

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket No. RP05-17-000

ORDER ACCEPTING TARIFF SHEETS SUBJECT TO CONDITIONS

(Issued November 5, 2004)

1. On October 7, 2004, Northern Natural Gas Company (Northern) filed revised tariff sheets¹ to clarify components of its *pro forma* service agreements. In addition, Northern is adding a standard evergreen provision to the TI (Interruptible Throughput), IDD (Interruptible Deferred Delivery), and PDD (Preferred Deferred Delivery) service agreements. The Commission conditionally accepts Northern's revised tariff sheets to become effective November 7, 2004, subject to Northern filing the revisions discussed below, within 15 days of the date this order issues. Our conditional acceptance benefits the public because it ensures that the subject tariff provisions conform to Commission requirements and policy.

Instant Filing

2. Northern proposes to make the following changes to the *pro forma* service agreements set forth in its tariff. Northern states that the purpose of these changes is to allow it to include background information in the amendment to the service agreement.

¹ See Appendix to this order for list of tariff sheets.

First, Northern proposes to revise the form it uses for amending its various service agreements for firm and interruptible services. Northern proposes to add a blank where it can insert “WHEREAS clauses as necessary.” If “whereas” clauses are included in the amendment then the revised form provides for the “whereas” clauses to be followed by the statement: “NOW THEREFORE, in consideration of the above, the parties agree as follows:”.

3. Second, Northern proposes to amend its *pro forma* service agreements for interruptible service under Rate Schedules TI, IDD, and PDD. The evergreen clause would provide that service would continue month to month after the primary term of the agreement unless terminated by either party on thirty days notice. Northern also proposes certain other minor changes to its form for amending service agreements. Northern states that it has a practice of using evergreen provisions in all of its interruptible service agreements. Northern further states that its interruptible service agreements do not result in the withholding of any capacity nor does its tariff give any particular priority based on contract date. Therefore, Northern concludes that the proposed revisions concerning the evergreen provisions have no substantive impact on any shippers. To ensure that the Commission will not consider Northern’s service agreements as non-conforming, Northern includes the evergreen provision in the interruptible *pro forma* service agreements.

Notice and Interventions

4. Public notice of the filing was issued on October 13, 2004. Interventions and protests were due as provided in section 154.210 of the Commission’s regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)), any timely filed motion to intervene is granted unless an answer in opposition is filed within 15 days of the date such motion is filed. Any motions to intervene out-of-time filed before the date of this order are granted pursuant to Rule 214, since the Commission finds that granting intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. No protests or adverse comments were filed.

Discussion

5. The Commission accepts Northern’s revised tariff sheets to become effective November 7, 2004, subject to the removal of the proposed language permitting whereas clauses in agreements to amend service agreements. Section 4(c) of the Natural Gas Act (NGA) requires that, under such rules as the Commission may prescribe, pipelines must file not only schedules showing all rates for jurisdictional services, but also “all contracts which in any manner affect or relate to such rates, charges, classifications, and services.” The purpose of the NGA filing requirement is to give the Commission and other interested parties an opportunity to review the contracts to ensure that they satisfy the

requirements of the NGA. In order that the pipelines need not file each and every contract that they enter into, § 154.110 of the Commission's regulations (18 C. F. R. § 154.110 (2004)) requires that every pipeline's tariff contain an unexecuted *pro forma* copy of each form of service agreement. The form of service agreement must:

refer to the service to be rendered and the applicable rate schedule of the tariff; and provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for insertion of receipt and delivery points, contract quantity, and other specifics of each transaction as appropriate.

6. Where a customer's service agreement conforms to the *pro forma* service agreement, the Commission's prior review and approval of the *pro forma* service agreement and the tariff have accomplished the purpose of the NGA section 4 filing requirement. Since the Commission and other interested parties have had an opportunity to determine that the form of service agreement provided in the tariff is just and reasonable and not unduly discriminatory, there is no need to review the subsequent conforming contracts to determine if they comply with the requirements of the NGA.

7. However, for this procedure to satisfy the filing requirements of section 4 of the NGA, the *pro forma* service agreement and the tariff must clearly define and limit the information that can be inserted into the blank spaces provided, so that the blank spaces may only be filled in with specific information, such as the name of the customer, receipt and delivery points, term, and the rate to be charged. If a form of service agreement were to contain a more open-ended authorization for the pipeline and customer to include unspecified provisions in a service agreement, then the Commission and interested parties could not be considered to have had an opportunity to review such provisions for compliance with requirements of the NGA.

8. We find that Northern's proposal to revise its form of amending service agreements to permit the addition of unspecified "whereas" clauses allows the parties too much flexibility as to the provisions that might be included in such clauses to allow the required review to determine whether those provisions would be just and reasonable and non-discriminatory under section 4 of the NGA. The Commission recognizes Northern's statement that the purpose of permitting "whereas" clauses is to allow it to include background information in the agreement. However, Northern's proposed revision to its contract amendment form describes the provisions in the "whereas" clauses as consideration for the agreement to amend the contract. There is nothing in the revised form of service agreement itself that would prevent the inclusion in a "whereas" clause of various other agreements between the parties that affect their substantive rights. In addition, there is nothing in the revised amendment form that would limit what agreements might be included in the "whereas" clauses. In these circumstances, we find that we must reject Northern's proposal to include in its amendment form a blank for

“whereas” clauses as contrary to § 154.110 of the Commission’s regulations concerning form of service agreements. Therefore, Northern has failed to support the proposed whereas clause language under section 4 of the NGA. Accordingly, we direct Northern, within 15 days of the date this order issues, to file revised tariff sheets removing the above-quoted proposed whereas clause language from its revised tariff sheets.

The Commission orders:

(A) Northern’s revised tariff sheets listed in the Appendix to this order are accepted to become effective November 7, 2004, subject to the conditions set forth in the body of this order and the ordering paragraph below.

(B) Northern is directed, within 15 days of the date this order issues, to file revised tariff sheets removing the proposed whereas clause language, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix

**Northern Natural Gas Company
Docket No. RP05-17-000**

FERC Gas Tariff, Fifth Revised Volume No. 1

Tariff Sheets Conditionally Accepted Effective November 7, 2004

Fourth Revised Sheet No. 400
Second Revised Sheet No. 400A
Third Revised Sheet No. 403
Third Revised Sheet No. 403A
Fifth Revised Sheet No. 431
Fourth Revised Sheet No. 443
Fifth Revised Sheet No. 446