107 FERC ¶ 61,252
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Northern Natural Gas Co. Docket No. RP03-398-005
RP03-398-004

ORDER ON REHEARING, CLARIFICATION AND COMPLIANCE

(Issued June 2, 2004)

1. On October 31, 2003, the Commission issued an order (October 31, 2003 Order)[1] following a technical conference conditionally accepting and rejecting certain tariff proposals that Northern Natural Gas Co. (Northern) had included as part of a general rate increase application captioned above. Following the October 31, 2003 Order, numerous parties requested rehearing. Some parties also requested a motion to stay the effectiveness of the October 31, 2003 Order while rehearing is pending. For the reasons discussed below, we will deny the requests for rehearing and the motion to stay.

2. In addition, on November 21, 2003, Northern filed revised tariff sheets[2] to comply with the Commission's October 31, 2003 Order. VPEM and NMDG/MRGTF protest certain elements of Northern's compliance filing. We accept Northern's tariff sheets as complying with the October 31, 2003 Order subject to certain conditions discussed below.

I. Background

3. On May 1, 2003, Northern filed a general rate increase application, pursuant to section 4 of the Natural Gas Act. On May 30, 2003, the Commission accepted and suspended Northern's tariff sheets to become effective November 1, 2003, and, inter alia,

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[1] Northern Natural Gas Co., 105 FERC ¶ 61,172 (2003) (October 31, 2003 Order).

[2] See Appendix A.

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set nine tariff proposals for technical conference.[3] Commission staff convened the technical conference on July 29 and 30, 2003, which resulted in the issuance of the October 31, 2003 Order.

4. Numerous parties requested rehearing of the October 31, 2003 Order. Requests for rehearing were received from Indicated Shippers, The Northern Municipal Distributors Group and The Midwest Region Gas Task Force Association (NMDG/MRGTF); Ag Processing, Inc. (Ag Processing); West Texas Gas, Inc. and WTG Gas Marketing, Inc. (collectively, West Texas); ONEOK Field Service Co., ONEOK Bushton Processing, Inc. and ONEOK Gas Processing, LLC (collectively, ONEOK); MidAmerican Energy Company (MidAmerican); Mewbourne Oil Co. (Mewbourne); the Large Local Distribution Company Coalition (Coalition); the American Iron and Steel Institute, Alcoa, Inc., Archer Daniels Midland Co., United States Gypsum Co. and USG Interiors, Inc. (collectively, the Industrials); and Duke Energy Trading and Marketing, LLC (Duke). Northern filed a motion for clarification, or, alternatively, a request for rehearing. Parties requesting rehearing focus their comments on the imbalance issue.

II. Notice and Responsive Pleadings

5. Public notice of Northern's compliance filing was issued on November 25, 2003. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. 18 C.F.R. § 154.210 (2003). NMDG/MRGTF and VPEM filed protests, which are addressed below.

III. Imbalance Mechanism

A. General

6. 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, instead of using an average monthly price. The five weeks would include the four weeks during the month when the imbalances occurred plus the first week following that month. Northern would determine each week's price based on the average of several index prices. When a customer took more gas from the system than it put on during a month, it would reimburse the pipeline for the gas taken based on the highest of the five weekly prices. If the customer took less gas off the system than it put on, the pipeline would purchase the gas based on the lowest of the five weekly prices.

[3] Northern Natural Gas Co., 103 FERC ¶ 61,266 (2003) (May 30, 2003 Order).

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Second, Northern revised its existing tiering structure by reducing the first-level imbalance tolerance band where Northern cashes out imbalances based on 100% of the applicable index price. Under its existing tariff, the first-level imbalance tolerance was 0-3 percent. Northern proposed to narrow this to 0-2 percent. Third, it proposed to add a new tier for imbalances greater than 25 percent.

7. In the October 31, 2003 Order, the Commission conditionally accepted certain elements of Northern's imbalance proposal, and rejected others. First, the Commission accepted Northern's proposal to cash-out imbalances based on the weekly high/low index price, using a five-week average pricing structure. The Commission noted that it has previously approved pipelines' requests to cash-out at a weekly high/low index price to discourage arbitrage. The Commission also held that a pipeline does not need to show that price arbitrage caused operational problems to implement a weekly high/low cash-out price.[4] The Commission listed six pipelines as examples of pipelines that currently cash-out imbalances based on a weekly high/low price: Natural Gas Pipeline Co. of America (NGPL); High Island Offshore System, LLC (HIOS); Enbridge Pipelines (KPC); Enbridge Offshore Pipelines, LLC (UTOS); Guardian Pipeline, LLC (Guardian); and CenterPoint Energy – Mississippi River (CenterPoint).

B. Rehearing

1. Weekly High/low

a. Requests for Rehearing

8. A number of parties requested rehearing of the Commission's decisions concerning Northern's proposal to modify its cash-out mechanism. Specifically, numerous parties argue that the Commission erred in approving Northern's high/low index proposal. Parties argue that Northern failed to meet its burden of proof to establish that its proposed changes to its imbalance cash-out mechanism were just and reasonable. Parties argue that Northern's proposal is not consistent with Order No. 637's directives that pipelines are authorized to impose penalties "only to the extent necessary to prevent impairment of reliable service."[5] Indicated Shippers adds that Northern's mandatory

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[4] October 31, 2003 Order at P 80.

[5] See 18 C.F.R. § 284.12(b)(2)(v) (2003); Northern Natural Gas Co., 101 FERC ¶ 61,203 at 61,865 (2002).

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high/low cash-out proposal operates similarly to an operational flow order (OFO) because it would require shippers to take actions to attempt to ensure that there are zero imbalances.

9. The Industrials argue that the Commission's October 31, 2003 Order dismisses the fact that Northern's proposal to calculate imbalance repayments using a weekly high/low index is a much more restrictive measure that will result in increased shipper penalties. The Industrials also assert that since the implementation of Order No. 637, the Commission has regularly rejected punitive pipeline cash-out proposals that are not supported by a demonstration of actual operational harm, or at least a demonstration of a credible threat of arbitrage.

10. In addition, numerous rehearing applicants assert that the Commission erred in asserting that Northern's cash-out imbalance mechanism proposal is consistent with certain pipelines that the Commission cited in support of Northern's proposal. Protestors assert that three of the pipelines cited – NGPL, UTOS, and HIOS – do not use weekly high/low cash-out prices. Instead, the three pipelines each use an "average monthly index price" in calculating imbalance cash-outs. NMDG/MRGTF also asserts that unlike Northern's proposal, the tariffs of each of the three pipelines contains a threshold imbalance tolerance band that is penalty free. Parties also argue that the other pipelines referenced in the October 31, 2003 Order are distinguishable from Northern, e.g., Duke asserts that Guardian and Enbridge are extremely small, limited purpose pipelines, making them substantially different from Northern. Duke asserts that CenterPoint's high/low cash-out mechanism was agreed to as part of a settlement and, therefore, has no precedential value for Northern's punitive high/low proposal.

11. Protestors also assert that the precedent on which the Commission based its decision does not support the decision. Mewbourne notes that the Commission stated in the October 31, 2003 Order that the Commission regularly approves proposals such as Northern's to discourage arbitrage, and then cited only one case, Texas Gas Transmission Corp.,[6] to support the proposition. Mewbourne asserts that Texas Gas is distinguishable because in that case virtually all the distribution company parties supported the more stringent imbalance mechanisms proffered by Texas Gas. According to Mewbourne, the new mechanisms were viewed by those customers as necessary to resolve a long-term underrecovery of costs attributable to demonstrable arbitrage.

[6] 97 FERC ¶ 61,349 (2001) (Texas Gas).

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b. Commission Response

12. A pipeline has the initiative under NGA section 4 to propose rates, terms, and conditions for the services it provides.[7] If the pipeline shows that its proposal is just and reasonable, the Commission must accept it, regardless of whether other rates, terms and conditions must be just and reasonable.[8] Here, Northern satisfactorily shows that its use of a high/low index price is just and reasonable.

13. The Commission in Order No. 637 recognized a need to minimize arbitrage on pipeline's systems and determined that, to the extent that changes to a cash-out mechanism are necessary to remove the incentive for arbitrage, a pipeline could implement such changes. Specifically, in Order No. 637, the Commission stated that pipelines "could change the methods by which they cash out imbalances to eliminate the incentives for shippers to borrow gas from the pipeline because the cash-out price is less than the market price for gas."[9]

14. The rehearing applicants contend that Northern fails to show that arbitrage actually occurs on its system or that any imbalances that may conceivably be related to arbitrage are causing any operational problems. However, Commission precedent does not require that a pipeline show that arbitrage has actually occurred on the system or has caused operational problems before permitting a pipeline to modify its cash-out mechanisms. In Texas Gas Transmission Corp.,[10] the Commission stated that, when

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[7] United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956). ANR Pipeline Co. v. FERC, 771 F.2d 507, 513 (D.C. Cir. 1985).

[8] Western Resources, Inc. v. FERC, 9 F.3d 1568, 1578 (D.C. Cir. 1993).

[9] FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,099 at 31,607. See also Order No. 637-A, III FERC Stats. & Regs. P31,589 at 31,608 (2000).

[10] Texas Gas, 97 FERC ¶ 61,349 at 62,634. Transcontinental Gas Pipe Line Corp., 98 FERC ¶ 61,213 at 61,814 (2002). Rehearing applicants contend that in ANR Pipeline Co., 105 FERC ¶ 61,236 (2003), the Commission rejected the pipeline's proposal to revise its imbalance mechanism on the ground that it had failed to show any operational problems caused by imbalances or a significant arbitrage problem. However, that case is distinguishable from this case, since it involved a proposal to penalize imbalances incurred during periods of less than a month. Here, Northern does not propose any such intra-monthly imbalance penalties.

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price arbitrage occurs, the pipeline is, in essence, required to sell gas at below market levels and buy gas from them at above-market levels. The Commission concluded that it was not just and reasonable to require pipelines to give their customers such an opportunity, particularly since this can lead to the pipeline incurring a substantial underrecovery of costs. Texas Gas accordingly stated that "there is no reason to make the correction of such a problem contingent on a showing that the imbalances are causing the operational problems."[11]

15. In addition, the Commission previously permitted pipelines to modify their cash-out mechanisms based on a showing that their existing cash-out mechanism provides an incentive for shippers to engage in arbitrage, without showing that customers actually engaged in arbitrage. The pipeline does not have ready access to information about why a shipper incurred an imbalance. For example, when a customer takes more gas from the system than it put on the system, the pipeline would not ordinarily know what the customer did with the excess gas it took, i.e., whether the customer sold that gas for a price higher than the cash-out index price. Therefore, if "the current system provides obvious opportunities and incentive to game the system," the Commission found "it reasonable to assume that there is a danger of such gaming occurring and to permit [the pipeline] to modify its cash-out mechanism to eliminate that opportunity."[12]

16. Northern records the effects of its imbalance resolution in its System Levelized Account (SLA), a rate base account.[13] It annually recalculates the rate impact of the balance of the SLA, and if the rate impact changes by more that $0.0001 for two consecutive years, Northern can adjust its rates at the end of two years. In other Northern proceedings, Northern customers, including the rehearing applicants here, previously recognized that shipper imbalances due to arbitrage can cause the SLA balance to increase, and thus adversely affect all the shippers on the system.[14] In 2002, the Commission approved an uncontested settlement which included provisions intended to reduce the opportunity for such arbitrage.[15] Prior to the settlement, Northern cashed out

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[11] Texas Gas, 97 FERC ¶ 61,349 at 62,634.

[12] Gulf South Pipeline Co., 98 FERC ¶ 61,068 (2002).

[13] Northern records the monthly dollar effects of its imbalance resolution mechanism in its SLA.

[14] Northern Natural Gas Co., 101 FERC ¶ 61,203 at P 85 (2002). Northern Natural Gas Co., 105 FERC ¶ 61,174 at P 106 (2003).

[15] Northern Natural Gas Co., 98 FERC ¶ 61,120 (2002).

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imbalances based on the average gas price for the month in which the imbalances were incurred. Under the settlement, Northern calculated the average monthly price for a period beginning on the eleventh day of the month in which the imbalances occurred and continuing through the tenth day of the following month. In its reply comments following the technical conference in this proceeding,[16] Northern stated that this change initially appeared effective at reducing imbalances on Northern's system. However, after a short period, imbalances again started increasing on Northern's system. As a result, the SLA balance increased from $40,814,178 in April 2002 when the settlement became effective to $55,708,918 on April 30, 2003.[17] The Large LDC Coalition notes in its rehearing request that the SLA balance continues to increase to approximately $60 million.

17. This evidence shows that there is a continuing problem with imbalances on Northern's system, leading to an under recovery of costs. Even with the 10-day lag in the calculation of the average monthly price used for cashing out imbalances, shippers can still predict toward the end of the month with reasonable accuracy whether the cash-out price is likely above or below market prices toward the end of the month. About two thirds of the daily prices used in calculating the average price are already known. By contrast, under the high/low weekly system with the addition of a fifth week, it is possible the high or low weekly average price used will be based on daily prices that are largely unknown even toward the end of the month in which the imbalances are incurred, thereby significantly reducing the opportunity for arbitrage. Therefore, the Commission finds it reasonable to conclude that the likelihood of gaming occurring on Northern's cash-out mechanism exists which ultimately leads to an underrecovery of costs that Northern will shift to other customers. Accordingly, it is also reasonable, given the policies and precedent discussed above, to permit Northern to modify its cash-out mechanism to reduce the incentive for shippers to engage in such actions.

18. Rehearing applicants suggest that Northern does not provide its customers sufficient imbalance management services to permit its customers to avoid incurring the imbalances, and in the absence of such imbalance management services the Commission should not permit Northern to implement the changes to its cash-out price proposed here. The Commission recently considered the adequacy of Northern's imbalance management services in its Order No. 637 compliance proceeding. There, the Commission held that, with the additional imbalance management services Northern proposed in that

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[16] September 30, 2003 comments at pages 27-29.

[17] Reply comments at 28.

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proceeding, Northern does provide its customers sufficient imbalance management services, consistent with the requirements of Order No. 637. These include (1) imbalance netting and trading; (2) an imbalance-to-storage option, a monthly in-kind balancing mechanism, provided through firm delayed delivery form storage under Rate Schedule FDD or an interruptible delayed delivery from storage under Rate Schedule IDD;[18] (3) a new Preferred Deferred Delivery Service; (4) the PowerPak option, which is similar to a form of park and loan service or a no-notice service; and (5) the Auto-Balancing option, where a shipper may request Northern to automatically schedule volumes into or out of its deferred delivery account as necessary to balance receipts and deliveries.[19] Northern also offers a no-notice service under Rate Schedule SMS.

19. To the extent rehearing applicants consider these imbalance management services inadequate, the place to have raised that issue was in the concurrently ongoing Order No. 637 compliance proceeding, which was specifically established to consider, among other things, whether it should require Northern, pursuant to NGA section 5; to provide additional imbalance management services. For example, rehearing applicants contend that Northern's imbalance trading provisions are difficult to use. However, in Northern Order No. 637 proceeding, the Commission expressly considered whether Northern offers imbalance trading consistent with Commission requirements.[20] The change proposed here to Northern's cash-out mechanism is not so fundamental as to require a reexamination of the adequacy of Northern's imbalance management services. All that is being modified here is the index price used to cash out the imbalances, not the tolerances that trigger penalties through the use of cash out prices that are more or less than 100 percent of the applicable index price.

20. Parties are correct that three pipelines – NGPL, UTOS and HIOS – were inadvertently cited as pipelines cashing-out imbalances on a weekly high/low index price. However, KPC, and Guardian do, in fact, use the weekly high/low mechanism, as do other pipelines including Texas Gas, Transco, Gulf South and Black Marlin cited above. We also find that, contrary to parties' claims, Texas Gas is precedent supporting

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[18] As discussed below, Northern has modified its imbalance-to-storage service in this proceeding in order to allow it to be used based on the volume needed to put the shippers in balance without the need to dollar value those volumes.

[19] See Northern Natural Gas Co., 101 FERC ¶ 61,203 at P 69-145 (2002). Northern Natural Gas Co., 105 FERC ¶ 61,174 at P 104-134 (2003).

[20] Northern Natural Gas Co., 101 FERC ¶ 61,203 at P 87-107.

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Northern's imbalance proposal. Rehearing applicants suggest that Texas Gas is distinguishable, because in that case a larger percentage of the customers supported Texas Gas' proposal on the ground that arbitrage by some customers was causing Texas Gas to underrecover its costs, with the result that those costs could be shifted to the other customers. Also, rehearing applicants contend that Texas Gas uses an in-kind method to resolve imbalances at the zero to two percent range, rather than a high/low method. However, a number of parties contested Texas Gas' proposal, and thus our acceptance of the proposal was based on its merits. Also, in accepting Texas Gas' proposal to require in-kind make-up of imbalances in the zero to two percent range, the Commission expressly noted that there could be other methods of addressing the resolution of imbalances that would also be just and reasonable.[21] The Commission also notes that, in fact, certain of Northern's imbalance management services give the shipper the option of having imbalances made up in-kind from gas the shipper places in storage.

21. Finally, some rehearing applicants contend that the Commission should not permit Northern to implement its proposed high/low pricing mechanism on shippers who do not have real time metering at their delivery points, to enable them to track their imbalances on a daily basis. They contend that Order No. 637 stated that pipelines could only impose penalties in time frames comparable to the information it collects and disseminates to shippers. The rehearing applicants raised this same contention in Northern's Order No. 637 proceeding, and the Commission addressed it there.[22] Among other things, the Commission stated there that any imbalance penalties are monthly penalties and even those customers without real time metering are notified by Northern of scheduled volumes through the nomination process at each nomination cycle. The Commission also noted that the parties had established a Northern-Customer Operational team to work in good faith to improve Northern's imbalance management, and that this is an issue that should be raised first in that forum.

2. Penalty Free Tolerance

a. Requests for Rehearing

22. Parties argue that the Commission erred by approving an imbalance cash-out mechanism that did not include a penalty-free tolerance band. MidAmerican asks the Commission to require Northern to incorporate a monthly tolerance in which imbalances

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[21] 97 FERC at 62,634.

[22] Northern Natural Gas Co., 105 FERC ¶ 61,174 at P 118-122 (2003).

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are cashed out at a monthly average monthly index price (MIP) before the high/low index prices are charged. NMDG/MRGTF asserts that Northern's proposal effectively eliminates any tolerance zone because Northern applies the high/low weekly mechanism to the very first MMBtu that a shipper is out of balance. NMDG/MRGTF argues that while it would prefer that Northern's cash imbalance proposals be rejected entirely, at a minimum Northern should be directed to revise its proposal to state that the average price for the month (rather than the high/low price) applies to imbalances within the first three percent of imbalance. The Coalition argues that the Commission erred in accepting Northern's proposal to apply its high/low price mechanism to the 0-3 percent imbalance zone, rather than the average monthly price in effect prior to November 1, 2003. It asserts that the use of the high/low price amounts to a penalty and the Commission cannot justify a penalty in the lowest tier, which they assert barely exceeds meter error, without clear and convincing proof of an operational justification.

b. Commission Response

23. As discussed above, a primary purpose of Northern's high/low proposal is to minimize arbitrage and the continuing increase in the SLA balance, which ultimately hurts all of Northern's customers. Shippers may incur imbalances in the 0 to 3 percent range for the purpose of arbitrage, just as they can incur greater imbalances for that purpose. Thus, the goal of minimizing arbitrage supports the use of the high/low pricing method for all imbalances, not just these in excess of a tolerance level such as three percent. For that reason, the Commission approved the use of the high/low pricing method for all imbalance tolerance levels for other pipelines, including Guardian and Black Marlin.

24. As rehearing applicants point out, Texas Gas requires shippers to resolve imbalances in the 0 to 3 percent range on an in-kind basis, instead of using its high/low pricing mechanism for such imbalances. However, Texas Gas uses that approach not as a means of mitigating the effect of its high/low proposal as suggested by the rehearing applicants here, but because it believed that even the high/low pricing mechanism could be insufficient to prevent gaming in the 0 to 3 percent range. Accordingly, it proposed, and the Commission accepted, mandatory in-kind resolution of imbalances in the 0 to 2 percent range as a more effective means of mitigating arbitrage.[23]

25. As previously discussed, Northern offers a number of imbalance management services to its customers as an alternative to resolving their imbalances by cash-out. For

[23] See Texas Gas, 97 FERC at 62,633-5.

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example, the Monthly Imbalance to Storage option permits shippers to have their imbalances resolved on an in-kind basis by using storage inventory gas. This can have some advantages over the mandatory in-kind resolution method required by Texas Gas. In the Texas Gas proceeding, some customers were concerned that Texas Gas would require them to purchase gas after the month in which the imbalances were incurred, when gas prices might be significantly higher.[24] By contrast, the imbalance to storage option gives customers greater control over incurred gas costs to resolve their imbalances, since customers may purchase stored gas volumes over a longer period of time, allowing them a greater opportunity to purchase the gas at advantageous prices.

3. SLA Account

a. Requests for rehearing

26. NMDG/MRGTF asserts that the Commission failed to address the impact on the SLA account of Northern's proposal to permit volumetric resolution of imbalances through Northern's storage services, and failed to address the discriminatory aspects of that proposal. NMDG/MRGTF argues that under Northern's proposal, there are no assurances that a shipper utilizing the proposed volumetric imbalance to storage mechanism will not detrimentally impact the SLA balance. Thus, while the proposal may alleviate some of the cost of the imbalance to the specific shipper in question, it provides no assurance that Northern will not require the remaining shippers to subsidize some of the costs associated with that shipper's imbalance through the SLA account and the annual adjustment to base rates resulting from that account.

b. Commission Response

27. We will deny the request for rehearing on this issue. After the technical conference in this proceeding, Northern proposed to modify its existing monthly imbalance-to-storage option to respond to customer requests for improved imbalance management services. Under this option as revised by Northern, a shipper may notify Northern before the first day of the month, that it desires to use the imbalance-to-storage option. It must notify Northern of the applicable transportation and storage services and storage point used for this purpose. To determine the shippers' daily storage account volume, Northern allocates the shipper's net monthly imbalance to the days in the month that the shipper's daily volume imbalance was in the same direction as the system's net monthly imbalance.

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[24] Id. at 62,635.

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28. NMDG/MRGTF recognizes that this option can benefit the specific shippers who use it. However, it contends that Northern could require the remaining shippers to subsidize some of the costs associated with that shipper's imbalance through the SLA account. That is because this option permits the shipper to resolve the imbalance on a volumetric basis, rather than a dollar-valued basis. NMDG/MRGTF suggests that the actual cost of the gas purchased by Northern to refill operational storage depleted by imbalances may be higher than the costs of gas ultimately repaid by a shipper using a volumetric mechanism. NMDG/MRGTF also contends that the approval of the imbalance-to-storage option in this case is inconsistent with Northern's withdrawal of a similar proposal in its Order No. 637 proceeding, where Northern stated it agreed with NMDG/MRGTF that the proposal in the Order No. 637 proceeding could permit arbitrage and adversely affect the SLA account.[25]

29. We find that this proposal offers significant benefits to shippers who choose to use it, and find NMDG/MRGTF provides no reason to believe that this option will adversely affect the SLA balance. The imbalance-to-storage option proposed here differs from the proposal made in the Order No. 637 compliance proceeding in ways that make the instant proposal less susceptible to arbitrage than the Order No. 637 compliance proposal. First, under the instant proposal, the shipper must elect to use the option before the month begins. By contrast, under the proposal in the Order No. 637 proceeding, shippers could nominate injections or withdrawals into storage to offset imbalance at the end of the month. In withdrawing that proposal, Northern stated, "Providing shippers with an after-the-fact option to elect to maximize their financial gain will likely come at a cost to the SLA."[26] This proposal gives no such after-the-fact option, since shippers must exercise the option before the month in which the imbalance occurred. In any event, since under this option, Northern would actually take the shipper's gas from storage to offset any net excess monthly take from the system by the customer, Northern should not have to make any purchases to offset the imbalances of shippers exercising this option. The Commission concludes that NMDG/MRGTF has provided no basis to believe that the monthly imbalance-to-storage option, as proposed in this proceeding, would adversely affect the SLA.

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[25] Northern Natural Gas Co., 105 FERC ¶ 61,174 at P 106-109.

[26] Transmittal letter to December 23, 2002 compliance filing in Docket No. RP00-404 at page 9.

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30. NMDG/MRGTF also contends that the imbalance-to-storage option is unduly discriminatory, because it requires the shipper to purchase firm or interruptible storage under Rate Schedules FDD or IDD to benefit from the proposal. NMDG/MRGTF contends that there is no reason why shippers should not be able to resolve imbalances by making injections to, or withdrawals from, Northern's operational storage through the use of third-party services including, but not limited to, third party storage and in-kind transfers. The ability of shippers to use third-party imbalance management services was an issue that the Commission directed all parties to consider in all the pipeline's filings to comply with Order No. 637, including Northern's. Thus, parties could have raised the issue of whether the Commission should order changes in Northern's tariff under NGA section 5 to allow shippers to take advantage of third party imbalance management services in its Order No. 637 proceeding. Since the parties had an opportunity to raise this section 5 issue in that proceeding, the Commission will not also pursue that issue in this proceeding.

4. Potential market distortion

a. Requests for rehearing

31. Mewbourne argues that the October 31, 2003 Order accepted proposals for imbalance resolution that, in effect, tie access to imbalance resolution mechanisms to the purchase of additional services from Northern. Mewbourne asserts that to take advantage of Northern's storage imbalance management tool, a shipper must purchase storage service from Northern. Mewbourne further asserts this will create market distortions, and notes that it is not a "tool" at all for producers, most of whom are not storage customers.

b. Commission Response

32. As previously discussed, Northern provided a number of imbalance management tools for the shippers to use to avoid imbalance penalties. The Commission does not require Northern provide free balancing services so shippers might meet their contractual obligations. While a shipper that does not purchase storage cannot take advantage of the imbalance-to-storage option, not all the imbalance management services require the use of storage. For example, producers such as Mewbourne could take advantage of the imbalance netting and trading option. Moreover, the Commission fails to see the merit in Mewbourne's argument that use of Northern's imbalance services will provide undue market distortions. The Commission required Northern to offer such services pursuant to Order No. 637, and has provided all Northern's customers an opportunity in Northern's Order No. 637 proceeding an opportunity to address the adequacy of those services, including their market effects.

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5. Field Area Imbalances

a. Requests for Rehearing

33. The Indicated Shippers argue that Northern's imbalance problem was not occurring in the Field Area. They argue that they demonstrated in the comments following the technical conference that only 6.6% of the imbalances occurred in Northern's Field Area. Indicated Shippers also asserts that in 11 of 24 months, Field Area imbalances actually helped because these imbalances accrued in the direction opposite to the majority of imbalances. Indicated Shippers argues that since Field Area shippers are not responsible for the imbalances on the system, it is unnecessarily punitive to subject Field Area shippers to Northern's imbalance mechanism. The Coalition also contends that Northern should cash out imbalances in the opposite direction of the system imbalance based on an average monthly price, rather than a high/low weekly price.

b. Commission Response

34. The Commission finds that Northern may reasonably apply its high/low pricing mechanism to the Field Area, as well as the Market Area. While a relatively small percentage of the overall system imbalances may be attributable to Field Area-only transactions, there is no reason why Northern must treat the shippers who incur those imbalances differently than similar shippers on other parts of the system. All imbalances, wherever they occur, can contribute to the increase of the SLA balance, and thus adversely affect other shippers. As part of seeking to ameliorate this problem, Northern may impose the high/low prices on imbalances consistently throughout its system.

35. The Commission also sees no basis to require Northern under NGA section 5 to adopt a cash-out system under where Northern treats imbalances that are in the opposite direction of the system imbalance differently from imbalances in the same direction. As Northern pointed out in its reply comments, shippers with imbalances in the opposite direction of the system imbalance should have a greater opportunity than the other shippers to resolve their imbalances through trading. That is because they will have more potential trading partners than shippers whose imbalances are in the same direction as the majority of the imbalances on the system during a particular month.

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6. Motion for Clarification

a. General

36. The Coalition includes in its rehearing a motion for clarification that the October 31, 2003 Order did not authorize Northern to apply any cash-out penalties under the high/low mechanism to the SLA balance, as opposed to crediting them directly to the customers. The Coalition states that such application of the cash-out penalty revenues to the SLA as it exists now results from the customers' agreement to use the cash-out revenues as an offset in the SLA settlement approved in Docket No. RP01-76-000. The Coalition contends that, absent customer assent, Commission policy requires Northern to credit all penalties to the customers.

b. Commission Response

37. The Commission grants clarification that the October 31 Order did not address any issue concerning the crediting of revenue from the cash-out mechanism as between the SLA account and the penalty revenue credits that go directly to the customers. Section 284.12(b)(v) of the Commission's regulations, as adopted by Order No. 637, requires pipelines to credit penalty revenue to customers in a manner prescribed in the pipeline's tariff. The Commission is considering how Northern must comply with this regulation in its Order No. 637 proceeding.[27] The change in the index price used to calculate the cash-out prices approved in this proceeding should not affect the penalty revenue crediting mechanism developed in Northern's Order No. 637 proceeding. Regardless of whether an average monthly price is used or a high/low weekly price is used, the Commission does not consider the amount paid that equals 100 percent of the cash-out price not to be a penalty, but rather compensation for the cost of the imbalance. It is only the pipeline's revenues resulting from use of a cash-out price higher or lower than 100 percent of the index price (i.e. the premiums) that the Commission considers a penalty for this purpose.[28] Thus, whatever penalty revenue crediting mechanism that is approved in Northern's Order No. 637 will govern Northern's crediting of revenues from its cash-out mechanism, including as the cash-out mechanism is revised here.

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[27] Northern Natural Gas Co., 101 FERC ¶ 61,203 at P 172-180 (2002). Northern Natural Gas Co., 105 FERC ¶ 61,174 at P 148-172 (2003), compliance filing pending.

[28] Black Marlin Pipeline Company, 101 FERC ¶ 61,087 at P 9 (2002).

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IV. Hourly take restrictions

A. Background

38. Prior to this case, Northern's tariff language permitted it to restrict hourly takes of gas to 6.3 percent (16 hour gas day) of a shipper's firm entitlement to protect system operational integrity. In this proceeding, Northern proposed to revise the tariff to permit Northern 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. In its comments, Northern argued that permitting it to agree with a shipper to a lower hourly take would result in additional capacity which could be used for other shippers and reduce any need to construct additional capacity. In the October 31, 2003 Order, the Commission accepted Northern's proposal, stating that it accepted the provisions because the program is voluntary; it would free up capacity on Northern's system; and it would provide more service options resulting from the system's enhanced operational flexibility.[29]

B. Rehearing

1. Requests for rehearing

39. NMDG/MRGTF asserts that Northern's proposal will allow Northern to reap an economic benefit from hourly limitations that may result in an over-subscription in capacity on a given line. First, NMDG/MRGTF argues that if Northern can sell any additional capacity as Limited Firm Transportation (LFT) or some other service, Northern will have an incentive to pressure shippers to agree to such limitation. Second, permitting a shipper to take firm capacity in a branchline at restricted hourly takes will detrimentally impact other shippers currently receiving traditional firm service on the same branchline. Third, NMDG/MRGTF asserts that Northern will need to re-certify its operational capacity if its proposal does free up additional capacity as Northern claims. NMDG/MRGTF also asserts that neither the Commission nor Northern attempted to quantify what benefits to the system would result from the proposal.

[29] October 31, 2003 Order at P 47.

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2. Commission response

40. We will deny the request for rehearing. Under Northern's proposal, Northern and a shipper may agree to more restrictive uniform hourly flow requirements. Any such agreement would reduce the capacity that Northern would have to reserve to serve that customer, thus freeing up capacity on Northern's system for service to other shippers and allowing other shippers to enjoy more service options that emanate from enhanced flexibility. Also, the enhanced capacity should allow shippers on Northern's system to realize lower rates because of increased throughput. It is not necessary for Northern to quantify such benefits. Arguments that Northern will pressure other parties into accepting such a provision are speculative. Northern's tariff requires it to offer firm shippers contracts permitting hourly flow takes of up to 6.3 percent of contract demand to the extent capacity is available. To the extent Northern failed to abide by its tariff, parties are free to avail themselves to the complaint procedures should Northern engage in such activities. The Commission also rejects arguments that Northern must obtain additional certificate authority for the capacity freed up by its proposal; when a pipeline files under NGA section 4 to change the terms and conditions under which it offers an already certificated service, as here, additional certificates are not necessary.

C. Compliance Filing

1. Ranking of Bids

41. In accepting Northern's hourly take proposal, the Commission noted that since the provision is part of Northern's generally applicable tariff, Northern must offer it in a non-discriminatory manner. To clarify certain concerns raised by parties, the Commission conditioned this acceptance on Northern: (1) explaining how it would rank bids with differing hourly flow take provisions; and, (2) explaining how it would handle the more restrictive hourly limitations with regard to capacity release.

42. With regard to ranking bids, Northern, in its compliance filing, stated that "Northern's tariff provides that, unless Northern posts a different bid evaluation methodology, Northern will use an NPV (net present value) methodology to rank bids based on MDQ, term, and reservation rate."

43. VPEM asserts it cannot determine from Northern's explanation how it would rank bids with differing hourly flow requirements. VPEM suggests that perhaps Northern plans to ignore differing hourly flow restrictions when evaluating bids. Under this scenario, however, VPEM expresses concerns that certain shippers may be treated as being similarly situated when they are not, which may be unduly discriminatory. VPEM

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submits that the Commission should direct Northern to disclose what methods it is intending to use for purposes of capacity allocation, or order Northern to withdraw its hourly take proposal.

44. In its compliance filing, Northern explains that it will rank bids using a (NPV) methodology based on the MDQ, term, and reservation rate. Based on this explanation, Northern will not take into account differing hourly take provisions when implementing its NPV methodology. Accordingly, we find that Northern's explanation satisfactorily complies with our directive in the October 31, 2003 Order.

2. Reconciliation with Capacity Release

45. To reconcile its revised hourly take provisions with its capacity release provisions, Northern adds the following provision to section 19(A)(5) of its GT&C: "The hourly take rate will be applicable to the primary point(s) on the Shipper's Service Agreement. If the Shipper nominates an alternate point (including capacity release) the MDQ on the Shipper's contract will be limited such that the hourly flow on the contract is not increased and the MDQ will be adjusted to equal a 6.3% hourly take rate." Northern offers, as an example, that if the releasing shipper has an MDQ of 24Dt, with a 24 hour take requirement (1 Dt per hour), and if the entire MDQ is released and used at an alternate delivery point, it will adjust the acquiring shipper's MDQ to 16 Dt, or 1 Dt per hour for 16 hours. Northern contends that this will ensure that a replacement shipper does not infringe upon available capacity on an alternate basis and protects against the degradation of service to other firm shippers.

46. VPEM and NMDG/MRGTF contend that Northern has not adequately clarified its capacity release provisions to account for changes in hourly flow restrictions. VPEM asserts that Northern's proposed tariff revision is outside the scope of the compliance filing, and thus the Commission should summarily reject this language. Further, VPEM expresses concern that Northern's proposal unnecessarily limits a shipper's ability to release capacity, since Northern's proposed language could result in the replacement shipper having its capacity reduced, even for service between the releasing shipper's primary receipt and delivery points. VPEM asserts there is no need for such operational limitations, and that Northern has not shown this proposal to be just and reasonable. VPEM asks that in the alternative to rejecting the proposal, the Commission should direct Northern to present a proposal that is just and reasonable.

47. NMDG/MRGTF has three additional concerns with how Northern reconciles its hourly take restrictions with its capacity release provisions. First, it questions Northern's proposal to reduce contract capacity for nominations to secondary points. It contends that Northern's tariff does not state what will happen if the secondary point is on a restricted

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branchline or in a capacity constrained area. NMDG/MRGTF adds that if the secondary point is not in a constrained area, the releasing shipper would never be able to recover all of the charges it pays for capacity from the replacement shipper. NMDG/MRGTF asks Northern to revise its tariff to provide that, if the secondary point is on the same branchline or in the same constrained area as the primary point, the capacity could only be released if the release were subject to the same hourly flow limitations as originally agreed to by the releasing shipper. NMDG/MRGTF contends that, otherwise, the release transaction may jeopardize system integrity and traditional firm service.

48. Second, NMDG/MRGTF expresses concerns that Northern's proposal does not address the situation where a shipper releases capacity from a point subject to the normal 6.3 percent hourly take restriction, and the replacement shipper wants to use a secondary point that cannot accommodate the capacity if 6.3 percent hourly flows are permitted. NMDG/MRGTF is unsure whether, in this situation, Northern proposes that a replacement shipper could agree to an hourly take restriction. It asks: (1) how Northern would reflect that situation in the bids for that capacity; (2) how Northern will incorporate this agreement into the value of those bids; and, (3) assuming Northern awards the capacity to such a shipper, whether Northern proposes to transform the MDQ in this situation as well. NMDG/MRGTF asserts that this should be allowed. It recommends that the Commission direct Northern to include in its tariff a provision prohibiting a bidder for released capacity from using an alternate point that could only be used if a lower hourly take restriction is imposed.

49. Finally, NMDG/MRGTF believes that the Commission should require shippers releasing capacity to include in their posting a specific notice that the subject release capacity includes an hourly take restriction and to provide details of that restriction. It also requests that the Commission direct Northern to post on its website a listing of all points on its system that are subject to hourly take restrictions, and to update that list whenever Northern and a shipper execute a new agreement providing a modified hourly flow restriction.

50. In our October 31, 2003 Order, we directed Northern to "address NMDG/MRGTF's concerns regarding how it would handle the more restrictive hourly flow limitations with regard to capacity release."[30] NMDG/MRGTF set forth its specific concerns in its initial comments, filed on September 16, 2003. They are:

[30] 105 FERC ¶ 61,172 at 61,885 (2003).

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> Northern has not addressed how a more restrictive hourly limitation will be handled for purposes of capacity release. For example, if a shipper that has a 5percent hourly limitation releases capacity that is subject to that limitation, how will Northern track that capacity to ensure that the acquiring shipper both takes the capacity subject to the limitation and is subject to all of the tariff provisions concerning restricted hourly takes? Will the releasing shipper be required to notify potential acquiring shippers of the 5 percent hourly limitation in its capacity release posting? Obviously, the more such transactions there are, the more complex these issues become.[31]

51. We deny VPEM's recommendation to summarily reject Northern's proposed tariff revision, since Northern's proposal attempts to resolve parties' concerns about how its modified hourly take provisions will reconcile with its capacity release provisions. However, our acceptance of Northern's proposal is subject to conditions.

52. Northern's proposal contravenes Commission policy and is inconsistent with existing provisions of its tariff. Northern proposes that "If the Shipper nominates an alternate point (including capacity release) the MDQ on the Shipper's contract will be limited such that the hourly flow on the contract is not increased and the MDQ will be adjusted to equal a 6.3 percent hourly take rate." Northern is proposing that whenever a shipper desires to move to a secondary point, and that shipper has agreed to more restrictive hourly flow limitations in its contract, then that shipper will not be able to transfer that hourly flow provision to its alternate point. This could result in the shipper losing capacity should it require service at that point, since its hourly flow would be the same, but flowed over fewer hours. However, section 26 of Northern's GT&C allows a shipper to change receipt or delivery points subject to available capacity without suffering operational limitations. Similarly, section 47(B) of Northern's capacity release provisions allows a replacement shipper to make contingent bids for released capacity, with a possible contingency being the transfer to an alternate receipt or delivery point. Accordingly, Northern's proposal could potentially rob a shipper of its right to seek secondary points (subject to available capacity) without suffering operational limitations.

53. Further, under a capacity release, the replacement shipper assumes the contract of the releasing shipper, including terms and conditions of service. Should that contract include more restrictive hourly flow limitations, then that provision is passed on to the replacement shipper. Only through mutual agreement can parties modify such a provision in a capacity release contract. If a replacement shipper desires to move to a

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[31] Initial Comments at p. 45.

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different receipt or delivery point, but a system constraint prevents the shipper from doing so, then that shipper will not be able to assume service at the secondary point. If capacity is available, however, the replacement shipper should be able to move to the alternate point pursuant to section 26 of Northern's GT&C. Under Northern's proposal, however, Northern would prevent the replacement shipper from transferring its hourly flow restrictions to secondary points, regardless of whether capacity is available.

54. Accordingly, we direct Northern to revise its proposal to clarify that, if a shipper nominates to a secondary point, that shipper has the option of retaining a more restrictive contractual hourly flow limitation if capacity is available at that point. Alternatively, Northern and the shipper may mutually agree to a different hourly flow limitation at that point. These clarifications should alleviate NMDG/MRGTF's concerns regarding alternate point requests.

55. Finally, NMDG/MRGTF recommends certain posting requirements for contracts involving modified hourly flow limitations. It believes that shippers releasing capacity should be required to include in their posting a specific notice that the capacity being released is subject to an hourly take restriction and to provide details of that restriction. We agree that any revised hourly flow restriction presents an important operating parameter and should be included in any notice for capacity release.

56. NMDG/MRGTF also requests that the Commission direct Northern to post on its website a listing of all points on its system that are subject to hourly take restrictions, and to update that list whenever Northern and a shipper execute a new agreement providing a modified hourly flow restriction. In Columbia,[32] the Commission addressed how to make modified hourly flow restrictions transparent to shippers to avoid possible undue discrimination. The Commission held that hourly flow restrictions:

> …would not be material deviations if the form of service agreement is drafted to include provisions concerning such matters with appropriate blanks to be filled in. However, if the pipeline has not drafted its pro forma service agreement to have a blank in which a number can be filled in to address matters such as pressure obligations and hourly flows, then the addition of a footnote or other clause covering such a matter is a material deviation. Any other interpretation of Order No. 582 and §154.1 would violate NGA section 4. Matters such as minimum

[32] Columbia Gas Transmission Corp., 97 FERC ¶ 61,221 (2001).

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> pressure obligations and hourly flow requirements not only affect the rights of the customer in whose service agreement such a provision might be contained, they also affect the service provided to other customers.[33]

57. In this case, Northern's pro forma transportation agreement provides a space to include any generally applicable tariff provisions set forth on the table in section 58 of Northern's tariff. The table in section 58 includes the provision allowing Northern and a shipper to agree to a modified hourly flow provision. Accordingly, any contract with a modified hourly flow restriction would not result in a material deviation from Northern's pro forma service agreement, and thus will not have to be filed with the Commission.

58. However, footnote 26 in Columbia directs that "Where a form of service agreement does have blanks to fill in such matters as minimum pressure obligations so that such obligations can be negotiated as part of the service agreement, the agreed-upon minimum pressure obligation or other such term would constitute "special details pertaining to a transportation contract" within the meaning of § 284.13(b)(viii) (2001) and thus must be posted in the pipeline's internet web site consistent with that regulation." Consistent with the Commission's decision in Columbia, and with section § 284.13(b)(viii) (2003), we require Northern to post on its website information pertaining to any contract containing a modified hourly flow provision.

V. Expansion of LFT Service

A. Background

59. 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. In its September 16, 2003 filing, Northern modified its proposal to address concerns expressed by shippers regarding the proposal's possible impact on existing firm shippers. Specifically, Northern modified 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 LFT service). In addition, Northern modified the 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. Also, Northern modified Sheet No. 252 to clarify that, given

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[33] Id. at 62,003.

equal bids, it would make any available winter Market Area capacity available to TF and TFX shippers before offering it for LFT service. Northern revised this provision to address shippers' concerns that LFT service not degrade firm service.

60. In the October 31, 2003 Order, the Commission accepted Northern's proposal to expand Market Area LFT (Limited Firm Transportation) service into the winter months as modified. The Commission found that Northern had shown that it has sustainable capacity and had incorporated tariff provisions to prevent LFT service from degrading existing firm service

B. Rehearing

1. Requests for rehearing

61. MidAmerican asserts that the Commission erred in failing to require Northern to define the term "sustainable capacity" in its tariff. MidAmerican states that it is concerned that the October 31, 2003 Order fails to protect shippers by removing any ambiguity as to the term "sustainable capacity" to ensure that shippers' firm service will not be degraded by Northern's "over-selling" LFT service throughout the winter in the future. MidAmerican asserts that to ensure shippers' firm service is not adversely impacted in the future, Northern should be required to define "sustainable capacity" in the winter heating season within its tariffs as capacity that is available every day from November 1 through March 31. MidAmerican argues that this would be consistent with Northern's stated position that it has available sustainable capacity to support LFT service in the Market Area during the winter season.

2. Commission Response

62. We deny the request for rehearing. It is sufficient for Northern to demonstrate that it has available sustainable capacity in the Market Area during the winter, and it has done so by submitting a table estimating unsubscribed Market Area capacity in five zones for the period November 2003 through March 2004. Because the Commission has found that Northern has sufficient unsubscribed capacity with which Northern will provide this service, it declines to require that "sustainable capacity" be defined further.

C. Compliance Filing

63. In its October 31, 2003 Order, the Commission's acceptance of Northern's LFT proposal included pro forma changes Northern submitted as part of its September 16, 2003 comments to address shipper concerns. Northern's instant compliance filing includes revised tariff sheets setting forth the changes the Commission approved in the

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October 31, 2003 Order. Among its changes, Northern adds the following language to section 2 of Rate Schedule LFT: "The order for determining a Limited Day among similarly situated LFT shippers shall be based on: (1) lowest price first; (2) the LFT Shipper(s) with the greater number of remaining Limited Days first; (2) pro rata. Northern will post the LFT Shippers impacted by a Limited Day on its website."

64. VPEM requests two clarifications to this provision. First, it asks the Commission to direct Northern to define what constitutes "similarly situated" shippers. As an example, VPEM asks whether an LFT shipper having a 6.3 percent hourly take limit is similarly situated to an LFT shipper having a 5.0 percent hourly take limit. VPEM also feels that Northern's proposal to post LFT shippers "impacted" by a Limited Day is inadequate, especially given the Commission's approval of Northern's proposal to allow it to modify hourly takes. VPEM argues the reason for the posting is to permit shippers who are affected to satisfy themselves that they were not treated in a discriminatory manner. VPEM contends that Northern's Limited Day information posting should also reveal: (1) the LFT shippers who were "similarly situated"; (2) among those similarly situated, the shippers who were affected; and, (3) the reasons thereof.

65. With respect to VPEM's first concern, Northern has explained that in ranking bids, it will use an NPV methodology that does not take into account differences in hourly flow provisions. We find Northern's explanation adequately defines what constitutes "similarly situated" shippers. However, we share VPEM's second concern, and direct Northern to clarify its tariff accordingly.

66. Northern also revises section 19 of its GT&C 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.) Northern offers in section 19 the following curtailment sequence for LFT service with Limited Days remaining for the month: (a) lowest price first; (b) greater number of Limited Days first; and, (c) pro rata.[34]

67. NMDG/MRGTF argues that this provision is confusing, since it appears to state that the lowest price and greater number of Limited Days will both be considered first. It also contends that Northern should revise subsection (b) to clarify that it is the greater number of "remaining" Limited Days. We agree with NMDG/MRGTF's concerns and direct Northern to make the proper clarifications.

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[34] The Commission accepted this proposal in pro forma form in its October 31, 2003, Order.

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VI. PDD Rollover fee

A. Background

68. Northern's original proposal was to include a $0.385 per MMBtu annual rollover fee in its Preferred Deferred Delivery (PDD) Rate Schedule,[35] which it would apply to any balance held in a shipper's PDD account as of March 31 of each year. Northern explained that the rollover fee was necessary to encourage shippers to reduce their PDD account balances by Mach 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.

69. In the October 31, 2003 Order, the Commission accepted Northern's proposal to assess a PDD annual rollover fee for any balance held in a shipper's PDD account as of March 31 of each year, as being consistent with Northern's IDD and FDD rollover fees.[36] In that order, the Commission referred to the rollover fee as a penalty, and directed Northern to comply with the penalty revenue crediting provisions of Northern's tariff.

B. Rehearing

1. Requests for rehearing

70. Northern asserts that the PDD annual rollover fee is not a penalty and requests clarification that rather than a penalty, the rollover fee is an annual charge applicable to the balance of storage gas held in the shipper's PDD account as of March 31. Northern asserts that a rollover fee is charged for account balances that are held from one cycle year to the next, compensating Northern for maintaining account balances for more than one cycle year.

71. Northern asserts that the Commission may have confused the PDD annual charge set forth in section 4 of the PDD Rate Schedule with the fee Northern assesses for unauthorized PDD gas, set forth in section 9 of the PDD Rate Schedule, which is subject

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[35] 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).

[36] October 31, 2003 Order at P 60.

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to the penalty and revenue crediting provisions of Northern's tariff. Northern argues that the crediting of PDD penalty revenues applicable to unauthorized gas is consistent with the treatment of similar IDD penalty revenues for unauthorized gas that are also included in Northern's penalty and revenue crediting provisions.

72. Northern also asserts that if the Commission does not grant its motion for clarification, then Northern seeks rehearing of this issue.

2. Commission Response

73. We will deny the motion for clarification and the request for rehearing. The Commission considers a penalty to be any charge imposed by the pipeline on a shipper that is designed to deter shippers from engaging in certain conduct and reflects more than simply the costs incurred as a result of the conduct. Here, Northern has explained 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. The fee is not assessed to everyone on the pipeline; only those with account balance as of March 31 are required to pay. Therefore, we find that PDD rollover fee as explained by Northern constitutes a penalty, and not a mere rollover fee as charged by Northern.

VII. Motion to Stay

74. Multiple parties filed motions to stay the effectiveness of the October 31, 2003 Order until a final decision has been made on the rehearing requests. This order acts on all issues on rehearing and the motions for stay are therefore denied.

VIII. Other Compliance Issues

75. In its October 31, 2003, Order, the Commission set the following six miscellaneous tariff provisions for hearing: (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. In its compliance filing, Northern also proposes to move into effect on

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November 22, 2003, the tariff sheets listed on Appendix B. NMDG/MRGTF objects to Northern placing these tariff sheets into effect at this time, arguing that the proposals may negatively affect shippers and are to be resolved at hearing.

76. We accept Northern's motion to place into effect on November 22, 2003, the tariff sheets listed in Appendix A. The Commission conditionally accepted and suspended these tariff sheets in its October 31, 2003, Order. However, since the Commission also set these six tariff miscellaneous tariff provisions for hearing, we condition any acceptance upon the outcome of that hearing.

The Commission orders:

(A) The requests for rehearing are denied.

(B) The requests for stay of the October 31, 2003 Order are denied.

(C) Northern's compliance filings are accepted subject to conditions as discussed in the body of this order.

(D) We direct Northern to file, within 21 days of the date this order issues, revised tariff sheets and additional information pursuant to the above discussion.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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Appendix A

Northern Natural Gas Company
Fifth Revised Volume No. 1
Tariff Sheets Accepted Effective Nov. 1, 2003

Substitute Third Revised Sheet No. 125A
Substitute Seventh Revised Sheet No. 226
Fourth Revised Sheet No. 227
Third Revised Sheet No. 228
Original Sheet No. 228A
First Revised Sheet No. 229
Eighth Revised Sheet No. 252
Eighth Revised Sheet No. 267
Substitute Original Sheet No. 267A
Substitute Seventh Revised Sheet No. 268
Sixth Revised Sheet No. 269
Substitute Fourth Revised Sheet No. 285
Substitute First Revised Sheet No. 285A
Substitute Fifth Revised Sheet No. 297

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Appendix B

Northern Natural Gas Company
Fifth Revised Volume No. 1
Tariff Sheets being Moved into Effect on November 22, 2003

Fourth Revised Sheet No. 104
Second Revised Sheet No. 120
Second Revised Sheet No. 125D
Fourth Revised Sheet No. 141
Fifth Revised Sheet No. 147
Third Revised Sheet No. 148
First Revised Sheet No. 160
First Revised Sheet No. 214
Sixth Revised Sheet No. 264
Eighth Revised Sheet No. 265
Original Sheet No. 265A
First Revised Sheet No. 308
Original Sheet No. 309