSA 541:3. The Commission erred in this docket by: (1) failing to grant Energy Express’s Petition to Intervene; and (2) by approving an unjust and illegal settlement agreement that fails to return supplier refunds to the proper ratepayers. Energy Express requests that the Commission order a rehearing in this matter to correct these legal errors.

BACKGROUND

In March 2015, Northern Utilities, Inc. (“Northern”) filed its proposed cost of gas (“COG”) rate adjustments for summer 2015. Shortly thereafter, Northern received a refund of approximately \$10.5 million for its New Hampshire customers from Portland Natural Gas Transmission System (“PNGTS”) after FERC disallowed a portion of PNGTS’s rate subject to refund. Because Northern passes on the PNGTS rate to its ratepayers, Northern recognizes that the refund must be returned to those ratepayers. Northern proposed to distribute the refund prospectively through lower rates over the course of three years. Energy Express exited the natural gas market in New Hampshire in September 2014, however, and will therefore not recover any of its overpayments under Northern’s proposal.

On April 30, 2015, the Commission approved Northern's COG rates but scheduled a hearing for June 2, 2015 to determine how to distribute the \$10.5 million refund from PNGTS to its Sales Service and Delivery Service (i.e. gas marketer) customers. Two gas marketers, Global Montello Group Corp. and Sprague Operating Resources, LLC (collectively, "Global/Sprague"), intervened and requested that the Commission order Northern to issue direct, one-time refunds to the gas marketers that paid the higher PNGTS rate.

On June 2, 2015, the parties purportedly reached a settlement agreement in this case. Under the settlement agreement, the refund would be distributed to gas marketers over three years, with 50% of the refund returned in year one, 30% in year two, and 20% in year three. A copy of the proposed settlement agreement was never sent to Energy Express. After the hearing, Global/Sprague objected to the settlement agreement. Energy Express filed a Petition to Intervene on August 7 and an Opposition to the Settlement Agreement on August 12. The Commission never officially acted on these filings.¹

Over a month after Energy Express made its filings, the Commission issued an order on September 22, 2015 approving the settlement agreement over the objection of the gas marketers.

DISCUSSION

I. The Commission Erred by Failing to Grant Energy Express's Petition to Intervene

The Commission's procedural rules state: "The commission shall grant one or more petitions to intervene in accordance with the standards of RSA 541-A:32." Puc 203.17. Under RSA 541-A:32(V), "[t]he presiding officer *shall render an order* granting or denying each

¹ Two weeks after the Commission issued its Order on September 22, 2015, Energy Express received a letter from the Executive Director of the Commission that states: "The Commission denied your petition on the basis that it was untimely." However, the Commission never acted on Energy Express's petition and a letter from the Executive Director of the Commission after the Commission has already issued its decision in the docket does not satisfy the Commission's obligation to "render an order" on the petition.

petition for intervention, specifying any conditions and briefly stating the reasons for the order.” (emphasis added). In this case the Commission never issued an order on Energy Express’s Petition to Intervene. For this reason alone, the Commission must order a rehearing in this case.

On a more fundamental level, Energy Express has a due process right to notice and an opportunity to be heard in this proceeding. *In re Blizzard*, 42 A.3d 791, 797-98 (N.H. 2012) (“Parties whose rights may be affected are entitled to be heard, and in order that they may enjoy that right, they must first be so notified.”). If the Commission’s order is allowed to stand, Energy Express will have to absorb approximately \$600,000 in overpayments. Energy Express has a property interest in those funds because it actually paid the higher PNGTS rate. The court acknowledged this ratepayer interest in *Appeal of Granite State*, stating “the unavailability of a refund would force the consumer to purchase electricity at rates in excess of those established under proper criteria and thereby raise serious due process questions.” *Appeal of Granite State Elec. Co.*, 421 A.2d 121, 123 (N.H. 1980). Despite the amount of money involved and the small number of gas marketers impacted by the case, Northern never provided Energy Express notice of the proceeding. Northern also never provided Energy Express a copy of the settlement agreement that redistributes Energy Express’s share of the refund to future gas marketers. This process is entirely inadequate considering what is at stake for Energy Express.

II. The Commission Erred by Approving the Settlement Agreement Because it Does not Return the PNGTS Refund to Gas Marketers that Paid the Improper Rate

The Supreme Court of New Hampshire has held that the Commission has implied statutory authority to order a gas company to issue direct refunds to its customers. *Granite State Gas Transmission, Inc. v. State*, 202 A.2d 236, 237-38 (N.H. 1964). In deciding to issue refunds, the Commission must be guided by equitable principles of restitution and unjust enrichment.

Appeal of Granite State Elec. Co., 421 A.2d at 123. The fundamental equitable principle underlying these concepts is to “restore to the person entitled thereto that which in equity and good conscience belongs to him.” *Id.* The utility’s interests are secondary and do not “outweigh[] the interest of consumers who have paid charges at improper rates.” *Id.*

In *Granite State Gas Transmission*, the court upheld the simple, equitable rule that refunds should be returned to those customers that actually paid the increased rates. *Granite State Gas Transmission, Inc.*, 202 A.2d at 238 (“If the gas purchased by the customer was at an increased rate, then it received a refund calculated on the basis of all its purchases.”). In *Appeal of Granite State*, the court reaffirmed the principle that direct refunds should be issued to those customers that paid improper rates but carved out a narrow exception where the administrative cost and burden of refunding ratepayers requires a different methodology:

However, given the cost of actually writing out refund checks and mailing them to thousands of customers in twenty-three communities (a cost ultimately borne by them as ratepayers) we see no reason why a credit could not equally effectuate the above policy.

Appeal of Granite State, 421 A.2d at 123. Thus, the lesson from these cases is that the Commission must order direct refunds to impacted ratepayers unless the administrative cost of doing so is so high that a direct refund is impractical.

By approving the settlement agreement in this docket, the Commission violated the basic purpose of refunds: to make those ratepayers that paid an improper rate whole. The class of gas marketers impacted by the improper PNGTS rate is small and discrete. It is clear from a Maine Public Utilities Commission order involving the same refund issue that Northern has the ability to calculate the exact amount that each marketer overpaid. *Northern Utilities, Inc.*, Proposed Cost of Gas Factor, No. 2015-00041, Order on Delivery Service Refund, at 7 (Me. P.U.C. Sept.

21, 2015) (“Northern has historical billing information and can, without accounting difficulties, calculate the actual money owed to each party.”). The Maine Commission recognized the practical differences between the Sales Service and Delivery Service rate classes in deciding to award direct refunds only to Delivery Service customers. *Id.* To make Energy Express and the other gas marketers whole, Northern simply has to run a few calculations, apply interest, and mail a dozen checks. This minor administrative burden does not “outweigh[] the interest of consumers who have paid charges at improper rates.” Energy Express, in particular, must receive a direct cash refund because it is no longer participating in the natural gas market in New Hampshire and will therefore not benefit from lower prospective rates. Accordingly, the Commission must order a rehearing in this docket and issue an order that requires Northern to reimburse directly the impacted ratepayers, including Energy Express.

CONCLUSION

The Commission’s actions in this docket are contrary to Commission rules and contrary to the basic equitable principles applicable to utility refunds. For these reasons, Energy Express requests that the Commission grant this motion for rehearing and reopen this docket for further proceedings.

Respectfully submitted on October 9, 2015.

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