105 FERC ¶ 61,172
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 FOLLOWING TECHNICAL CONFERENCE CONDITIONALLY ACCEPTING AND REJECTING TARIFF SHEETS, SUBJECT TO FURTHER PROCEEDINGS

(Issued October 31, 2003)

1. On May 1, 2003, Northern Natural Gas Company filed a general rate increase application, pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's regulations, to modify its rate structure to recover increased costs for jurisdictional services. Northern's filing included a Primary Case and a Prospective Case. In its Primary Case, Northern proposed to revise its rate structure and proposed certain changes to its terms and conditions of service. Northern requested a June 1, 2003, effective date for its Primary Case tariff sheets. In its Prospective Case, Northern proposed to implement various other rate provisions and terms and conditions of service. Northern requested that the tariff sheets in its Prospective Case become effective after a settlement or a Commission order on the merits of the proposal.

2. On May 30, 2003, the Commission accepted and suspended Northern's tariff sheets to become effective November 1, 2003. In that order, the Commission: (1) set for hearing all issues involving Northern's modified rate structure, as well as its prospective changes to its terms and conditions of service; (2) rejected Northern's proposal to modify its right-of-first-refusal (ROFR) provisions; and, (3) set nine Primary Case tariff proposals for technical conference. Commission staff convened the technical conference on July 29 and 30, 2003.

3. On August 8, 2003, Northern distributed to parties a revised proposal addressing concerns expressed at the technical conference. On September 5, 2003, Northern submitted a second revised proposal to parties. On September 16, 2003, Northern filed with the Commission its revised proposal, including pro forma tariff changes, and initial comments further justifying and supporting its revised proposal.

4. In this order, we approve certain tariff proposals addressed in the technical conference subject to the changes Northern proposed after the technical conference. We also reject other tariff proposals. We direct Northern to file actual revised tariff sheets, within 21 days of the date this order issues, incorporating its pro forma tariff modifications and the revisions discussed below, to be effective November 1, 2003. This order benefits the public by assuring that Northern's tariff conforms to the Commission's policies.

Details of Filing

5. In this order, we address Northern's proposed Primary Case changes to its terms and conditions of service. Northern proposes to: (1) expand Limited Firm Transportation (LFT) Service into its market area during the winter months; (2) change its marketing fee provisions; (3) modify its hourly take restrictions; (4) post available Firm Deferred Delivery (FDD) capacity on its website; (5) implement a rollover fee for its Preferred Deferred Delivery (PDD) service; (6) revise its creditworthiness provisions; (7) revise its cash-out and imbalance mechanism; and, (8) allow for a TFX contract conversion mechanism.[1] Northern proposes other miscellaneous tariff changes that it calls administrative and bookkeeping in nature.

Initial and Reply Comments

6. Subsequent to the technical conference, Northern submitted revised proposals to parties on August 8 and September 5, 2003. Northern filed its revised proposal with the Commission on September 16, 2003, along with its initial comments. At the technical conference, parties agreed to file initial comments on or before September 16, 2003, and reply comments on or before September 30, 2003. The Coalition, Indicated Shippers, Minnegasco, and NMDG/MRGTF filed rebuttal comments to Northern's reply comments. Northern argues that the Commission should reject these rebuttal comments since they were submitted contrary to filing guidelines established at the technical conference, and since parties don't present any new arguments. Parties argue that their rebuttal comments correct factual errors and address new proposals that Northern made in its reply comments. We accept the rebuttal comments since the information will assist the Commission in resolving issues in this proceeding. Appendix B lists commenting parties. We discuss parties' concerns below.

[1] In its reply comments, Northern withdrew proposed changes to its Facilities provisions that would have allowed Northern to impose contractual restrictions on expansion shippers.

Discussion

7. As discussed below, we conditionally accept some of Northern's proposals and reject others.

Expansion of LFT Service

Proposal

8. In its May 1, 2003, filing, Northern proposed to expand Rate Schedule LFT (Limited Firm Transportation) service to its Market Area in winter months. Under Rate Schedule LFT, Northern has the right to not schedule a shipper's service on any day, but not more than a maximum of 10 days per month. The Commission currently authorizes Northern to provide LFT service in the Field Area year-round, and in the Market Area in summer months only. In orders issued in Docket No. RP00-223-000, the Commission refused to permit Northern to offer LFT services in the Market Area during the winter months, since Northern had not shown that it had unsubscribed firm capacity available for LFT service.[2] Northern contends that it now has unsubscribed Market Area firm capacity available in winter to use for LFT service. Northern provides a table summarizing available capacity.[3]

9. In its September 16, 2003, filing, Northern modified its proposal to address concerns shippers expressed regarding the proposal's impact on existing firm shippers. Northern modifies Sheet No. 125A to specify the order for determining which of several similarly situated shippers will be subjected to a Limited Day (days Northern chooses not to schedule the firm service). Northern proposes the following order for determining which LFT shippers are subject to a Limited Day: (1) lowest price first; (2) the LFT shipper having the greater number of remaining LFT days first; and, (3) pro rata.[4] Northern also clarifies that it will post on its website the LFT shippers affected by Northern calling Limited Day, arguing that this would enable shippers to monitor any

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[2] Northern Natural Gas Company, 92 FERC ¶ 61,255 (2000); <u>order on reh'g</u>, 95 FERC ¶ 61,088 (2001).

[3] Exhibit No. NNG-19 to the May 1, 2003, application.

[4] Northern explains that, if it calls a Limited Day for two similarly situated LFT shippers paying the same price, with one having 10 LFT days remaining and the other having five LFT days remaining, Northern would first limit the shipper with 10 days remaining. If both similarly situated shippers pay the same price and have the same number of LFT days remaining, Northern would limit both LFT shippers on a pro rata basis.

curtailment of LFT service. Northern also revises Sheet Nos. 226 through 229 to clarify that it will give LFT service a lower priority than other firm services in instances of curtailment (except for LFT shippers that have no Limited Days remaining for the month, who will receive equal priority as other firm services).

10. In addition, Northern modifies the Net Present Value (NPV) calculations on Sheet No. 252 to clarify that, for purposes of calculating the NPV of any bids for LFT service, it would not include the revenues applicable to any Limited Days since such revenues are not guaranteed. Finally, Northern modifies Sheet No. 252 to clarify that, given equal bids, it would make any available winter Market Area capacity available to TF and TFX shippers before offering it for LFT service. Northern revises this provision to address shippers' concerns that LFT service not degrade firm service.

11. In its September 30, 2003, reply comments, Northern proposed two additional changes to its LFT provisions to address concerns that LES expressed. Northern clarifies in its NPV provisions that, if a shipper requests LFT service, Northern will not include any revenues attributable to any Limited Days *or the potential resale of LFT shipper capacity*. It also clarifies that, in a force majeure event, LFT shippers have the same rights to service as other firm shippers after Northern uses all of that shipper's Limited Days.

Comments

12. Numerous parties recommend the Commission reject Northern's proposal to expand Market Area LFT service into winter as not being justified. In general, they assert that Northern fails to show that it has sustainable capacity available to provide such service, and that such service would not degrade existing firm service. MidAmerican contends that Northern fails to demonstrate the service's impact on existing firm and interruptible shippers and its impact on receipt and delivery point flexibility, allocations, operating conditions, and curtailments.

13. With respect to available capacity, parties contend that Northern only shows a one-time occurrence of available capacity, and not sustainable available capacity. They argue that Northern has to show that it has sustainable capacity available during an entire winter month to implement its proposal.

14. VPEM questions how Northern would determine which shipper is selected for Limited Day status. It is unsure how Northern would determine which shippers are "similarly situated," and how Northern would determine the "lowest price." VPEM and NMDG/MRGTF ask Northern to clarify its proposal for allocating LFT capacity based on price and the number of remaining days. VPEM also contends that Northern's proposal

to post on its website LFT shippers affected by a Limited Day is not transparent enough. To prevent undue discrimination in designating Limited Days, VPEM recommends that Northern post what LFT shippers it chose not to curtail for that Limited Day. NMDG/MRGTF recommends that Northern expand the information it posts on its website concerning Limited Days to include shippers and contracts subject to interruption, amount of LFT capacity curtailed, the location and duration of all curtailments, and the remaining number of LFT interruption days for each shipper.

15. Several parties argue that Northern fails to allocate costs to this new service, and want Northern to credit all LFT revenues back to shippers, should the Commission approve this proposal.

16. Aquila protests that LFT shippers will have priority over TF shippers' use of secondary points. Aquila also states that, even though Northern argues that information is not available to determine if implementation of LFT service in winter would degrade service at system points, it's contrary to Northern's claim that operational flexibility allows it to provide LFT service and sell incremental firm service at receipt and delivery points. Aquila argues that Northern must schedule LFT transactions after alternate TF or TFX transactions.

17. Lincoln Electric System (LES) generally supports Northern's proposal with the modifications Northern proposes in its reply comments.

18. The Industrials, Madison, NMDG/MRGTF, and the Coalition recommend that, should the Commission accept Northern's proposal, it should require Northern to adopt requirements similar to those set forth in Trunkline.[5] In that proceeding, the Commission accepted Trunkline's proposal to implement a similar LFT service. As part of Trunkline's proposal, if Trunkline receives a request for firm transportation service under any of its existing firm rate schedules for capacity currently used for LFT service, Trunkline requires the LFT shipper to either convert all or part of its service to the existing firm service, or terminate its LFT service. Parties in this proceeding argue that incorporating a similar provision into Northern's proposal would: (1) protect existing firm shippers; and, (2) prevent Northern from using the current procedures for selling available capacity, which does not require an open season in every instance, to facilitate an LFT arrangement where Northern anticipates earning more profits than from a TF arrangement.

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[5] Trunkline Gas Company, 77 FERC ¶ 61,169 (1996), order on reh'g, 78 FERC ¶ 61,025 (1997).

19. MidAmerican proposes that, should Northern expand LFT service into the Market Area in winter, the Commission should: (1) require Northern to provide compensation to customers not contracting for LFT service if their existing firm services are degraded; (2) direct Northern to clarify in its tariff that it will only sell LFT service when sustainable capacity is available; (3) require Northern to define the term "sustainable" in its tariff; and, (4) set LFT revenue treatment for hearing.

20. NMDG/MRGTF also wants any Commission acceptance of this proposal conditioned on Northern revising its tariff to specifically state that it will only provide LFT service from unsubscribed firm capacity in the Market Area that it could not otherwise sell as TF or TFX service for the entire winter month. It also wants Northern to specify that the capacity available for LFT service is not capacity that otherwise is under firm contract, citing a similar Commission directive in Transwestern.[6] NMDG/MRGTF also wants Northern to clarify that it will curtail all LFT service prior to curtailing non-LFT service.

21. The Coalition recommends the Commission not allow shippers a ROFR on expiring LFT capacity, but require Northern to post the capacity for bidding. It does not believe Northern should automatically extend any LFT contracts at the maximum rate to avoid the bidding process.

22. In its reply comments, Northern argues that its summary table proves that it has wintertime capacity available to perform this service. Northern says it will only sell LFT capacity from available firm capacity. It also argues that LFT service would not degrade other firm services, citing Transwestern,[7] where the Commission held that the offering of unsubscribed capacity for LFT service would not unduly diminish the rights of existing capacity holders. Northern contends it proposed the modifications discussed above to prevent the degradation of existing firm services. Finally, Northern argues that the Trunkline principle does not apply here since it has already shown that it has unsubscribed capacity for LFT service.

Discussion

23. We accept Northern's proposal to expand Market Area LFT service into the winter months. In Northern's original proposal to implement LFT service, the Commission held that Northern must either show that it had unsubscribed firm capacity available, or propose conditions on its LFT service that ensure service to firm customers would not be

[6] Transwestern Pipeline Company, 90 FERC ¶ 61,044 at 61,201 (2000).

[7] Transwestern Pipeline Company, 90 FERC ¶ 61,044 (2000).

degraded.[8] In this case, Northern shows it has sustainable capacity and incorporates tariff provisions to prevent LFT service from degrading existing firm service.

24. As proof of available sustainable capacity in the Market Area during the winter, Northern submits a table estimating unsubscribed Market Area capacity at five zones for the period November 2003 through March 2004. Northern estimates that 74,819 MMBtu/day in the Palmyra East area; 1,346 MMBtu/day in the Palymra North area; 10,341 MMBtu/day in the Waterloo East Area; 50,647 MMBtu/day in the Emmons North area; and, 11,431 MMBtu/day in the Farmington North area will be available over that time period.[9] Northern states that this available capacity will come from contract expirations and capacity turnbacks. We find that Northern's capacity projections, as supported by the summary table, sufficiently show enough available capacity to implement Market Area LFT service in winter.

25. With regard to service degradation issues, Northern assures shippers that it will only use unsubscribed capacity for Market Area LFT service in winter, and not capacity currently under TF or TFX contracts. In addition, Northern incorporates several tariff provisions to assure that expanding Market Area LFT service into winter will not degrade service offered under Rate Schedule TF and TFX. For instance, Northern revises Section 26 of its GT&C to specify that "if bids received from a TF, TFX, and LFT shipper(s) are equal in the bid evaluation process, capacity would be awarded to any TF and/or TFX shipper(s) first." Accordingly, TF and TFX shippers will have first priority on the available capacity should the shippers equally value the capacity. Northern also revises its curtailment provisions set forth in Section 19 to clarify that, if Northern must curtail service, it will curtail any LFT service with Limited Days remaining before curtailing other firm services. This measure assures that flowing TF and TFX service for existing customers will continue to have the same high priority it enjoys presently. These principal aspects of Northern's proposal are consistent with our finding in Transwestern, where we concluded that "if capacity is available and not fully subscribed, offering it for the LFT service will not unduly diminish the rights of existing capacity holders, who have no right to expect a pipeline to maintain unsubscribed capacity…"[10]

26. Parties request certain conditions should the Commission accept this proposal. Several shippers ask that the Commission require Northern to incorporate tariff language

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[8] Northern Natural Gas Company, 92 FERC ¶ 61,255 at 61,808 (2000).

[9] Northern also shows estimated available capacity at four Market Area receipt points with quantities ranging from 9,364 MMBtu/day at the Field/Market demarcation to 80,296 MMBtu/day at NBPL/Ventura.

[10] Transwestern Pipeline Company, 90 FERC ¶ 61,044 at 61,201 (2000).

the Commission approved in Panhandle[11] and Trunkline.[12] This provision would require that, should a shipper on Northern's system request TF or TFX service on capacity currently used for LFT service, the LFT shipper must either convert the capacity to TF or TFX service, or reduce its capacity by the desired quantity of FT or FTX service. We reject the parties' recommendations to include such a provision. In Trunkline and Panhandle, the Commission did not require the pipeline to incorporate this provision to implement LFT service. In both cases, the pipeline merely proposed to include the provision as part of its proposal to implement LFT service, which the Commission accepted.

27. We reject MidAmerican's proposal to have Northern compensate existing firm shippers whose services are degraded by LFT service, since implementation of Market Area LFT service in winter should not degrade existing firm services. We also reject the Coalition's proposal that the Commission not allow shippers a ROFR on expiring LFT capacity, but require Northern to post the capacity for bidding. Northern's Rate Schedule LFT and its GT&C already set forth generally applicable ROFR and posting and bidding provisions. We do not believe LFT service should be treated different from other firm services in this regard, and the Coalition fails to provide any reasons why the Commission should deviate from this policy.

28. NMDG/MRGTF asks that the Commission direct Northern to: (1) specify in its tariff that it will only provide LFT service from unsubscribed firm capacity in the Market Area that it could not otherwise sell as TF or TFX capacity; (2) specify that the capacity available for LFT service is not capacity that otherwise is under firm contract; and, (3) clarify that it will curtail all LFT service prior to curtailing non-LFT service. We reject NMDG/MRGTF's requests. First, we don't believe it is appropriate to restrict customer service choices when firm capacity becomes available on Northern's system. Northern plans to offer LFT service for any available capacity, not just capacity that Northern could not otherwise sell as TF or TFX capacity, as indicated by Section 26 of its GT&C. Northern's proposal is also consistent with the Commission's policy of allowing a pipeline to find the highest value for available capacity. NMDG/MRGTF's second concern does not require a tariff revision. The Commission prohibits pipelines from overselling or double-booking firm capacity. Accordingly, Northern cannot offer LFT service for capacity currently under firm contract. Lastly, regarding NMDG/MRGTF's third concern, Northern already proposes to revise its curtailment provisions to clarify that, under any curtailment situation, Northern will curtail any LFT service with Limited

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[11] Panhandle Eastern Pipe Line Company, 74 FERC ¶ 61,102, reh'g denied 75 FERC ¶ 61,084, reh'g denied 75 FERC ¶ 61,272 (1996).

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

Days remaining before curtailing other firm services. This provision should satisfy NMDG/MRGTF's concerns. An LFT shipper is paying a reservation charge to guarantee service during days of the month other than Limited Days. Therefore, once it has no more remaining Limited Days in a month, its service should be treated like any other firm service and be curtailed only on a pro rata basis with other firm services.[13]

29. Finally, certain parties express concerns over how Northern will allocate costs for this service and whether it should credit any revenues received back to shippers. We order that all cost allocation, rate design, and revenue treatment issues regarding this proposal be resolved at the hearing established in this proceeding.

Marketing Fees

<u>Proposal</u>

30. Northern's current tariff allows it to receive a marketing fee for helping a releasing shipper to market released capacity. Northern proposes to expand this role to include Northern negotiating and paying a marketing fee when a releasing or replacement shipper engages Northern's marketing services. As an example of a situation that could result in Northern paying a fee, Northern provides that it "could agree to pay a releasing shipper a marketing fee in exchange for Northern receiving a share of the revenue it receives from an acquiring shipper which Northern has been successful in finding and which has acquired the releasing shipper's capacity." Northern claims that this flexibility will benefit both the releasing and replacement shippers by giving Northern an additional tool to assist in the release of capacity.

31. After the technical conference, Northern agreed to clarify its proposed tariff to provide that a releasing shipper may not receive a rate for released capacity, including any marketing fee paid by Northern, which exceeds the maximum rate for the applicable service. According to Northern, this would ensure that the combination of capacity release revenues and any marketing fees paid by Northern would be capped at the maximum tariff rate.

<u>Comments</u>

32. Several parties express uncertainty as to Northern's motives for requesting authority under its tariff to pay a marketing fee when it assists with capacity release transactions. Ag Processing refers to the proposal as "puzzling," and states that Northern's responses to data requests were unhelpful. Nicor Gas also objects, arguing

[13] Panhandle Eastern Pipe Line Company, 74 FERC ¶ 61,102 at 61,325 (1996).

that Northern fails to explain why it needs such a change, and believes the proposal is neither necessary nor justified. The Industrials also express concerns that Northern's motives are unclear, and question how Northern intends to determine the fee and whether this payment potentially could result in Northern obtaining more than the maximum rate for the released capacity.

33. The Coalition asserts that Northern's marketing fee proposal could result in "pernicious consequences." Examples the Coalition provides include Northern using the payment of marketing fees as a *de facto* discount or as a means of discouraging shippers from marketing the capacity themselves, thereby reducing competition between Northern's interruptible services and released capacity. The Coalition also points out that Northern has not identified any other pipeline whose tariff allows it to pay a marketing fee.

34. NMDG/MRGTF also opposes the marketing fee proposal, calling it "vague and unsupported." Specifically, they note that it is unclear how Northern will deal with revenues received from a replacement shipper in the next rate case and whether Northern will use the revenues to reduce its cost of service. NMDG/MRGTF argues that the proposal raises serious issues of market power and discriminatory treatment, noting that Northern could seek other concessions in return for negotiating a deal between the releasing and replacement shipper. NMDG/MRGTF also states that the proposal appears to have no benefits for other shippers whatsoever.

Discussion

35. We reject Northern's proposal to allow it to negotiate and pay a marketing fee when a releasing or replacement shipper engages Northern's marketing services. Northern fails to justify its proposal, or show it to be just and reasonable. Under its proposal, Northern would locate a shipper willing to release capacity (the releasing shipper) and a shipper looking for capacity (the replacement shipper). By facilitating any such capacity release transaction, Northern would pay to the releasing shipper a marketing fee for releasing its capacity. In return, Northern would collect capacity revenue from the replacement shipper. The Commission has several concerns regarding this proposal. First, by seeking shippers to release capacity, Northern would essentially assume the role of a gas marketer, which could cause a conflict of interest with Northern's role as a gas transportation provider. Also, Northern, as a marketer of capacity, would compete against its own interruptible services, which could lead to more conflicts of interest. Further, Northern has not sufficiently explained several aspects of its proposal, including revenue ramifications and how the proposal could be implemented in a not unduly discriminatory manner.

Hourly Take Restrictions

Proposal

36. Northern's current tariff allows it to restrict hourly takes by shippers in the Market Area to no more than 6.3 percent of each shipper's firm daily entitlement when necessary to maintain operational integrity. This percentage allows Market Area shippers to take their daily contractual entitlements over a 16-hour day. Northern proposes to modify Section 19(A)(5) of its GT&C to allow it and a shipper to agree to an hourly take requirement of less than 6.3 percent when a shipper is able to accommodate a more uniform hourly take limitation. According to Northern, the proposal would permit it to meet certain shippers' needs with less pipeline capacity, allowing it to operate its system more efficiently. The proposal would also make capacity available for other shippers and reduce the need to construct new facilities. Northern does not propose to reduce rates for shippers accepting more restrictive flow limitations.

37. Northern also proposes to include the following language in Section 19(A)(5) of its GT&C:

> Electronic flow measurement and flow control equipment is required at any point where Northern and a Shipper have agreed to lower hourly takes. In the event a Shipper that has agreed to limit hourly takes to less than 6.3 percent for incremental entitlement does not comply with Northern's order to restrict hourly takes, Shipper shall pay a penalty equal to the Punitive DDVC charge set forth on Sheet 53. Penalty revenues shall be credited to shippers in accordance with Section 57 of the General Terms and Conditions of this tariff.

Comments

38. Numerous parties recommend that the Commission reject Northern's hourly take modifications because they are unsupported. They contend that, given the complex nature of Northern's system, Northern does not show that the proposal is necessary, operationally feasible, and would not degrade service to existing firm shippers. VPEM states that existing firm shippers would lose flexibility. The Coalition argues that Northern fails to provide empirical data justifying its proposal. The Agricultural Intervenors question whether Northern has adequate flow measurement equipment to implement the proposal.

39. The Coalition and LES assert that Northern's proposal is discriminatory and contravenes the Commission's policy on pre-approved negotiated rates (or terms and

conditions). It believes the provision could allow Northern to discriminate between shippers. Several parties believe the proposal would give Northern too much market power. Madison contends that implementing greater flow restrictions would create an environment in which Northern would have incentive to coerce small and other shippers into accepting hourly flow restrictions. LES argues that allowing Northern to mandate flow control valves in certain situations expands Northern's negotiating leverage to the detriment of the shippers.

40. Parties also question what Northern will do with the new capacity. The Industrials express concern that, under the proposal, only Northern would benefit from the proposal, since it would have more capacity to sell. Several parties express concern that Northern would overcollect costs under more restrictive hourly takes, since Northern bases its existing rates on throughput taken over a 16-hour day. Parties want Northern to credit revenue from such hourly restrictions back to shippers. The Industrials oppose any hourly flow restrictions that do not include a cost decrease.

41. Numerous parties express concern over the penalty aspect of Northern's proposal, arguing that the Commission should not allow Northern to assess a penalty for a voluntary action. They believe that Northern's proposal is inconsistent with Order No. 637. NMDG/MRGTF counters that the proposed DDVC penalty is not punitive enough. It argues that violation of any hourly flow restrictions would not deter shippers from behavior that is potentially harmful to traditional firm shippers.

42. LES supports Northern's proposal to allow hourly restrictions when mutually agreed upon, but expresses concerns over installation and maintenance of the corresponding flow-control valves. LES asserts that, since Northern has physical control over the flow-control valves to implement this proposal, Northern should assume full responsibility for their maintenance and proper functioning, and should assume the liability for any risks resulting from valve failures. LES contends that valve failure could have serious consequences for shippers. LES also recommends that the Commission require Northern to install appropriate bypass piping so that it can maintain service during periods of valve maintenance and calibration.

43. VPEM wonders how, in a bid situation, Northern would rank bids with differing hourly flow take proposals. NMDG/MRGTF argues that Northern has not shown how it would handle more restrictive hourly limitations with regard to capacity release.

44. NMDG/MRGTF recommends the Commission condition any acceptance upon: (1) Northern increasing the penalty for exceeding the restricted hourly take level to the Punitive Critical Day level; (2) Northern including in its tariff limitations on capacity

release; and, (3) Northern crediting back to shippers any revenues made from the sale of capacity freed up by the implementation of this proposal.

45. Madison suggests that, should the Commission accept this proposal, it require Northern to file relevant contracts with the Commission to allow full disclosure and to discourage shipper coercion. Oneok asks that the Commission permit shippers to explore any corresponding rate base impact at the rate case hearing.

46. In its reply comments, NMDG/MRGTF expresses concerns that, since Northern will install the monitoring equipment, all shippers will pay for the service through their general rates. In their reply comments, LES and Northern reaffirm their positions on this issue.

Discussion

47. We accept Northern's proposal to allow Northern and a shipper to mutually agree to more restrictive hourly flow requirements. The special restriction is only voluntary in nature, and would free up capacity on Northern's system. By allowing for more available capacity, shippers on Northern's system should realize lower rates because of increased throughput, and enjoy more service options resulting from the system's enhanced operational flexibility. Since the provision is part of Northern's generally applicable tariff, Northern must offer it in a non-discriminatory manner. This fact also allays any concerns about Northern negotiating a term and condition of service.

48. The Commission also accepts Northern's proposal to assess a Punitive DDVC charge[14] to shippers agreeing to a more restrictive hourly flow, but not complying with a Northern order to restrict hourly takes. Order No. 637 allows for more stringent penalties where necessary to prevent the impairment of reliable service.[15] Section 19(A)(2) of Northern's currently effective GT&C provides that "If Shipper takes gas in excess of the volume of gas authorized for delivery on any day Northern has ordered reduced deliveries, Shipper shall be subject to a penalty for takes of gas in excess of the authorized volume, without any tolerance. The penalty shall be equal to the Punitive DDVC rate set forth on Sheet No. 53." Since the Punitive DDVC charge is being applied in circumstances when Northern must order reduced deliveries or restrict hourly flow to prevent the impairment of service, Northern's proposal is consistent with Commission policy. Further, Northern appropriately proposes in Section 19(A)(5) that it will credit all penalty revenue back to shippers.

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[14] Northern's Punitive DDVC charge is five times its monthly SMS reservation charge, or $8.75 per MMBtu.

[15] § 284.12(b)(2)(v).

49. LES asserts that, since Northern physically controls the flow-control valves to implement this proposal, Northern should assume full responsibility for their maintenance and proper functioning, and should assume the liability for any risks resulting from valve failures. Responsibility for flow measurement equipment is governed by Section 2 of Northern's GT&Cs, which provides that "Gas delivered by Northern to the Shipper/Purchaser shall be measured by an adequate meter or meters of standard type, installed, operated and maintained by Northern at its sole expense. In the alternative, the responsibility for meter installation, operation and/or maintenance may be as mutually agreed upon between the parties." This current tariff provision would apply to Northern's proposal. With regard to liability, Section 2 also sets forth provisions for what happens when the flow measuring equipment malfunctions. We are not convinced of the need for Northern to install flow bypass apparatus, as LES recommends, and therefore decline to order this installation.

50. Finally, we will not condition our acceptance on Northern crediting excess capacity revenues back to shippers. Northern, however, will have to account for any adjusted billing determinants in its Section 4 rate case. We will also not require Northern to file contracts providing for more restrictive hourly flow limitations with the Commission. Since the provision is proposed as part of Northern's generally applicable tariff, it will not result in non-conforming service contracts. However, any provision in a service agreement for more restrictive hourly flows would constitute a "special detail pertaining to a transportation contract, pursuant to Section 284.13(b)(1)(vii) of the Commission's regulations, and thus must be posted on the pipelines' Internet website consistent with that regulation.[16] We will, however, condition this acceptance on Northern providing explanations of two relevant concerns that parties raise. We direct Northern to address VPEM's question of how Northern would rank bids with differing hourly flow take provisions. We also direct Northern to address NMDG/MRGTF's concerns regarding how it would handle the more restrictive hourly limitations with regard to capacity release.

Posting Available FDD Capacity

<u>Proposal</u>

51. Northern proposes to clarify in its tariff that it will post any additional FDD[17] capacity on its Internet website in the same fashion it posts all other available capacity. In its initial comments, Northern explains that it will provide this additional storage

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[16] Columbia Gas Transmission Corporation, 97 FERC ¶ 61,221 at 62,003 (2001).

[17] FDD, or Firm Deferred Delivery, is Northern's traditional firm storage service.

capacity through a combination of purchasing third-party services and using its own existing storage facilities, as its current tariff allows.

Comments

52. No party opposes Northern's proposal to post available FDD capacity. NMDG/MRGTF, however, expresses concerns over Northern purchasing services from third parties, and how it treats such costs and revenues. It asks the Commission to order an examination of the costs and revenues associated with this proposal at the hearing established in the case for rate issues. VPEM asserts that Northern should remain at risk for any costs associated with its third-party capacity acquisitions.

53. In its reply comments, Northern reiterates that it only clarifies in its tariff that it will post available FDD capacity, which is the Commission's policy. It does not include as part of its proposal any changes to the terms and conditions of its existing storage services with regards to Northern purchasing third-party storage.

54. In its reply comments, the Coalition contends that the Commission should not allow Northern to acquire and roll in third-party storage that would degrade the value of existing storage services, particularly FDD. The Coalition asks that the Commission find that, to the extent Northern buys storage service that is inferior to its own, Northern may only do so through the establishment of one or more separate storage services to be provided via third-party storage.

Discussion

55. We accept Northern's proposal to post available FDD capacity in its website. Since Northern proposes no changes to how it purchases third-party storage services, we perceive no need to address that issue here. Parties can discuss any costs and revenue issues associated with Northern's FDD service at Northern's general rate case hearing.

PDD Rollover Fee

Proposal

56. Northern proposes to include a $0.385 per MMBtu annual rollover fee in its Preferred Deferred Delivery (PDD) Rate Schedule,[18] which it would apply to any balance

[18] PDD is an interruptible storage service that has a higher priority than Northern's conventional interruptible storage service (IDD), and a lower priority than Northern's firm storage service (FDD).

held in a shipper's PDD account as of March 31 of each year. Northern explains that the rollover fee is necessary to encourage shippers to reduce their PDD account balances by March 31 in order to coincide with the operations of Northern's underground storage fields, which it draws down at that time of year to manage the cycle inventories of each field. Northern notes that its proposed PDD rollover fee amount is consistent with its FDD and IDD rollover fees. Northern states it will reserve that all cost and revenue issues related to implementing the PDD rollover fee for the hearing in the subject rate case.

Comments

57. No party opposes Northern's proposal to assess an annual PDD rollover fee. Koch, however, contends that since Northern has not imputed revenues for this fee in its rate proceeding, it should credit all revenues back to shippers using Rate Schedule FDD service.

58. NMDG/MRGTF protested implementation of PDD service in Docket No. RP00-404, and explains that implementation of the service is under rehearing. NMDG/MRGTF is not opposed to Northern assessing a PDD rollover fee, but asks that the Commission only accept it subject to the outcome of the rehearing.

Discussion

59. We accept Northern's proposal to assess an annual PDD rollover penalty for any balance held in a shipper's PDD account as of March 31 of each year. No party protested Northern assessing this fee, and the fee amount is consistent with Northern's IDD and FDD rollover fees. Because the proposed rollover fee is a penalty, Northern must comply with the penalty revenue crediting provisions of its tariff. Since Northern's Rate Schedule PDD service is pending rehearing in Docket No. RP00-404-006, we will condition our acceptance subject to the outcome of that proceeding.

Creditworthiness Standards

Proposal

60. Northern proposes two modifications to the security it requires under its creditworthiness provisions: (1) adding the value of imbalance gas to the definition of security required from non-creditworthy shippers; and, (2) adjusting the level of security required each month to reflect changing gas prices when it loans gas to shippers.

61. Northern states that the first proposal requires a non-creditworthy shipper that desires service to not only provide security equal to three months of service charges, which it tariff already requires, but also an amount equal to the three highest cashout payments made by the shipper to Northern during the previous 12 months. Northern argues that this provision prevents a non-creditworthy shipper from using Northern as a source of gas supply.

62. Northern states that its second proposal allows it to request additional security or reduce the amount of security to reflect updated natural gas prices. Under the proposal, Northern would adjust the price each month as necessary to reflect changes in the basis-adjusted NYMEX prices. Northern claims that this proposal would be mutually beneficial because it would give shippers the ability to provide reduced security if gas prices decrease, while granting Northern the opportunity to obtain the proper amount of collateral if prices increase.

Comments

63. Commenters primarily express concerns over Northern's first proposal. The Coalition argues that Northern is not at risk for imbalance gas needed on the system. Rather, Northern receives a return on any costs incurred from balancing its system, as these costs flow into the pipeline's System Levelization Account (SLA) annual filings.

64. The Industrials state that Northern's creditworthiness proposal is unwarranted, arguing that Northern fails to demonstrate that it faces significant risk for collection of imbalance gas. While the Industrials state that the Commission previously approved a similar credit requirement for two other pipelines, the Commission found that the risks faced by those pipelines warranted the inclusion of such provision.

65. SEMCO argues that Northern's proposal to require security for both transportation and imbalance charges has not been shown to be just and reasonable. SEMCO also claims that Northern cannot justify requiring security for a full three months of imbalance charges. SEMCO argues that Northern already over-collects on the transportation security component, making over-collection on the imbalance charge security component unwarranted.

Discussion

66. We accept Northern's revised creditworthiness standards subject to conditions. Northern currently requires non-creditworthy shippers to pay three months reservation charges as security. Northern proposes to revise that provision so that non-creditworthy shippers must, in addition to three months of reservation charges, also pay as security "an

amount equal to the 3 highest imbalance cashout payments made by the Shipper to Northern, if any, during the previous 12 months." In Gulf South,[19] the Commission acknowledged that a pipeline is entitled to a reasonable security for the value of gas it loans to customers, including imbalance gas (which the Commission said is, in effect, gas a shipper borrows from the pipeline). The Commission approved as reasonable Gulf South's proposal to charge shippers, as part of their security, the highest one-month imbalance from the previous twelve months. In North Baja,[20] the Commission rejected the pipeline's request to require shippers to prepay three months worth of loaned gas, holding that "requiring a prepayment based on the value of the entire amount of gas that might be loaned over a three-month period is excessive." The Commission argued that loaned gas quantities are too variable. Accordingly, consistent with Commission action in Gulf South and North Baja, we accept Northern's proposal to include imbalance gas as part of its security for non-creditworthy shippers, but reject Northern's proposal to charge the three highest imbalance cash-out amounts from the previous twelve months. We direct Northern to file revised tariff sheets either reflecting that it will charge non-creditworthy shippers the highest monthly imbalance owed over the previous twelve months, or in the alternative, another reasonable time period in light of the natures of the services.

Imbalance Mechanism

Proposal

67. Northern originally proposed several changes to its imbalance resolution mechanism. First, it proposed to value the imbalances based on the highest or lowest of five weekly prices. The five weeks would include weeks during the month when the imbalances occurred plus a week following that month.[21] Northern would determine each week's price based on the average of several index prices. Second, Northern proposed to revise its existing tiering structure by reducing the first-level imbalance tolerance from 3 percent to 2 percent. Third, it proposed to add a new tier for imbalances greater than 25 percent.

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[19] Gulf South Pipeline, L.P., 103 FERC ¶ 61,129 at 61,422 (2003).

[20] North Baja Pipeline, L.L.C., 102 FERC ¶ 61,239 at 61,711 (2003).

[21] Northern currently cashes out imbalances based on a monthly average index price. As part of its 2002 SLA Settlement (98 FERC ¶ 61,120 (2002)), Northern modified its cash-out mechanism to use the month beginning 10 days after the beginning of the month in which the imbalances were incurred and ending 10 days after the end of that month.

68. Northern states that the Commission recognized the need for pipelines to revise ineffective imbalance mechanisms,[22] and has approved pipeline proposals to change cash-out pricing mechanisms from an average monthly price to a weekly high/low index price, citing several examples.[23] It contends that the five-week month for calculating index prices will inject additional uncertainty as to the index price calculations, and is consistent with its current 10-day lag. Northern also asserts that its proposed tiering revisions are consistent with Commission policy, since the Commission has allowed pipelines moving from a monthly cash-out pricing mechanism to a weekly mechanism to also revise their tiering structure, citing Texas Gas.[24]

69. In its initial comments following the technical conference, Northern stated that, contingent on the Commission accepting its high/low weekly index price proposal, it would also revise its Monthly Imbalance-to-Storage provisions. Northern's current tariff allows shippers to transfer imbalances to storage (using FDD and IDD services), with the volumes valued according to Northern's dollar valuation provisions. Northern states that shippers did not use this imbalance option because of the dollar valuation element. Here, Northern proposes to revise its Monthly Imbalance-to-Storage provisions to allow shippers to move imbalances to their FDD and IDD storage accounts without the corresponding dollar valuation, thereby mitigating the cash-out provisions. However, on storage allocation days or when the shipper's storage contract parameters do not allow the shipper to use its storage account, Northern would require a shipper to cash out its imbalances. Also, the shipper must notify Northern prior to the first day of the month if it plans to use the imbalance storage mechanism that month. Northern also adds that it cannot implement its Imbalance-to-Storage provisions until April 1, 2004, since the modifications require changes to Northern's computer system. Northern asserts that revising its Storage-to-Imbalance provisions meets the Commission's objectives of providing alternative solutions to the resolution of imbalances.

70. Finally, in its reply comments, Northern agreed to withdraw its proposal to reduce its existing imbalance tolerance level from 3 percent to 2 percent, but retains its proposal to include a new imbalance tier at 25 percent.

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[22] As of April 30, 2003, Northern's SLA account balance was $55.7 million. The SLA account reflects Northern's cash-out revenues.

[23] Texas Gas Transmission Corporation, 95 FERC ¶ 61,318; order on rehearing, 97 FERC ¶ 61,349 (2001); Black Marlin Pipeline Company, 101 FERC ¶ 61,087 (2002); and Guardian Pipeline, L.L.C., 102 FERC ¶ 61,081 (2003).

[24] Texas Gas Transmission Corporation, 97 FERC ¶ 61,349 (2001).

Comments

71. Parties ask that the Commission reject Northern's proposed changes to its imbalance provisions for a multitude of reasons. They argue, among other things, that Northern: (1) lacks justification for its proposal; (2) fails to show via operational data that it is experiencing problematic imbalances on its system; (3) fails to show that its proposal adequately addresses any operational problems; (4) did not prove that it is experiencing gaming on its system, or that its proposal would eliminate gaming; (5) discriminates against shippers that do not use Northern's firm transportation and storage services; (6) did not discuss or provide alternative non-punitive methods to help shippers stay in balance; (7) did not recognize in its proposal variations in heat content; (8) fails to show that its proposal is an improvement over its current imbalance provisions; (9) proposes imbalance provisions that are potentially harmful to non-offending shippers; and (10) may impact smaller shippers who have less flexibility with its proposal.

72. Parties note that Northern's current imbalance provisions, implemented as part of the SLA Settlement, became effective on April 1, 2002, which they contend is not long enough to gauge their effectiveness. Parties also assert that the proposal is inconsistent with Order No. 637, since it will introduce new penalties to non-gaming shippers. With regard to changing to a weekly high/low index price, Alliant asks that Northern better define what it means by "highest average weekly price" (i.e., will it be the average of Ventura and Demarcation, or is it a specific Gas Daily term). Several parties assert that Northern is attempting to enhance its SLA collections at the expense of its shippers. Finally, the Industrials want Northern to incorporate a no-harm, no-foul mechanism into its cash-out procedures for shippers that incur imbalances that benefit overall system integrity, i.e., the imbalance is in the opposite direction of the overall system imbalance.

73. Parties express various concerns over Northern's proposal to allow shippers to utilize FDD and IDD accounts to volumetrically resolve imbalances. Specifically, they assert that the proposal: (1) is useless because of the lack of timely imbalance information; (2) may allow shippers to intentionally nominate incorrectly to avoid cash-out procedures; (3) does not consider whether shippers have storage withdrawal or injection rights on storage allocation days; (4) will do little more than allow Northern to collect additional IDD revenue; (5) is unduly discriminatory since it favors shippers holding firm storage; (6) could result in more system gaming; (7) does not address the SLA account balance problem; and, (8) could result in all shippers paying for imbalances, via the SLA account, caused by only a few shippers.

74. In addition, Aquila asserts that storage allocation days undermine the value of the service, given that Northern allocated storage on 85 days from June 2002 through

May 2003. LES wants this proposal expanded to include third-party storage. Alliant contends that the proposal makes it difficult for third-party storage providers to compete with Northern. MidAmerican says that if shippers were to resolve imbalances with FDD service, they would have to reevaluate their FDD needs, and they might not meet the monthly minimum or maximums that Northern requires. The Coalition asserts that Northern filed this proposal too late in the process to accept, and expresses concerns that it may negatively impact Northern's SLA account.

75. Several shippers wonder why Northern proposes to charge shippers to use this storage on a daily basis, rather than allow shippers to use storage to resolve monthly imbalances. Aquila believes that Northern should base the amount of gas a shipper injects or withdraws from storage on the shipper's month-end total imbalances as opposed to Northern's proposal to allocate back on a daily basis.

76. Certain shippers fail to see the nexus between Northern's Imbalance-to-Storage proposal and its proposal to cash-out imbalances using a high/low weekly index price. Some recommend that the Commission accept the volumetric storage balancing provision, but reject the weekly high/low index price proposal. Others want both proposals implemented at the same time, so that shippers can use the storage to mitigate the revised cash-out provision.

77. MUD wants Northern to allow shippers to roll imbalances forward a month if the shipper is unable to schedule the imbalance due to a storage allocation day. Aquila recommends a sunset date of April 30, 2004, for these proposals. Madison requests that Northern explain why shippers must notify Northern prior to the first day of the month, and why shippers can't make the election through the end of the month, when Northern calculates its imbalances.

78. Finally, several parties ask that the Commission set Northern's proposed imbalance mechanism changes for hearing. They contend that the complexity of the issue requires more time to address and a more analytical approach than can be offered via a technical conference. Some assert the need for additional information on the subject. Others want more time to analyze and discuss an imbalance counter-proposal that Coalition presented at the technical conference. And some parties assert that Northern's proposal includes cost-of-service and rate design implications, and is too intertwined with its SLA account, storage services, and other operational mechanisms.

79. In their reply comments, parties reiterate, clarify, and further justify their concerns.

Discussion

80. We conditionally accept certain elements of Northern's imbalance proposal, and reject others. First, we accept Northern's proposal to cash-out imbalances based on the weekly high/low index price, and to incorporate a five-week month structure. The Commission regularly approves pipelines' requests to cash out at a weekly high/low index price as a means to discourage arbitrage. In Texas Gas, the Commission approved a similar provision stating that "The Commission recognizes that use of the weekly high/low price…better balances the goals of deterring arbitrage, while not imposing an unnecessarily high penalty on the customers."[25] The Commission also held that a pipeline does not need to show that price arbitrage has caused operational problems in order to implement a weekly high/low cash-out price. Further, Northern's tariff would be consistent with those of the following pipelines that currently cash-out imbalances based on a weekly high/low price: Natural Gas Pipeline Company of America, High Island Offshore System, L.L.C., Enbridge Pipelines (KPC), Enbridge Offshore Pipelines (Utos), L.L.C., Guardian Pipeline, L.L.C., and Centerpoint Energy – Mississippi River. With regard to Alliant's concern, however, we direct Northern to clarify how it defines "highest weekly average price." Further, we reject Aquila's request for a sunset date, since we are finding the proposal just and reasonable.

81. Second, we conditionally accept Northern's proposal to use FDD and IDD storage services to resolve imbalances. Northern proposed a nearly identical tariff provision in its Order No. 637 compliance filing, filed on March 4, 2002, in Docket No. RP00-404-002. The only substantial change that Northern makes in the current proposal is inclusion of the following provision:

> To determine the daily volume to be transferred to the Shipper's storage account, the Shipper's net monthly imbalances will be allocated to the days in the month that the Shipper's daily volume variance was in the same direction (i.e., long or short) as the net monthly imbalance. The allocation for each day will be based on that day's variance as a percent of the total long or short variances, as applicable, for the month. The daily long or short volume will be injected into or withdrawn from the Shipper's storage account pursuant to the provisions of this section. On storage allocation days or when storage parameters do not allow the use of the Shipper's storage account, imbalances must be cashed in/out. Storage allocation days are defined as gas days wherein storage is allocated in the Intra-day 2 nomination cycle.

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[25] Texas Gas Transmission Corporation, 97 FERC ¶ 61,349 at 61,333 (2001).

82. The Commission conditionally approved Northern's nearly identical tariff provision in its November 21, 2002, Order on Compliance with Order Nos. 637, 587-G, and 587-L.[26] To address protesters' concerns, the Commission conditioned that acceptance on Northern clarifying that it may only charge a transportation fee for the imbalance gas to storage once, as opposed to charging transportation fees for both injection and withdrawal. In its December 23, 2002, filing to comply with the underlying order, Northern withdrew its proposal to allow shippers to use FDD and IDD storage services to volumetrically resolve imbalances. In the transmittal letter to that filing, Northern explained that it withdrew its proposal because of concerns parties expressed that the proposal may negatively impact Northern's SLA account balance.

83. We accept Northern's proposal to allow shippers to resolve imbalances using FDD and IDD storage services in the subject filing for the same reasons we approved it in Northern's Order No. 637 compliance filing. Such service will provide an additional balancing tool on Northern's system, and will ease the administrative burden to Northern and its shippers for dollar-valuing imbalances resolved through the current Imbalance-to-Storage provisions. However, we will accept this provision subject to the following conditions. To address concerns that Madison and other shippers expressed, we direct Northern to fully explain why shippers must notify Northern prior to the first day of the month to use the service, and why shippers can't make the election through the end of the month, when Northern calculates its imbalances.

84. Further, we reject Northern's proposal to implement an additional tolerance tier for imbalances over 25 percent. In adding or restricting tolerance levels, which could result in increased shipper penalties, pipelines have the burden of proof to show operational justification for the more restrictive measure. Northern has not shown an operational need for adding another level of imbalance tolerance.[27]

85. Finally, the Commission issued a policy statement in Price Discovery in Natural Gas and Electric Markets in Docket No. PL03-3-000 on July 24, 2003.[28] The Commission requires that any prospective use of any index price in jurisdictional tariffs meet the criteria set forth in the policy statement for index price developers and reflect

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

[27] At the technical conference, the Coalition presented its own proposed changes to Northern's imbalance mechanism. The Coalition and NMDG/MRGTF summarized the Coalition's proposal in their comments. Other parties recommended that the Commission investigate and/or adopt certain or all elements of the Coalition's proposal. Northern, however, did not adopt any elements of the Coalition's proposal in its subject proposal.

[28] 103 FERC ¶ 61,121 (2003).

adequate liquidity at the referenced location to be reliable. The Commission instructed staff to monitor both the level of reporting to index developers and the amount of adherence to the mandated standards. Specifically, staff is tasked to: identify the level of market participants currently reporting; identify increases (or lack thereof) in reporting by market participants currently not reporting; determine the quality of reporting (i.e., adherence to the mandated standards by data providers); review the quality of reported indices (i.e., adherence to the standards mandated by index developers); and communicate with index developers to insure appropriate Commission data access when needed. As the Commission stated in the policy statement, all pipelines, including Northern, must, in new tariff filings, use indices that meet the criteria in the policy statement and reflect adequate liquidity at the referenced locations to be reliable.

86. The Commission directs staff to file a report no later than 180 days from the date of this order regarding whether the index Northern proposes to use in its tariff meets the mandated standards and reflects adequate liquidity at the referenced points to be reliable. Northern and other parties may file comments on staff's report, including additional evidence, no later than 15 days after staff issues its report. Thereafter, the Commission will issue an order determining whether the indices proposed by Northern meet the criteria set forth in the policy statement and, if not, requiring Northern to make prospective changes to its proposal necessary to conform to the policy statement.

TFX Contract Conversion

Proposal

87. Northern proposes to permit TFX shippers that were required to enter into TFX contracts to support the construction of facilities to convert their service to TF service upon expiration of their TFX contract terms. Northern proposes to accomplish this by extending their entitlement for five years at TF maximum rates, without going through the ROFR process or posting requirements. Northern argues that because an expansion TFX customer would have already paid for the expansion costs incurred on their behalf, that customer is entitled to convert to TX service upon expiration of the TFX contract. Northern states that this would allow the shipper to take advantage of lower rates applicable to TF service.

Comments

88. NMDG/MRGTF questions the validity of Northern's claim that TFX customers could take advantage of lower rates. NMDG/MRGTF states that the proposal appears to permit a shipper to control capacity without bidding, and without a pro rata allocation if other bidders are willing to bid the maximum rate for the capacity. NMDG/MRGTF also

points out that Northern fails to present any data showing this change would result in a net benefit to the system, and speculates that a conversion could adversely affect the firm service of other customers during the winter.

Discussion

89. We reject Northern's proposal to allow TFX shippers to convert to TF service upon expiration of their TFX contracts without going through the ROFR process or posting requirements. Northern's posting and bidding requirements are set forth in Sections 25 through 27 of its GT&C, and ROFR provisions are set forth in Section 52. Northern and its shippers are required to follow these provisions for all expired and available capacity. Northern has not justified allowing certain shippers to deviate from existing posting and bidding and ROFR requirements, and its proposal is preferential. If TFX shippers on Northern's system want to convert expired TFX contracts to TF contracts, they may do so, but only pursuant to Northern's current tariff non-discriminatory provisions.

Miscellaneous Tariff Changes

90. As part of its general Section 4 primary rate case, Northern proposed numerous other miscellaneous tariff revisions that the Commission did not set for technical conference. They include: (1) removing the Order No. 636 transition cost recovery mechanisms that no longer apply; (2) eliminating an inconsistency in the tariff related to the operation and maintenance of equipment that produces data for billing purposes; (3) removing obsolete nominations provisions that the NAESB nomination standards supersede; (4) clarifying in Rate Schedules FDD, IDD, and PDD that the Ogden storage point is the only Market Area storage point where a shipper is required to use the same type of transportation service when delivering to the storage point and receiving gas from the Ogden point; (5) removing outdated references in the SMS Rate Schedule regarding zone transfers; (6) implementing a tariff provision providing that, in the event Northern calls an SOL Day, it would waive negative DDVC charges for the affected area; (7) clarifying the order of billing throughput quantities for a single shipper at a delivery point or multiple shippers at a delivery point; (8) removing the reference to "receipt" in the Overrun sections of Rate Schedules TF, TFX, LFT, and VFT; (9) updating its table of tariff-permitted provisions in service agreements; (10) removing references to the September 1, 2002, capacity release cap; and, (11) other changes it calls bookkeeping and administrative in nature.

91. Northern tendered these miscellaneous tariff revisions as part of its Primary Case, with the corresponding tariff sheets proposed to become effective November 1, 2003. Northern, however, did not discuss or explain any of these proposals in its May 1, 2003,

filing. No party protested or commented on these proposed tariff changes prior to the technical conference, or in their initial comments subsequent to the technical conference. Certain parties, however, commented on these tariff proposals in their reply comments following the technical conference. DTEM, the Coalition, and NMDG/MRGTF request that the Commission set these miscellaneous proposals for hearing. NMDG/MRGTF opposes six of Northern's proposed miscellaneous tariff revisions. They are: (1) the deletion of the following provision from its Liability of Parties provisions of its GT&C: "However, Northern will maintain and operate all equipment which produces data used by Northern for billing purposes."; (2) the clarification that Ogden storage point is the only storage facility in the Market Area; (3) the deletion of SOL and Critical Day noticing requirements from Rate Schedule SMS, and modification of its zone transfer provisions; (4) the modification of the Billing Throughput Quantity priorities in Section 30 of its GT&C; (5) the removal of the references to "receipt" points in various rate schedules; and, (6) changes to its table setting forth tariff-permitted provisions in service agreements, found in Section 58 of its GT&C.

92. The Commission accepts the miscellaneous tariff provisions with the following exceptions. We share NMDG/MRGTF's concerns over the six miscellaneous tariff revisions that it identified above. In each case, Northern provides no explanation of, or justification for, its proposed tariff change. Further, these six tariff proposals may negatively affect shippers and may be unjust and unreasonable. Accordingly, we direct that the six miscellaneous tariff provisions identified above be resolved at the hearing established in this proceeding.

Requests for Clarification

93. Two parties request clarification on certain issues. First, the Coalition requests clarification of the Commission's rejection of Northern's proposed ROFR tariff changes. In its May 1, 2003, filing, Northern proposed the following two changes to its ROFR: (1) language allowing a shipper to agree to waive its ROFR at any time; and, (2) a provision specifying that the ROFR will not be applicable to interim service agreements for capacity that is already under contract for a certain period. In its May 30, 2003, suspension order, the Commission rejected the second provision of the ROFR proposal, arguing that it contravenes Commission policy and is inconsistent with the Commission's decision in Williams, where the Commission rejected a contract provision requiring the shipper to waive or not exercise its ROFR.[29]

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

94. In its initial comments, the Coalition requests that the Commission clarify that it also rejected Northern's proposed ROFR provision that would allow a shipper to agree to waive its ROFR at any time. The Coalition asks that the Commission direct Northern to remove this provision from its GT&C. NMDG/MRGTF agrees with the Coalition's conclusion that Northern should remove this provision from its tariff.

95. In its reply comments, Northern notes that the ROFR issue is pending rehearing and is not appropriately part of the technical conference.

96. In its May 30, 2003, suspension order, the Commission only rejected Northern's proposal that the ROFR will not apply to interim service agreements for capacity that is already under contract for a certain period. The Commission did not reject the provision allowing a shipper to agree to waive it ROFR. We find this provision acceptable. Although Northern offers shippers their regulatory ROFR, shippers are not required to exercise this ROFR. Shippers may forgo the capacity or choose not to match another shipper's bid. Allowing a shipper to waive its ROFR will not harm other shippers, but may benefit Northern and its shippers by allowing the pipeline to better plan capacity usage. Further, since this provision is part of Northern's generally applicable tariff, implementation will occur in a non-discriminatory manner.

97. DEFS also requests clarification. On Fourth Revised Sheet No. 281, Northern proposes to charge its shippers incremental gas treatment fees. Northern specified in its general rate case filing that this proposal was part of its Prospective Case, and thus would not go into effect until after a settlement or a Commission order on the merits of its proposal. DEFS notes, however, that Northern inadvertently listed Sheet No. 281 as part of its Primary Case (to go into effect on November 1, 2003), and the Commission included the sheet in Appendix A of its May 30, 2003, suspension order. DEFS requests that the Commission clarify that Sheet No. 281 may only go into effect prospectively, and not on November 1, 2003.

98. Northern proposed to assess incremental gas treatment fees as part of its Prospective Case. Any acceptable proposals that are part of Northern's prospective case will not go into effect until after a settlement or a Commission order on the merits of its proposal. The Commission clarifies that Sheet No. 281 is not part of Northern's Primary Case, and accordingly, will not go into effect November 1, 2003.

<u>The Commission orders:</u>

(A) As discussed above and specified in Appendix A, we conditionally accept certain tariff sheets effective November 1, 2003, and reject others.

(B) We direct Northern to file revised tariff sheets, within 21 days of the date this order issues, incorporating the conditions discussed above.

(C) Within 180 days of the date this order issues, staff will file a report regarding whether the index provider meets the standards set forth in the policy statement and the index reflects adequate liquidity at the referenced location to be reliable. All comments on staff's report will be due no later than 15 days after staff issues the report.

By the Commission.

(S E A L)

Linda Mitry
Acting Secretary

Appendix A

Northern Natural Gas Company
Fifth Revised Volume No. 1

Tariff Sheets Conditionally Accepted November 1, 2003, as Modified by Northern's Pro Forma Tariff Revisions

65 Revised Sheet No. 50
66 Revised Sheet No. 51
31 Revised Sheet No. 52
64 Revised Sheet No. 53
Fifth Revised Sheet No. 55
Fourteenth Revised Sheet No. 56
22 Revised Sheet No. 59
Sixth Revised Sheet No. 59A
25 Revised Sheet No. 60
Sixth Revised Sheet No. 60A
Seventh Revised Sheet No. 101
Second Revised Sheet No. 102
Fifth Revised Sheet No. 103
Fourth Revised Sheet No. 104
Third Revised Sheet No. 110
Third Revised Sheet No. 114
Sixth Revised Sheet No. 115
Third Revised Sheet No. 117
Second Revised Sheet No. 120
Second Revised Sheet No. 121
Fourth Revised Sheet No. 125
Third Revised Sheet No. 125A
Second Revised Sheet No. 125D
Third Revised Sheet No. 125F
First Revised Sheet No. 130
Seventh Revised Sheet No. 135
Fourth Revised Sheet No. 141
First Revised Sheet No. 142B
First Revised Sheet No. 142C
Fifth Revised Sheet No. 147
Third Revised Sheet No. 148
First Revised Sheet No. 160
Second Revised Sheet No. 163
Sixth Revised Sheet No. 200
First Revised Sheet No. 214
Seventh Revised Sheet No. 226
Sheet No. 238 (reservation of space)
Eighth Revised Sheet No. 259
Sixth Revised Sheet No. 264
Eighth Revised Sheet No. 265
Original Sheet No. 265A
Seventh Revised Sheet No. 267
Original Sheet No. 267A
Seventh Revised Sheet No. 268
First Revised Sheet No. 268A
Fifth Revised Sheet No. 269
Third Revised Sheet No. 269A
Second Revised Sheet No. 269B
Second Revised Sheet No. 278
Third Revised Sheet No. 283
Fourth Revised Sheet No. 285
First Revised Sheet No. 285A
Seventh Revised Sheet No. 286
Third Revised Sheet No. 292A
Fifth Revised Sheet No. 297
Sixth Revised Sheet No. 303
Third Revised Sheet No. 305
First Revised Sheet No. 306
First Revised Sheet No. 308
Original Sheet No. 309
Sheet No. 310 (reservation of space)
Third Revised Sheet No. 443
Original Sheet No. 443A
Second Revised Sheet No. 444
First Revised Sheet No. 445
First Revised Sheet No. 452
First Revised Sheet No. 453
First Revised Sheet No. 454

First Revised Sheet No. 455
First Revised Sheet No. 456
Second Revised Sheet No. 458
Original Sheet No. 458A

Second Revised Sheet No. 459
Original Sheet No. 459A
Sheet No. 479 (reservation of space)
Sheet No. 490 (reservation of space)

Tariff Sheets Rejected

Third Revised Sheet No. 213
Sixth Revised Sheet No. 288

Northern Natural Gas Company
Original Volume No. 2

Tariff Sheet Conditionally Accepted November 1, 2003

171 Revised Sheet No. 1C

Appendix B

List of Commenting Parties

AG Processing, Inc.
Alliant Energy Corporate Services, Inc. (Alliant)
American Iron and Steel Institute; Alcoa, Inc.; Archer Daniels Midland Company; United States Gypsum Company; USG Interiors; and, U.S. Energy Services, Inc. (Industrials)
Aquila, Inc.; Northern States Power Company; and Northern States Power Company Wisconsin (Aquila)
Centerpoint Energy Minnegasco (Minnegasco)
Duke Energy Field Services, L.P. (DEFS)
Duke Energy Trading and Marketing, L.L.C. (DETM)
Indicated Shippers
Koch Nitrogen Company and Terra Industries, Inc. (Agricultural Intervenors)
Large Local Distribution Company Coalition (Coalition)
Lincoln Electric System (LES)
Madison Gas and Electric Company (Madison)
Metropolitan Utilities District of Omaha (MUD)
Mewbourne Oil Company (Mewbourne)
MidAmerican Energy Company (MidAmerican)
Nicor Gas
Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG/MRGTF)
Oneok Field Services Company; Oneok Bushton Processing, Inc.; and Oneok Gas Processing, L.L.C. (Oneok)
Semco Energy Gas Company (Semco)
Virginia Power Energy Marketing, Inc. (VPEM)
Wisconsin Electric Power Company and Wisconsin Gas Company (Wisconsin)