

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DG 15-090

Northern Utilities, Inc.
2015 Summer Period Cost of Gas – Phase 2 – PNGTS Refund Methodology

OPPOSITION TO SETTLEMENT OF
SPRAGUE OPERATING RESOURCES LLC AND
GLOBAL MONTELLO GROUP CORP.

Pursuant to the procedural schedule established by the Commission by letter dated July 30, 2015, Sprague Operating Resources LLC (Sprague) and Global Montello Group Corp. (Global) hereby respectfully oppose the June 26, 2015, settlement filed June 26, 2015, settlement filed by Northern Utilities, Inc. d/b/a Unitil (Northern), Commission Staff and the Office of Consumer Counsel.

I. INTRODUCTION

Northern filed its off-peak period Cost of Gas Adjustment in both New Hampshire and Maine. Shortly thereafter, Northern received a full cash refund from Portland Natural Gas Transmission System (PNGTS) of the amounts that had been collected by PNGTS in excess of the lawful maximum tariff rate for interstate pipeline service rendered by PNGTS during the pendency of its most recent rate proceeding. The refund received by Northern from PNGTS¹ was directly the result of overpayments made by sales customers, delivery service customers acting as their own suppliers, and marketers under so-called slice of “company-managed” resources.²

Similarly, at approximately the same time, marketers received cash refunds directly from PNGTS for the actual overpayments made by each marketer for the PNGTS “slice of system” capacity that Northern had directly released to them.³

¹ Northern’s calculation of the company-managed assets assigned to marketers under its retail access program involve a monthly calculation of demand charges and an invoice showing those individual demand calculations to each marketer. Each month, Northern’s invoice for company-managed assets plainly collected from marketers an amount in excess of the lawful maximum tariff rate. Accordingly, during the pendency of the rate proceeding, the marketers bore a dollar-for-dollar increase based on the slice of Northern’s company-managed supply. *See* Northern’s response to NU-SPR-1-1.

² For the purposes of this opposition, delivery service customers acting as their own suppliers and marketers are similarly situated and therefore share the exact same interests. For this reason, we refer to this interest as the “marketer” interest but it is meant to infer both. Delivery service customers never pay Northern’s demand charges directly unless they act as their own suppliers. Marketers are invoiced for all company-managed supplies to provide service for their customers under sophisticated and individually negotiated competitive market contracts.

³ *See* Sprague’s response to NU-SPR-1-2 (“PNGTS has already refunded to Sprague the dollars Sprague directly overpaid as a replacement shipper. However, the significantly larger amount of dollars, in terms of multiples larger, are those Sprague paid directly to Northern on a monthly basis for the PNGTS demand rate during the rate case, which are separately articulated in Northern’s “company-

The Commission initiated this phase of the proceeding at the parties' request to determine whether Northern should refund the PNGTS over-collection in a one-time payment to marketers based on the amounts marketers actually paid to Northern towards the refund amount.⁴ Much of the discovery in this proceeding related to the marketers describing the most pertinent aspects of contracting for and pricing natural gas supplies and services in the highly competitive New Hampshire retail natural gas market. Importantly, the evidence showed that participants in New Hampshire's competitive retail natural gas markets do not negotiate service pricing based on any single cost input, but rather on the basis of a comprehensive risk algorithm,⁵ and that profit and loss is not determined on any single customer contract or any aspect of cost associated with serving a customer,⁶ but on the basis of the marketers' entire cross-regional portfolio of products, services, physical and financial opportunities, and assessment (and assumption) of risks.

In advance of a June 2, 2015, hearing on the matter, the parties met and discussed whether a settlement was possible. Commission Staff was intently concerned that, if there were a three-year return of the refund amount for sales customers but a one-time return of the over-collection to marketers, that delivery service customers would migrate to sales service in order to receive the benefit of the refund. During those discussions, Sprague and Global asked Northern if it would tag, isolate or identify the accounts of returning delivery service customers to ensure they did not receive any portion of the sales service customers' refund. Northern stated it could not do so, and that it did not have the capability to do so in its customer information system (CIS). Because there was no resolution to Staff's strongly held concern, Sprague and Global acceded to the settlement.

Northern's original proposal was to provide the refund over a three-year period in equal distributions each year. The settlement proposed provides that the three-year disbursement be accomplished at a rate of fifty percent (50%) credited in year one, thirty percent (30%) in year two, and twenty percent (20%) in year three. In drafting the written agreement, Northern refused to state that its CIS did not have the ability to identify migrating customers so that it could keep them from eroding the refund benefit

managed" supply invoices each month.") Direct refunds promote the central regulatory goals of simplicity and ease of administration. By contrast, any method that approximates a direct refund of known over-collections is inferior and is instituted when the utility does not know the amounts paid by each customer, or cannot locate each customer, or cannot institute a direct refund method for administrative reasons. None of those conditions exist here.

⁴ In its Maine Division, Northern similarly contested the issue of whether it should be required to provide the refund that it received in cash back directly via a one-time payment to the marketers who paid it. In an August 11, 2015, open meeting, the Maine Public Utilities Commission decided in a 3-0 vote to require Northern to return the PNGTS over-collection to marketers in a single one-time cash payment. *Northern Utilities*, Docket No. 2015-00041 (Phase 2) (*written order pending*).

⁵ See Testimony of Mark Roberts describing how the pricing algorithm relies on all known variables, NYMEX forward curves, capacity forward curves, market prices for gas in regional markets, risk management requirements of the customer, whether the customer is a flat load industrial or whether there is heat sensitivity, the amount of swing the customer requires.

⁶ See NU-SPR-1-5; Staff-1-3. There is no direct profit or loss determination based on one customer. The marketer assesses its risk and its costs in determining whether some elements have performed favorably and some unfavorably.

that would otherwise flow to sales customers. Northern's failure to confirm this fundamental precept of settlement, although asked numerous times, eroded the marketers' confidence in the settlement. Because of the inability of Northern to provide adequate assurance during the formulation of the written settlement that it did not, in fact, have the ability to isolate or identify returning customers in order to keep them from obtaining the refund, the Commission should either establish a process to complete the record with regard to the marketers' concerns, or it should modify the settlement and end the proceeding now by separating refund owed to marketers, and ordering Northern to issue a one-time refund to marketers.⁷

The reasons for a direct refund were and continue to be simple: (1) the cash to fund the marketer refund is in Northern's hands;⁸ (2) the marketers directly paid for the over-collection as ratepayers themselves and/or as part of their agency and/or delegated representation of delivery service customers;⁹ (3) Northern knows exactly which marketers paid for the over-collection; and (4) Northern knows the amounts that were over-collected as a result of Northern charging marketers in excess of the lawful maximum interstate pipeline rate for PNGTS' services and states, like the marketers, that they are easy to calculate.¹⁰ 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.

II. THE EVIDENCE DEMONSTRATES NO ONE WILL MIGRATE TO SALES SERVICE BECAUSE OF THE SALES SERVICE REFUND. BUT IF THEY DO, NORTHERN CAN PROTECT SALES CUSTOMERS FROM A DILUTION OF THEIR REFUND AMOUNT.

The market itself establishes the negotiating balance between marketers and their delivery service customers through unregulated contracts, and whether a benefit accrues following Global and Sprague's proposed one-time refund payment, the benefit will be as determined by the parties to the competitive retail agreement: in the form of a direct payment, a price adjustment, an additional set of services, brand new beneficial pricing

⁷ Northern has represented to the Maine Public Utilities Commission that it didn't matter to Northern whether marketers receive a one-time refund or a refund over an extended period of time. (Gary Epler, Technical Session, July 16, 2015).

⁸ The total amount of the refund was approximately \$10M for Northern's New Hampshire Division.

⁹ Each marketer is a "ratepayer" of Northern's by virtue of its responsibility to pay the capacity assignment demand rate directly to Northern. In addition, under Northern's tariff, the marketer is "authorized to act for and conclusively bind, the Customer regarding Delivery Service in accordance with the provisions of Delivery Service T&C, Section 21 of this tariff." Northern's Delivery Service Terms & Conditions, Definitions (Designated Representative). A marketer "shall act on behalf of the Customer to acquire Supplies and deliver them to the Designated Receipt Point pursuant to the service selected by the Customer . . ." Northern's Delivery Service Terms & Conditions, Section 20.2.3.

¹⁰ See, Sprague's response to NU-SPR-1-3 (" . . . Sprague provided these numbers and the underlying calculations in an email to Northern (Fran Wells and Rob Furino) on March 13, 2015, at 12:02 p.m. Metro's accounts were provided at 2:23 p.m. on March 13, 2015. Sprague's calculation of the overcollection Northern owes it is based on the monthly invoices issued by Northern for "company-managed" supply that articulated the charges Sprague had to pay based on the then-applicable [unlawful] PNGTS demand rate. . . What is important is that it is not a complicated number to derive.").

or accommodation in price for newly introduced services. However, this natural outcome of where a free market and a regulated market intersect was of no comfort to Commission Staff: any delivery service customer may seek to get the refund, and may do so by moving to sales service. In response, Sprague and Global asked for a mechanism that could reduce the incentive. As described above, during pre-hearing negotiations, Northern said it had none in its CIS, but subsequently refused to confirm this in writing as part of the settlement even when Northern was given adequate and repeated notice that its failure to provide that confirmation would cause Sprague and Global to withdraw from the settlement. Sprague and Global concluded reasonably based on Northern's actions that Northern had the ability to provide such protection through its CIS to sales customers but was unwilling – for whatever reason -- to use it.

Simultaneously, Northern states that it does not believe there is any significant risk that delivery service customers will migrate to sales service in order to obtain the refund.¹¹

III. CONCLUSION

For all the reasons set forth, Sprague and Global oppose the settlement as it purports to apply to marketers and delivery service. The PNGTS refund should be paid directly back to marketers such as Sprague and Global in a one-time cash payment.

Respectfully submitted,

**GLOBAL MONTELLO GROUP CORP.
SPRAGUE OPERATING RESOURCES, LLC**

By its attorneys,



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Dated at Portland, Maine, this 12th day of August 2015.

¹¹ *Northern Utilities*, Docket No. 2015-00041 (Phase 2) (MPUC, order *pending*) (Northern's responses to EXM-005-002 and GMGC-003-012). The weight of the evidence in the Maine Division case provided by those who actively conduct business in competitive markets every day also points in the opposite direction. *See*, Michalek Testimony at 7.