

100 FERC ¶ 61, 179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
And Nora Mead Brownell.

In Re Investigation of Certain Financial Transactions Docket No. IN02-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued August 8, 2002)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Commission's Chief Accountant, the Market Oversight and Enforcement section, Office of General Counsel and Northern Natural Gas Company (Northern). The Agreement resolves only those issues of fact and law as discussed in the Commission's August 1, 2002 Order to Respond issued in the above referenced proceeding concerning possible violations of the Commission's regulations under Part 201 of the Uniform System of Accounts governing interstate pipelines, 18 C.F.R. part 201 (2002).
2. The Order to Respond directed Northern and Transwestern Pipeline Company to provide, within thirty days, written responses stating why the Commission should not find that each company: (1) violated the General Instructions-Records under Part 201 of the Uniform System of Accounts by failing to maintain written cash management arrangements with their parent, Enron Corporation (Enron); (2) entered into imprudent loans, the proceeds of which were transferred to Enron shortly before Enron filed for bankruptcy; and (3) should be prohibited from passing costs arising from such loans and arrangements on to ratepayers after settlement rates now in effect expire.
3. The Agreement provides, among other things, that Northern and its parent company¹ will comply with the provisions of the Final Rule regarding written cash

¹Northern is currently owned by Dynegy, Inc. On July 29, 2002, MidAmerican
(continued...)

management practices resulting from the Commission's Notice of Proposed Rulemaking, Regulation of Cash Management Practices, in Docket No. RM02-14-000 issued on August 1, 2002.² Northern will not include the costs associated with the \$450 million loan entered into on November 19, 2001, with Citicorp North American, Inc. and JP Morgan Chase Bank as co-administrative agents in any future Commission rate proceedings before the Commission. Specifically, Northern will not include the loan itself, the interest cost of the \$450 million loan, or the cost of acquiring such loan, in any future Commission rate proceedings.

4. The Commission finds that the Agreement provides an equitable resolution of the specific issues raised in the August 1, 2002 Order to Respond with respect to Northern and is in the public interest. Approval of this Agreement does not constitute settlement or waiver of any further action or remedies the Commission may find appropriate concerning matters that are not addressed in the August 1, 2002 Order to Respond. Further, nothing in this approval constitutes immunity from any civil or criminal action that any other federal agency or department may take.

The Commission orders:

(A) The attached Stipulation and Consent Agreement is approved in its entirety without modification.

(B) The Commission's approval of the attached Stipulation and Consent Agreement does not constitute approval of, or precedent regarding, any principle or issue in this matter.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,

¹(...continued)

Energy Holdings Company agreed to purchase Northern from Dynegy subject to certain closing conditions.

²100 FERC ¶ 61,142 (2002).

Deputy Secretary.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

In Re Investigation of Certain Financial Data) Docket No. IN02-6-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction.

On August 1, 2002, the Commission issued an Order to Respond to Northern Natural Gas Company (Northern) and Transwestern Pipeline Company (Transwestern) that directed Northern and Transwestern to state: (1) why they have not violated the Commission's Uniform System of Accounts for natural gas companies with respect to written cash management agreements with their parent; and (2) why the costs and indebtedness associated with certain loans were not imprudently incurred and therefore unrecoverable by Northern and Transwestern in any future Commission rate proceedings.

II. Agreement.

Northern neither admits nor denies any violation of the Commission's Uniform System of Accounts and Northern neither admits nor denies that any of its loans were entered into imprudently. However, Northern, the Chief Accountant, and the Market Oversight and Enforcement Section, Office of General Counsel agree as follows:

A. Northern and its parent ³/ commit that they will comply with the Final Rule regarding written cash management practices resulting from the Commission's Notice of Proposed Rulemaking, Regulation of Cash Management Practices, in Docket No. RM02-14-000 issued August 1, 2002.

B. Northern will not include the costs associated with the \$450 million loan

³ Northern is currently owned by Dynegy, Inc. On July 29, 2002, MidAmerican Energy Holdings Company agreed to purchase Northern from Dynegy subject to certain closing conditions.

entered into on November 19, 2001 with CitiCorp North American, Inc., and JP Morgan Chase Bank as collateral trustee, and Citicorp North American, Inc. and JP Morgan Chase Bank as co-administrative agents, in any future rate proceedings before the Commission. Specifically, Northern will not include the loan itself, the interest cost of the \$450 million loan, or the cost of acquiring such loan, in any future Commission rate proceedings.

C. Notwithstanding Paragraph B, the Commission acknowledges that Northern will, from time to time, amend, extend and terminate debt or acquire new debt as the economic and financial market environment in which Northern competes for capital dictates. Specifically, it should be noted that the \$450 million short-term loan in question will expire or be paid in full on or before November 19, 2002 and will, therefore, not be included in the capital structure of Northern after November 2002. However, the Commission reserves the right to determine, in any future NGA Section 4 rate proceeding, whether the acquisition cost associated with any future refinancing of the \$450 million loan was just and reasonable.

D. This Agreement settles any and all civil and administrative disputes, and is in lieu of any other remedy that the Commission might assess, determine, initiate or pursue, including remedies pursuant to Section 5, 7 and 16 of the Natural Gas Act, concerning only those matters specifically described or referred to in the Commission's August 1, 2002 Order to Respond. The Commission reserves the right to pursue any other matters that are not the subject of the August 1, 2002 Order to Respond.

III. Terms

A. By this Agreement, the Chief Accountant, Market Oversight and Enforcement and Northern intend to settle only the matters referred to in this Agreement and that are within the Commission's jurisdiction and statutory authority to settle.

B. The Chief Accountant, Market Oversight and Enforcement and Northern acknowledge and agree that this Agreement is a settlement only of those matters specifically set forth in the Commission's August 1, 2002 Order to Respond that are being investigated by the Chief Accountant and Market Oversight and Enforcement. Nothing herein is intended to be an admission on the part of Northern of any violation or wrongdoing.

C. The Chief Accountant, Market Oversight and Enforcement and Northern state that they enter into this Agreement voluntarily and that, other than the agreements provided herein, no tender, offer, or promise of any kind whatsoever has been made by any party to this Agreement, or any member, employee, officer, director, agent, partner or representative

of any such party, to induce any other party to enter into this Agreement.

D. Except as expressly stipulated and acknowledged and agreed herein, neither the Chief Accountant, nor Market Oversight and Enforcement nor Northern makes or has made any admissions or acknowledgments or agreements in connection herewith.

E. Unless the Commission issues an order approving this Agreement in its entirety without modification, this Agreement shall be null and void and have no effect whatsoever and the Chief Accountant, Market Oversight and Enforcement and Northern will not be bound by any of its provisions or terms, unless they agree otherwise in writing.

F. With the exceptions of any additional administrative or civil remedies that may be imposed for failure to comply with the terms of Part II of this Agreement, any and all administrative or civil remedies that the Commission may have against Northern, its successors or assigns, either before the Commission or in the courts, arising from the matters set forth in Part II of this Agreement, shall be forever barred upon compliance with the provisions of Part II of this Agreement.

G. The undersigned representative of Northern affirms that he/she has read the representations set forth in the Agreement, and that all statements and matters set forth herein are true and correct to the best of his/her knowledge, information and belief, and that he/she understands that the Chief Accountant and Market Oversight and Enforcement enter into this Agreement in express reliance on those representations.

H. The terms and conditions of this Agreement are binding on Northern and its successors and assigns.

I. By its order approving this Agreement, the Commission shall terminate with respect to Northern matters referred to it in the August 1, 2002 Order to Respond. Northern waives any rights to seek further administrative review or to seek judicial review of any Commission order approving this Agreement without modification.

J. Each of the undersigned warrants that he or she is an authorized representative of the party designated, is authorized to bind such party, has notified the party of the terms of this Agreement and accepts it on the party's behalf.

Agreed to and accepted:

John Delaware, Deputy Executive Director
and Chief Accountant

Date

Virginia Strasser, Associate Counsel,
Market Oversight and Enforcement,
Office of General Counsel

Date

Northern Natural Gas Company

Date