

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. RP06-109-001

ORDER ON COMPLIANCE

(Issued May 23, 2006)

1. On January 12, 2006, Northern Natural Gas Company (Northern) filed additional information (January 12 Compliance Filing ) to comply with the Commission's December 22, 2005 Order Conditionally Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, in Docket No. RP06-109-000 (December 22 Order).<sup>1</sup> In its informational filing, Northern explains and clarifies its proposal to revise certain nomination provisions of its General Terms and Conditions (GT&C). In general, Northern's proposal would permit local distribution companies (LDCs) with multiple power plants in an established Operational Zone to aggregate volumes for purposes of calculating Daily Delivery Variance Charges (DDVC) and imbalance penalties. As part of the proposal, however, Northern would require the LDC to tender individual nominations for power plant deliveries within the Operational Zone instead of making one general nomination to the Operational Zone. Northern's proposal also allows LDCs to include power generating plants with which the LDC has a tolling arrangement in an existing Operational Zone.<sup>2</sup>

2. Northern's informational filing complies with the December 22 Order. Moreover, we believe Northern can implement its proposed revisions to its nomination provisions in a non-discriminatory manner and increase shipper flexibility. Accordingly, we approve

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<sup>1</sup> 113 FERC ¶ 61,310 (2005).

<sup>2</sup> A tolling arrangement or agreement means that the owner of the electric generator agrees with an LDC to convert natural gas owned and provided by the LDC to electricity owned by the LDC.

Northern's revised tariff sheets to become effective May 24, 2006, subject to the conditions discussed below.

### **Background**

3. Northern's Market Area is divided into three Operational Zones. Section 28 of Northern's currently effective GT&C requires that shippers make nominations "by path, *i.e.*, specific receipt point to specific delivery point." However, section 28 also provides, "For nomination purposes, a Point of Delivery in the Market Area may be defined as a currently established Operational Zone applicable for deliveries to the facilities of a single LDC." Thus, if a particular LDC has multiple delivery points in an Operational Zone, the LDC may treat all those delivery points as a single delivery point for nominating service on Northern, instead of making separate nominations to each of the LDC's individual delivery points within the zone. Nominated quantities to the Operational Zone cannot exceed the collective entitlements of the LDC's individual delivery points within that Operational Zone. Further, Northern's tariff requires its firm shippers to take daily volumes at their delivery points as close to scheduled volumes as possible. If the shipper does not conform to this requirement, it is subject to a charge for variances from scheduled quantities called the Daily Delivery Variance Charge (DDVC), as set forth in section 48 of the GT&C. Under the zone nomination, the sum of the actual delivered volumes is compared to the single Operational Zone nomination for calculating an LDC's exposure to DDVC.

4. On November 23, 2005, Northern filed revised tariff sheets to revise its nomination provisions. Under its proposal, Northern would permit LDCs with multiple power generating plants in an established Operational Zone to aggregate volumes for purposes of calculating DDVCs and imbalance penalties. However, Northern would require the LDC to nominate to individual power plants within the Operational Zone instead of making one general nomination to the Operational Zone. Northern's proposal also permitted LDCs to include in its Operational Zone, electric generating plants with which it had tolling arrangements. Several parties protested Northern's filing, raising numerous concerns and asking that Northern provide more information explaining and clarifying its proposal.

5. In the December 22 Order, the Commission accepted and suspended the tariff sheets subject to refund and conditions and further review. The Commission directed Northern to file, within 21 days of the order, additional information addressing the concerns of protesters and the Commission. Specifically, the Commission required Northern to: (1) describe its proposal in more detail and explain how the proposal deviates from its currently effective nomination procedures for nominations within Operational Zones; (2) clarify whether its proposal would in fact require shippers to nominate to all delivery points serving power plants on an individual delivery point basis regardless of the circumstances, and provide the operational basis for any such

requirement; (3) explain the reasons for its proposal concerning the aggregation of deliveries to power plants for purposes of calculating DDVC and imbalance charges; (4) provide a detailed explanation of any operational basis for its proposal to calculate DDVC and imbalance penalties differently depending on whether or not deliveries are made to power plants which are connected to Northern by facilities owned by the same LDC or have a tolling arrangement with that LDC; and (5) explain any other reason for finding that this aspect of Northern's proposal is not unduly discriminatory. In addition, the Commission directed Northern to address all other concerns that the protesters raised, including, but not limited to: (1) the definition of "tolling arrangement," and whether Northern should include the definition in its tariff; (2) the basis for proposing a one-hour notification period; and, (3) the need for new end user agreements. The Commission provided parties with 15 days to file reply comments. Power Generators Group<sup>3</sup> (PGG) filed reply comments, which we discuss below.

### **Details of Filing**

6. In its informational filing, Northern explains that it is proposing two revisions to its nomination provisions. First, Northern proposes to expand the delivery points an LDC may include in an Operational Zone. Pursuant to its currently effective tariff, an LDC can only include in an Operational Zone, those delivery points where it owns facilities behind the delivery point. Under Northern's proposal, an LDC may include in an Operational Zone delivery points where the LDC has a tolling arrangement.

7. Under its second proposal, Northern would permit LDCs to aggregate, into a sub-zone within the Operational Zone, all its delivery points that serve power generating plants. Northern would allow the LDC choosing to aggregate its power generating plants into a separate operational zone within the existing Operational Zone (sub-zone) to aggregate DDVC and imbalances, but would require the LDC to nominate to the individual delivery points within the sub-zone. Northern explains that, in essence, this proposal would allow an LDC to create a sub-zone within its current Operational Zone for power generating plants. Northern further explains that, as part of this proposal, it would also require LDCs establishing sub-zones for their power generating plants to provide Northern with the expected gas volume and burn rate within one hour of gas flow. Northern asserts that it's proposing this tariff change at the request of certain LDCs who have expressed interest in aggregating their deliveries to power plants separately from their other loads for DDVC and imbalance purposes.

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<sup>3</sup> Power Generators Group is comprised of the electric utilities of Lincoln Electric System (LES) and Missouri River Energy Services.

8. Northern explains that its two proposals are both elective and operate independent of one another. Northern states that LDCs not aggregating their power generating plants into a sub-zone can still make one nomination to the general Operational Zone, and may still aggregate the DDVC and imbalances within the Operational Zone without changing their current nomination procedures. Northern further states that only LDCs aggregating their power generating plants into a sub-zone within the Operational Zone are required to make individual nominations to the power generating plants within that sub-zone.

9. Northern explains that the operational basis for requiring LDCs electing to create sub-zones to make separate nominations is to ensure system integrity. Northern explains that, when an LDC aggregates power generating plants into a sub-zone, it does not have the numerous offsetting delivery points present in the case of nominations to a traditional Operational Zone. Northern adds that nominating individually to power generating plants would provide Northern with the information necessary to make operational adjustments to maintain system integrity. Northern further asserts that this proposal addresses the market needs of its customers.

10. Northern also clarifies, in response to concerns expressed in the protests, that: (1) it agrees to include a definition of a tolling arrangement into its tariff; (2) its proposal would not require any shipper to change how it currently nominates under the Operational Zone provisions; and, (3) an LDC with power plant facilities downstream of another LDC must enter into an end-user allocation agreement with the LDC point operator and Northern.

### **Discussion**

11. Northern's informational filing satisfactorily complies with the Commission's December 22 Order. Further, we conditionally accept Northern's revised tariff sheets to become effective May 24, 2006, subject to Northern incorporating the tariff revisions discussed below.

12. In its reply comments, PGG asserts that Northern's proposal expands the asserted existing preferential and discriminatory treatment to power plant generators owned or served by LDCs as compared to power plants not owned or served by LDCs, and should be rejected. As discussed more fully below, Northern has shown that its proposed tariff revisions are just and reasonable and not unduly discriminatory or preferential. Further, PGG has not met its burden under section 5 of the Natural Gas Act (NGA) to show that the existing provisions are unduly discriminatory or preferential. We address PGG's specific concerns below.

### **Discriminatory and Preferential Treatment**

13. In its informational filing, Northern states that, under its existing tariff, an LDC can aggregate, for nomination purposes, all delivery points in an Operational Zone where it owns facilities behind the delivery point. Therefore, an LDC can make a single nomination for its power plant and all other deliveries in the Operational Zone and aggregate all such deliveries for DDVC and imbalance purposes. Northern proposes to expand the delivery points eligible for this treatment to include points where the LDC has a tolling agreement with a power plant. Northern further states that, under its proposal, an LDC electing the power plant sub-zone option must nominate the plants individually but would still receive the balancing benefits of the proposal. Northern asserts that, in contrast, other shippers nominating to the LDC's delivery point already receive balancing benefits because the LDC takes the swing and they are not subject to the DDVCs. Northern asserts that Operational Zones have been limited to LDCs, since their inception because Operational Zones are used to operate the pipeline system and only LDCs, as delivery point operators, have the incentive and expertise to properly operate gas distribution facilities with receipts of gas from multiple delivery points. Northern asserts that power generating plants are simply end-users and do not have the same operational responsibility to coordinate and ensure deliveries off of Northern's system as do LDCs. Northern further asserts that, as an end-user of gas, a power plant does not receive gas for distribution from multiple delivery points and thus does not have the necessary experience in operating a natural gas pipeline or distribution system. Northern contends that end-user power plants are not involved with the operations of the pipeline but rather are solely concerned with the operating conditions of individual power plants. Northern further contends that requiring it to extend its Operational Zone provisions to all power generators could jeopardize operational integrity.

14. PGG responds that Northern's Operational Zone provisions are unduly discriminatory, since they apply only to LDCs. PGG asserts that Northern fails to meet the burden of proof under section 4 of the NGA that its proposal is just and reasonable and not unduly preferential or discriminatory. PGG states that the Commission approved Northern's Operational Zone provisions as part of a settlement agreement during Order No. 636 restructuring, before electric utility deregulation. PGG notes that, since that time, it has built a number of power plants, with others currently under construction. PGG argues that, despite owning multiple power plants, its members are not afforded the benefits of DDVC and imbalance penalty aggregation that have historically been afforded to LDCs. PGG asserts that, with its subject proposal, Northern is only broadening the benefits to LDCs while continuing to exclude non-LDC shippers. PGG contends that, by doing so, Northern is discriminating against a certain class of customers.

15. PGG asserts that Northern introduced the concept of sub-zones in this filing which was not part of its original proposal. PGG states it does not object to introducing sub-zones as long as they are available to all shippers. PGG asserts that there are benefits

from aggregating DVCC and imbalance penalties that would inure to LDCs that consequently place PGG generators at a competitive disadvantage. Although PGG agrees with Northern that individual nominations to individual delivery points serving power plants will improve system reliability, PGG contends the instant proposal results in discriminatory treatment because Northern fails to provide adequate operational reasons to deny this benefit to non-LDCs. PGG also asserts that, if Northern is concerned about obtaining information to ensure operational integrity, Northern should require that all power plant operators provide individual nominations to power plants, and not just LDCs.

16. PGG argues that the Commission should reject Northern's assertions that power generators lack the incentive and expertise to manage the nominations in an Operational Zone. PGG contends that power plant owners are actually more sensitive to system operating characteristics, and have an incentive to maintain gas pipeline operational reliability and manage DDVC and imbalance penalties. PGG asserts that its fuel managers have the training and ability to maintain pipeline pressure at reliable levels. PGG argues that the logic associated with operating an entire distribution system is similar to the logic of operating an electrical transmission or distribution system, except needed reaction times are even quicker with the electrical system. PGG asserts that power generators are the point operator in situations where a power plant directly connects to Northern's system and, as such, pose virtually no risk to the operational integrity of any retail loads. Finally, PPG adds that its managers have substantial expertise in the operation of interstate pipelines and local distribution systems.

17. The Commission finds that Northern's proposal is just and reasonable and not unduly discriminatory or preferential. Northern currently offers its Operational Zone provisions to any LDCs nominating to its delivery points in an existing Operational Zone. Northern explains that it established its Operational Zone program with limits related to deliveries an LDC's facilities because unlike other shippers, they are the delivery point operators. LDCs have the operational responsibilities of the delivery point operators and receive the gas from multiple delivery points in their Operational Zones for distribution. In contrast, the power plant generators, which are end-users, are not delivery point operators with the associated responsibility to coordinate and ensure deliveries from Northern's system for further transportation on distribution facilities. The Commission allows pipelines to limit tariff provisions to certain classes of shippers, *i.e.*, LDCs, as long as the pipeline offers such provisions in a non-discriminatory manner.<sup>4</sup> Therefore, PGG has not demonstrated that Northern has failed to show that the limitation in its proposed tariff revisions related to LDCs is unduly discriminatory or preferential. Further, based on the above discussion, PGG's argument that the existing Operational Zone tariff

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<sup>4</sup> See *Columbia Gas Transmission Corp., order on reh'ing*, 105 FERC ¶ 61,351 (2003), where the Commission approved the pipeline's proposal to incorporate into its tariff contract reduction rights for certain classes of shippers.

provisions should be found to be unduly discriminatory or preferential is rejected. PGG has not met its burden under section 5 of the NGA.

### **Tariff Revisions**

18. To implement its proposal, Northern proposed the following tariff language, with revisions italicized:

For nomination purposes, a Point of Delivery in the Market Area may be defined as a currently established Operational Zone applicable for deliveries to the facilities of a single LDC *as well as an LDC's delivery points serving an electric generation plant where the LDC has a tolling arrangement*. All zone delivery points must contain TBS specific entitlements. The total of the TBS specific entitlements must equal the zone delivery point entitlement; however, daily nomination and scheduling may be made by a zone nomination. *An LDC may aggregate delivery points that serve power plants in an operational zone for DDVC and imbalance purposes; provided, however, the shipper must nominate such delivery points on an individual basis. Shipper must use commercially reasonable efforts to provide one-hour notification prior to flow to Northern's Gas Control Department of expected volumes and burn rate.*

19. PGG asserts this language could be open to misinterpretation. Specifically, PGG notes that Northern proposes that a delivery point may be defined as an established Operational Zone "...as well as an LDC's delivery points serving an electric generation plant where the LDC has a tolling arrangement." PGG notes that later, Northern proposes that "an LDC may aggregate delivery points that serve power plants in an Operational Zone." PGG asserts this language does exclude delivery points that are geographically located outside of the LDC's Operational Zone that are serving tolling arrangements from aggregation into that Operational Zone for DDVC and imbalance penalty purposes. PGG also notes that Northern failed to provide any tariff language that would allow shippers to establish sub-zones within an Operational Zone. Northern clarifies in its informational filing that, under its proposal, LDCs cannot aggregate power plant delivery points in an existing Operational Zone outside of that Operational Zone.

20. As proposed, Northern's tariff language could lead to confusion regarding the delivery points LDCs may aggregate into an Operational Zone. Accordingly, we direct Northern to file revised tariff sheets, within 15 days of the date this order issues, clarifying its proposal. Specifically, we direct Northern to clarify that only delivery points serving an electric generation plant where the LDC has a tolling arrangement within the LDC's existing Operational Zone may be included in that Operational Zone. In addition, Northern should provide revised tariff language which expressly states that LDCs can

aggregate delivery points that serve power plants into sub-zones within existing Operational Zones, consistent with the discussion above. PGG proposes alternate language (at 12) to eliminate the alleged undue discrimination which expands the Operational Zone language to include all power generators, utilities, and municipalities and not limit the language to LDCs. Consistent with our above determination regarding the alleged discrimination, we reject the proposed language.

### **Tolling Arrangement Definition**

21. In its informational filing, Northern proposes to add to its tariff the following definition of tolling arrangement: “A tolling agreement or arrangement means that the owner of the electric generator has agreed with an LDC to convert natural gas owned and provided by the LDC to electricity owned by the LDC.” PGG proposes revised language (at 16) which expands the proposed definition to include agreement between the owner of an electric generator and power generators, utilities, and municipalities in order to eliminate the asserted undue discrimination. Consistent with the above discussion, we reject PGG’s proposed language and direct Northern to file revised tariff sheets, within 15 days of the date this order issues, incorporating its proposed tolling arrangement definition into its tariff.

### **One-Hour Notification Period**

22. Northern explains that, together with the requirement of separate nominations for LDCs creating a separate sub-zone to aggregate deliveries to power plants, it will require that the shippers nominating to individual delivery points serving power plants must use commercially reasonable efforts to provide at least one-hour’s notice before the LDC begins to flow gas to the power plant and to include with such notification an indication of the expected volume and burn rate. Northern asserts that the basis for the one-hour notification period is to provide Northern with advanced notice of when the power plants served by LDCs will come on line in the event Northern needs to perform certain actions to ensure deliveries to all of its customers’ loads (heating as well as electric generation). Northern further asserts that given the dynamic nature of serving power plant loads, which differs from the predictable nature of heating loads, Northern may have to take certain actions in a short amount of time to ensure operational integrity, *i.e.*, allow for adjustments to horsepower, compression, regulation, and flow control. Northern contends that the one-hour notice provision will enable Northern’s gas control department to monitor actual activity against scheduled activity. Therefore, Northern concludes that proposed tariff language requiring “commercially reasonable efforts” to give one-hour notice ensures the operational integrity of Northern’s system and addresses shipper concerns.

23. PGG argues that the term “commercially reasonable efforts” is unclear. PGG states that if this means that the power plant will notify Northern one hour prior to flow when operationally feasible and reasonable, that would be acceptable. PGG further asserts that Northern must recognize that power plant operators during unusual operating circumstances must react quickly to maintain their system stability. PGG further asserts that the dynamics associated with stability and reliability of the electric power supply and transmission system simply will not always allow for a one-hour notification. PGG contends that, if it is Northern’s intent that “commercially reasonable efforts” includes and incorporates this type of situation, then PGG has no issue with the concept. However, PGG believes that the tariff language should be as specific as possible. PGG suggests that the following language would be more definitive, achievable, and appropriate for all parties:

Shipper must provide Northern a minimum of a one hour notification prior to the planned startup or shutdown of generating units. Shipper will notify Northern within one hour of all unplanned startups and shutdowns of generating units.

24. The one-hour notification requirement applies only to shippers nominating to individual delivery points that serve power plants within a sub-zone created by an LDC. The Commission finds that Northern’s requirement of commercially reasonable efforts to make that notification, as explained by Northern, is a reasonable standard to preserve operational integrity and balance the needs of shippers to which it applies. The specific application of this reasonable standard must be considered in the context of the circumstances where the notification is required. PGG’s suggested language requiring one-hour notification after unplanned startups and shutdowns of generating units is rejected as unsupported.

### **End-User Agreement**

25. Northern responds to a party’s request that it require the power plant, the party supplying the gas, and the party behind whose facilities the plant lies, should execute an end-user agreement for balancing purposes. Northern clarifies that the only way for an LDC serving power plant facilities downstream of another LDC to include that power plant, along with its other power plants, as proposed by this tariff filing, *i.e.*, in a separate sub-zone for nomination and balancing purposes, is for the LDC serving the power plant to enter into an end-user allocation agreement with Northern and the LDC delivery point operator. Northern asserts that section 30(E) of its GT&C, Billing Throughput Quantity, similarly provides that the receiving party, *i.e.*, the LDC as delivery point operator (the party behind whose facilities the plant lies), may choose to provide the measured volumes for the parties receiving any gas downstream of Northern’s point of delivery, *i.e.*, the plant, and furnish Northern with measurement data for the end-user to be used for billing purposes (Northern’s billing of shipper volumes). Northern asserts that this is the only

way for it to obtain the necessary measurement data to aggregate and bill an LDC for deliveries to a power plant located behind another LDC's facilities.

26. PGG argues that Northern is incorrect in asserting that the only way for Northern to obtain the measurement data necessary to aggregate and bill a customer for deliveries to an end user load located behind another LDC's facilities is to require a three party end-user allocation agreement. PGG asserts that Northern is seeking measurement information from the end-user (power plant) meters and a means of comparing that information against the nominated supply scheduled for delivery to the end-user (power plant) and received into Northern's system at the receipt point(s). PGG contends that power plants, ethanol plants, and other large loads could easily enter into an agreement with Northern that provides for real time measurement data from the delivery pipeline, LDC or Northern, and measurement facility into the power plant. PGG further contends that the comparisons required by Northern to insure operational integrity are then easy to accomplish. PGG asserts that it is a simple addition and subtraction problem to add the power plant's supply receipt(s), subtract the Northern fuel component, and compare the remainder to the actual usage as measured and reported to Northern from the power plant measurement facilities. PGG argues that in those instances where the downstream distribution pipeline receives and delivers the fuel supply to the power plant, timely and intraday nomination scheduling process can easily address the question of downstream capacity availability, and in cases where the distribution transportation capacity has been contracted on a firm basis the concern is minimized. PGG further argues that a reasonable prerequisite for the arrangement whereby a power generator has operational zone balancing would be that the power plant has the real time measurement facilities with reasonable meter accuracy and that the measurement information is available to Northern. PGG contends that the suggested arrangement only requires two parties to enter into an agreement and such an agreement could allow Northern to witness periodic measurement testing insuring that the measurement is accurate and satisfies the requirements of Northern. Finally, PGG asserts that Northern required LES to provide real time measurement in conjunction with the pipeline tap and facilities built to serve the Salt Valley Generation Station.

27. As explained by Northern, requiring the three parties involved in these transactions to reach an end-user allocation agreement is reasonable and consistent with Northern's current tariff. We agree that its reasonable for Northern to require these three parties to reach an allocation agreement to aggregate and bill the LDC for deliveries to a power plant behind the facilities of another LDC, even assuming *arguendo* that it is not the only way to provide measurement. In fact, the Commission will require Northern to clarify its tariff to expressly require such a three party end-user allocation agreement in these circumstances. Therefore, the Commission directs Northern to file revised tariff sheets, within 15 days of the date this order issues, to include the end-user allocation agreement requirement in its revised tariff language consistent with the discussion above.

The Commission orders:

(A) Northern's revised tariff sheets conditionally accepted in the December 22 Order, are accepted to become effective May 24, 2006, subject to the conditions set forth in the body of this order and the ordering paragraphs below.

(B) Northern's January 12 Compliance Filing is accepted for filing subject to the conditions set forth in this order and the ordering paragraph below.

(C) Within 15 days of the date this order issues, Northern is directed to file revised tariff sheets consistent with the discussion in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.