FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

OFFICE OF ENERGY PROJECTS

In Reply Refer To:
OEP/DG2E/Gas 3
Northern Natural Gas Company
Cunningham Storage Boundary
Expansion Project
Docket No. CP09-465-000

December 2, 2009
Shannon P. Coleman, Esq.
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Washington, D.C. 20006

RE: Response to Cooperating Agency Request

Dear Ms. Coleman:

Thank you for your letters of November 6 and 13, 2009, on behalf of the Kansas Corporation Commission (KCC) requesting cooperating agency status in the development of the Environmental Assessment for the Cunningham Storage Boundary Expansion Project. We acknowledge that the KCC has special expertise regarding the project's potential environmental impacts and we welcome your continued participation as we develop the Environmental Assessment for this project. However, because the KCC is an intervenor in the instant proceeding, we are unable to grant KCC's request as detailed below.

In Order No. 2002 issued under Docket No. RM02-16-000 on July 23, 2003[1] (paragraphs 295 to 300) the Commission addressed the prohibition of simultaneous intervenor and cooperating agency status as it applies to hydroelectric cases, though the theory is equally applicable to natural gas certificate proceedings. The prohibition applies to state and local agencies as well as federal agencies. In paragraph 295 the Commission stated:

> "The NOPR proposed to modify, as to federal agencies, the Commission's policy that an agency which has served as a cooperator in the preparation of a NEPA document may not thereafter intervene in the same proceeding, and to make conforming revisions to our *ex parte* rule. The rationale for the existing policy is

1 104 FERC ¶ 61,109. See also Order No. 2002-A, Docket No. RM02-16-001, issued January 23, 2004 (106 FERC ¶ 61,037).

> that cooperating agency staff will necessarily engage in off-the-record communications with the Commission staff concerning the merits of issues in the proceeding, so that, if the agency is allowed to become an intervenor, it will then have access to information that is not available to other parties, in violation of the prohibition in the APA (Administrative Procedures Act) and our rule against on (sic) *ex parte* communications."

Further in paragraph 300, the Commission stated:

> "We continue to believe strongly that maximizing cooperation between the Commission and the federal resource agencies will lead to optimal results in the licensing process. However, we conclude that precedent indicates that allowing federal agencies to serve both as cooperators and intervenors in the same case would violate the APA. Our proposal to change the existing policy rested on a plain meaning reading of the APA provisions which the courts have not adopted. Rather, the courts have interpreted the APA more broadly on this point in order to ensure that the purposes of the statute are fulfilled. We therefore will not change the policy precluding cooperating agencies from also being intervenors."

Therefore, the information provided to you by Mr. Rafael Montag of my staff on November 6, 2009, comports with current Commission policy with regard to intervenors and cooperating agencies.

Please be assured that my staff will continue to discuss environmental issues with resource agencies, including the KCC, as we continue our review of the project. If I can be of further assistance, please feel free to contact me at 202-502-8325.

Sincerely,

Lauren O'Donnell, Director
Division of Gas – Environment and Engineering

cc: Public file, Docket No. CP09-465-000
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