

103 FERC ¶ 61, 152
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket No. RP98-39-029

ORDER ON REHEARING, SETTING MATTERS FOR HEARING,
GRANTING CLARIFICATION, ORDERING REFUNDS, GRANTING PETITION
FOR RELIEF AND CEASING COLLECTION EFFORTS

(Issued May 8, 2003)

1. On January 2, 2003, the Commission issued an order (January 2 Order) directing persons identified in that order's Appendix to pay Kansas ad valorem tax refunds that those parties owed. The refunds owed were set forth in the May 2002 refund report filed by Northern Natural Gas Company (Northern).¹ Requests for rehearing and motions for clarification were filed by a number of parties² and Lois Hendrickson filed a petition for relief due to hardship. This order grants rehearing as to some but denies rehearing as to the others, sets certain matters for hearing, grants clarification, and grants the petition for relief. This order also specifies procedures for refund recovery from new parties not listed in the January 2 Order's Appendix, and ceases collection efforts for certain parties, as more fully explained in the body of the order.

¹102 FERC ¶ 61,007 (2003).

²Parties filing were Ensign Operating Company and Ensign Oil & Gas, Incorporated, Sterling Production Company, Texaco Exploration and Production Inc., Key Gas Corporation and Key Gas Holding LLC, the Indicated Producers (Anadarko Petroleum Corporation, ExxonMobil Production Company and BP America Production Company), Pioneer Natural Resources USA, Inc., Chesapeake Energy Corporation, the Iowa Utilities Board, and Northern.

I. Background

2. The Commission has previously ordered that producers must reimburse Northern for Kansas ad valorem taxes collected after October 1983 that resulted in the producer collecting amounts in excess of the Maximum Lawful Price (MLP) established pursuant to the Natural Gas Policy Act (NGPA) of 1978.³ In 1993, the Commission ruled that Kansas' ad valorem tax did not qualify as a reimbursable severance tax under section 110 of the NGPA,⁴ and ordered producers to refund the excess amount over the MLP that they had collected since 1988, and flow through the refunds to their customers. In 1996, the Court of Appeals affirmed the Commission, but held that the producers must also make refunds from 1983, the year the reimbursement was first challenged at the Commission.⁵

3. On September 10, 1997, the Commission issued an order requiring producers to refund amounts, with interest, that unlawfully exceeded the applicable MLP, for the period commencing October 3, 1983, and directed pipelines to submit Statements of Refunds Due to first sellers/producers indicating the refunds claimed by the pipeline, and then file reports reflecting those statements with the Commission.⁶

4. A number of producers filed various pleadings with the Commission, asserting that the refund amounts claimed by Northern were incorrect, or seeking relief from the refunds for various other reasons. To resolve these disputes the parties participated in

³Although the 1989 Wellhead Decontrol Act deregulated the price for all first sales of natural gas, in accordance with the intent of Congress, the first sale of natural gas occurring prior to decontrol is subject to the Commission's wellhead pricing regulations as they were in effect at the time of the sale.

⁴Colorado Interstate Gas Co., 65 FERC ¶ 61,292 (1993), reh'g denied, 67 FERC ¶ 61,209 (1994).

⁵Public Service Company v. FERC, 91 F. 3d 1478 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997).

⁶Public Service Company of Colorado, 80 FERC ¶ 61,264 (1997), reh'g denied, 82 FERC ¶ 61,058 (1998), aff'd in relevant part, Anadarko Petroleum Corporation v. FERC, 196 F.3d 1264 (D.C. Cir. 1999), reh'g, 200 F.3d 867, cert.denied, 120 S. Ct. 2215 (2000), order on remand, 91 FERC ¶ 61,264 (2000) (Public Service).

extensive settlement discussions with Northern which led to the Commission's approval of a settlement on December 27, 2000 (the Settlement).⁷

5. The Settlement relieved producers of liability for refunds of \$50,000 or less, and provided for additional relief for refunds in excess of \$50,000 in accordance with a specific refund reduction formula. The amount each producer owed after application of the refund reduction formula was set forth in the Settlement. A producer was deemed to have joined the Settlement if it paid the amount specified in the Settlement by a certain date. Many producers paid that amount, but some did not.

6. The January 2 Order directed producer/first sellers that did not join the Settlement to pay the Kansas ad valorem tax refunds that were shown on Northern's May 2002 refund report as still outstanding, and listed them in the Appendix to that order. Even though these persons had not entered the Settlement, the Commission extended the Settlement's refund reduction provisions to any person listed in the Appendix who, within 30 days of the order, either (1) made payment of the amount owed under the Settlement, or (2) made arrangements for the payment of that amount. Northern was ordered to seek recovery of the full refund amount from persons who did not take either action.

II. Subsequent Pleadings

7. On February 3, 2003, Northern filed a motion for clarification in this docket. Northern stated that while the January 2 Order accurately characterizes the Settlement provision that relieved producers of refund liability claims of \$50,000 or less, it did not include in its description the additional refund reduction provisions for refund claims greater than \$50,000. In addition, Northern proposed corrections to the Appendix to the January 2 Order to reflect additional other working interest owners who owed ad valorem tax refunds, not reflected in its last refund report, and to show the full amount that each party owed, as well as the refund amount owed after the settlement's credit was applied. The Commission agrees that the Settlement provided for the described refund reduction. Moreover, we will include a corrected appendix to this order, Appendix A, that reflects the latest information furnished by Northern concerning who still owes refunds, and the amount owed.

8. In response to a data request by Staff, issued on February 24, 2003, Northern notified the Commission that four persons on the January 2 Order's Appendix had paid,

⁷Northern Natural Gas Company, 93 FERC ¶ 61,311 (2000).

or made arrangements to pay the refund they owed under the settlement. As a result, approximately \$100,000 additional refunds have, or will be collected for distribution to customers.⁸ As discussed below Northern also filed responses to certain pleadings.

III. Requests For Rehearing

9. For the reasons discussed below, we will generally deny the requests for rehearing, but grant two of the requests.

A. Ensign Operating Company and Ensign Oil & Gas, Inc. Request

10. Ensign Operating Company and Ensign Oil & Gas, Incorporated (Ensign Entities) assert that Ensign Operating was improperly listed in the Appendix to the January 2 Order as still owing refunds of \$3,128,858.09. They contend that the corporate parent, Ensign Oil & Gas, became a party to the Settlement by making the payment specified in the Settlement, and acted on behalf of Ensign Operating in resolving all amounts due under the Settlement. The Ensign Entities rely on the Settlement provision that releases settling parties from all further liability in this proceeding. They state that the Commission affirmed that Ensign had satisfied its refund obligations since the Commission's Letter Order of June 8, 2001, determined that the Petition in Docket No. SA98-9-000, filed by Ensign Oil & Gas Inc., was moot for that reason.

11. The Ensign Entities contend that the refund amount Northern claims is owing by Ensign Operating relates to producing properties that were owned by Northern Pump during the period when the refund obligation arose. They assert that Ensign Operating acquired the working interests in certain wells from Northern Pump and did not acquire all or part of the entire corporate entity. While Ensign Operating now owns the working interests in the properties, they dispute that Ensign Operating is a successor in interest to the obligations of Northern Pump, or owes the refunds of Northern Pump. Furthermore, the Ensign Entities note that Northern Pump was dissolved in 1989. They contend that if Northern continues to assert that refunds are still owing, they will establish these facts in hearing, and also rely on the Commission's prior holding in Docket No. SA98-9 that the Ensign Entities did not owe any refunds.

⁸Northern also stated that one person in the appendix had already paid its obligation under the settlement and should not have been in the appendix.

Northern's Response

12. Northern responds that Ensign Operating was not a party to the Settlement, and Ensign Operating and Ensign Oil & Gas are two separate companies that have different legal obligations. Therefore, Northern asserts, Ensign Oil & Gas could not resolve Ensign Operating's refund obligations when it became a Settling Producer, by the terms of the Settlement. Only Ensign Oil & Gas responded to the Settlement by submitting verification forms required to become a party to the Settlement, and Ensign Operating did not.

13. Northern further contends that Ensign Operating never provided the working interest information it requested and other data required by the Commission to determine refund obligations, information that Northern has been requesting since 1997. Northern claims that Ensign Oil & Gas and Ensign Operating had information in their possession that all wells are actually owned by Ensign Operating and have chosen to wait until now, well after the Settlement, to provide this information. Northern states it is prepared to address these issues in hearing.

14. Northern also states that Ensign Entities' claim that the payment of \$15,946.85 satisfies a refund obligation of \$3 million is obviously not true. That payment, it contends, relates only to the Ensign Oil & Gas's refund obligation of \$69,933.56, not to Ensign Operating's liability of \$3 million, as shown on the verification forms identifying the Settling Producer parties.⁹

Discussion

15. The Ensign Entities and Northern disagree with respect to the facts related to the Ensign Entities' refund obligations and whether the participation of one of the Ensign Entities in the Settlement fully and completely extinguished all claims against all Ensign Entities. Since there is a factual dispute and both parties indicate their willingness to resolve this dispute in hearing, the Commission denies Ensign Entities' request to the

⁹Ensign Entities filed a further reply to Northern's response again claiming that they were a settling party under the settlement, and renewing the request that they be held to no longer owe any refund. The Ensign Entities also filed a further response purporting to provide additional evidence that, contrary to Northern's claims, Northern had full knowledge at all times that Ensign Operating owned the wells owned by Northern Pump and that Northern consistently treated Ensign Operating and Ensign Oil & Gas interchangeably.

extent they request the Commission to make a merits determination at this time, and orders that the issue of Ensign Entities' liability for Kansas ad valorem refunds be set for hearing.

B. Sterling Production, Inc.'s Request

16. Sterling Drilling Co., was listed in the appendix as owing a refund of \$426,578.51. Sterling Production asserts that Sterling Drilling, Inc. (Drilling), the original owner of the leases at issue was liquidated, and that the sale of these assets to Sterling Production does not make Sterling Production a successor-in-interest so as to make it liable for Drilling's obligation. Sterling Production requests that the Commission grant rehearing so it can present its evidence. Sterling also requests additional time for research and for settlement discussions.

Northern's Response

17. Northern asserts that a Kansas Certificate of Amendment name change filing proves that Sterling Drilling became Sterling Production in 1996, and therefore Sterling Production is liable for the refund obligation. Northern also indicates it will adjust the refund obligation to the extent Sterling Production can provide adequate documentation to support its claims with respect to certain wells.

Discussion

18. Sterling Production and Northern dispute whether Sterling Production is the successor-in-interest of Sterling Drilling. Accordingly, we direct that the issue be set for hearing to examine the facts of this dispute. This will afford Sterling Production adequate time for research and for settlement discussions.

C. Key Gas Corporation and Key Gas Holding, LLC, Indicated Producers (Anadarko Petroleum Corporation, ExxonMobil Production Company, and BP America Production Company), Pioneer Natural Resources USA, Inc. and Chesapeake Energy Corporation's Requests

19. The appendix to the January 2 Order listed Key Gas as owing \$298,628.38 in ad valorem tax refunds. In its rehearing request Key Gas Corporation and Key Gas Holding, LLC (KGH) contends that while it has a working interest in the wells, it is not responsible for refund liabilities because the wells were acquired in September 2000, and it did not receive Kansas ad valorem reimbursements, and therefore KGH is not a successor to the working interest owners during the 1983-1988 period. Finally, KGH

protests the unsubstantiated 66% increase in its liability in Northern's Motion For Clarification.

20. Anadarko Petroleum Corporation (Anadarko) represents that the appendix to the January 2 Order incorrectly listed it as owing \$891,663.46 of refund liabilities when in fact it was a sponsoring party to the November 20, 2000 Settlement Agreement and paid its settlement amount due. Anadarko further claims that the stated refund amount appears to relate to properties formerly owned by Walter Kuhn Drilling Co., and Anadarko states that its purchase of the Walter Kuhn Drilling Company working interest was not obtained through corporate or partnership successorship and therefore does not make it a successor in interest.¹⁰ ExxonMobil Production Company and BP America Production Company, likewise assert that they also did not acquire the Walter Kuhn Drilling Company or Ensign Operating Company working interests through successorship and therefore they are not liable for those refunds.

21. The January 2 Order listed Prize Operating Co. (Prize) as owing \$80,549.48 of refunds. Pioneer Natural Resources USA, Inc.(Pioneer) requests clarification that escrow interest settlement terms are applicable to payments related to its obligation associated with the Prize refund claim, or in the alternative, that the Commission modify its January 2 Order to include all refund calculation provisions in determining the amount due.

22. Chesapeake Energy Corporation (Chesapeake) moved to intervene in the proceeding asserting that in the Addendum to Northern's February 3, 2003 Motion For Clarification, Northern, for the first time listed Chesapeake as owing \$200,088.96 of the ad valorem refund liability of Cotton Petroleum.¹¹ The January 2 Order had listed Cotton Petroleum as owing that refund with no reference to Chesapeake. Chesapeake contends that it has never held a working interest in the well previously owned by Cotton Petroleum, is not a successor in interest to Cotton Petroleum, and therefore should not be included as a party owing refunds listed in the Addendum to the Motion.

¹⁰Anadarko also sought rehearing of certain Commission notices that gave other persons who disputed the refund claim additional time to make payment of the refund, and requested that it be accorded the same treatment. Since the contested refunds, including Anadarko's, are being set for hearing, payment of the refund is not due at this time, although interest will accrue, so Anadarko's request is moot.

¹¹ Given the absence of undue delay or prejudice, we find good cause to accept Chesapeake Energy Corporation's late notice of intervention.

Discussion

23. Northern did not file any response to the requests and answers outlined above. In response to a Staff Data Request, Northern indicated that it is still reviewing these claims. The arguments made by these parties are factual claims and interpretations of Settlement provisions. In the interest of achieving a final resolution on these long-standing obligations, the Commission orders that these parties be included in the hearing to be convened to examine the factual record with respect to the Kansas ad valorem refund obligations of first sellers on the Northern system. Adequate time will be provided in the hearing schedule for Northern to complete its review of claims.

D. Iowa Utilities Board

24. Iowa contends that the January 2 Order erroneously extended the settlement's terms to persons who had not chosen to enter the settlement, since the settlement expressly prohibits extending its terms to persons who did not join the settlement by December 27, 2000, the date the Commission approved the settlement. Iowa argues that inclusion of a large number of producers was a key element in reaching settlement, and by extending settlement terms to those producers that chose not to join in the settlement, the order undermines the negotiation process that led to this settlement. Second it argues that the January 2 Order distorts the incentives that were a critical part of the settlement. The terms of the approved-settlement are not open to alteration without the consent of the parties, and the January 2 Order has changed those terms in a material way. Finally, it asserts that the Commission acted unlawfully in reducing the amounts due to customers since the amounts claimed from individual producers have been determined by earlier procedures, and those amounts must be paid in full under the Public Service decision.

25. In response to the Commission's inquiry, Northern notified the Commission that four persons on the January 2 Order's appendix had paid or made arrangements to pay the refund they owed under the settlement. As a result, approximately \$100,000 additional refunds have, or will be collected for distribution to customers.

26. We will deny Iowa's request. The January 2 Order does not diminish the benefits that customers received under the settlement, but was an effort by the Commission to move the proceeding further along. Iowa acknowledges that the ad valorem proceeding has constituted a "long and intractable dispute."¹² Since the negotiating process led to a

¹²Rehearing request at 1.

settlement, the January 2 Order obviously could not harm the process, nor affect the negotiating process in the future.

27. The Commission's action provided an incentive to producers who still owed refunds to come forward and pay. To the extent that some have responded to the January 2 Order, the amount of the outstanding claims has been reduced, and additional amounts can be refunded to customers. There is nothing to indicate that absent the Commission's action these parties would have paid their refund obligation. Since producers must pay interest for the period until they pay the refund, we do not see how customers have been harmed by the delay.

28. The amount of the reduction of the refunds is not a significant amount in the overall picture. As to persons which did not respond to the January 2 Order, the Commission has not waived any refund, or a part of the refund. Their obligation remains the same as it was before the January 2 Order, and Northern is to seek recovery of the full amount from the other person on the Appendix to the January 2 Order. Since none of the operative terms of the settlement have been negated by the January 2 Order, and by this we mean the collection of at least the threshold level of the claimed refunds, and permitting the waiver of a certain amount of the refund has induced recovery of additional refunds, there has not been a material change in the settlement's terms.

E. Status Of American Warrior, Renick Farms, H.I. Inc./Irex, FDG & Company, George Clements, Chinook Energy Corporation, Zenith Drilling and Walter Kuhn Drilling

29. These parties are listed in the Appendix to the January 2 Order as owing refund obligations but have not taken any action to resolve those claims. In its response to the Staff Data request, Northern indicates that certain of these parties dispute the claims (American Warrior, Renick Farms, H.I. Inc./Irex and FDG & Company) and that it is still reviewing the claims. Northern also indicates that certain of these parties could not be contacted (George Clements, Chinook Energy Corporation, Zenith Drilling and Walter Kuhn Drilling). In the interest of achieving a final resolution on these long-standing obligations, the Commission orders that these parties also be included in the hearing to be convened to examine factual disputes related to Kansas ad valorem refund obligations of first sellers on the Northern system.

F. Harold Hendrickson and Charles Thomas

30. Lois Hendrickson, wife of Harold Hendrickson, petitioned the Commission on January 15, 2003 for relief from refund obligations of her husband due to hardship. Ms. Hendrickson states that her husband died in 1994 and that her only income is social security payments. The Commission grants the petition since Northern's response to Staff's data request indicated that Charles Thomas provided proof of bankruptcy. Accordingly, the Commission orders that the refund obligation associated with this claim is terminated.

G. The XTO Refund

31. The January 2 Order listed XTO as owing \$1,950,117.74 in refunds. XTO filed for rehearing asserting it did not owe this refund. Northern filed a response, and stated that as a result of further research, Northern had identified new parties who were the ones with this refund obligation. Northern stated that it had initially appeared that the parties receiving the tax reimbursements at issue were no longer in existence, and XTO had been named as the party responsible for the refunds. However, Northern has now determined that the entities that received the tax reimbursement, ESPAGAS, as successor to MAPCO Oil and Gas, and GlobalSantaFe, are still in existence, and are the parties responsible for the refunds. Northern stated that it had notified them of this obligation. Accordingly, we grant XTO's request for rehearing and eliminate its refund obligation, and set the refund obligation of ESPAGAS and GlobalSantaFe for hearing. Since these entities had not been listed on the January 2 Appendix, we direct Northern to serve a copy of this order upon them.

H. Texaco Exploration and Production, Inc.

32. We will grant the request for rehearing of Texaco Exploration and Production, Inc.(TEPI) that it has fully satisfied its refund obligations under the Settlement since Northern, in its response, to the rehearing request, agrees that TEPI has no refund obligation.

The Commission orders:

(A) The requests of Texaco Exploration and Production, Inc., and XTO for rehearing are granted, and all other requests are denied.

(B) Pursuant to the Commission's authority under the Natural Gas Policy Act, particularly Section 504(a), the Department of Energy Organization Act, particularly

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Section 401(g), and the Commission's rules and regulations, a public hearing shall be held in the above-captioned docket concerning the disputes regarding the proper refund amount that is due and payable by each producer to Northern as discussed in the body of this order, and listed in Appendix B to this order.

(C) Collection efforts will cease on the obligations of Harold Hendrickson and Charles Thomas.

(D) Northern, must within 7 days of this order, serve a copy of this order on ESPAGAS, and GlobalSantaFe.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX A**Northern Natural Gas Company**
Docket No. RP98-39-000**Corrected Parties and Amounts Owed From The
January 2, 2003 Order**

<u>Producer/First Seller</u>	<u>Refund Owed*</u>
Ensign Operating Co.	\$3,216,800.60
XTO	\$2,004,929.51
Anadarko	\$916,725.36
Sterling Drilling Co.	\$438,568.31
Key Gas Corp.	\$520,084.73
American Warrior	\$270,368.84
Renick Farms	\$233,000.60
Cotton Petroleum/Chesapeake	\$205,712.84
George Clements	\$195,845.11
The Chinook Energy Corp.	\$157,068.97
Zenith Drilling Corp.	\$156,192.45
H.I. Inc./Irex	\$150,361.89
Walter Kuhn Drilling	\$73,481.96
Walter Kuhn/Mobil	\$66,003.58
JEFCO	\$124,150.41
Harold Hendrickson	\$104,673.15
Texaco, Inc.	\$86,548.84
FDG & Company	\$88,842.32
Prize Operating Co.	\$82,813.47
Western Pacific Farms	\$74,630.72
Davidson Trust	\$68,477.57
Chesapeake Operating	\$0.00
Wyokan	\$53,980.13
Charles Thomas	\$201,943.57

* Represents amount owed through January 31, 2003. Full amount owed also includes interest through the date of payment.

APPENDIX B**Northern Natural Gas Company****Docket No. RP98-39-000****Parties and Refund Obligation Amounts****Hearing Parties**

<u>Producer/First Seller</u>	<u>Refund Owed*</u>
Ensign Operating Co.	\$3,216,800.60
ESPAGAS	\$707,976.67
GlobalSantaFe	\$795,720.46
Anadarko	\$916,725.36
Sterling Drilling Co.	\$438,568.31
Key Gas Corp.	\$520,084.73
American Warrior	\$270,368.84
Renick Farms	\$233,000.60
Cotton Petroleum/Chesapeake	\$205,712.84
George Clements	\$195,845.11
The Chinook Energy Corp.	\$157,068.97
Zenith Drilling Corp.	\$156,192.45
H.I. Inc./Irex	\$150,361.89
Walter Kuhn Drilling	\$73,481.96
Walter Kuhn/Mobil	\$66,003.58
FDG & Company	\$88,842.32
Prize Operating Co.	\$82,813.47
Western Pacific Farms	\$74,630.72
Davidson Trust	\$68,477.57
Wyokan	\$53,980.13

* Represents amount owed through January 31, 2003. Full amount owed also includes interest through the date of payment.