

## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. RP97-250-001]

NorAm Gas Transmission Company;  
Notice of Proposed Changes in FERC  
Gas Tariff

May 20, 1997.

Take notice that on May 15, 1997, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 1997:

Second Revised Sheet No. 282  
Substitute Original Sheet No. 282A

NGT states that the purpose of this filing is to comply with the order issued in this docket on April 30, 1997.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

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## DEPARTMENT OF ENERGY

Federal Energy Regulatory  
Commission

[Docket No. IN97-1-000]

Questar Pipeline Company; Order  
Instituting Proceeding

Issued May 9, 1997.

Before Commissioners: Elizabeth Anne Moler, Chair; Vicky A. Bailey, James J.

Hoecker, William L. Massey, and Donald F. Santa, Jr.

After completing a preliminary investigation under the Commission's Rules Relating to Investigations, 18 CFR Part 1b, the Enforcement Section, Office of the General Counsel (Enforcement), has reported to the Commission that from November 1, 1988 through September 30, 1992, Questar Pipeline Company (Questar) may have collected gathering rates from Mountain Fuel Supply Company (Mountain Fuel) that violate section 4(d) of the Natural Gas Act (NGA), 15 U.S.C. § 717c(d) (1994), and Questar's Federal Energy Regulatory Commission (FERC) tariff. The instant order establishes a proceeding, pursuant to sections 4, 5 and 16 of the NGA, 15 U.S.C. §§ 717c, 717d and 717o (1994).

As discussed below, the Commission is ordering Questar to show: (a) Why it has not violated section 4(d) of the NGA and its FERC tariff as a result of its gathering charges to Mountain Fuel from November 1, 1988 through September 30, 1992; and (b) why it should not refund (with interest running through the refund date) the portion of those gathering charges that exceeded the one-part gathering rates contained in the revisions to Sheet No. 8, Volume 3, of Questar's tariff that were in effect during that period.

## A. Background

For a period including November 1, 1988 through September 30, 1992, Questar was an interstate pipeline engaged in the transportation and sale of natural gas in interstate commerce, and was located in Salt Lake City, Utah. Mountain Fuel was a local distribution company also located in Salt Lake City. Questar and Mountain Fuel were corporate affiliates.

Questar gathered and transported gas for Mountain Fuel. Volume No. 3 of Questar's FERC tariff contained Rate Schedule No. X-33 (RS X-33), which governed Questar's transportation for Mountain Fuel, and Sheet No. 8, which governed the transportation rates Questar charged under RS X-33. Questar periodically filed revisions to Sheet No. 8 with the Commission.

On September 9, 1988, Questar filed two tariff sheets with the Commission that included gathering rates. One of these was Tenth Revised Sheet No. 8, which set out a gathering rate of \$0.28941 per decatherm (Dth), to become effective November 1, 1988. The Commission accepted these sheets for filing on December 1, 1988. 45 FERC ¶ 61,447 (1988).

On April 17, 1989, Questar filed an offer of settlement in Docket No. RP88-93. Questar's offer included Substitute Tenth and Eleventh Revised Sheets No. 8, effective November 1, 1988 and January 1, 1989, respectively, both of which contained a gathering rate of \$0.23095/Dth. On October 6, 1989, the Commission approved Questar's settlement offer in Docket No. RP88-93, with modifications not relevant here. 49 FERC ¶ 61,018 (1989).<sup>1</sup> The settlement gathering rate of \$0.23095/Dth remained in effect through October 1991.

On July 24, 1992, Questar submitted a settlement offer in Docket No. RP91-140. The settlement offer included Third Substitute Seventh Revised Sheet No. 8 and Second Substitute Eighth Revised Sheet No. 8, effective November 1, 1991 and January 1, 1992, respectively, both of which included a "one-part" (commodity only, as opposed to demand and commodity) gathering rate of \$0.18296/Dth. The offer also included Ninth Revised Sheet No. 8, effective October 1, 1992, which contained a one-part gathering rate of \$0.32693/Dth.<sup>2</sup> The Utah Division of Public Utilities (UDPU), which regulated Mountain Fuel's retail rates in Utah, intervened in this docket and filed comments supporting the settlement. On November 3, 1992, the Commission approved the settlement. 61 FERC ¶ 61,180 (1992).

## B. The Alleged Overcharges

Based on the information gathered in its investigation, Enforcement alleges that during the period from November 1, 1988 through September 30, 1992:

1. Questar's gathering rates to Mountain Fuel exceeded the gathering rates set out in the revisions to Sheet No. 8. The excessive rates, per decatherm, were as follows:

Months	Tariff rate	Charged rate	Excess rate
11-12/88 .....	\$0.23095	\$0.27840	\$0.04745
01-12/89 .....	.23095	.24580	.01485
01-12/90 .....	.23095	.27940	.04845
01-10/91 .....	.23095	.28064	.04969

<sup>1</sup> All citations to the FERC Reports are captioned *Questar Pipeline Co.* unless otherwise indicated.

<sup>2</sup> On August 12, 1992, Questar amended its settlement offer in ways not relevant here.

Months	Tariff rate	Charged rate	Excess rate
11-12/91 .....	.18296	.28064	.09768
01-09/92 .....	.18296	.28190	.09894

2. Questar's gathering overcharges to Mountain Fuel totaled \$3,427,192. The overcharges for the time periods set out in ¶ 1 were as follows:

Months	Decatherms sold	Excess rate	Overcharge
11-12/88 .....	5,619,369	\$0.04745	\$266,639
01-12/89 .....	18,439,042	.01485	273,820
01-12/90 .....	15,107,171	.04845	731,942
01-10/91 .....	14,613,340	.04969	726,137
11-12/91 .....	5,496,168	.09768	536,866
01-01/92 .....	9,013,427	.09894	891,788

3. Mountain Fuel passed through to its customers all gathering charges that it paid to Questar, including Questar's overcharges.

### C. Discussion

During the course of the investigation, Questar made a number of contentions that warrant comment. Questar argued that the Commission lacks jurisdiction over its gathering rates, and cited Section 1(b) of the NGA, 15 U.S.C. § 717(b) (1994), and *Northwest Pipeline Corp. v. FERC*, 905 F.2d 1403 (10th Cir. 1990), in support of this assertion. Section 1(b) states that the NGA does not apply "to the production or gathering of natural gas." In *Northwest Pipeline*, the court reversed a Commission order asserting jurisdiction over what the Commission claimed were a pipeline's transportation rates; the court held that the Commission had failed to adequately support its conclusion that the pipeline's rates were for transportation rather than gathering.

However, *Northern Natural Gas Co. v. FERC*, 929 F.2d 1261 (8th Cir. 1990), *cert. denied*, 502 U.S. 856 (1991), rather than *Northwest Pipeline*, governs the Commission's authority to regulate Questar's gathering rates. In *Northern Natural*, the court upheld the Commission's authority to regulate an interstate pipeline's gathering rates on the ground that the rates were charged "in connection with" jurisdictional transportation and therefore were subject to regulation under section 4(a) of the NGA, 15 U.S.C. § 717c(a) (1994). The court distinguished the Tenth Circuit's decision in *Northwest Pipeline*, noting that the Tenth Circuit had relied on the Commission's failure to support its determination that the rates were transportation rates; in *Northern Natural*, the Commission acknowledged that the rates were gathering rates.

Questar also argued that the Commission never asserted its jurisdiction over Questar's gathering rates. Questar stated that the first time any representative of the Commission

directed Questar to include a gathering rate in its tariff sheets was during an August 4, 1988 meeting that Questar had arranged with staff of the Office of Pipeline Regulation (OPR) to discuss a July 18, 1988 letter order that the Director of OPR had issued in Docket No. RP88-93. In that meeting, OPR staff directed Questar to include a "gathering rate of general applicability" in its tariff. On August 17, 1988, Questar included a challenge to staff's directive in Questar's appeal of the letter order. "Questar Pipeline Company's Appeal from Staff Action" (Docket No. RP88-93-005, *et al.*). Questar based its challenge on the assertion that the Commission lacks jurisdiction over gathering. *Id.* at pp. 18-19. On February 1, 1989, the Commission denied Questar's appeal in part, but did not address Questar's jurisdictional challenge. 46 FERC ¶ 61,115 (1989).<sup>3</sup> Questar views the Commission's silence on this point as a failure to assert jurisdiction.

However, the Commission's December 1, 1988 order, discussed *supra*, accepting the Questar tariff filing that included Tenth Revised Sheet No. 8—which contained a gathering rate—constituted an assertion of the Commission's jurisdiction over Questar's gathering rates for Mountain Fuel. Moreover, Questar's filing of that tariff sheet constituted Questar's acceptance of that jurisdiction, at least for the period in which the tariff gathering rate remained in effect. The Commission orders approving the settlements in Docket Nos. RP88-93 and RP91-140 constituted additional instances of the Commission's assertion and Questar's acceptance of Commission jurisdiction over Questar's gathering rates.

<sup>3</sup> Questar did not seek rehearing.

Indeed, Questar's acceptance of these settlements precludes the company from challenging the Commission's jurisdiction over Questar's gathering rates during the period at issue. In *Colorado Interstate Gas Co. v. FERC*, 83 F.3d 1298 (10th Cir. 1996), the court held that an interstate pipeline that had entered into a settlement requiring it to charge specified gathering rates lacked standing to challenge Commission jurisdiction over those rates during the term of the settlement. The settlement rates in either Docket No. RP88-93 or Docket No. RP91-140 were in effect throughout the period from November 1, 1988 through September 30, 1992.<sup>4</sup>

Questar also claimed that the gathering rates contained in the revisions to Sheet No. 8 did not apply to Mountain Fuel. Questar contended that these rates were "default rates" that only applied to those gathering contracts that did not provide for specific gathering rates (such as contracts that expressly incorporated the prevailing tariff rate). During the period at issue, Questar calculated its gathering charges to Mountain Fuel in accordance with a gathering agreement that the two affiliates executed in 1987,

<sup>4</sup> Questar also suggested that the settlement the Commission approved in Docket No. RP91-140 precludes further Commission action based on Questar's past gathering charges. Questar cited section III.B(2), which states that the settlement resolves "any current dispute or inquiry raised by . . . the Commission concerning prior statements of Questar's rates for gathering services on its FERC Gas Tariff rate sheets."

However, the Commission's order approving the settlement reserves the Commission's right to redress Questar's overcharges to Mountain Fuel. Ordering Paragraph (C) states:

The Commission's approval of this settlement does not preclude any Commission action regarding Questar's collection of gathering charges from Mountain Fuel Supply Company prior to the date of this order.

61 FERC at p. 61,656. Questar did not seek rehearing of this order.

but never filed with the Commission. Questar argued that the rates calculated under this gathering agreement superseded the rates contained in the revisions to Sheet No. 8.

Questar's contentions are inconsistent with applicable law. Once the Commission's orders approving the settlements in Docket Nos. RP88-93 and RP91-140 became final and no longer subject to judicial review, the gathering rates (and effective dates) contained in the revisions to Sheet No. 8 took precedence over any gathering rate dictated by the Questar-Mountain Fuel gathering agreement. See *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 582, (1981) (where the tariff rate and the contract rate conflict, the tariff rate controls).

Questar further contended that even if the Commission has the legal right to require Questar to refund a portion of its gathering charges to Mountain Fuel, the Commission's exercise of that right would be inequitable. The company offered several reasons for this contention.

Questar produced two "supplemental agreements" in which the UDPU endorsed the Questar-Mountain Fuel gathering agreement. In the first "supplemental agreement," which Questar's predecessor, Mountain Fuel and the UDPU executed on November 5, 1987, the UDPU stated that the gathering agreement "provides a fair, just and reasonable means for [Mountain Fuel] to obtain gathering services from [Questar]," and agreed not to challenge Mountain Fuel's passthrough of the gathering rates charged by Questar during 1988. In the second "supplemental agreement," which Questar, Mountain Fuel and the UDPU executed on April 27, 1989, the parties agreed, among other things, that Questar would charge Mountain Fuel a gathering rate of \$0.2458/Dth during calendar year 1989 and that the UDPU, which had intervened in Docket No. RP88-93, would support Questar's proposed settlement in that docket.

However, the UDPU's general endorsement of the gathering agreement did not relieve Questar of the obligation to charge Mountain Fuel the gathering rates contained in Questar's tariff. The UDPU did not have jurisdiction over Questar's gathering rates. See *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 at 310 (1988) (quoting *Notern Natural Gas Co. v. State Corporation Comm'n of Kansas*, 372 U.S. 84 at 91-92 (1963)) ("When a state regulation \* \* \* presents the prospect of interference with the federal regulatory power, then the state law may be pre-

empted even though 'collision between the state and federal regulation may not be an inevitable consequence.'"). In addition, the UDPU did not address Questar's gathering rates for 1990 through 1992, a period that includes 33 of the 47 months at issue. Finally, the UDPU's support of the settlements in Docket Nos. RP88-93 and RP91-140 conflicts with the agency's endorsement of the gathering agreement because the settlements provided for lower gathering rates than those Questar charged under the agreement.

Questar further asserted that its alleged gathering overcharges did not harm Mountain Fuel's ratepayers. Questar noted that during the relevant time period, Rate Schedule No. CD-1 of Questar's tariff (RS CD-1) governed its sales of gas to Mountain Fuel. Questar contended that it subtracted the gathering revenues collected under its transportation rate schedules—including RS X-33—from the cost of service used in calculating its sales rate under RS CD-1. Thus, Questar argued, if it had charged Mountain Fuel the tariff rate for the gathering provided under RS X-33, the pipeline would have had to charge Mountain Fuel a higher rate for the gas Questar sold Mountain Fuel under RS CD-1 to fully recover its costs.

However, Questar's gathering rates and sales rates were determined in the settlements that the Commission approved in Docket Nos. RP88-93 and RP91-140. Charging Mountain Fuel the settlement gathering rates would not have allowed Questar to charge its affiliate higher sales rates; Questar would have had to charge Mountain Fuel the sales rates set out in the settlements. Therefore, it appears that if Questar had charged Mountain Fuel the settlement gathering rates, Mountain Fuel's ratepayers would have benefitted.

Finally, Questar asserted that if it is forced to refund its alleged overcharges, it will not recover its cost of service for the period during which the overcharges took place. However, this assertion, even if proven by Questar, would not appear to excuse Questar's refund obligation. It appears that the imposition of refunds is necessary to enforce the settlements that the Commission determined to be in the public interest in Docket Nos. RP88-93 and RP91-140. The Commission and courts have long recognized that upholding such settlements serves a strong public interest. *E.g.*, *Mobil Oil Corp. v. FPC*, 570 F.2d 1021, 1026 (D.C. Cir. 1978) ("[J]ust as encouraging settlements is in the public interest, so is abiding by settlements that are

entered into in good faith and without overreaching.")

#### *The Commission orders:*

(A) Within 30 days of the issuance of this order, Questar shall:

(1) File an answer to the allegations of overcharges and violations that conforms to the requirements of Rule 213 of the Commission's Rules, 18 CFR 385.213. In its answer, Questar shall admit or deny, specifically and in detail, each allegation set forth in Part B of this order, and shall set forth every defense relied on. If an allegation is only partially accurate, Questar shall specify that part of the allegation it admits and that part of the allegation it denies.

(2) Show (a) why it has not violated section 4(d) of the NGA and its FERC tariff as a result of its gathering charges to Mountain Fuel during the period November 1, 1988 through September 30, 1992 and (b) why it should not refund (with interest running through the refund date) the portion of those gathering charges that exceeded the one-part gathering rates contained in the revisions to Sheet No. 8 that were in effect during that time period.

(3) Questar shall separately state the facts and the arguments that it advances. Questar must support with exhibits, affidavits and/or prepared testimony any facts that it alleges. Questar's statement of material facts must include citation to supporting data. At a minimum, Questar should provide work papers and any other documents to support its allegations that all of the revenues received by Questar associated with the Mountain Fuel gathering agreement were used in the applicable rate proceedings to reduce the cost of service allocated to Questar's sales service under Rate Schedule CD-1, and Mountain Fuel was the only customer receiving service under Rate Schedule CD-1. All materials must be subscribed and verified as set forth in sections 385.2005 (a) and (b)(2) of the Commission's regulations, 18 CFR 385.2005 (a) and (b)(2).

(B) Notice of this proceeding shall be published in the **Federal Register**. Interested parties shall file petitions for intervention no later than 30 days after the date of publication.

By the Commission.

**Lois D. Cashell,**

Secretary.

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