UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Border Pipeline Company | Docket Nos. RP06-72-000
RP03-563-001
RP03-563-002
RP03-563-003

ORDER SETTING ADDITIONAL ISSUES FOR HEARING
AND DISMISSING REHEARING REQUESTS

(Issued April 28, 2006)

1. On December 1, 2005, the Commission issued an order setting certain issues for hearing in the instant proceeding, but reserving four additional sets of issues for further review.[1] Upon that review, the Commission concludes that two of those sets of issues should be included in the hearing established by the December 1, 2005 Order. The other two are decided here, and the Commission directs Northern Border Pipeline Company (Northern Border) to modify its tariff accordingly. In addition, the Commission dismisses the rehearing requests pending in Docket No. RP03-563-000, *et al.* and terminates that proceeding as moot.

I. **Background**

2. Northern Border filed a general section 4 rate case in the instant proceeding on November 1, 2005. One portion of that filing increased various portions of Northern Border's rates to recover cost increases across its entire system, including changes to its fuel cost recovery mechanism and a proposal to roll-in certain historical system expansion costs. The Commission accepted and suspended those increases and set them for hearing.

3. Northern Border also proposed two additional changes in the design of its rates. First, Northern Border's current rates are mileage-based, with rates for the entire system stated on a per 100 Dekatherm-mile basis. Northern Border proposed in this filing to divide its system into two rate zones, a Supply Zone and a Market Area zone. The Supply Zone includes the portion of Northern Border's system between the

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[1] *Northern Border Pipeline Company*, 113 FERC ¶ 61,230 (2005) (December 1 Order).

U.S./Canadian border and Milepost 396 near Glen Ulin, North Dakota, downstream of a constraint point on Northern Border's system. The proposed Supply Zone is principally where natural gas is received into the system and includes few market delivery points. While Northern Border proposed to continue mileage-based rates in the Market Area zone, it proposed a postage stamp rate in the Supply Zone. The new Supply Zone rate serves to assure that a maximum rate contract for gas receipt in the Supply Zone would generate the same revenue regardless of the point of receipt. Second, Northern Border proposed a short-term rate for contracts of less than one year that was 2.5 times the long term maximum rate for the same service. The short-term rate design would permit Northern Border to capture maximum revenue at a time when basin differentials were particularly high and thus share in the benefits of a short-term contract under circumstances when a longer term contract was not available.[2] The Commission set these two proposals for hearing because they changed Northern Border's rate structure and fell within the bounds of a traditional rate hearing.

4. In addition, Northern Border proposed modifications to the following provisions in its firm transportation rate schedule and in its General Terms and Conditions (GT&C). It modified the right of first refusal (ROFR) provisions previously contained in section 5 of Rate Schedule T-1 by shortening several of the time frames determining when a shipper must notify Northern Border whether the shipper intends to exercise its ROFR, for matching any competing bids from third parties, and for negotiating a new service agreement. Northern Border also made certain narrow technical and clarifying changes to the credit provisions contained in revised section 5.1. It also revised section 3.1 of Rate Schedules T-1R and T-1B to provide that there will be an out-of-path transportation charge for utilizing a path outside the shipper's transportation path except when the out-of-path movement is in the proposed Supply Zone. Northern Border also revised section 3.2 of Rates Schedule T-1B to provide that if the shipper uses secondary points which impact the directional flow of a discounted transaction, such discount will not apply to those secondary points and utilization of those points will be at the maximum rate.

5. Consistent with its proposals filed in Docket Nos. RP03-563-000 *et al.*, Northern Border also revised the language regarding posting of available capacity in revised section 26.2 of Northern Border's GT&C to restrict the bids it would accept under certain circumstances. Section 26.2(a) provides that for capacity for a term of one year or more that is generally available for more than 95 days, Northern Border reserves the right not to accept a bid for capacity at: (1) a rate less than the maximum rate; and/or (2) for a path within but shorter than the path criteria set forth in the posting; and/or, (3) for a term of less than one year. Section 26.2(a) further provides that for 90 days or more before the commencement of the service, Northern Border reserves the right not to accept a bid for such long term capacity at: (1) a rate less than the maximum rate; or (2) for a path within

[2] The shipper and Northern Border would divide equally the revenue in excess of the maximum long term rate.

or shorter than the path criteria set forth in the posting; or (3) for a term of less than one year. The proposed section 26.2(b) provides modified posting dates to match bids for capacity that is no longer contracted under an existing service agreement once it is no longer subject to subsection (a) [as just discussed], or which will be operationally available within 90 days or less before service starts. New section 26.2(b) provides that Northern Border will accept bids at the maximum rates for capacity for a shorter path than the posted path and for a term of less than one year unless such bids appear anomalous or abusive. Moreover, Northern Border reserved the right not to accept a bid for posted capacity at a rate less than the maximum rate or for a one year or more term for a shorter path than the posted path criteria.

6. The December 1, 2005 Order in this proceeding suspended these provisions discussed in the previous two paragraphs but did not set them for hearing because it concluded that they were non-rate provisions. As noted, the Commission stated it would review these matters further at a later date. This order provides that review.

7. Before Northern Border's November 1, 2005 filing in this proceeding, Northern Border filed under NGA section 4 to revise section 26.2 of its GT&C in Docket No. RP03-563-000. On September 10, 2003, the Commission rejected Northern Border's proposed change.[3] In addition, pursuant to NGA section 5, the Commission directed Northern Border to clarify section 26.2 of its tariff to provide that Northern Border must accept short-term or short-haul bids for posted capacity at the maximum rate, if that bid is the highest value bid. Northern Border requested rehearing of that order. On December 4, 2003, it also filed to comply with the September 2003 Order. On April 15, 2004, the Commission issued an order providing parties an opportunity to file further comments on the issues raised in Northern Border's request for rehearing.[4] Both Northern Border's rehearing request and the compliance filing in Docket No. RP03-563-001, *et al.*, remain pending. Northern Border's proposed changes to section 26.2 of its GT&C in this proceeding are essentially the same as its proposed changes to that section in the compliance filing pending in the earlier docket.

II. Discussion

8. As discussed in its December 1 Order, the Commission concluded that four sets of issues were not rate issues and therefore would not be included in the hearing established by the order. Upon further review, the Commission concludes that two sets of issues are sufficiently entwined with the rate matters previously set for hearing that they should also be included in the hearing. Specifically, the revisions to secondary point rights contained in revised section 3.1 of Rates Schedule T- 1R and T-1B appear designed to accommodate the creation of the new Supply Zone since the restrictions apply to the

[3] *Northern Border Pipeline Company*, 104 FERC ¶ 61,264 (2003).

[4] *Northern Border Pipeline Company*, 107 FERC ¶ 61,027 (2004).

Market Zone but not to the postage stamp Supply Zone. As such, that proposal is properly included in the parties' evaluation of Northern Border's proposal to create the new Supply Zone, which has been set for hearing. This also appears to drive the modification to the discounted rate provision contained in section 3.2 of the revised tariff providing that the discounts will not be available when the discount will result in a change in directional flow. Since it appears that a reverse in direction could impact the revenues derived from either the Supply or Market Zone, this issue will also be set for hearing.[5]

9. Similarly, the language regarding posting of available capacity in revised Subsection 26.2 of Northern Border's GT&C is clearly designed to re-enforce the purpose of the Supply Zone, or to obtain the same result through an alternative means. As was discussed in the December 1 Order, the Supply Zone is designed to assure that shippers delivering gas to Northern Border north and west of Milepost 396 pay the full costs of that zone regardless of the length of their haul on the Northern Border system. The Supply Zone proposal thus addresses Northern Border's concern that a shipper bid a maximum rate bid for less than the length of the entire system would strand capacity on the upper portion of its system. As stated in the summary of the proposed changes to section 26.2, the revisions to the capacity allocation provisions would permit Northern Border to reject maximum bids for less than the entire length of capacity available or for a term of more than one year (including capacity that is subject to a right-of-first refusal), and thereby maximize system revenue. A related provision would permit Northern Border to reject any bid designed to manipulate the bidding provisions to control downstream capacity if the bid is anomalous or abusive. These two provisions, while they relate to the allocation of capacity, appear to have the same objective as the proposal to create the Supply Zone and the proposed short term price provision that is up to 2.5 times that maximum rate. Both these rate proposals and the capacity allocation proposal appear designed to accomplish the purpose of maximizing revenues by rejecting unfavorable offers when demand is soft or raising rates above the stated long term maximum rate when demand is strong. As such, it is appropriate to consider the relationship between the rate proposals and the capacity allocation provisions at hearing.

10. Since the Commission now concludes that the issues raised in prior dockets, and which Northern Border has reiterated here, should be set for hearing, there is no reason to address the rehearing requests or the compliance filing in Docket No. RP03-563-000 (the root docket). Therefore the rehearing request and the compliance filing are dismissed as moot, and Docket No. RP03-563-000 and its sub-dockets are terminated.

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[5] See section 3.2 at Original Sheet No. 180A. As was noted in the protests to the filing, the purpose of this provision is unclear.

11. The remaining two sets of issues will be decided here. The first is the change to the credit provisions contained in section 5.22(b) of the revised tariff. This is an editorial change that refers to the more general credit worthiness provisions in section 41 of the GT&C, and it is accepted.

12. More problematic are Northern Border's proposed changes to the time frames in its ROFR provisions, which Chevron protested as unjust and unreasonable. Chevron objected to the shortening of the notice periods previously contained in Northern Border's tariff, the time frame for posting capacity, and period within which the shipper must remove any contingencies contained in its bid. Northern Border would also reduce the bid closing dates for available capacity to a period from a minimum of 24 hours or a minimum of one hour for bids on available capacity with a term of less than one month, and from a minimum of three days to a minimum of up to three days for bids on capacity with a term of more than one month but less than one year.

13. Specifically, section 5.1 provides that between six and eighteen months before the termination of a shipper's contract, Northern Border will give the shipper notice that it "must exercise its right of first refusal." Northern Border proposes to reduce the minimum time within which it can require a shipper response from 10 to 2 days. The Commission concludes that this is unreasonable, since Northern Border's tariff gives it the discretion to pick any time within a one-year period (six to eighteen months) to present the customer with this notice. Since Northern Border is reserving to itself so much discretion as to when it initiates the ROFR process, the shipper should have more than two days to react to Northern Border's notice. Moreover, the language in Section 5.1 is also somewhat ambiguous about the type of response that the shipper must provide to Northern Border's notice. As discussed in *Dominion Transmission, Inc.*,[6] at this initial stage of the ROFR process, the shipper need only inform the pipeline whether it is interested in renewing its contract. It need not commit to retaining its capacity. However, Northern Border's tariff could be interpreted as requiring such a final commitment in response to the section 5.1 notice. Therefore, the Commission requires Northern Border to revise section 5.1 to make clear that the customer need only provide notice that it may be interested in retaining its capacity and thus wishes to retain the option to exercise its ROFR. If, however, the shipper states that it is not interested in retaining its capacity, that would represent a binding commitment to the termination of its contract, so that Northern Border may then market the capacity without providing the existing shipper a ROFR.

14. Northern Border proposes to revise sections 5.12 and 5.13 to provide that, if the ROFR shipper agrees to match a third party bid, it must execute a revised service agreement with 5 business days. The Commission concludes that the shorter time frame proposed here is not unreasonable given that most service agreements contain a standard

[6] *Dominion Transmission, Inc.*, 111 FERC ¶ 61,135 (2005) (*Dominion*) at P 12.

format and incorporate the earlier discussions of the parties. Northern Border also proposes to shorten the time periods for which capacity subject to a ROFR is posted for third party bids. Revised section 5.21 would reduce the minimum time for posting capacity for third party bids from 20 to 5 days. However, 5 days is too short a period for shippers to respond to a posting that involves a long term contractual commitment. Finally, revised section 5.22(c) would reduce the time frame to remove a contingency in a bid from 30 to 5 business days. The Commission will accept a shorter time frame but concludes that the minimum should not be less than 10 business days. This will afford the shipper adequate time to review its alternatives and determine whether to remove the contingency. The remaining changes to the ROFR provisions are primarily technical and clarifying changes and are accepted here. Finally, the Commission concludes that a minimum of one hour's posting is reasonable for available capacity with a term of less than one month but that Northern Border should retain the minimum three day posting for available capacity between one month and one year. Northern Border shall file revised tariff sheets containing the required changes within 5 days after this order issues, to be effective May 1, 2006.

The Commission orders:

(A) The provisions in Northern Border's November 1 filing relating to capacity allocation, secondary points, and discounted rates are set for hearing and are consolidated with the hearing established by the December 1 Order.

(B) Northern Border shall file the revisions to its ROFR provisions required by the body of this order within 5 days after this order issues, to become effective May 1, 2006.

(C) The request for rehearing and the compliance filing pending in Docket Nos. RP03-563-001, 002, and 003 are dismissed as moot and therefore the root docket, Docket No. RP03-563-000, and its sub-dockets are terminated.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.