

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket No. RP06-302-000

ORDER ACCEPTING TARIFF SHEET AND SERVICE AGREEMENTS SUBJECT  
TO CONDITIONS

(Issued May 5, 2006)

1. On April 7, 2006, Northern Natural Gas Company (Northern) filed six non-conforming service agreements and associated amendments for service with Northern States Power Company-Minnesota (NSP-MN). Northern states that the agreements contain non-conforming provisions necessary to retain NSP-MN as a major customer on its system. Northern's filing also includes a letter agreement with Xcel Energy Services, Inc. (Xcel), the parent company of NSP-MN. Finally, Northern includes a tariff sheet to add the subject agreements to its list of non-conforming service agreements.<sup>1</sup> Northern requests that the revised tariff sheet take effect on May 8, 2006.
2. The Commission accepts Northern's six non-conforming agreements and associated amendments, subject to the conditions discussed below. Further, the Commission accepts Northern's Original Sheet No. 66D, to be effective May 8, 2006, as proposed.

**Background**

3. Northern states that on May 17, 2004, it entered into a letter agreement with Xcel on behalf of NSP-MN to continue to be the primary service provider for NSP-MN's current and future market requirements. Northern states the 2004 letter agreement was based on Xcel's various Requests for Proposals (RFP). Northern states Xcel was

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<sup>1</sup> Original Sheet No. 66D to Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

specifically looking for incremental service requirements around the time that CenterPoint Energy Minnesota Gas (CenterPoint) issued an RFP for a new major pipeline to be built which would bypass Northern in the Minneapolis environs. Northern asserts that negotiations led to the May 17, 2004 agreement which is now represented by the instant Service Agreements and Letter Agreement which preclude Xcel from joining in the construction of a line to bypass Northern.

4. Northern states that NSP-MN is its second largest customer. Northern asserts that it entered into the instant Service Agreements to avoid a major potential bypass of its system. According to Northern, had it not been able to reach agreement with Xcel, it would have potentially lost load representing about 225,000 Dt per day during the months of November through March, about 100,000 Dt per day during the months of April through October, and any of NSP-MN's related load growth requirements.

#### **Details of the Instant Filing**

5. Northern's filing includes six service agreements for service under Rate Schedules TF and TFX.<sup>2</sup> The filing includes: (1) a TF Maximum Rate Agreement; (2) a TF Discounted Rate Agreement; (3) a TFX Maximum Rate Agreement; (4) a TFX Discounted Rate Agreement; (5) a TFX Power Plant Agreement; and, (6) a TFX Carlton Agreement. Northern states that the six Service Agreements with NSP-MN and the Letter Agreement with Xcel constitute one comprehensive, interrelated agreement that must be reviewed and approved as a package. Northern asserts that the Service Agreements contain certain non-conforming provisions that were included specifically to avoid a possible bypass of a major portion of Northern's market area. The Letter Agreement with Xcel on behalf of NSP-MN includes provisions applicable to the construction of new facilities, if and when required, and provisions not related to the transportation agreements delineated above. Northern states that the Service Agreements are to become effective on November 1, 2007, and expire on October 31, 2017. In general, the non-conforming provisions in the proposed agreements include: (1) a provision allowing NSP-MN to realign certain quantities under its Rate Schedule TF and TFX service agreements from certain Market Area receipt points to the Chicago receipt point; (2) a growth option allowing NSP-MN or an affiliate to increase its MDQ at certain intervals over the contract term, and at specific levels, at a pre-determined rate; (3) a renegotiation provision should the Commission not approve the subject provisions; (4) a provision allowing NSP-MN to combine its power plants into one Operational Zone for the

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<sup>2</sup> Northern's Rate Schedule TF provides a firm transportation service with a uniform year-round rate. Rate Schedule TFX provides a firm transportation service with a higher rate in winter (November-March) than summer (April-October).

purposes of aggregating Deferred Delivery Variance Charge (DDVC) and imbalance calculations,<sup>3</sup> and; (5) a statement that the shipper considered bypassing Northern's system.

### **Public Notice**

6. Public notice of the instant filing was issued, with interventions, comments, and protests due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2005)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG/MRTF or Distributors)<sup>4</sup> filed a protest. Power Generator's Group<sup>5</sup> (PGG) filed a protest out-of-time. Northern States Power Company –MN and Northern States Power Company-Wisconsin filed comments in support of Northern's proposal.

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<sup>3</sup> A Deferred Delivery Variance Charge is assessed when a shipper's actual delivered quantities do not conform to its scheduled quantities. Northern's DDVC provisions are set forth in section 48 of its GT&C.

<sup>4</sup>NMDG is composed of the following Iowa municipal-distributor customers of Northern Natural Gas Company: Cascade, Cedar Falls; Coon Rapids; Emmetsburg; Gilmore City; Graettinger; Guthrie Center, Harlan; Hawarden; Lake Park; Manilla; Manning; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine. MRGTF is composed of the following municipal-distributor and local distribution customers of Northern Natural Gas Company: Austin; Circle Pines; Community Utility Company; City of Duluth, Minnesota - Duluth Public Utilities; Great Plains Natural Gas Company; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehan's Gas Company, Inc.; Two Harbors; Virginia; and Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin, d/b/a St. Croix Gas, Wisconsin; and Watertown, South Dakota.

<sup>5</sup> PGG is comprised of the City of Lincoln, Nebraska d/b/a/ Lincoln Electric System, and Missouri River Energy Services.

### Discussion

7. Northern's instant filing concerning the accommodation it has reached with NSP-MN is similar to two previous arrangements reached by Northern with CenterPoint and MUD, other major customers on its system, in what Northern states is an attempt to keep these entities from bypassing its system.<sup>6</sup> As we did with the previous two filings, we accept the instant filing, subject to the conditions discussed below.

8. Distributors argue on a number of grounds that the Commission should reject the instant filing outright or set these issues for technical conference and a formal evidentiary hearing. First, Distributors contends that section 154.204 of the Commission's regulations require that a filing addressing service agreements must include a description of the necessity for the proposed changes. Distributors argue that, for example, there are no facts in the instant filing that demonstrate that NSP-MN's bypass threat was bona fide. However, the regulation cited by Distributors is not applicable to the instant filing because it relates to tariff filings to revise rate schedules, form of service agreements in the pipeline's tariff, or the pipeline's general terms and conditions of service. Northern does not propose any such changes here, but only seeks approval of particular executed service agreements.

9. Second, Distributors note the magnitude of the discounts and other benefits included in these agreements, and the fact that pursuant to settlement<sup>7</sup> of Northern's last general section 4 rate case, Northern cannot file another rate case with rates to be effective prior to November 1, 2007. Distributors assert that, accordingly, the Commission must at this time address what they allege are the anti-competitive and discriminatory aspects of the instant filing, as well as the rate issues such as whether a discount adjustment will be permitted in the next rate case. They argue that this is necessary so that the extent to which captive and other shippers will be required to subsidize the discounts and other benefits provided to NSP-MN will be clearly defined and Distributors will be relieved of the burden of having to first produce evidence that the

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<sup>6</sup> *Northern Natural Gas Co.*, 111 FERC ¶ 61,287 (2005), *order on reh'g* 113 FERC ¶ 61,119 (2005), (Metropolitan Utilities District ((MUD))Agreements); *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 (2005), *order on reh'g*, 111 FERC ¶ 61,379 (2005), *order on reh'g*, 113 FERC ¶61,188 (2005) (CenterPoint Energy Minnesota Gas ((CenterPoint)) Agreements) , *appeal pending*, *Northern Municipal Distributors Group and Midwest Gas Task Force Association v. FERC*, (D.C. Cir.), Case Nos. 05-1468 and 06-1016.

<sup>7</sup> 111 FERC ¶ 61,444 (2005).

substantial discounts provided to NSP-MN were not justified by competition in a subsequent rate case.

10. Section 284.10(b)(5)(ii)(A) of the Commission's regulations expressly permits a pipeline to “charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.” Consistent with that regulation, Northern’s tariff sets forth both a maximum just and reasonable rate and a minimum rate for each service. Thus, the discounted rates Northern has agreed to provide NSP-MN are not deviations from Northern’s tariff that require Commission approval. Rather, the Commission has already authorized those discounts through its Part 284 regulations and its approval of Northern’s tariff. The only aspects of Northern’s contracts with NSP-MN requiring approval in this proceeding are the material deviations from Northern’s form of service agreement such as the growth option, realignment provision, and renegotiation clause, which we address below.

11. While Northern is seeking approval in this proceeding of material deviations in discounted rate contracts, the discounts in those agreements will have no effect on the rates that the Distributors or any other customer other than NSP-MN currently pays. Northern’s maximum rates will remain those approved in the most recent settlement of its last general section 4 rate case, until Northern proposes to change them in a new section 4 rate case. If Northern includes in such a rate case a proposal to adjust its rate design to account for the subject discounts, Northern must justify its discounts at hearing in the rate case where all parties will have an opportunity to challenge the discount and to seek discovery regarding the purpose and level of any discount. Northern will have the ultimate burden of showing that in fact competition did require the discounts.<sup>8</sup>

12. Third, Distributors argue that the instant filing is not consistent with the principle that capacity should go to the shipper that values it most because there has been no competitive bidding for the subject capacity. Distributors argue that there has been no posting of the capacity and that such posting would go a long way towards showing whether the discounts granted to NSP-MN are reasonable, and whether there are other parties that are willing to pay more for some or all of the subject capacity. Therefore, the Distributors argue that if the Commission does not reject the Service Agreements outright, the Commission should require Northern to hold a capacity auction for the capacity at issue.

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<sup>8</sup> *Northern Natural Gas Co.*, 113 FERC ¶ 61,188 at P25.

13. In keeping with its action in the similar cases set forth above, the Commission will not require Northern to auction the subject capacity.<sup>9</sup> Northern is entitled to allocate its capacity in a manner consistent with its tariff. Because Northern's tariff does not require that capacity be auctioned, the Commission will not require Northern to submit the subject capacity to auction. Further, in the 1989 Rate Design Policy Statement,<sup>10</sup> the Commission stated its concern with allocative and productive efficiency and stated that it is a necessary objective but not the only objective considered by the Commission.<sup>11</sup> Further, while the Commission articulated its goal of placing capacity in the hands of those that value it most highly, the Commission assumes that the pipeline will always seek the highest possible rate from non-affiliated shippers, since it is in its own economic interest to do so. Accordingly, the Commission has not required pipelines to implement allocation mechanisms utilizing methodologies such as the Net Present Value (NPV) process which would allocate capacity to the shipper bidding the highest amount to the pipeline. Rather, the Commission has permitted pipelines to implement such an allocation methodology to the extent it believes such methodologies are necessary on its system in order to allocate scarce capacity to the highest valued use. Consistent with this policy, Northern's existing tariff permits it to hold open seasons for capacity based upon the NPV allocation policy but does not require the use of such a methodology.

14. For the reasons set forth above, the Commission concludes that it need not further investigate the proposed discounts. Therefore, the remainder of the discussion will focus on the non-conforming service agreement provisions for which Northern seeks approval in this filing.

15. In the instant case, the Commission finds that Northern's Service Agreements contain several non-conforming material deviations from Northern's tariff or *pro forma* service agreements that are sufficiently connected to the proposed rates that they do not present a substantial risk of undue discrimination or a substantial negative impact upon other shippers and do not affect the quality of service provided. Therefore, the Commission will accept the following provisions: (1) renegotiation provisions should the Commission not approve the instant provisions; (2) a provision in the TFX Discount Agreement clarifying that the agreement's delivery points are all located within

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<sup>9</sup> *Northern Natural Gas Co.*, 110 FERC ¶ 61,321 at P23 (2005), *order on reh'g*, 111 FERC ¶ 61,379 at P 37-39 (2005), *order on reh'g*, 113 FERC ¶ 61,188 at P28 (2005)

<sup>10</sup> 47 FERC ¶ 61,295 (1989), *order on reh'g*, 48 FERC ¶ 61,122 (1989).

<sup>11</sup> *Id.* at 62,052-53.

Northern's Operational Zone EF, and; (3) language stating that the package of instant agreements supercedes Northern's TF agreement (CR#23268) with NSP-MN.

16. In addition, certain agreements<sup>12</sup> contain a provision stating that NSP-MN represents and warrants that it would have participated in a project designed to bypass Northern if not for the entire economic package negotiated and agreed to by the parties.<sup>13</sup> Although this provision is a deviation from Northern's form of service agreement, as stated above we find it to be acceptable. Because the provision is only a representation by NSP-MN concerning its alternatives to taking service on Northern, the provision has no effect on the service Northern will provide under the instant agreements. Nor does it affect the quality of service Northern provides to its other shippers. Further, our acceptance of this provision does not represent a Commission finding as to whether competition required Northern to offer the instant discounts, thereby justifying a discount adjustment in Northern Natural's next rate case. Should Northern seek such a discount adjustment in its next rate case, it will retain the ultimate burden of proof consistent with the discussion in P 10 above. All parties will be free to argue whatever position they desire, and the Commission will decide the issue based on the record developed in that proceeding.

17. Northern's agreements, however, contain certain other non-conforming provisions affecting services that deviate materially from Northern's tariff and *pro forma* service agreements and may pose a risk of undue discrimination. The Commission will examine the non-conforming contract provisions below.

### **Realignment Provisions**

18. Several of Northern's TF and TFX agreements include a provision permitting NSP-MN to shift a specified level of primary receipt point entitlement under its TF and

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<sup>12</sup> Section 4.d. of Northern's TF Full Rate Agreement and Carlton Agreement; section 4.e. of its TF Discount Agreement; sections 4.c. of its TFX Full Rate Agreement and TFX Discount Agreement; and section 5.A.iii. of Northern's TFX Power Plant Agreement.

<sup>13</sup> For instance, section 4.d. of Northern's TF Full Rate Agreement provides that: "Shipper represents and warrants that it would have participated in a project designed to bypass Northern but not for the entire economic package negotiated and agreed to by the parties and set forth herein and in Shipper's TFX Discounted Carlton Agreement, TFX Discount Agreement, TFX Power Plant Agreement, TF Discount Agreement, and TFX Full Rate Agreement.

TFX Maximum Rate Agreements from Ventura, Demarc, or Beatrice to Chicago.<sup>14</sup> These provisions also provide for NSP-MN's rate for the service associated with the changed receipt points to be reduced from the maximum rate to a discounted rate and therefore be provided under the TF and TFX Discounted Rate Agreements. According to Northern, it has agreed to construct new facilities to meet NSP-MN's future growth requirements. It states that to reduce construction costs, it proposes to allow NSP-MN to realign certain entitlements. The provisions provide that the total receipt point volume at Chicago subject to the discounted rate should not exceed 36,316 Dt per day plus any incremental volumes from growth options. Northern adds that the provision provides that any realigned volumes between maximum rates and discounted rates would be transferred between the agreements within the same rate schedule to provide ease in billing.

19. The Distributors argue that the realignment provisions of the agreements are, in essence, a contract MDQ adjustment provision, and that the Commission does not permit MDQ adjustment provisions as non-conforming provisions.

20. Northern's realignment proposal would permit a shipper to change primary receipt points and the rate paid under certain circumstances. It does not, as Distributors suggest, permit a shipper to increase its MDQ. However, the Commission has concerns that the realignment proposal may convey to NSP-MN a valuable right to change primary receipt points without following the regular procedures in Northern's tariff for obtaining such a change. Accordingly, the Commission accepts the instant proposal subject to Northern clarifying that its proposal does not convey a special priority to change primary receipt points that would adversely affect the ability of other shippers to obtain primary point capacity under Northern's generally applicable tariff provisions.<sup>15</sup>

### **Growth Options and Full Service Requirement Provisions**

21. Section 6.a.(iv) of Northern's TFX Discount Agreement provides the following growth option:

Shipper, or its regulated Wisconsin Affiliate, shall have an annual option to contract for an incremental 10,000 DTH/day at existing delivery points of twelve-month service by providing Northern written notice at least 18

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<sup>14</sup> Sections 3 of the TF Full Rate Agreement, TFX Full Rate Agreement, and TFX Discount Agreement; and section 1.c of the TF Discount Agreement.

<sup>15</sup> *Colorado Interstate Gas Co.*, 105 FERC ¶ 61,124 at P 21 (2003).

months prior to the desired effective date of the incremental entitlement. The increased entitlement will be added to this Agreement or a new TFX service agreement for a term of ten (10) years from the effective date of the incremental entitlement; provided, however, that the incremental 10,000 DTH/day can be in either Wisconsin or Minnesota, but in aggregate the growth cannot exceed 10,000 DTH/day/year.

22. Northern asserts the Commission should approve this provision because of the unique circumstances surrounding its arrangement and because any competitive alternatives to the instant agreement would have been sized to accommodate all of Xcel's estimated growth requirements. Northern asserts that to compete with alternatives, it had to satisfy Xcel that it could meet its growth needs for the entire term of the agreements at agreed-upon rates.

23. Distributors argue that this provision would impact the service provided to other shippers, and that this type of provision is of interest to other shippers. Moreover, it asserts that this type of term is in the nature of an impermissible negotiated term and condition of service, rather than a negotiated rate.

24. The Commission finds this provision to be an impermissible material deviation. This provision is different from the growth option and full service requirement provisions set forth in Northern's TFX Rate Schedule, since it would permit not only the shipper in the contract, NSP-MN, but also its Wisconsin affiliate to demand growth of contract entitlement from Northern. Such a non-conforming term presents a substantial risk of discrimination and, therefore, the Commission will not allow it as a non-conforming contract term. Accordingly, Northern must either remove this provision from its TFX Discount Agreement, or else offer it to all shippers in a manner that is not unduly discriminatory as part of its generally applicable tariff.

### **Gas Flow Rate**

25. Section C(2) of the Xcel Letter Agreement provides that:

Northern agrees not to propose and will actively oppose any action that would require it to (a) change its tariff or procedures to change the required gas flow rate to less than 1/16 of the MDQ in the Market Area or (b) change its tariff or procedures to allocate and/or curtail firm entitlement based upon price. Without limiting the foregoing, Northern will seek judicial review of any FERC order directing Northern to change the required gas flow rate to less than 1/16 of the MDQ or to allocate and/or curtail firm entitlement based upon price.

26. Distributors argue that these are valuable concessions, and providing them only to NSP-MN is both unduly discriminatory and unduly preferential in favor of NSP-MN.

27. Northern is stating that, during the term of the agreements, it will not change its generally applicable required flow rates to less than 1/16 of the MDQ in the Market Area, or change the allocation or curtailment procedures in its tariff based upon price. Therefore, Northern is not offering terms and conditions to a shipper that it does not already provide in its tariff; it is merely stating that it will not change these procedures which are applicable to all shippers. Such a provision does not result in a risk of undue discrimination, nor does it change the quality of service that Northern provides its shippers. Accordingly, the Commission finds this provision to be permissible and will allow Northern to include it in its Letter Agreement.

### **Power Plant Aggregation**

28. Section 6 of Northern's TFX Power Plant Agreement provides that, to the extent NSP-MN nominates to its seven individual power plants,<sup>16</sup> Northern will aggregate volumes delivered to those plants for Daily Delivery Variance Charges and imbalance calculation purposes. Section 6 also provides that, in the alternative, Northern may include those delivery points in NSP-MN's existing Operational Zone EF. Section 4 of Northern's TFX Power Plant Agreement provides that, in addition to the nomination provisions set forth in Northern's tariff, NSP-MN will use commercially reasonable efforts to provide at least one-hour notification prior to flow to Northern's Gas Control Department of expected volumes and burn rate at the generation facilities served pursuant to this agreement. This will permit NSP-MN time to react to load changes at its power generating plants.

29. In Docket No. RP05-109-000, Northern proposed a generally applicable tariff provision permitting local distribution companies (LDCs) with multiple power plants in an established Operational Zone to aggregate volumes for purposes of calculating DDVC and imbalance penalties. . However, under the proposal, instead of making one general nomination to the Operational Zone, Northern would require the LDC to nominate to individual power plants within the Operational Zone. Northern argued this requirement was to preserve system integrity. The Commission accepted Northern's proposal, effective May 24, 2006, subject to Northern filing additional information further

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<sup>16</sup> Those power plants include Blue Lake Power Plant, Mankato, High Bridge, Inver Hills, Black Dog, Cannon Falls, and Riverside.

explaining its proposal. Northern filed that information on January 12, 2006 and Commission action is pending.<sup>17</sup>

30. Distributors argue that the Commission has not yet approved Northern's generally applicable tariff provision in Docket No. RP06-109-000, and so the instant provision should not be approved. PGG<sup>18</sup> asserts that accepting Northern's proposal to allow NSP-MN to combine its power generating plants into an Operational Zone for the purposes of calculating DDVCs and imbalance penalties without making the benefit available to all power plant operators is discriminatory and should not be permitted. It argues that providing only NSP-MN with the benefit results in unfair operational and commercial advantages to power generators served by LDCs, compared to power generators that are served by non-LDC shippers.

31. The Commission will accept Northern's proposal to allow NSP-MN to combine its seven power generating plants into one Operational Zone for the purposes of aggregating DDVCs and imbalance penalties, subject to the outcome of the proceedings in Docket No. RP06-109-000. Further, the Commission will also accept Northern's proposal to require NSP-MN to use commercially reasonable efforts to provide at least one-hour notification prior to flow of expected volumes and burn rate in section 4 of its TFX Power Plant Agreement subject to the outcome of Docket No. RP06-109-000. Further, PGG's concerns about the general applicability of the proposed Operational Zone provision are better suited for discussion in the Docket No. RP06-109-000 proceeding, where Northern proposes to incorporate the provisions into its generally applicable tariff. Accordingly, we will address PGG's concerns in that proceeding. The Commission finds that this action represents the most efficient manner of proceeding, given that the subject Service Agreements do not take effect until November 1, 2007.

#### **Other Provisions Pursuant to Northern's GT&C**

32. Northern asserts that its agreements contain certain provisions that are permissible pursuant to section 58 of its GT&C.<sup>19</sup> However, Distributors raise certain specific concerns with certain items.

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<sup>17</sup> *Northern Natural Gas Co.*, 113 FERC ¶ 61, 310 (2005).

<sup>18</sup> PGG is comprised of the City of Lincoln, Nebraska d/b/a/ Lincoln Electric System, and Missouri River Energy Services.

<sup>19</sup> Section 58 of Northern's GT&C sets forth a list of specific terms and conditions that Northern may negotiate with shippers on a not unduly discriminatory basis.

33. First, all six proposed agreements include provisions setting forth certain delivery pressure requirements at specific delivery points. For example, section 4(b) of Northern's TF Full Rate Agreement provides for pressure obligations at specific delivery points that range from 95 psi to 350 psi, as set forth in Appendix B of the contract. Northern states these provisions are permissible pursuant to section 58 of its GT&C, which lists the various terms and conditions that Northern may negotiate with shippers on a not unduly discriminatory basis and includes pressure obligations. Distributors assert that the proposed pressure obligation provisions constitute impermissible negotiated terms and conditions of service and should be rejected.

34. We disagree with Distributors. Section 38 of Northern's GT&C specifically permits the negotiation of pressure obligations between Northern and all shippers.<sup>20</sup> Accordingly, the Commission will permit Northern to place such pressure obligations in its service agreements.

35. Second, several discounted rate agreements<sup>21</sup> contain a provision giving NSP-MN the ROFR rights set forth in section 52 of Northern's GT&C, despite the fact these agreements would not otherwise be eligible for the ROFR. Further, six proposed agreements<sup>22</sup> include a provision giving NSP-MN the right to extend the agreements for an additional 10-year period beginning November 1, 2017, by providing written notice to Northern 18 months prior to the expiration of the primary term. Northern states that these provisions are permissible pursuant to section 58 of its GT&C.

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<sup>20</sup> Section 38 of Northern's GT&C states that:

Unless otherwise mutually agreed to, delivery of natural gas transported by Northern to Shipper on Northern's transmission facilities shall be at such varying pressures as may exist under operating conditions in the pipeline of Northern at the delivery point(s) between Northern and Shipper and shall not be less than 50 pounds per square inch gauge pressure so far as practicable.

<sup>21</sup> Sections 4(b) of the TF Discount Agreement and TFX Carlton Agreement; section 6(c) of the TFX Discount Agreement, section 5(e) of the TFX Power Plant Agreement.

<sup>22</sup> Sections 2.b. of Northern's TF Full Rate Agreement, TF Discount Agreement, TFX Discount Agreement, TFX Power Plant Agreement; section 1.b. of Northern's TFX Full Rate Agreement; and section 2 of Northern's Carlton Agreement.

36. Distributors argue that the Service Agreements may violate the Commission's regulations and Northern's tariff with respect to the exercise of ROFR rights and rollover right provisions. Distributors assert that the proposed language does not provide enough information to fully determine this issue.<sup>23</sup> Further, it argues that Northern has failed to demonstrate that the proposed Service Agreements do not provide NSP-MN with a preference over other shippers that wish to exercise rollover rights and do not discriminate against other shippers with rollover and ROFR rights. Therefore, Distributors argue that the Commission should reject these provisions.

37. Section 58 of Northern's tariff states that Northern may agree to include ROFR rights in Service Agreements.<sup>24</sup> Northern is incorporating the regulatory ROFR applicable to all shippers into several of its Service Agreements, as is permitted by section 58 of its GT&C. Section 58 also permits Northern to negotiate extensions of contract entitlements with all shippers.<sup>25</sup> Because the negotiation of an extension is a right Northern provides to all shippers, the Commission finds this provision to be a permissible conforming provision. Also, the Commission finds that Northern's

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<sup>23</sup>Distributors assert that the Service Agreement states that:

1. Entitlements and Term.

(a.) Shipper's TF Service Agreement Contract No. 23268 expires on October 31, 2007. A portion of the entitlement is subject to Shipper's grandfathered rollover right and a portion is subject to Right of First Refusal (ROFR). Certain TFX entitlement expires on October 31, 2006, March 31, 2007 and October 31, 2007 and is subject to the Right of First Refusal (ROFR) process in Northern's FERC Gas Tariff, as amended from time to time (Northern's Tariff). Shipper agrees to extend a portion of this entitlement as discussed herein. For billing purposes, the TF Full Rate Agreement will be designated as the "last through the meter." Letter Agreement, Page 1, Paragraph A.1.a.

<sup>24</sup> Section 58 states that under Rate Schedules TF, TFX and FDD Northern and a Shipper may agree to include ROFR rights in agreements.

<sup>25</sup> Section 58 provides in part that Northern and Shipper may agree, on a not unduly discriminatory basis, to contract extensions, including evergreens, rollovers and other extensions.

agreement to include ROFR rights does not provide NSP-MN any undue preference, nor would this action be unduly discriminatory since the ROFR language is the same for all shippers taking service under the subject rate schedules. Accordingly the Commission will accept this provision as a permissible conforming provision.

38. Finally, certain of Northern's agreements<sup>26</sup> include the following provision: "In the event the rates resulting from the above described rate adjustment are greater than the Discounted Rates agreed to herein, Northern shall further discount other Shipper contract entitlement to effectuate the value of the Discounted Rates agreed to herein." Northern asserts this type of discount type is allowed pursuant to section 54(B)(9) of its GT&C but that it is technically non-conforming due to its placement in the contract.<sup>27</sup>

39. Distributors argue that because Northern's tariff addresses this type of discount, to approve this provision as a non-conforming provision would permit NSP-MN to benefit from the provision even if the allegedly parallel tariff provision of general applicability is later changed. Therefore, Distributors argue that the Commission should reject this provision.

40. Both Distributors and Northern agree that this provision is permissible under section 54(B)(9) of Northern's tariff. Therefore, Northern has submitted a provision that implements and provides the specifics of a discount that is authorized by its tariff. Accordingly, the Commission will accept this provision as conforming to the tariff. If the tariff authorizing such a discount is later changed the Commission will address the effects of the change at that time.

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<sup>26</sup> Sections 3 of its TF Discounted Agreement, TFX Power Plant Agreement, and TFX Carlton Agreement; and section 4 of its TFX Discounted Agreement.

<sup>27</sup> Section 54 (B) (9) of Northern's GT&C provides in part that:

From time to time Shipper and Northern may agree in writing one a level of discount of the otherwise applicable rates and charges in addition of a basic discount from the stated maximum rates. For example, Northern may provide a specific discount rate that provides for discounts that: (9) provide for increasing (or decreasing) a discounted rate for service under one rate schedule to make up for a decrease (or increase) in the maximum rate for a separate service provided under another rate schedule.

**Tariff Sheet**

41. Given the discussion above, the Commission accepts Northern's proposed Original Sheet No. 66D, effective May 8, 2006 as proposed.

The Commission orders:

(A) Original Sheet No. 66D is accepted to be effective May 8, 2006, as proposed.

(B) Northern's TF Full Rate Agreement; TF Discount Agreement; TFX Full Rate Agreement; TFX Discount Agreement; TFX Power Plant Agreement; and, TFX Carlton Agreement are accepted subject to the conditions discussed in the body of this order.

(C) Northern must file, within 15 days of the date this order issues, revised service agreements consistent with the discussion above, together with the clarifications required above.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.