BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of NorthWestern Corporation, d/b/a NorthWestern Energy, Sioux Falls, South Dakota, seeking approval of a natural gas general rate increase for Nebraska.	)	Application No. NG-0048 ORDER APPROVING SETTLEMENT AGREEMENT Entered: December 18, 2007

BY THE COMMISSION:

On June 1, 2007, NorthWestern Corporation, d/b/a North-Western Energy,(NorthWestern), Sioux Falls, South Dakota filed an Application for Natural Gas Rate Increase (Application) under the State Natural Gas Regulation Act, *Neb. Rev. Stat.* § 66-1801 et seq. (2003) (the Act). The Application seeks to increase rates to customers located in North Platte, Kearney, Grand Island, and Alda.

In accordance with *Neb. Rev. Stat.* § 66-1838, NorthWestern sought to negotiate the rate increase directly with the above-mentioned municipalities. The Commission entered an order on July 24, 2007, certifying the matter for negotiations.

On or about November 21, 2007, NorthWestern filed Notice of Settlement and a copy of the Settlement Agreement (Agreement) reached between it and the municipalities along with Proposed Findings of Fact, Proposed Conclusions of Law, and a Proposed Order. Included in the filing were amended tariff sheets.

Hearing was held on the Agreement on December 10, 2007. Mark Fahleson and Troy Kirk appeared on behalf of NorthWestern. Additionally, Mike Tye appeared on behalf of the City of Kearney and Roger Cox appeared as the Public Advocate. Additional representatives from NorthWestern were also present including, Kendall Kliewer, vice president and controller and Pam Bonrud, director of government relations and regulatory affairs.

B A C K G R O U N D

According to the Agreement, NorthWestern will receive an annual rate recovery increase of **$1,499,295**. This would represent an increase in residential sales service rates of $1,172,574 and an increase in other sales and delivery services of $326,721 effective as of December 1, 2007, on an annual basis. Among other changes outlined in the proposed tariff sheets, the residential customer charge would increase from $5.00 to $8.00; however the residential volumetric charge would decrease from $0.33737 per therm for the first thirty (30) therms and $0.10513 per therm for any usage over thirty (30)

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therms to $0.25283 per therm for the first thirty (30) therms and $0.09513 for usage over thirty (30) therms.

Furthermore, the parties reached agreement on certain issues relating to service line installation and NorthWestern's budget bill plan, which are reflected in NorthWestern's Tariff Changes.

The Agreement further provides for a "City Approved Economic Development Surcharge" (Economic Development Surcharge) of $0.00254 per therm.[1] Section 1.4 of the Agreement states,

> Based on the particular desires and approvals of each of the Cities, the parties agree that NorthWestern will contribute $188,000 to the economic development funds of the Cities in the following amounts: (a) $0 annually to an economic development fund for the benefit of the Village of Alda; (b) $86,000 annually to an economic development fund for the benefit of the City of Grand Island; (c) $56,000 annually to an economic development fund for the benefit of the City of Kearney; and $46,000 annually to an economic development fund for the benefit of the City of North Platte. The parties agree that NorthWestern's contributions to the economic development funds for the benefit of the foregoing cities will be recovered by NorthWestern by a customer surcharge as reflected in the Tariff Changes attached hereto as Attachment "C."

The Public Advocate raised concerns regarding whether the Economic Development surcharge is an item that can be approved by the Commission under the Act and the propriety of similar surcharges used in lieu of a community establishing a tax or franchise fee.[2] Mr. Cox also questioned whether the implementation date of December 1, 2007, is permissible under the Act.[3]

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[1] See Sec. 1.4 of the Settlement Agreement and Attachment C to the Agreement.

[2] See Statement of Roger Cox, Trans. 20:22-23:12.

[3] Cox, Trans. 24:3-25:4.

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O P I N I O N A N D F I N D I N G S

The Commission's review of the Agreement is limited to the face of the Agreement itself. As stated in *Neb. Rev. Stat.* § 66-1838(14),

> "Any agreement filed with the commission shall be presumed in the public interest, and absent any clear evidence on the face of the agreement that it is contrary to the standards and provisions of the State Natural Gas Regulation Act, the agreement shall be approved by the commission within a reasonable time."

Two provisions of the Agreement require further attention by the Commission: the imposition of the Economic Development Surcharge and the effective date of the rate increase.

Economic Development Surcharge

Representatives from NorthWestern, as well as Mr. Tye, were deliberate in characterizing the Economic Development Surcharge as a pass-through charge, approved by the cities themselves. Mr. Kleiwer stated that "We pay the cities the amount that we agreed to here, that any over-under is that of the companies or has historically been that of the companies."[4] Statements during the hearing describe the surcharge as a charge more similar to a tax imposed by the municipality and collected through natural gas utility bills. In fact, Mr. Tye stated that the process through which this surcharge was approved was similar to that which would be employed in the assessment of a tax.[5] However, the surcharge as implemented differs from a tax in that any funds collected in excess of the $188,000 amount to which the parties have agreed will be retained by NorthWestern. The overage would necessarily contribute to its revenue and rate of return. This would imply that the surcharge is more similar to a contribution included in operating expenses. That characterization is further supported by the language of the Agreement itself which speaks in terms of NorthWestern recovering its "contributions to the economic development funds".

To the extent that the surcharge is intended by the parties to be a tax, it is outside the scope of the Act and the Commission has no authority to assess whether the individual municipalities properly exercised their taxing authority. The Commission does not intend to impede the negotiations between

[4] Statement of Kendall Kliewer, Trans. 38:1-4.

[5] Statement of Mike Tye, Trans. 33:16-20.

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municipalities and jurisdictional utilities. Negotiated rate cases are meant to reduce costs to ratepayers and contribute to a positive relationship between municipalities, ratepayers and the utility. However, we would strongly caution municipalities to carefully consider whether the negotiation of a rate filing is the proper venue for imposition of surcharges which are intended to raise revenue for cities. Embedding these types of charges in utility rates sets a dangerous precendent and misleads ratepayers regarding the true costs of utilities.

Assuming that the Economic Development Surcharge is actually more similar to a contribution included as an operating expense in NorthWestern's revenue requirement, the Commission's review is limited to whether inclusion of a contribution such as this is in violation of the Act. The appropriate standard for the inclusion of expenses is whether said expenses are "prudently incurred to provide natural gas service."[6] With respect to contributions, the Commission has previously held, "membership dues and fees which directly contribute to the growth and retention of [a utility's] customer base and specifically relate to the business of providing natural gas service in Nebraska should be permitted."[7]

The Commission has no means for determining the specific uses of the economic development funds established by this Agreement. Furthermore, we are unable to make any determinations regarding the amount at issue. The Act clearly states that the presumption is that the Agreement is in the public interest and must be approved barring any ***clear*** evidence to the contrary. It appears, on the face of the Agreement, that the intended purpose of the surcharge is to promote economic growth and therefore it would be an expense prudently incurred to provide natural gas service pursuant to the Commission's prior order.

During the hearing, Ms. Bonrud stated that ratepayers in the Village of Alda would not be required to pay the surcharge as Alda would not be receiving any of the funds.[8] However, nothing in § 1.4 of the Agreement or in the proposed tariff sheets specifically exempt Alda from payment of the volumetric surcharge. Furthermore, NorthWestern stated that the surcharge

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[6] § 66-1825(7).

[7] *In the Matter of Aquila, Inc. d/b/a Aquila Networks (Aquila), Omaha, seeking individual rate increases for Aquila's Rate Area One, Rate Area Two, and Rate Area Three,* Docket No. NG-0041, Order Granting Application in Part, p. 10 (July 24, 2007).

[8] Statement of Pam Bonrud, Trans. 7:2-9 and 11:13-16.

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would not be a separate line item on the bill; however, it would be willing to delineate it on the bill at the Commission's request.[9]

The Commission finds that in light of the nature of the Economic Development Surcharge, as described by the parties, it shall be reflected as a separate line item on the utility bill so that the actual natural gas volumetric rate is clear to ratepayers. The surcharge should be described as it is in the tariff sheets as "City Approved Economic Development Surcharge" or a reasonable abbreviation thereof. Furthermore, NorthWestern shall file amended tariff sheets that clearly indicate that the surcharge will not be imposed on ratepayers residing in the Village of Alda.

Effective Date of Rates

The Agreement states "NorthWestern will, at its option, file and implement interim rates, effective December 1, 2007, that reflect the terms of this Agreement."[10] NorthWestern filed Notice of Implementation of Interim Rates on November 21, 2007, which included tariff sheets reflecting the interim rate, contemporaneous with the filing of the Notice of Settlement and Agreement which included the final rate.

NorthWestern could have implemented the full increase rate filed in its original application within sixty (60) days after the filing. However, the December 1, 2007 date for implementation of interim rates appears to have been part of the negotiation between the parties.

The Commission expects the interim rates to be implemented on a prorated basis. The Commission finds that provisions of the Agreement related to implementation of interim rates do not violate the Act.

CONCLUSION

Pursuant to the standard of review set forth in § 66-1838(14), the Commission finds no clear evidence on the face of

[9] Bonrud, Trans. 10:9-16, "Well, right now, . . . it is included in the normal monthly charge right now because that is how we have always historically done it in the past. So, we are just continuing down that same path, but, . . . if the Commission wanted us to break it out as a separate – if you want to see a line item on the bill, we would do that to meet the Commission's wishes."

[10] Section 1.8 of the Settlement Agreement.

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the Agreement that it is contrary to the standards and provisions of the Act. Therefore, the Commission concludes that the Agreement shall be approved in its entirety.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Agreement is approved in its entirety including, but not limited to, the implementation of the agreed-upon rates effective December 1, 2007, as set forth in the Agreement.

IT IS FURTHER ORDERED that NorthWestern file revised tariff sheets consistent with the terms set forth herein.

IT IS FURTHER ORDERD that the City Approved Economic Development Surcharge be reflected as a separate line item on utility bills as set forth herein.

IT IS FINALLY ORDERED that implementation of revised rates shall be done on a prorated basis.

MADE AND ENTERED at Lincoln, Nebraska, this 18th day of December, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

//s// Rod Johnson
//s// Frank E. Landis

Executive Director

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