

SETTLEMENT PRACTICE AT THE FERC: BOOM OR BANE

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Settlement practice at the Federal Energy Regulatory Commission and its predecessor, the Federal Power Commission¹ (collectively referred to as the "Commission"), has its origins in section 554(c) of the Administrative Procedure Act (APA),² and the conduct of the settlement practice is governed by regulations promulgated by the Commission.³ Currently over 70% of the Commission's pipeline rate cases are disposed of via settlement procedures.⁴

Section 554(c) provides in pertinent part:

- (c) The agency shall give all interested parties opportunity for—
 - (1) *the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and*
 - (2) to the extent that the parties are unable so to determine a controversy by consent, hearing and decision on notice and in accordance with sections 556 and 557 of this title.⁵

The legislative history accompanying this provision acknowledged that informal procedures or settlement procedures at the administrative level constitute a "vast bulk of administrative adjudication and are truly the lifeblood of the administrative process."⁶ Indeed, throughout the years, the settlement process at the Commission has been "closely entwined in the fabric of the Commission's administrative regulation."⁷ The basis for such policy was articulated by the Commission in Order No. 32⁸ which stated, in pertinent part:

The Commission wishes to emphasize the importance of voluntary settlements to the orderly and expeditious conduct of its business. During the period when responsibility

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1. In 1978 the Department of Energy Reorganization Act, (DOE Act), 42 U.S.C.A. § 7101-7375 (West 1985 & Supp. 1986), transferred jurisdiction under the Natural Gas Act (NGA), 15 U.S.C.A. § 717-717w (West 1983 & Supp 1986), the Natural Gas Policy Act (NGPA), 15 U.S.C.A. § 3301-3432 (West 1983 & Supp 1986), the Federal Power Act (FPA), 16 U.S.C. § 791a-828c (1982), and the Public Utility Regulatory Policies Act (PURPA), 16 U.S.C. § 2601-2645 (1982), from the Federal Power Commission to the Federal Energy Regulatory Commission.

2. 5 U.S.C. § 554(c) (1982).

3. See 18 C.F.R. §§ 385.601, 385.602, 385.603 (1986).

4. Congressional Budget Request, FY 1987, Federal Energy Regulatory Commission, U.S. Department of Energy (Feb. 1986).

5. 5 U.S.C. § 554(c) (1982) (emphasis added).

6. Senate Judiciary Comm., Administrative Procedure Act—Legislative History, S. Doc. No. 248 at 24, 79th Cong., 2d Sess. 203 (1945).

7. Tennessee Gas Pipeline Co., 20 F.E.R.C. ¶ 61,096 at 61,206-07 (1982).

8. 7 F.E.R.C. ¶ 61,256 (1979), published at 44 Fed. Reg. 34,936 (1979), reprinted in F.E.R.C. Stats. & Regs., Regulation Preambles 1977-1981, ¶ 30,061 (1979).

for administering the Natural Gas Act and the Federal Power Act was in the hands of the Federal Power Commission, that agency had a strong policy favoring the disposition of cases through settlements. The FPC and the courts recognized that the Commission could not possibly cope with the flood of business engendered by its jurisdictional statutes if the outcome of a substantial proportion of that business were not the result of voluntary settlements entered into by the parties. . . . We adhere to that view.⁹

The focus of this article will be on the use of settlement procedures as a tool to resolve issues and proceedings at the Commission and the evolving nuances of such procedures. This article will first examine the underlying technical nature of the settlement process at the Commission, including a review of guiding regulations and statutory authorities. It will then review recent decisions bearing upon the continuing ability of the settlement process to "eliminate the need for often costly and lengthy formal hearings."¹⁰ Particular emphasis will be focused upon the D.C. Circuit's holding in *United Municipal Distributors Group v. FERC (UMDG)*,¹¹ in which the court upheld the Commission's power to sever parties, as opposed to issues, from a settlement agreement and the Commission's recent decision on rehearing in *Northern Natural Gas Co.*,¹² in which the Commission appears to have retreated from the broad settlement policies announced in *UMDG* and placed many of the issues presumably settled by the court in *UMDG* into a state of uncertainty.

I. OVERVIEW OF THE SETTLEMENT PRACTICE

In administrative proceedings the term "settlement" carries with it a different connotation than the meaning usually ascribed to the term in civil court actions. The primary difference is that in administrative proceedings settlements do not have to be consented to by all parties to the proceeding, and if settlements are found to be "equitable by the regulatory agency, then the terms of the settlement form the substance of an order binding on all the parties, even though not all are in accord as to the result."¹³

As set forth by the Court of Appeals in *Pennsylvania Gas & Water Co.*,¹⁴ the differing connotation of the term "settlement" in administrative practice and civil court actions results in large part from the differing roles of the two forums. "[T]he court must passively await the appearance of a litigant"¹⁵ and can adopt or approve a settlement only upon mutual agreement of the parties. In contrast, a "regulatory agency is charged with a duty to move on its own initiative where and when it deems appropriate" and "may responsibly exercise its initiative by terminating the proceedings at virtually any stage on such terms as its judgment on the evidence before it deems fair, just, and equitable, provided of course the procedural requirements of the statute are observed."¹⁶ As

9. *Id.*, 44 Fed. Reg. at 34,937 (citing *Mitchell Energy Corp. v. FPC*, 519 F.2d 36, 40 (5th Cir. 1975); *Texas E. Transmission Corp. v. FPC*, 306 F.2d 345, 347 (5th Cir. 1962)).

10. *Pennsylvania Gas & Water Co. v. FPC*, 463 F.2d 1242, 1247 (D.C. Cir. 1972).

11. 732 F.2d 202 (D.C. Cir. 1984).

12. 35 F.E.R.C. ¶ 61,105 (1986).

13. *Pennsylvania Gas & Water Co. v. FPC*, 463 F.2d 1242, 1246 (D.C. Cir. 1972).

14. 463 F.2d 1242 (D.C. Cir. 1972).

15. *Id.* at 1246.

16. *Id.* (footnote omitted).

noted by the court in *Cities of Lexington v. FPC*, "there is nothing in the Administrative Procedure Act which expressly requires unanimous consent of all the participating parties to an agreement of settlement" in an administrative proceeding.¹⁷

Unlike a court in a civil action, an administrative agency "cannot refuse to consider a proposal which appears, on its face at least, consistent with [its] duty [of protecting the ultimate consumer],"¹⁸ even if all the parties to the proceeding are not in agreement as to the results. Thus, even if the Commission cannot approve a contested settlement under its regulations, the court in *Michigan Consolidated Gas Co.* noted that if the settlement proposal has merit, the Commission must at some stage consider it as a resolution of the issues which may be in the public interest.¹⁹

As indicated, the settlement practice has historically been employed by the Commission to assist in managing its voluminous case load.²⁰ The settlement practice at the Commission serves two traditional roles: it provides a solution to regulatory delay and serves as a litigation tool. It has been observed that: "The whole purpose of the informal settlement provision is to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result of their own which the appropriate agency finds compatible with the public interest."²¹ The Commission has acknowledged the role of settlements as solutions to regulatory delay.²² Indeed, the Commission would be unable to "cope with the flood of business engendered by its jurisdictional statutes if the outcome of a substantial proportion of that business were not the result of voluntary settlements entered into by the parties."²³

In addition to providing an alternative to protracted administration hearings, settlements also play a very important role in preparation for those hearings. Although as a general rule the conduct or the statements of the parties during the course of settlement negotiations are considered privileged,²⁴ settlement conferences can be employed as tools to determine the general positions of the parties and the issues which may ultimately be the subject of litigation.

II. PROCEDURAL ASPECTS OF THE SETTLEMENT PRACTICE

Although section 554(c)²⁵ provides that an agency shall afford parties to an administrative proceeding the opportunity to, *inter alia*, submit offers of

17. 295 F.2d 109, 121 (4th Cir. 1961).

18. *Michigan Consol. Gas Co. v. FPC*, 283 F.2d 204, 224 (D.C. Cir. 1960), *cert. denied* sub nom. *Panhandle E. Pipe Line Co. v. Michigan Consol. Gas Co.*, 364 U.S. 913 (1960) (emphasis in original).

19. *Id.*

20. *Texas E. Transmission*, 306 F.2d at 347.

21. *Pennsylvania Gas*, 463 F.2d at 1247.

22. *El Paso Natural Gas Co.*, 20 F.E.R.C. ¶ 61,443 at 61,912 (1982).

23. Order No. 32, *supra* note 8, 44 Fed. Reg. 34,936 at 34,937 (citing *Mitchell Energy Corp. v. FPC*, 519 F.2d 36, 40 (5th Cir. 1975); *Texas E. Transmission Corp.*, 306 F.2d at 347).

24. *Texas Eastern Transmission Corp.*, 48 F.P.C. 1170, 1179 (1972). The exception to this rule would occur when there is a question regarding the construction of settlement agreements. In that event, the Commission has held that the statements of the parties used to establish the intent of the parties are not privileged communications. *Independent Oil & Gas Ass'n*, 18 F.E.R.C. ¶ 61,289 at 61,603 (1982).

25. 5 U.S.C. § 554(c) (1982).

settlement to terminate proceedings or resolve disputed issues in a proceeding, it does not set forth the procedures the agency is to employ with regard to submission of such offers. In fact, the legislative history of section 554(c) reveals an intent that "the precise nature of informal procedures" be left to "development by the agencies themselves."²⁶ In order to implement the settlement authority set forth in the APA, the Commission has adopted regulations outlining the procedural aspects and elements of settlement procedures before it. The Commission procedures are structured to entertain both unanimous or "uncontested" settlement offers,²⁷ and non-unanimous or "contested" settlement offers.²⁸ A brief overview of the settlement process at the Commission follows.

A. Settlement Conference

In order to initiate settlement procedures at the Commission, a settlement conference will be convened to ascertain the positions of the parties and their respective interests in the outcome of the proceedings. An informal settlement conference may be convened by any party or participant, including the Commission Staff,²⁹ to the proceeding and is not governed by the formalities of the Commission notice³⁰ and participation³¹ requirements. On the other hand, a formal settlement conference is subject to the notice and participation requirements set forth in Rule 601 and may be convened only by the Commission or the decisional authority, usually the presiding administrative law judge, either *sua sponte* or upon motion of any party or participant at any time and for any "purpose related to the conduct or disposition of the proceeding, including submission and consideration of offers of settlement."³² As a general rule, motions to convene a settlement conference will be looked on with favor by the Commission or the decisional authority as a means of enabling "the parties to discuss openly their position and concerns on the contested issues in the case."³³

Participation in settlement conferences is encouraged by the Commission's regulations, which specifically provide that failure of a party to attend a formal settlement conference will constitute a waiver of all objections to any order or ruling arising out of, or any agreement reached at the conference.³⁴ The participation of all parties to a proceeding is encouraged by the Commission for the purpose of considering and accommodating all divergent views and interests.³⁵ The waiver rule contained in Rule 601(b)(3), however, is applicable only to

26. Staff of Senate Committee on the Judiciary, 79th Congress, 1st Sess. 8, Senate Judiciary Committee Print on S.7 at 24 (Comm. Print 1945).

27. 18 C.F.R. § 385.602(g) (1986).

28. *Id.* § 385.602(h).

29. *Id.* § 385.602(b)(2). The Commission Staff is specifically omitted from the definition of a party contained in 18 C.F.R. § 385.102(c) (1986), and is only a participant in settlement proceedings. The Commission Staff's non-party status means it cannot object and make an otherwise uncontested offer of settlement contested. See *KN Energy, Inc.*, 31 F.E.R.C. ¶ 63,062 (1985).

30. 18 C.F.R. § 385.601 (b)(1) (1986).

31. *Id.* § 385.601 (b)(2), (3).

32. *Id.* § 385.601(a).

33. *Centel Corp., Western Power Div.*, 27 F.E.R.C. ¶ 63,071 (1984).

34. 18 C.F.R. § 385.601 (b)(3) (1986).

35. *Energy Terminal Serv. Corp.*, 20 F.E.R.C. ¶ 61,053 at 61,112 (1982).

formal settlement conferences. The Commission has clearly recognized the distinction between formal and informal settlement conferences, and the applicability of the waiver rule contained in Rule 601(b)(3), in its order in *Montana-Dakota Utilities Co.*,³⁶ where it held that a party that had opposed settlement and attended a formal prehearing conference, at which it raised its opposition, had not waived its right to file comments by not attending an informal conference. Not only is attendance at formal settlement conferences encouraged, the Commission's regulations also provide that all participants in a formal settlement conference who appear in a representative capacity must be authorized to act on behalf of their principals.³⁷ This requirement is of particular importance for it is at the settlement conference that issues are identified for resolution and trial procedures may be established.³⁸

B. Settlement Judge

In order to further promote and encourage the use of the settlement process as a means of expeditiously resolving disputed issues and cases,³⁹ the Commission's regulations provide authority for the appointment of a settlement judge in cases set for hearing.⁴⁰ The purpose of the settlement judge is to preside over settlement conferences and negotiations and assess the practicalities of potential settlements, in an attempt to reach a more expeditious and final determination of the case.⁴¹

A motion for the appointment of a settlement judge may be made to the presiding officer or the Commission by any party or participant, including the Commission Staff.⁴² Such a motion may be acted on at any time, and the time limits contained in the Commission's regulations for answers to motions⁴³ are inapplicable to motions for the appointment of settlement judges.⁴⁴ In addition to motions by parties and participants, the presiding officer may request the chief administrative law judge to appoint a settlement judge.⁴⁵

According to the Commission's regulations, the appointment of a settlement judge by the chief administrative law judge is discretionary if the motion is made by a presiding officer or by a party with the concurrence of a presiding officer; however, the appointment is mandatory if directed by order of the Commission.⁴⁶ In those instances where the appointment of a settlement judge is discretionary, such appointments are generally favored unless the appointment would serve no real purpose.⁴⁷ In those cases where issues are factual and sus-

36. 27 F.E.R.C. ¶ 61,312 (1984).

37. 18 C.F.R. § 385.601 (b)(2) (1986).

38. *Panhandle E. Pipe Line Co.*, 29 F.E.R.C. ¶ 61,281 at 61,574 (1984).

39. Order No. 90, 11 F.E.R.C. ¶ 61,308 (1980), published at 45 Fed. Reg. 45,902 (1980), *reprinted* in F.E.R.C. Stats. & Regs., Regulation Preambles 1977-1981 ¶ 30,169 (1980).

40. 18 C.F.R. § 385.603 (1986).

41. *Centel Corp., W. Power Div.*, 27 F.E.R.C. ¶ 63,071 (1984).

42. 18 C.F.R. § 385.603(c), (d) (1986).

43. *Id.* § 385.213(d).

44. *Id.* § 385.603(c)(3).

45. *Id.* § 385.603(c)(2).

46. *Id.* § 385.603(d), (e).

47. *Middle S. Serv., Inc.*, 26 F.E.R.C. ¶ 63,113 (1984).

ceptible of prompt determination, the Commission has deferred the decision of whether the appointment of a settlement judge is appropriate to the presiding administrative law judge.⁴⁸ Decisions made regarding the discretionary appointment of a settlement judge are "not subject to review by, appeal to, or rehearing by the presiding officer, chief administrative law judge, or the Commission,"⁴⁹ nor are decisions to terminate settlement negotiations before a settlement judge made by the chief administrative law judge subject to such review.⁵⁰

C. *Offers of Settlement*

Offers of settlement, whether resulting from formal or informal conferences, may be submitted by any participant in any proceeding, whether pending or scheduled for hearing, at any time.⁵¹ Accordingly, the Commission has held that the submission of a settlement offer after the certification of the record and issuance of an Initial Decision by the presiding administrative law judge is a timely submission.⁵² The Commission's regulations clearly provide that offers of settlement can be submitted by any participant or party; submission is not restricted to the applicant in the proceeding. Indeed, settlement agreements have been certified to the Commission over the objection of the applicant.⁵³

All offers of settlement must be filed⁵⁴ with the Secretary of the Commission who is entrusted with the responsibility of transmitting them to the presiding officer, if a hearing has been ordered and the record not yet certified to the Commission, or to the Commission.⁵⁵ Upon the filing of the offer of settlement, initial comments on the offer of settlement may be filed with the Commission within 20 days of the date of filing, and reply comments⁵⁶ may be filed within 30 days of the date of filing.⁵⁷ Failure to file comments constitutes a waiver of all objections to the offer of settlement.⁵⁸

The submission of comments on an offer of settlement is not restricted to parties or participants to the proceeding. Non-parties are entitled to file comments on the offer of settlement.⁵⁹ Rule 602,⁶⁰ which governs offers of settlement and the filing of comments thereon, does not require that one must be a participant in order to file comments on an offer of settlement. Indeed, comments of non-participants have been viewed as valuable additions in the context of the entire record in a case; however, they have been disallowed to prevent

48. *Pacific Gas & Elec. Co.*, 27 F.E.R.C. ¶ 61,248 at 61,468 (1984).

49. 18 C.F.R. § 385.603(i) (1986).

50. *Id.*

51. *Id.* § 385.602(b)(1).

52. *Southern Natural Gas Co.*, 25 F.E.R.C. ¶ 61,093 at 61,313 (1983).

53. *Gulf Cent. Pipeline Co.*, 23 F.E.R.C. ¶ 63,127 (1983).

54. The content of all settlement offers is governed by 18 C.F.R. § 385.602(c) (1986), and service of the settlement agreement must be made pursuant to 18 C.F.R. § 386.602(d) (1986).

55. 18 C.F.R. § 385.602(b) (1986).

56. Initial Comments have not been found to be prerequisites to reply comments. *See Columbia Gas Transmission Corp.*, 24 F.E.R.C. ¶ 63,011 at 65,025 (1983).

57. 18 C.F.R. § 385.602(f)(2) (1986).

58. *Id.* § 385.602(f)(3).

59. *El Paso Natural Gas Co.*, 24 F.E.R.C. ¶ 63,008 at 65,022 (1983).

60. 18 C.F.R. § 385.602 (1986).

certification of an offer of settlement.⁶¹

D. Role of the Presiding Officer⁶²

The role of the presiding officer in the settlement process is distinct from the role of the Commission. Unlike the role of the Commission, the presiding officer's role, at least initially, is not to assess the merits of the offer of settlement. Rule 602⁶³ sets forth the responsibilities of the presiding officer at various stages of the settlement process. First, the presiding officer must make a determination of whether the settlement offer is contested in whole or in part. If it is not challenged, the offer of settlement is treated as uncontested and the presiding officer *must* certify it to the Commission.⁶⁴ In such a case, there is no provision in the Commission's regulations for any expression of opinion on the merits.⁶⁵ If, however, the offer of settlement is found to be contested, in whole or in part, the presiding officer *may* certify all or a part of it to the Commission.⁶⁶ Since the duty conferred upon the presiding officer in this instance is permissive, as opposed to mandatory, an assessment of the merits may be made in order to assist in the determination of the issue of certification.⁶⁷

E. Uncontested Settlements

In making a determination as to the character of an offer of settlement—contested or uncontested—the presiding officer must examine the comments filed on the settlement by parties in the case.⁶⁸ These comments may contain evidence of support or objection, or they may set forth a variety of requests for modification or clarification of the offer of settlement. In the event that only comments in support of the offer of settlement are filed with the Commission, it is clear that the offer of settlement is uncontested and must be certified by the presiding officer to the Commission. Likewise, comments requesting clarification or modification to an offer of settlement will not render an offer of settlement contested.⁶⁹ Indeed, at least one presiding judge has found that “where a party does not expressly invoke the talismanic word ‘object’ or

61. See generally *Columbia Gas Transmission Corp.*, 24 F.E.R.C. ¶ 63,011 at 65,025 (1983), (discussing *Pacific Interstate Transmission Co.*, 23 F.E.R.C. ¶ 61,309 (1983)).

62. The Commission's regulations define a presiding officer to mean:

(1) With respect to any proceeding set for hearing under Subpart E of this part, one or more Members of the Commission, or any administrative law judge, designated to preside at such hearing, or, if no Commissioner or administrative law judge is designated, the Chief Administrative Law Judge; or

(2) With respect to any proceeding not set for hearing under Subpart E, any employee, including the Oil Pipeline Board, designated by rule or order to conduct the proceeding.

18 C.F.R. § 385.102 (c)(1986).

63. *Id.* § 385.602.

64. *Id.* § 385.602(g)(1); *Consolidated Gas Supply Corp.*, 20 F.E.R.C. ¶ 63,096 (1982).

65. *Columbia Gas Transmission Corp.*, 24 F.E.R.C. ¶ 63,011 at 65,025 (1983).

66. 18 C.F.R. § 385.602(h)(2)(i) (1986).

67. *Columbia Gas*, 24 F.E.R.C. at 65,025-26.

68. Subsection (h) of Rule 602, 18 C.F.R. § 385.602(h) (1986), which controls the treatment of contested settlement offers, clearly differentiates between comments filed by “any party,” and by implication comments filed by “any others.”

69. *Consolidated Gas Supply Corp.*, 27 F.E.R.C. ¶ 61,426 at 61,792 (1984).

'oppose' in its comments and, instead, 'requests' modification or 'clarifications' as conditions to Commission approval, the settlement can be treated as an uncontested offer of settlement."⁷⁰ There are also situations in which parties may object to the draft order accompanying the offer of settlement, rather than the terms of the offer of settlement itself. Such objections to a proposed order accompanying an offer of settlement have been held not to render the settlement contested.⁷¹

Although an offer of settlement may be uncontested and must be certified by the presiding officer to the Commission, approval of an uncontested offer of settlement by the Commission is not automatic. The Commission must find that the offer of settlement appears to be fair and reasonable and in the public interest prior to its approval of an uncontested settlement.⁷² Commission approval of an uncontested offer of settlement has no precedential value in a litigated case.⁷³

F. Contested Settlements

Rule 602(h) of the Commission's regulations⁷⁴ governs disposition of contested offers of settlement. That rule provides that a presiding officer *may* certify a contested offer of settlement to the Commission if a determination is made that there are "no genuine issues of material fact"⁷⁵ in dispute, and only issues of policy or law exist.⁷⁶ If there are genuine issues of material fact in dispute, however, the presiding officer may still certify the offer of settlement if (a) the parties concur in a motion for omission of the Initial Decision;⁷⁷ (b) the presiding officer determines that the record contains substantial evidence from which the Commission may reach a reasoned decision on the merits;⁷⁸ and (c) the parties have had an opportunity to present evidence and to cross-examine opposing witnesses.⁷⁹ These three requirements must be read in the conjunctive, and the presiding officer only has the discretionary power to certify an offer of settlement to the Commission if all three criteria are met.⁸⁰ Contrary to the mandatory nature of certification related to uncontested offers of settlement,⁸¹ certification, as it relates to contested offers of settlement, is left to the discretion of the presiding officer, even if the criteria set forth in the Commission's regulations are satisfied.⁸²

The Commission may approve a contested offer of settlement if (1) the record contains substantial evidence upon which a reasoned decision can be

70. Northwest Pipeline Corp., 29 F.E.R.C. ¶ 63,020 at 65,044 (1984).

71. Northwest Pipeline Corp., 24 F.E.R.C. ¶ 63,120 at 65,222 (1983).

72. 18 C.F.R. § 385.602(g)(3) (1985); *See generally* Kentucky W.Va. Gas Co., 28 F.E.R.C. ¶ 61,038 at 61,071 (1984).

73. Northwest Pipeline Corp., 27 F.E.R.C. ¶ 61,339 at 61,657 (1984).

74. 18 C.F.R. § 385.602(h) (1986).

75. *Id.* § 385.602(h)(2)(ii).

76. Consolidated Gas Supply Corp., 27 F.E.R.C. ¶ 63,031 at 65,150 (1984).

77. 18 C.F.R. § 385.602(h)(2)(iii)(A) (1986).

78. *Id.* § 385.602(h)(2)(iii)(B).

79. *Id.* § 385.602(h)(2)(iii)(C).

80. Middle S. Serv., Inc., 27 F.E.R.C. ¶ 63,043 at 65,185 (1984).

81. 18 C.F.R. § 385.602(g)(1) (1986).

82. *Id.* § 385.602(h)(2)(i).

based,⁸³ or (2) the Commission finds that no genuine issue of material fact exists.⁸⁴ The proponent of an offer of settlement bears the burden of proof to establish for the Commission that there are no outstanding genuine issues of material fact.⁸⁵ This burden may be met through the introduction of evidence as to the factual premises underlying the offer of settlement. This burden has been held in some cases to have been met through the incorporation by reference of evidence submitted to the Commission in other pending dockets.⁸⁶

In making a determination as to the existence of contested issues of material fact, the Commission must look to the underlying factual predicates of the offer of settlement, not inferences or conclusions which may be derived from such factual predicates or expert opinions.⁸⁷ In addition, the Commission must examine the various interests of the parties who raise objections to a settlement in making its determination as to the existence of contested issues of material fact. The Commission has held that the objections of a party with no present and immediate interest in a settlement will not render a settlement contested.⁸⁸ Indeed, the Commission in *El Paso Natural Gas Co.*⁸⁹ stated that "if a party's interests are not immediately and irreparably affected by approval of a settlement . . . , that party's opposition to a settlement does not create a genuine material issue." If genuine issues of material fact are found to exist, the Commission may still approve the contested offer of settlement if the record contains substantial evidence on which the Commission can reach a reasoned decision.⁹⁰ This evidence should be clearly identified in the comments of the parties and the certification by the presiding officer. Otherwise, there is a possibility that the Commission will not take it upon itself to perform a search of the record in the depth necessary to reveal the supporting evidence. Indeed, the Commission has stated on one occasion: "[w]e refuse to dissect the voluminous record to find support for the settlement where neither the parties nor the ALJ's have seen fit to detail that support and analysis."⁹¹

The Commission's authority to approve contested settlements, pursuant to its regulations, has been specifically sanctioned by the courts.⁹² Indeed, it is well established that the Commission may approve contested settlements as long as it determines that the proposal is just and reasonable and in the public interest.⁹³ As stated by the court in *Cities of Lexington v. FPC*:⁹⁴

83. *Id.* § 385.602(h)(1)(i)

84. *See id.*; Michigan Wis. Pipe Line Co., 20 F.E.R.C. ¶ 61,423 at 61,856 (1982).

85. Central Ill. Pub. Serv. Co., 21 F.E.R.C. ¶ 61,297 at 61,796 (1982).

86. Southern Natural Gas Co., 25 F.E.R.C. ¶ 61,093 at 61,313 (1983).

87. Pennsylvania Gas & Water Co. v. FPC, 463 F.2d 1242, 1252 (D.C. Cir. 1972); Trunkline Gas Co., 22 F.E.R.C. ¶ 63,114 at 65,398 (1983).

88. Trans-Alaska Pipeline Sys., 35 F.E.R.C. ¶ 61,425 (1986).

89. 25 F.E.R.C. ¶ 61,292 at 61,673 (1983).

90. 18 C.F.R. § 385.602(h) (1986).

91. Tennessee Gas Pipeline Co., 24 F.E.R.C. ¶ 61,146 at 61,336 (1983).

92. New Orleans Pub. Serv., Inc. v. FERC, 659 F.2d 509, 511-12 (5th Cir. 1981); Pennsylvania Gas & Water Co. v. FPC, 463 F.2d 1242, 1247-48 (D.C. Cir. 1972) (In some circumstances the Commission can approve a contested settlement without conducting a formal evidentiary hearing).

93. Placid Oil Co. v. FPC, 483 F.2d 880, 893 (5th Cir. 1973), *aff'd sub nom.* Mobil Oil Corp. v. FPC, 417 U.S. 283, 314 (1974).

94. 295 F.2d 109, 121 (4th Cir. 1961).

There is nothing in the Administrative Procedure Act which expressly requires unanimous consent of all the participating parties to an agreement of settlement; and to read such a contention into the statute in view of the countless state agencies, municipalities, and consumers who may be interested in an administrative proceeding would effectually destroy the settlement provision.

The Supreme Court in *Mobil Oil Corp. v. FPC*⁹⁵ held that the Commission has a duty to consider all offers of settlement, including those which cannot be approved due to their contested nature, as proposed resolutions on the merits of the case.

If the Commission Staff is the only contesting participant, the presiding officer may exercise his discretion to certify the offer of settlement regardless of whether there is an outstanding issue of material fact. The Commission, however, has placed restrictions on such discretion in at least one instance⁹⁶ by requiring that the record contain evidence to support the finding that the settlement rates are just and reasonable rates prior to certification of the offer of settlement over the objection of the Commission Staff. The Commission Staff, while performing its functions as the watchdog of the public interest,⁹⁷ is not considered a party to an offer of settlement under Rule 102 of the Commission's regulations.⁹⁸

In *Ohio Power Co.*,⁹⁹ only the Commission Staff expressed objection to the proposed offer of settlement. The Commission in that case couched its approval of the offer of settlement by stating: "our decision should in no way indicate that settlements automatically will be approved if staff is the only participant to object. The public interest test is not necessarily met just because all the immediate parties agree."¹⁰⁰ As an example, the Commission hypothesized a situation in which the Commission Staff was the only representative of "the ultimate consumer." If that were the situation, the Commission has stated that it would probably give greater weight to Commission Staff objections and might find that the offer of settlement was contrary to the public interest.¹⁰¹ This Commission position is further articulated in the Initial Decision rendered in *KN Energy, Inc.* which stated that "[t]he Commission Staff plays a very vital and most important role in every proceeding by representing the public interest."¹⁰² Thus, although an offer of settlement is not technically considered contested if the only objector is the Commission Staff, the Commission Staff's recommendations are given full consideration in making any determination.¹⁰³

When determining whether or not to approve an offer of settlement, the Commission is not bound to consider the offer as a whole.¹⁰⁴ Instead, it may determine whether contested issues are severable from the remainder of the pro-

95. 417 U.S. 283, 312-14 (1974).

96. Southern Pac. Pipe Lines, Inc., 35 F.E.R.C. ¶ 61,242 (1986).

97. KN Energy, Inc., 31 F.E.R.C. ¶ 63,062 (1985).

98. 18 C.F.R. § 385.102(c) (1986).

99. 23 F.E.R.C. ¶ 61,236 (1983).

100. *Id.* at 61,497.

101. *Id.* at 61,498.

102. KN Energy, Inc., 31 F.E.R.C. ¶ 63,062 at 65,213-14 (1985).

103. *Id.* at 65,214.

104. 18 C.F.R. § 385.602(h)(1)(iii) (1986) (permitting severing of uncontested portions of settlement agreement).

posed offer of settlement.¹⁰⁵ If the contested issues are severable, the Commission may set those contested issues for hearing and make a determination that the remaining portions of the offer of settlement are fair and reasonable and in the public interest.¹⁰⁶

Although the Commission is given the authority to sever contested issues from an offer of settlement, this option is rendered virtually unexercisable in many instances owing to the inclusion of "non-severability" clauses in most offers of settlement. The clauses mandate that the offer of settlement be approved as a package and that issues may not be severed. While "non-severability" clauses might seem oppressive, they are designed to protect the compromises and bargains struck by the parties to the offer of settlement. As the Commission noted in *Southern Natural Gas Co.*,¹⁰⁷ severance of a settlement package would serve to nullify the agreement negotiated by the majority of the parties.

If the Commission finds that the contested issues are not severable based on its own determination or on the terms of the offer of settlement, or, alternatively, because the record does not contain substantial evidence upon which a decision can be rendered, the Commission may remand the proceeding to take additional evidence on the contested issues or "[t]ake other action which the Commission determines to be appropriate."¹⁰⁸ It is this final catch-all provision, "to take other action that it considers appropriate," that provides the basis of authority for the Commission to sever parties and not issues from an offer of settlement, thereby permitting otherwise contested offers of settlement to be treated as uncontested as to consenting parties. The practice of severing a contesting party from an offer of settlement and allowing that party to have a hearing on the merits of the contested issues while allowing uncontesting parties to proceed as if the offer of settlement were uncontested was affirmed by the Court in *United Municipal Distributors Group v. FERC*.¹⁰⁹

III. UNITED MUNICIPAL DISTRIBUTORS GROUP CASE

The clearest statement of Commission policy toward severing contesting parties from an offer of settlement while permitting uncontesting parties to proceed with the offer of settlement as if it were uncontested¹¹⁰ was upheld in *United Municipal Distributors Group v. FERC (UMDG)*.¹¹¹ The *UMDG* case, at the time, represented a clear reflection of Commission policy statements related to settlements which called for the most expeditious disposition of cases before the Commission.¹¹²

105. *Id.*; see also Order 32, *supra* note 7, 44 Fed. Reg. 34,936 at 34,941.

106. 18 C.F.R. § 385.602(h)(2)(iii)(C)(iv) (1986) (provides that contested issues may be severed by the Commission from an offer of settlement and the remaining uncontested portions of a settlement may be approved by the Commission upon a finding that they are fair and reasonable and in the public interest).

107. 27 F.E.R.C. ¶ 61,477 at 61,921 (1984).

108. 18 C.F.R. § 385.602(h)(1)(ii)(B) (1986).

109. 732 F.2d 202 (D.C. Cir. 1984).

110. *United Gas Pipe Line Co.*, 22 F.E.R.C. ¶ 61,094 (1983).

111. 732 F.2d 202 (D.C. Cir. 1984).

112. See, e.g., *supra* notes 22-25 and accompanying text (discussing Commission's policy of encouraging settlements).

In *UMDG*, the petitioner, the United Municipal Distributors Group, sought review of two Commission orders approving a settlement of rate increases filed by a natural gas pipeline company. The two orders approved an offer of settlement as to all parties except the petitioner, and remanded the case as to the petitioner for a full administrative hearing on contested rate issues.¹¹³ The court of appeals affirmed the Commission's remand of the entire proceeding as to the petitioner and its approval of the offer of settlement as to all consenting parties.¹¹⁴ In doing so, the court rejected the petitioner's argument that the Commission's regulations governing contested offers of settlement limit the agency to three alternatives: (1) approving the offer of settlement as a binding resolution of the issues on the merits; (2) disapproving the offer of settlement in full; or (3) severing contested issues and approving the remaining uncontested portions.¹¹⁵ The court stated that "[t]he regulations, by their terms, do not preclude the action [severing parties] taken by FERC here."¹¹⁶

The court stated that the Commission's refusal to invoke the severance procedures outlined in Rule 602(h)(1)(iii)¹¹⁷ is adequately supported by the fact that the settlement represents an "inseparable package" and, by contesting the tax issue, the petitioner had rejected the entire settlement package.¹¹⁸ Therefore, the Commission's broad authority in Rule 602(h) to "[t]ake other action which [it] determines to be appropriate,"¹¹⁹ and the fact that the Commission had demonstrated that its treatment of the offer of settlement was supported by earlier precedent,¹²⁰ provided the foundation upon which the Commission's decision could be upheld. The court unequivocally upheld the Commission's interpretation of its regulations¹²¹ and found that the regulation entrusted the Commission with the authority to "'[t]ake other action which the Commission deems appropriate' when the Commission determines that 'the issue cannot be severed from the offer of settlement.'"¹²² Thus, the court's holding in *UMDG* confirms the ability of the Commission to expedite settlement procedures¹²³ by allowing consenting parties the benefit of their bargain while

113. *UMDG*, 732 F.2d at 205.

114. *Id.* at 212-13.

115. *Id.* at 208.

116. *Id.*

117. 18 C.F.R. § 385.602(h)(1)(iii) (1986) (stating uncontested portions of a settlement agreement may be severed).

118. *UMDG*, 732 F.2d at 208.

119. 18 C.F.R. § 385.602(h)(1)(ii)(B) (1986).

120. See *Potomac Edison Co.*, 17 FERC ¶ 61,167 (1981). In that case, all customers except one had agreed to the settlement of a proposed rate increase. The contestant had requested that the price squeeze issue be "kept alive for hearing." Because of this opposition, the Commission found that there was no settlement between Potomac Edison and the contestant. Accordingly, the Commission approved the settlement as uncontested as to all consenting parties and remanded the entire proceeding as to the contestant to the ALJ for determination on the question of rates. See also *Delmarva Power & Light Co.*, 6 F.E.R.C. ¶ 61,084 (1979); *Boston Edison Co.*, 3 F.E.R.C. ¶ 61,077 (1978).

121. See, e.g., *Belco Petroleum Corp. v. FERC*, 589 F.2d 680, 685-86 (D.C. Cir. 1978) (the courts must uphold an agency's construction of its own regulation if it is reasonable and consistent with the regulation).

122. *UMDG*, 732 F.2d at 208.

123. See *Texas E. Transmission Corp.*, 306 F.2d 345 (5th Cir. 1962); *Cities of Lexington v. FPC*, 295 F.2d 109, 121 (4th Cir. 1961) (where the Commission held that settlement agreements should be encouraged

allowing contesting parties the opportunity to adjudicate the disputed issues before the Commission.

The *UMDG* rule, permitting the severance of parties under the authority of Rule 602(h),¹²⁴ has provided the framework for the approval of many contested offers of settlement.¹²⁵ It was not until the Commission's decision in *Northern Natural Gas Co.*¹²⁶ that any serious challenge to the *UMDG* rule arose. *Northern Natural* muddies the otherwise clear doctrine of *UMDG*, which had been thought to be an accurate reflection of Commission settlement policy and a clear interpretation of its regulations governing contested offers of settlement.

IV. NORTHERN NATURAL CASE

The Commission's Order on Rehearing in *Northern Natural Gas Co. (Northern)*, issued on April 23, 1986,¹²⁷ represents a significant departure from the precedent and policy regarding settlements set forth by the Commission in *United Gas Pipe Line Co.*¹²⁸ and confirmed by the Court in *UMDG*.¹²⁹ Indeed, *Northern* raises fundamental questions regarding the Commission's settlement policy and procedures and the role played by state regulatory agencies and other parties to a proceeding who do not have rate responsibility.

On November 26, 1985, the Commission approved an offer of settlement related to the purchasing practices of Northern Natural Gas Company (Northern Natural) as to consenting parties, thereby treating it as an uncontested offer of settlement as to those parties,¹³⁰ and directed the administrative law judge to conduct a hearing on the opposition to the offer of settlement raised by the Iowa State Commerce Commission (ISCC).¹³¹ In response to the action of the Commission, the ISCC filed a request for rehearing based on two primary factors.¹³² First, the ISCC argued that the *UMDG* rule should not be relied upon in the case at hand since "[UMDG] only condones the severing of parties where those parties will not be bound by the terms of the settlement to which they object."¹³³ ISCC asserted that, in the instant case, the Commission had no choice but to resolve the purchasing practices issue on the merits after a hearing because the ISCC would be bound by the settlement agreement and would be

because "liberality of procedure is essential to the interest of the dispatch of business").

124. 18 C.F.R. § 385.602(h) (1986).

125. See *Southern Natural Gas Co.*, 27 F.E.R.C. ¶ 61,477 at 61,921 (1984) (holding that the severance of contesting parties "allows the consenting parties the benefit of their bargain and gives the contesting parties the opportunity to obtain the additional [relief] they seek"); *Panhandle E. Pipeline Co.*, 26 F.E.R.C. ¶ 61,342 (1984) (Commission approved the uncontested portion of a settlement as to all parties, and the contested issue not approved as to the contesting party was remanded for decision to the administrative law judge).

126. 35 F.E.R.C. ¶ 61,105 (1986).

127. *Id.*

128. 22 F.E.R.C. ¶ 61,094 (1983).

129. See *supra* notes 120-121 and accompanying text (discussing settlement procedure as outlined in *UMDG*).

130. *Northern Natural Gas Co.*, 33 F.E.R.C. ¶ 61,261 at 61,523 (1985).

131. *Id.* at 61,525.

132. *Northern Natural Gas Co.*, 35 F.E.R.C. ¶ 61,105 at 61,226 (1986).

133. *Id.* (footnote omitted).

remediless. The ISCC argued that by approving the offer of settlement without modification, the Commission precluded itself from ordering further refunds.¹³⁴ Second, the ISCC asked the Commission to reject the offer of settlement because the record "lacks the substantial evidence required to make a finding on the merits."¹³⁵

In response to, and in ultimate support of, the ISCC's arguments, the Commission found that the administrative law judge had acted improperly by certifying the offer of settlement as an uncontested settlement.¹³⁶ This finding was based on the presumption that the Commission's regulations related to contested offers of settlement allow an offer of settlement to be certified in spite of the existence of genuine issues of material fact *only* if it is determined that the "record contains substantial evidence from which the Commission may reach a reasonable decision on the merits of the contested issues,"¹³⁷ and "the parties have an opportunity to avail themselves of their rights with respect to the presentation of evidence and cross-examination of opposing witnesses."¹³⁸ In view of the fact that only direct testimony was filed in the record, the Commission vacated its prior approval of the offer of settlement as to the parties that supported or did not oppose the settlement and remanded the offer of settlement to the administrative law judge for the purposes of developing a record upon which a decision on the contested issues could reasonably be based.¹³⁹

Commissioner Trabandt, in his dissent, said that the majority's decision (1) was wrong on the merits¹⁴⁰ and (2) could significantly alter well established Commission settlement procedures approved by the Court in *UMDG*.¹⁴¹ He specifically urged rejection of the ISCC's contention that it is "settlement bound" by the approval of the offer of settlement as to contesting parties. Indeed, Commissioner Trabandt argued that the Commission had a broad range of potential remedies, including the ability to order additional refunds.¹⁴² A review of the alternative remedies available to the ISCC upon the outcome of a hearing reveals that Commissioner Trabandt's argument is meritorious. He suggested several federal remedies¹⁴³ were available to the ISCC in the face of the settlement. Additionally, there was an available state remedy. This state alternative would have provided the ISCC with final control over natural gas retail prices in the State of Iowa.¹⁴⁴

In addition to its state retail remedies, the ISCC could have availed itself of possible remedies under sections 4 and 5 of the NGA,¹⁴⁵ as indicated by

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.* (citing 18 C.F.R. § 385.602(h)(2)(iii)(B) (1986)).

138. *Id.* (citing 18 C.F.R. § 385.602(h)(2)(iii)(C)).

139. *Id.* (citing 18 C.F.R. § 385.602(h)(1)(ii)(A)).

140. *Id.* at 61,227 (Trabandt, Comm'r, dissenting).

141. *Id.*

142. *Id.*

143. *Id.*

144. See *Nantahala Power & Light Co. v. Thornburg*, 106 S. Ct. 2349 (1986); *Texas E. Transmission Corp. v. FPC*, 414 F.2d 344 (5th Cir. 1969).

145. 15 U.S.C. §§ 717c, 717d (1982).

Commissioner Trabandt in his dissent.¹⁴⁶ By implementing its rights under section 4 of the NGA, the ISCC could have challenged Northern Natural's rate filings,¹⁴⁷ or, through section 5 of the NGA, the ISCC had the ability to attack the settlement itself.¹⁴⁸

In the hearing that was granted to the ISCC under the original *Northern* order,¹⁴⁹ the ISCC, pursuant to sections 4 and 5 of the NGA, could have sought to have the rate level charged to the Iowa distributors prospectively lowered; requested that Northern Natural be ordered to observe, or refrain from, certain gas purchasing practices; or attempted to have Northern Natural's terms and conditions of service changed. If the ISCC had availed itself of its rights under section 4, Northern Natural would have had to bear the burden of proving the justness and reasonableness of its rates.¹⁵⁰ At the conclusion of such a hearing, the Commission could have ordered additional refunds, as indicated in Commissioner Trabandt's dissent. Although Northern Natural's rate customers within the State of Iowa may have been precluded from receiving refunds by virtue of the approved offer of settlement under the doctrine set forth in *Texas Eastern Transmission Corp. v. FPC*,¹⁵¹ the Commission could nevertheless have ordered refunds and placed the distribution of said refunds within the discretion of the ISCC. This course of action, taken pursuant to the guidelines established in *Texas Eastern Transmission Corp. v. FPC*,¹⁵² would have effectively placed the ISCC in a position to benefit the ultimate consumers in the State of Iowa.¹⁵³

Under section 5 of the NGA, the ISCC could have attacked the offer of settlement itself.¹⁵⁴ Although an offer of settlement once approved by the Commission binds all parties thereto, including the Commission,¹⁵⁵ settlements may be modified in accordance with the procedures of section 5 of the NGA.¹⁵⁶ In *National Fuel Gas Supply Corp.*,¹⁵⁷ the Commission explained: "In accepting a settlement, the Commission makes a finding that the settlement is compatible with the public interest and it is therefore precluded from reversing this finding *absent an order after an investigation under Section 5 of the NGA.*"¹⁵⁸

Thus, it is evident that the ISCC was not precluded from any meaningful remedy in the original *Northern* order.¹⁵⁹ The *Northern* order vacating the

146. Northern Natural Gas Co., 35 F.E.R.C. ¶ 61,105 at 61,227 (1986).

147. 15 U.S.C. § 717c (1982).

148. *Id.* § 717d.

149. Northern Natural Gas Co., 33 F.E.R.C. ¶ 61,261 at 61,523 (1985).

150. 15 U.S.C. § 717c (1982).

151. 414 F.2d at 350.

152. *Id.*

153. *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944) (The overriding goal of the Commission is to protect the ultimate consumers).

154. 15 U.S.C. § 717d (1982).

155. *El Paso Natural Gas Co.*, 20 F.E.R.C. ¶ 61,443 at 61,912 (1982) (citing *Texas Gas Transmission Corp. v. FPC*, 441 F.2d 1392, 1394 (6th Cir. 1971); *Chicago v. FPC*, 385 F.2d 629 (D.C. Cir. 1967); *Continental Oil Co. v. FPC*, 373 F.2d 96 (10th Cir. 1967)).

156. 15 U.S.C. § 717d(a) (1982).

157. 27 F.E.R.C. ¶ 61,111 at 61,209 (1984).

158. *Id.* at 61,211 (footnote omitted) (emphasis added).

159. Northern Natural Gas Co., 33 F.E.R.C. ¶ 61,261 (1985).

settlement agreement as to consenting or non-objecting parties¹⁶⁰ erred in accepting the ISCC's claim that it was remediless and "settlement-bound" by the settlement agreement.¹⁶¹ Through its order on rehearing, the Commission effectively terminated the rights of fifty-one parties to the offer of settlement while the ISCC has been granted a "super-party" status based on the false premise that the ISCC is remedy-bound.¹⁶² This is accomplished by allowing the one party (ISCC) to hold up an offer of settlement agreed to by fifty-one other parties entitled to refunds pursuant to the terms of the settlement.

It is the granting of "super-party" status that proves most troublesome in the *Northern* order. If a state commission is allowed to object to a settlement proposal and the result of that objection is to require all parties to litigate fully the issues before the Commission, the settlement process, as it has developed at the Commission, will be severely damaged.¹⁶³

Under the *UMDG* rule, the Commission can preserve an offer of settlement for consenting parties by severing non-consenting parties and allowing them to pursue their legal remedies in a hearing.¹⁶⁴ *Northern* can be viewed as implying a rejection of *UMDG* and the establishment of a new policy that a settlement may never properly be certified if a participant raises a material question of fact in the absence of a fully developed record. Such a policy would potentially provide any participant, who can make a colorable argument that it is left remediless by the settlement, the power to block the certification of a proposed settlement for all other parties and would thereby encourage abuse of the settlement process.

The far-reaching implications of the *Northern* order upon the settlement practice at the Commission are unclear. One could plausibly argue that the *Northern* order is only applicable to rate proceedings and that the rule in *UMDG* is applicable to all other proceedings at the Commission. This limitation, however, was not set forth by the Commission in the *Northern* order, nor does the *UMDG* case allow such a conclusion. In addition, one could argue that the applicability of the *Northern* order is limited to those proceedings in which a state commission voices objections to an offer of settlement. This restriction, however, is not articulated in the *Northern* order, nor does it necessarily follow that such a participant will be remedy-bound by an approved offer of settlement. Although the voicing of these restrictions in future Commission proceedings is undoubtedly forthcoming, the Commission's responses are clearly uncertain.

VI. CONCLUSION

Currently, the Commission's disposition toward settlement negotiations is ambiguous. Under *UMDG*, the court upheld the Commission's willingness to go to great lengths to settle as many issues as possible, thus avoiding lengthy

160. Northern Natural Gas Co., 35 F.E.R.C. ¶ 61,105 (1986).

161. *Id.* at 61,226-27 (Trabandt, Comm'r, dissenting).

162. *Id.*

163. *Id.*

164. See *supra* notes 104-106 and accompanying text (discussing severing of contesting parties in a proposed settlement as a viable means of expediting the settlement procedure).

and costly adjudications. Settlements were encouraged, as has been stated, by severing non-consenting parties from settlement negotiations and allowing them to litigate the contested issues in a Commission hearing while giving the consenting parties the benefit of their bargain.

Under the recent *Northern* decision,¹⁶⁵ however, it is unclear whether the Commission is willing to continue to go to such great lengths to settle claims. Owing to the existence of an incomplete record in *Northern*, however, it is, at this point, unclear whether the Commission intended to create such a broad sweeping rule which seemingly undercuts its past policy of encouraging settlements. Thus, the Commission's policy toward settlements remains in a state of uncertainty.¹⁶⁶

165. *Northern Natural Gas Co.*, 35 F.E.R.C. ¶ 61,105 (1986).

166. This uncertainty is particularly pronounced in light of the "Order Granting Rehearing Solely for Purpose of Further Consideration" issued by the Commission in *Northern Natural Gas Co.*, No. TA83-1-59-007 (June 19, 1986).

