103 FERC ¶ 61, 266
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. RP03-398-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO REFUND AND A TECHNICAL CONFERENCE AND ESTABLISHING HEARING PROCEDURES

(Issued May 30, 2003)

1. On May 1, 2003, Northern Natural Gas Company (Northern) filed a general rate case pursuant to Section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations. Northern's proposal includes a Primary Case and a Prospective Case. In its Primary Case, Northern proposes to modify its rate structure to recover increased annual costs for its jurisdictional services. Northern also proposes numerous changes to its terms and conditions of service. Northern proposes a June 1, 2003 effective date for its Primary Case.[1] In its Prospective Case, Northern proposes to implement various other rate provisions and terms and conditions of service. Northern requests that the tariff sheets in its Prospective Case become effective after a settlement or a Commission order on the merits of its proposal.

2. As discussed below, the Commission will accept and suspend for five months the tariff sheets proposed by Northern, subject to refund and conditions, to become effective November 1, 2003. Additionally, the Commission will convene a technical conference to discuss several of Northern's proposed changes to its terms and conditions of services. Finally, the Commission will establish a hearing to address all other issues. This order

[1]Although Northern requests a June 1, 2003, effective date for its Primary Case, it states that the actual effective date of the tariff sheets would be November 1, 2003, following the anticipated five-month suspension period.

benefits the public because it guarantees just and reasonable rates for Northern's customers.

Northern's Filing

A. Primary Case

3. Northern proposes increased rates to recover increased operational costs on its jurisdictional system. Northern bases its rates on a proposed $518 million cost of service. It calculates its cost of service using the twelve-month base period ending December 31, 2002, incorporating adjustments made during an adjustment period ending September 30, 2003. Northern's cost of service includes $182.6 million in operation and maintenance expenses, $69.4 million in depreciation and amortization for the gas plant in service, $2.6 million in the amortization of certain regulatory assets, $1.5 million in FAS 143 amortization, a $6.2 million return on its System Levelized Account (SLA) imbalance, $99.1 million in taxes, a $157.4 million return, and a $0.3 million credit for other operating expenses. Northern does not include in its cost of service items which it recovers pursuant to Commission-approved surcharges or recovery mechanisms (e.g., ACA, GRI, SBA, Fuel and UAF).

4. Northern derives its return based on a return on equity of 14 percent for its base rates, and 13 to 15 percent for its prospective term-differentiated rates. Northern proposes a capital structure of 48.65 percent debt and 51.35 percent equity. Northern also proposes to increase the depreciation rate of several facilities.

5. Northern designs its rates using a modified straight fixed-variable (SFV) methodology, which underlies Northern’s currently effective rates. Consistent with its settlement in Docket No. RP98-203-000, Northern proposes to recover a portion of its fixed costs in its maximum commodity rates. Northern proposed to continue using postage stamp rates in the Market Area and mileage-based rates in the Field Area for its commodity rates. Northern derives its billing determinants using the twelve-month base period ending December 31, 2002, and adjusts them to reflect known and measurable changes during the test period. Northern designs its rates using 79.5 million reservation billing determinants and 1,601 million commodity billing determinants. The billing determinants underlying Northern's currently effective rates are 68.5 million for the reservation rates and 1,667 million for the commodity rates.

6. Northern's proposed cost-based rates take into account seasonal usage patterns. In its Prospective Case, Northern proposes term-differentiated rates where shorter-term contracts have different maximum rate levels than longer-term contracts. Northern

asserts that the traditional rate structure is no longer valid in a more competitive market where shorter-term contracts predominate.

7. Northern also proposes revisions to various terms and conditions of service as part of its Primary Case. Specifically, Northern proposes to: (1) expand Limited Firm Transportation (LFT) service into its Market Area during the winter months; (2) revise tariff provisions related to facility expansion; (3) revise its right-of-first-refusal (ROFR) provisions; (4) change its marketing fee provisions; (5) modify restrictions on hourly takes on its system; (6) eliminate the annual redetermination of TF12 base and variable rates; (7) post available Firm Deferred Delivery (FDD) capacity on its website; (8) implement a rollover fee for its Preferred Deferred Delivery (PDD) service; (9) revise its creditworthiness provisions; (10) revise its cash-out mechanism; and (11) allow for a TFX contract conversion.

8. Northern proposes an effective date of June 1, 2003 for the Primary Case tariff sheets which, after the anticipated five-month suspension period, will be effective November 1, 2003. This effective date is consistent with the settlement of Northern's previous general rate case, in Docket No. RP98-203-000.[2]

B. Prospective Case

9. In its Prospective Case, Northern proposes various other rate provisions and terms and conditions of service. Specifically, Northern proposes to: (1) implement negative salvage rates of 0.5 percent for its onshore transmission plant and storage plant; (2) enhance rate seasonality; (3) establish an MDQ limit on its small customer DDVC tolerance level; (4) revise its fuel recovery costs methodology; (5) establish term-differentiated rates; (6) establish a new Rate Schedule SVNN for small volume customers; (7) simplify billing procedures; (8) revise its billing of overrun volumes; (9) implement a minimum MDQ requirement at each delivery point for firm service; and (10) modify its provisions for the treatment of non-pipeline quality gas. Northern proposes that the tariff sheets in its Prospective Case become effective after a settlement or a Commission order on the merits of its proposal.

Notice of Filing, Interventions, Protests and Answers

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[2] Northern Natural Gas Company, 87 FERC ¶ 61,321 (1999) (Article IV(A) of the approved settlement provides that Northern may not file a general Section 4 rate case to implement new base rates prior to November 1, 2003).

10. Notice of Northern's filing was issued on May 2, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations (18. C.F.R. § 154.210 (2003)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Numerous parties filed protests.[3] The protesters' concerns are discussed below.

11. On May 19, 2003, the Coalition filed an answer. On May 22, 2003, Northern filed its answer to the protests.[4] The Commission's Rules of Practice and Procedure do not permit answers to either protests or answers (18 C.F.R. § 385.213(a)(2)(2002). However, the Commission finds good cause to admit these pleading since they will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

Discussion

A. Primary Case

1. Rate Issues

12. Parties to this proceeding have raised numerous concerns with Northern's filing, including, but not limited to, the following typical rate-case issues: return on equity; capital structure; general depreciation rates; depreciation rates for the onshore mainline

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[3]Protesters include AG Processing, Inc.; the Large Local Distribution Company Coalition (the Coalition); Daystar Petroleum, Inc.; the Iowa Office of Consumer Advocate (Iowa); Nicor Gas; Indicated Shippers; The Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG/MRGTF); Northern States Power Company and Northern States Power Company Wisconsin (Northern States); Centerpoint Energy Minnegasco (Centerpoint); Metropolitan Utilities District of Omaha (MUD); Semco Energy Gas Company (Semco), the Canadian Association of Petroleum Producers; Madison Gas and Electric Company (Madison); and American Iron and Steel Institute, Alcoa, Inc., Archer Daniels Midland Company, Evtac Mining, United States Gypsum Company and USG Interiors, Inc. (collectively, the Industrials).

[4]Northern's answer generally asserts that the issues raised in the protests should be examined and considered at a hearing or technical conference.

system; deferred income taxes; changes in plant, operation and maintenance expenses; a management fee for its Gulf Coast rates; pipeline safety expenses; recovery of costs associated with ownership changes; recovery of costs regarding Enron and Dynegy; billing determinants; cost allocations; and assumptions surrounding the remaining useful life of Northern's mainline system.

13. Northern has not shown that the proposed rates are just and reasonable. The Commission finds that the typical rate case issues raised in the instant filing, along with the concerns raised by the parties, need to be investigated further. Accordingly, the Commission will set those issues for hearing.

2. Terms and Conditions of Service

14. In addition to the usual rate-case issues, Northern proposes in its Primary Case eleven revisions to its terms and conditions of service. As discussed below, the Commission will set one proposal for hearing, reject one, and set the remainder for a technical conference.

a. Terms and Conditions Set for Hearing

15. Northern proposes to eliminate the annual redetermination of its TF12 base and variable entitlements and establish a new method to determine the base/variable distinction for contracts entered into after June 1, 2003. With respect to existing contracts, shippers would retain their existing base/variable contract entitlement levels. For new contracts, Northern proposes that shippers can elect all of their TF12 entitlement to be TF12 base for the first year of service, and that there will be a one-time redetermination made after the first May through September contract period, after which the resulting base versus variable contract entitlement will be maintained for the remaining term of their contracts.

16. Protesters recommend that the Commission reject this proposal as being unsupported and unjustified. Northern States argues that Northern must continue the redetermination because large-volume TF contracts exist that have many years of service remaining. It adds that the redetermination serves as a counterweight to TFX services which caters to shippers that desire to contract for partial year service. Northern States questions whether continuing the redetermination would be administratively burdensome, given the sophisticated software used. It also contends that, while the individual redetermination adjustments may be minor, the cumulative adjustments over time may be substantial. NMDG/MRGTF contend that the proposal represents a significant rate design change that the current settlement does not permit. They also

assert that Northern provides no justification that the current TF12 levels (where it proposes to freeze the levels) are indicative of the TF12 levels which each of its shippers could expect to have on an average, annual basis.

17. Northern's proposal to eliminate its annual redetermination of its TF12 base and variable entitlements would impact the rates proposed in the subject Section 4 rate case. Accordingly, the Commission will set this proposal for hearing.

b. Terms and Conditions Rejected

18. Northern proposes to revise its ROFR provisions so that the ROFR will not be applicable to interim service agreements for capacity that is already under contract for a future period. Northern also proposes tariff language that would permit a shipper to waive its ROFR under a service agreement for capacity that is already under contract for a future period. Northern states that current Commission policy suggests that a shipper wanting future capacity must purchase the capacity during the interim period, but may release the capacity to replacement shippers during the interim period it does not need the capacity. Northern requests that the Commission reconsider such policy and allow it to make the interim capacity available to shippers without implementing a ROFR. Northern argues that shippers desiring capacity at some time relatively far into the future would then not have to pay for capacity before they need it. Northern notes that power plants, in particular, require 18 to 24 months lead-time for financing and construction and, therefore, typically submit requests for transportation service in the future. Northern contends that, to meet this market requirement, it must have the ability to allow this potential shipper to acquire the desired capacity for only the time the shipper actually needs the capacity.

19. Industrials and NMDG/MRGTF recommend that the Commission reject Northern's ROFR proposal, asserting that it is against Commission policy and inconsistent with the Commission's decision in Williams Gas Pipelines Central, Inc. (Williams).[5] Industrials believe that Northern should have disputed the Commission's policy on rehearing in the Williams proceeding. It also contends that, through the proposed ROFR change, Northern asks its shippers to subsidize its costs of reserving capacity for a generator's future use. Industrials also note that the Commission's policy to allow the reservation of future capacity only applies to expansion facilities and not to existing capacity as Northern proposes. NMDG/MRGTF add that Northern does not address the impact this proposal would have on ratepayers and on the interim shippers who would not have a ROFR on that capacity. They also question why a shipper

[5] Williams Gas Pipelines Central, Inc. 97 FERC ¶ 61,249 (2001).

desiring future capacity would not have to pay for the ability to reserve that capacity in advance. AG Processing contends that the Commission's policy has been for shippers to use capacity release when reserving future firm capacity.

20. In Williams, the Commission rejected a contract provision requiring the shipper to waive or not exercise its ROFR. Williams wanted the provision included in the contract since it had committed the future capacity to a power plant. The Commission held that, pursuant to Order No. 637,[6] a pipeline may not narrow its contractual ROFR, arguing that it would limit a shipper's right to receive service and would provide one shipper with a different quality of service than other firm shippers. In the subject proposal, Northern proposes to narrow in the same manner its regulatory ROFR. For the reasons cited in Williams, the Commission rejects Northern's proposal to limit its regulatory ROFR provisions.

21. Since the Commission began implementing open access, it has been concerned about allowing shippers to reserve firm capacity at a future date without requiring a shipper to begin paying a reservation charge for that capacity once the transportation agreement is executed. To do so would possibly tie up long term firm transportation service at the expense of other shippers who may place higher value on the capacity.[7] However, if Northern desires to sell capacity at a future date, it may do so, as long as it continues to make the capacity available to other shippers on a long-term basis, including giving those shippers ROFR rights, and is willing, if necessary, to expand its system to satisfy its contractual obligation to the future shipper at the time that shipper's contract commences.

c. Terms and Conditions Set for Technical Conference

22. The parties have raised a number of issues regarding the remaining nine revisions to Northern's terms and conditions of service. The Commission concludes that it would benefit the parties and the Commission to convene a technical conference to inquire into the matters raised by the parties and by Commission staff. Specifically, the Commission expects Northern to fully participate in the discussions on, among other things, the issues raised below.

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[6] Order No. 637, FERC Statutes and Regulations, Regulations Preambles July 1996 -- December 2000, ¶ 31,091, at 31,341.

[7] See Transwestern Pipeline Company, 95 FERC ¶ 61,165 at 61,535 (2001).

23. Northern proposes to expand its Rate Schedule LFT service to its Market Area in the winter months.[8] Protesters argue that this would degrade service for existing shippers, and that Northern has not shown that it has capacity available in winter months to offer this service. The Coalition contends that Northern does not appear to have allocated costs to this service, or to account for revenue it expects to receive if the Commission authorizes winter LFT service. The Coalition also believes that, consistent with Commission action in Trunkline Gas Company (Trunkline),[9] the Commission should require Northern to first make any available winter Market Area capacity available to firm shippers before offering it for LFT service.

24. Northern proposes that it may require an expansion shipper to maintain its existing contract entitlement in the expansion area, waive reduction rights, and/or refrain from realigning away from the expansion area. Semco contends that this proposal would unnecessarily lock expansion shippers into existing contracts. Industrials argue that this requirement would eliminate the shipper's ability to permanently release capacity. The Coalition asserts that the proposal would discriminate against existing customers seeking additional capacity and unnecessarily tie together existing and new agreements. It considers it discriminatory for Northern not to offer the same economics to both existing and new shippers. NMDG/MRGTF express concern that this proposal could present Northern with a powerful bargaining tool.

25. Northern proposes to allow it to pay a marketing fee in certain situations. Industrials question how Northern would determine the amount of marketing fee, and express concern that it may relate to a negotiated rate which the Commission does not allow pipelines to recover from ratepayers. They question how this fee would affect existing shipper rights, available capacity and the secondary market. Nicor Gas opposes Northern's reservation of right to recover such marketing fees in a future rate case. NMDG/MRGTF question when Northern would pay a marketing fee, what guidelines it would apply to the payment of fees, and how it would account for such fees. The Coalition asserts that such a fee contravenes the Commission's policy in Order No. 636-A.

26. Northern proposes to allow it and a shipper to agree to an hourly take requirement more restrictive than the currently effective 6.3-percent requirement. Industrials question what Northern plans to do with the excess capacity produced by the reduced takes, and

[8] Under LFT service, Northern has the right to not schedule the shipper's service on any day, but not more than a maximum of 10 days per month.

[9] Trunkline Gas Company, 77 FERC ¶ 61,169 (1996).

how the proposal would harm existing firm shippers. They also ask whether the proposal represents a negotiated term and condition of service and whether the corresponding penalties are consistent with Order No. 637. NMDG/MRGTF note that this proposal has economic ramifications, and contend that it may raise serious market power issues.

27. Northern proposes to post any available FDD capacity on its internet website in the same fashion that Northern posts all available firm capacity. NMDG/MRGTF request that the Commission set this proposal for hearing so parties can further discuss related concerns.

28. Northern proposes to include an annual rollover fee for any balance a shipper has in its PDD account as of March 31 of each year. NMDG/MRGTF note that Northern's PDD service, which the Commission approved in Northern Natural Gas Company,[10] is under rehearing, and believe that the Commission should approve no further changes to the service until it rules on the rehearing request.

29. Northern proposes to: (1) add the value of imbalance gas to the security required from non-creditworthy shippers; and (2) adjust the level of security required each month to reflect changing gas prices when it loans gas to shippers. Protesters argue that this proposal is unjustified, unnecessary and punitive. Semco argues that Northern should tie any security requirement to a shipper's future service and questions whether such security payment should accrue interest. Industrials object to this provision because it assumes that shippers will incur imbalances in the future.

30. Northern proposes to: (1) value its cash-out imbalances based on an average weekly high/low index price; (2) reduce its cash-out tolerance level from 3 percent to 2 percent; and (3) add a new tier for imbalances greater than 25 percent. Protesters argue that Northern's proposal: (1) would reduce the need for balancing or working gas and thus impact rates; (2) does not recognize that even responsible shippers cannot achieve perfection in system balancing; (3) would require delivery point operators to incur large expenses to accommodate Northern's requests on the scheduling of volumes; (4) does not provide enough time to see if Northern's current imbalance mechanism, which became effective on April 1, 2002, operates effectively; (5) contravenes Order No. 637 which required pipelines to provide more flexibility to avoid imbalance penalties; (6) does not address whether it will resolve the gaming issues on Northern's system; and (7) may impact smaller shippers more than high-volume shippers since they have less flexibility in nominating, scheduling, and the use of receipt and delivery points.

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[10] Northern Natural Gas Company, 101 FERC ¶ 61,203 (2002).

31. Northern proposes to allow certain TFX shippers to enter into TF service upon expiration of their TFX agreement by extending their entitlement for 5 years at maximum rates without going through the ROFR process or posting requirements. NMDG/MRGTF contend that this proposal raises a number of issues regarding equity and discriminatory treatment. They question whether it is fair to permit shippers to control capacity without permitting other shippers to bid on that capacity. They further question how Northern will determine various TF levels and whether Northern properly accounts for its proposal in its revenues and rates.

B. Prospective Case

32. In its Prospective Case, Northern proposes various other rate provisions and terms and conditions of service. Northern, however, has not shown the prospectively proposed rate provisions and terms and conditions of service to be just and reasonable. The Commission finds that the proposed prospective case raises typical rate case issues that, along with many concerns raised by parties, should be investigated further. Accordingly, the Commission will set the issues raised in the Prospective Case, as further discussed below, for hearing.

1. Negative Salvage Rates

33. Northern proposes to implement negative salvage rates for its onshore transmission facilities and its storage facilities. AG Processing questions Northern's negative salvage rate proposal and ask that they further explain the proposal. Indicated Shippers find this proposal patently unreasonable, arguing that Northern fails to consider that portions of it system may still have an indefinitely long useful life even if certain gas supplies deplete. It also believes that Northern's proposal circumvents the accounting requirements of FAS 143 for its onshore facilities.

2. Enhanced Seasonal Rates

34. Northern proposes to revise its existing rate structure to reflect rate seasonality to a greater extent than the rate seasonality agreed to in Northern’s Docket No. RP98-203-000 Settlement. Specifically, Northern proposes that firm transportation rates in both the Market Area and the Field Area reflect additional rate seasonality such that its rates for winter service would be higher during the months of December through February than during the months of November and March, and the rates for its summer service would be lower during the months of May through September than during the shoulder months of April and October. Northern states that its proposal is consistent

with its existing rate structure that reflects seasonal differences and Commission policy that a pipeline's rates may reflect the seasonality of demands on its system, i.e., higher rates during times of peak demand and lower rates during off-peak periods.

35. Industrials do not oppose seasonality or justified changes to Northern's TRFs, but, given the brief period of review for the subject proposal, argue that further assessment and discussion is necessary. Semco asserts that Northern fails to show why it's appropriate to design rates reflecting a greater degree of seasonality. AG Processing expresses concern that this proposal could result in cost shifts and rate distortions among shippers, and that shippers who utilize the system on a constant volume, high load-factor basis will have a service with rates that vary significantly from month to month.

36. Indicated Shippers argues that the proposed enhanced seasonal rates result in egregious increases in winter rates. They contend that allowing Northern to shift additional costs to its winter heating load is unjustified, and will reduce competition in the secondary market, which will prevent its firm shippers from off-setting the increased winter costs. NMDG/MRGTF argues the proposal will simply shift costs to those shippers that maintain high levels of winter period entitlement, and express concern that shippers receive no additional flexibility in return. The Coalition argues that this proposal will result in rate schedules that are too numerous and too complex for administrative efficiency. It also contends that Northern has not provided evidence that this proposal would enhance shipper services, and requests that this proposal be set for hearing.

3. Small Customer DDVC Tolerance

37. Currently, the Small Customer DDVC tolerance level is the greater of 5% of all scheduled volumes at the point or 650 MMBtu. Northern proposes to revise this provision to limit the tolerance level, in the event the customer's MDQ is less than 650, to the Customer's MDQ. Under Northern's existing provision, a Small Customer could request a small amount of capacity in order to retain a tolerance level covering its preexisting entitlement levels, effectively eliminating any DDVC exposure. Northern's proposed provisions limiting a Small Customer's tolerance level to its current MDQ will preclude a bypassing customer from purchasing a de minimis amount of capacity in order to retain a high tolerance percentage based on preexisting entitlement levels.

38. NMDG/MRGTF argues that Northern fails to show that all of its small customers with MDQs under 650 MMBtu per day have any opportunity to bypass Northern. They contend that there is no reason to penalize small customers for actions of another. They also argue that there is no reason to modify the currently effective tolerance levels which

Northern implemented as a result of a settlement. NMDG/MRGTF assert that this proposal has no factual underpinnings and will result in market power abuse. The Coalition, while generally supporting this proposal, notes that it could allow shippers with low MDQs to abuse the system.

4. Fuel Methodology Changes

39. Northern proposes to modify its existing methodology in two respects. First, Northern proposes to develop its fuel and UAF percentages in the annual PEA by using a 3-year averaging method, as opposed to the current methodology that is based on one year. Northern, however, will continue to collect true-up amounts, year-to-year, consistent with the current PRA mechanism. Second, Northern proposes to modify the methodology used to derive the Field Area Mainline the percentages. Specifically, Northern proposes to modify the current methodology used to develop the Field Area mainline fluel percentages by splitting the current Field mainline fuel for MIDs 1-7 and MIDs 8-16B into four fuel retention areas: Permian Mainline and Lateral and MidContinent Mainline and Lateral.

40. Indicated Shippers vehemently oppose increasing the mainline fuel rate structure in the field area from two to four rates since it could unduly harm captive producers. It notes that the NGA prohibits undue discrimination against one class of shippers.

5. Term Differentiated Rates

41. Northern proposes to establish firm transportation rates on its system that vary by contract term based on different returns on equity, with a higher rate for shorter-term contracts and a lower rate for longer-term contracts. Northern proposes three categories of term-differentiated rates: category 1 applies to contracts with terms of less than 3 years and is the highest term- differentiated rate; category 2 will apply to contracts with terms of three years or more, but less than 5 years, and reflects Northern’s filed return on equity; and category 3 applies to contracts with terms of 5 years or more and is the lowest term-differentiated rate.

42. Industrials argue that the proposed term-differentiated rates as procedurally deficient and contrary to Commission policy. According to Industrials, Northern does not propose its term-differentiated rates as part of its Section 4 rate case (the primary case), but rather includes the proposal instead in its prospective case. By bifurcating the term-differentiated rate proposal, Industrials assert the Commission and Northern's shippers cannot assess with any certainty the impact of the rate proposal on its proposed rate changes, including throughput, return on equity, and cost of service issues.

Industrials also object to the methodology Northern employs to calculate its term-differentiated rates, with too much return on equity allocated to its short-term contracts.
43. Semco argues that Northern's term-differentiated rate proposal does not reflect the realities of the gas marketplace. It believes that the proposal would encourage shippers to take on long-term contracts for the sole purpose of benefitting Northern. Northern States Power contends that Northern's term-differentiated rate proposal discriminates against shippers with existing long-term contracts, since they will be not offered the reduced long-term rates. Northern States Power asserts that the risk of existing long-term contracts is not different than the risks associated with new long-term contracts, so both shippers should be paying the same rate.

44. AG Processing expresses concern that Northern will use term-differentiated rates as leverage against captive customers, and that cost shifts between customers may result that do not reflect actual costs of service. Indicated Shippers does not oppose term-differentiated rates, but do not want Northern to superimpose a higher term-differentiated rate on top of a high seasonal rate. Additionally, they feel that the maximum return of equity in the term-differentiated rates should not exceed the return in the underlying base rates, and that Northern should discount longer-term contracts off of that figure.

6. Rate Schedule SVNN

45. Northern proposes to provide a service for small volume customers with contracted total firm entitlement of 5,500 MMBtu per day or less. This service combines transportation and balancing into one service for ease of managing daily market swings. Industrials express concern that this new service may degrade service for existing shippers for jeopardize pipeline reliability. It asserts that, before the Commission approve this service, it explore in detail the impact it will have on shippers. Industrials also wants the Commission to assure the rates are just and reasonable. The Coalition asserts that Northern fails to explain why it needs this service since it already provides SMS service. It also expresses concern that this service would place Northern at an unfair advantage in bidding for service to ethanol plants, and would discriminate against larger shippers. The Coalition asks that the Commission reject this proposal. NMDG/MRGTF see no demand or need for this service, and note that no shipper requested such a service. They contend that third-party suppliers currently offer similar services.

7. Billing Simplifications

46. Northern proposes to simplify its commodity billing process by establishing average out-of-balance transportation rates for the Market Area and the Field Area.

Industrials support billing simplifications that increase pipeline efficiency, but questions whether the subject proposal is appropriate and whether shippers will benefit. By requiring shippers to pay an "average," the Industrials contend that some shippers will pay more than they otherwise should. Industrials also question why, under this proposal, shippers must nominate to and from Demarc. MUD questions how often under this proposal Northern will recalculate the Field Area out-of-balance rate. Indicated Shippers contend that this proposal will discriminate against shippers who transport less than the average used, and favors shippers whose hauls are greater than average.

8. Billing Overrun Volumes

47. Northern proposes to revise its current billing mechanism such that a shipper whose actual takes at any point (zone) under its contract exceed the volumes scheduled at that point and the MDQ specified at that point (zone) will be charged the applicable interruptible rate instead of the firm commodity rate for such excess volumes. MUD seeks clarification of Northern's billing overrun proposal, contending that Northern currently bills its customers in the manner described in the proposal. MUD states that, if Northern does not have tariff authority to bill in this manner, it will seek credits from Northern for past billing errors. Indicated Shippers argue that this proposal will degrade the rights of firm shippers to utilize their firm entitlements. The Coalition asserts that the proposal appears to force shippers to pay a high overrun charge (equal to the applicable IT rate) when they have already paid a reservation charge. They also contend that this proposal adds complexity to an already complex system. The Coalition argues that testimony indicates that this charge would apply to a point or zone, but the tariff revisions do not reflect a zone charge - only a point charge. The Coalition asserts that the difference between a point charge and a zone charge is significant.

9. Minimum MDQ Requirement

48. Northern proposes to establish a minimum MDQ requirement of 50 MMBtu/day at each delivery point under firm service agreements in order to assure that customers have matched their firm entitlement with the market demand at each delivery point. The Coalition and Semco ask that the Commission reject Northern's minimum MDQ requirement as being unduly discriminatory and arbitrary. MUD asks that the Commission reject this proposal because: (1) it has some delivery points that are not operational during the summer, and thus have an entitlement level of 0; and (2) some delivery points are used only for interruptible service and thus have no firm entitlement.

10. Treating Non-Pipeline Quality Gas

49. Northern proposes to allow it and a shipper to agree on reimbursement to Northern for any costs relating to treating gas on behalf of the shipper in order to avoid shutting in a producer's production due to gas quality issues. Indicated Shippers find this proposal to be unjust and unreasonable since it contends that most pipelines will blend non-conforming gas into its gas stream for no charge. They also express concern that Northern does not explain how it will effectuate and perform the treating services.

Suspension

50. Based on a review of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets listed in the Appendix for filing and suspend their effectiveness for the period set forth below, subject to refund and the conditions in this order.

51. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.[11] It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.[12] Such circumstances do not exist here. Accordingly, the Commission will exercise its discretion to suspend tariff sheets listed in the Appendix for the maximum period and permit the rates to take effect on November 1, 2003, subject to refund and the conditions set forth in the body of this order and the ordering paragraphs below.

The Commission orders:

(A) Northern's tariff sheets listed in the Appendix are accepted and suspended, to be effective November 1, 2003, subject to refund, the conditions set forth herein and the outcome of the hearing established in this order.

(B) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing is to be

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[11] See Great Lakes Gas Transmission Co., 12 FERC ¶ 61,293 (1980) (five-month suspension).

[12] See Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (one-day suspension).

held in Docket No. RP03-398-000 concerning the lawfulness of Northern's proposed rates.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law for that purpose pursuant to 18 C.F.R. § 375.304, must convene a prehearing conference in this proceeding to be held within 20 days after issuance of this order, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The prehearing conference is for the purpose of clarification of the positions of the participants and establishment by the presiding judge of any procedural dates necessary for the hearing. The presiding administrative law judge is authorized to conduct further proceedings in accordance with this order and the rules of practice and procedure.

(D) The Commission staff is directed convene a technical conference to further discuss Northern's proposed revisions to its terms and conditions of service as discussed above. Staff must report to the Commission on the technical conference within 120 days of the issuance date of this order.

By the Commission. Commissioner Brownell concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

Northern Natural Gas Company
Fifth Revised Volume No. 1

Tariff Sheets Conditionally Accepted and Suspended
Effective November 1, 2003

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Northern Natural Gas Company
Original Volume No. 2

Tariff Sheet Conditionally Accepted and Suspended
Effective November 1, 2003

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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Northern Natural Gas Company Docket Nos. RP03-398-000

(Issued May 30, 2003)

BROWNELL, Commissioner, concurring:

Northern proposes to revise its ROFR provisions so that ROFR will not be available to interim service agreements for capacity that is already under contract for a future period. Northern recognizes that its proposal is not consistent with current Commission policy, but asks us to reconsider our policy. We allow electric transmission providers to do what Northern has proposed. See, e.g., Tenaska Power Services Co. v. Southwest Power Pool, Inc., 102 FERC ¶ 61,140 at 61,382 (2003).

In this order, we are setting a number of tariff proposals for technical conference. I would have also have set Northern's ROFR proposal for technical conference. In the technical conference, parties and our staff could explore which policy best furthers the goals of maximizing capacity utilization; optimizing expansion planning; and getting capacity to those shippers that value it most.

Nora Mead Brownell
Commissioner