

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Nornew Energy Supply, Inc.

Docket Nos. CP01-94-001,
CP01-94-003 and
TS04-258-000

ORDER ACCEPTING TARIFF SHEETS, IN PART,
SUBJECT TO CONDITIONS

(Issued August 29, 2006)

1. In an order issued on January 16, 2002,¹ the Commission issued certificates of public convenience and necessity to Nornew Energy Supply, Inc. (Nornew) to operate facilities and transport natural gas for the Board of Public Utilities of Jamestown, New York (JBPU) to JBPU's Samuel A. Carlson Generating Station (Carlson Station). In the January 16, 2002 Order, the Commission also accepted the pro forma tariff sheets Nornew had filed in its application, subject to Nornew filing actual tariff sheets with certain revisions. On February 19, 2002, Nornew submitted its compliance filing in Docket No. CP01-94-001, but the tariff sheets contained in that filing were not properly formatted, nor submitted in electronic form. Nornew resubmitted its tariff sheets on March 4, 2002 in Docket No. CP01-94-003. The tariff sheets submitted in Docket No. CP01-94-001 are rejected as moot, and the tariff sheets submitted in Docket No. CP01-94-003 are accepted in compliance with the January 16, 2002 Order, effective March 17, 2002, as requested, subject to conditions set forth below.

Background

2. On March 1, 2001, Nornew and Norse Pipeline, L.L.C. (Norse) filed applications seeking the necessary certificate authorization for Nornew to transport natural gas for JBPU to JBPU's Carlson Station. In the January 16, 2002 Order the Commission issued certificates of public convenience and necessity to Nornew. The order directed Nornew

¹ *Nornew Energy Supply, Inc.*, 98 FERC ¶ 61,018 (2002) (the January 16, 2002 Order).

to file actual tariff sheets to bring its tariff into compliance with the then-current standards and definitions of the Gas Industry Standards Board (GISB),² all requirements of Order Nos. 637,³ 587-K⁴ and 587-L,⁵ subsequent orders in the proceeding and other tariff regulations in effect at the time. In addition, the Commission required Nornew to file revised FT and IT recourse rates.

3. The January 16, 2002 Order required Nornew to modify section 4.7 of Rate Schedule FT and section 4.5 of Rate Schedule IT to add nondiscrimination language consistent with Commission policy. The Commission also adjusted Nornew's expenses and cost of capital, and determined that Nornew's total cost of service should be \$1,212,348. Further, the Commission determined that the correct billing determinants based on Nornew's physical capacity should be 7,117,500 Mcf. Based on these adjustments, the Commission directed Nornew to file revised tariff sheets reflecting new recourse rates. Specifically, the order held that under Nornew's Rate Schedule FT the maximum monthly reservation rate should be the equivalent of \$5.18 per Mcf, and the maximum Authorized Overrun Rate should be the equivalent of \$0.1703 per Mcf. Additionally, the order held that under Nornew's Rate Schedule IT the maximum

² The current governing body is the North American Energy Standards Board (NAESB), which will be referenced hereafter.

³ *Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services*, Order No. 637, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,091 (Feb. 9, 2000); *order on reh'g*, Order No. 637-A, FERC Stats. & Regs. Regulations Preambles (July 1996 - December 2000) ¶ 31,099 (May 19, 2000); *reh'g denied*, Order No. 637-B, 92 FERC ¶ 61,062 (2000); *aff'd in part and denied in part*, *INGAA v. FERC*, 285 F.3d 18 (D.C. Cir. 2002).

⁴ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-G, FERC Stats. and Regs. ¶ 31,072 (1999).

⁵ *Standards for Business Practices of Interstate Natural Gas Pipelines*, Order No. 587-L, FERC Stats. and Regs. Regulation Preambles (July 1996 - December 2000) ¶ 31,100 (2000).

volumetric rate should be the equivalent of \$0.1703 per Mcf. Finally, the Commission directed Nornew to express the rates in its tariff per thermal unit, or “per Dth.”⁶

4. Nornew, Norse, and National Fuel Gas Distribution Corporation (National Fuel) filed requests for rehearing of the January 16, 2002 Order. On April 26, 2002, the Commission issued an Order Denying Rehearing and Request for Clarification.⁷

Details of the Instant Filing

5. Nornew states that it has modified section 4.7 of Rate Schedule FT and section 4.5 of Rate Schedule IT to add nondiscrimination language consistent with Commission policy. Nornew states that it has also added rules for the use and non-discriminatory application of non-conforming negotiated rate agreements in Article 27 of the General Terms and Conditions of Service (GT&C).

6. Nornew proposes to add language to section 4.7 of Rate Schedule FT and section 4.5 of Rate Schedule IT to provide that it will distinguish negotiated rate agreements from discount agreements.

7. In compliance with the January 16, 2002 Order, Nornew states that it has modified section 4.3 of the FT Rate Schedule and section 4.3 of the IT rate Schedule to make any assessment of incidental charges subject to prior Commission approval. Further, Nornew proposes to revise in Article 22 of the GT&C, its policy for construction of new receipt or delivery points to be consistent with Commission policy.

8. Nornew states that it has added section 4.8 to Rate Schedule FT to provide that it shall credit, to shippers paying the maximum applicable FT recourse rates on Original Sheet No. 4, 100 percent of IT revenues received by Nornew. Nornew asserts that if it has no such FT maximum rate shippers, it shall retain IT revenues. Nornew adds that it has not allocated costs to interruptible transportation service. Nornew also has provided

⁶ The January 16, 2002 Order also denied Nornew’s request to approve a lease agreement with JBPU and directed Norse to show cause why the Commission should not find that Norse is engaged in the interstate transportation of natural gas. On July 30, 2003, the Commission issued an order disclaiming jurisdiction, finding that Norse’s facilities are exempt gathering facilities under Section 1(b) of the Natural Gas Act (NGA). *Nornew and Norse*, 104 FERC ¶ 61,177 (2003). On October 23, 2003, the Commission issued a notice rejecting a request for rehearing of the July 30, 2003 Order. *Nornew and Norse*, 105 FERC ¶ 61,110 (2003).

⁷ *Nornew Energy Supply, Inc.*, 99 FERC ¶ 61,123 (2002).

for credits to non-penalized maximum firm recourse rate shippers of revenues received from penalties for unauthorized deliveries under section 9.8 of the GT&C and imbalances under section 9.9 of the GT&C. All crediting provisions provide that the shipper qualifying for a credit will receive a credit based on the ratio of quantity transported for the shipper during the penalty month and the total system throughput during the penalty month. Nornew asserts that this will ensure that a party does not contract to be a shipper solely for the purposes of capturing a windfall of IT or penalty credits. To the extent necessary, Nornew requests a waiver of the Commission's crediting regulations consistent with the foregoing.

9. Nornew states that it has incorporated and/or adopted by reference the appropriate provisions of NAESB version 1.4 standards in various sections of its GT&C and in Article 26 of its GT&C. Nornew's *pro forma* tariff had already included compliance with numerous NAESB provisions and, consistent with Order No. 587-L, included a provision for netting and trading of imbalances in section 9.10 of the GT&C. Nornew states that the incorporation of the NAESB standards complies with Order Nos. 587-K and 587-L, with the exception of the NAESB Electronic Data Interchange (EDI), Electronic Delivery Mechanism (EDM) and electronic communication-related standards and business practices. The January 16, 2002 Order granted Nornew a waiver of such standards and business practices until Nornew receives a request from a shipper to provide EDI and EDM. Nornew has included in Appendix D to the instant filing a chart identifying each NAESB Standard and Definition and the location of the NAESB Standards as incorporated verbatim or by reference in Nornew's tariff.

10. Nornew states that it has incorporated the NAESB standard deadline for the closing of measurement (the fifth business day of the month) and other related NAESB language in section 4.5 of the GT&C. Nornew has incorporated the NAESB standard list of allocation methodologies in section 9.4(2) of the GT&C and further provided, in section 9.4(3), that daily operational flows will be reported one business day after the end of the gas day.

11. Nornew states that it has modified its capacity release timeline in section 11.2(d) of its GT&C to reflect NAESB standards for the close of the evaluation period and for the communication of a match of bid or award of capacity. Nornew also has revised section 11.5(d) of its GT&C to reflect NAESB standards with respect to conversion of daily to monthly and monthly to daily rates for maximum rate release transactions.

12. Nornew states that its tariff complies with Order No. 637. In Order No. 637, the Commission modified its open access transportation regulations under Part 284 to temporarily lift the price ceiling for short-term released capacity, limited the availability of the right of first refusal (ROFR) for firm transportation customers, required segmentation of firm capacity where operationally feasible, and revised its rules and policies for capacity releases, imbalance management, operational flow orders (OFOs)

and penalties.

13. With regard to segmentation, Nornew notes that Order No. 637 requires interstate pipelines to permit segmentation of capacity to the extent operationally feasible. Nornew contends that segmentation is not operationally feasible, and Nornew does not anticipate segmentation becoming operationally feasible in the foreseeable future. Nornew explains that it has two receipt points, one with Tennessee Gas Pipeline (Tennessee) and one with Norse in Mayville, NY. The two receipt points are located at virtually the same geographic point on Nornew's pipeline in Mayville. The pipeline extends from Mayville to one delivery point to Nornew's only customer, the JBPU's Carlson Station in Jamestown, New York.

14. Additionally, Nornew argues that, even if it were to construct one or more new delivery points to provide service for possible future transportation customers, segmentation would not be operationally feasible. Nornew contends that for segmenting to work, the path must be divided into multiple segments, each with its own receipt and delivery point. In effect, Nornew explains that it has only one geographic receipt point in Mayville. Nor can Nornew engage in forward hauls and backhauls to a single point. Norse cannot accept deliveries from an interstate pipeline and, because Norse has its own direct delivery point into Tennessee at Mayville, no Norse gathering customer would have an incentive to seek to deliver gas to Tennessee using Nornew. Nornew assures the Commission that, if in the future it constructs additional receipt or delivery points, it will modify its tariff to address segmentation issues in light of the pipeline's operations at that time.

15. Nornew also states that its tariff is consistent with the Commission's capacity release regulations, as modified in Order No. 637. Nornew asserts that replacement shippers will be treated the same as firm shippers contracting directly with Nornew in terms of contracting, scheduling, nominating, and other aspects of transportation service. Flows by a replacement shipper may commence the first morning after timely nominations are submitted and confirmed. Nornew's tariff provides a form of master Released Transportation Service Agreement with specific releases established pursuant to a term sheet exhibit to that Released Transportation Service Agreement. Nornew will permit a replacement shipper that has executed a Released Transportation Service Agreement to commence nominations to schedule firm transportation upon notification of bid acceptance. Therefore, Nornew concludes, releases can take place in a timely manner without undue administrative delays.

16. Nornew states that it has provided in section 7.1 of the GT&C a ROFR to long-term, firm, maximum recourse rate shippers and to long-term, firm, negotiated rate shippers paying negotiated rates in excess of the maximum firm recourse rate. Nornew has provided the latter because of its agreement with its sole customer, the JBPU, to provide a ROFR.

17. Nornew asserts that, given its size, configuration, current shipper, and resources, it has done everything possible to minimize its need to rely on Operational Flow Orders (OFOs) and penalties to ensure the reliability and integrity of its system. As a small diameter, short pipeline with two receipt points and one delivery point, Nornew has no storage, limited linepack and compression. Nornew acknowledges that significant imbalances clearly pose a risk to Nornew and it must have the ability to declare OFOs if necessary to protect the integrity of its system. Nornew notes that Article 8 of its tariff provides specific, limited bases for declaring OFOs when necessary and reasonable penalties for non-compliant shippers.

18. Nornew states that it has limited physical ability to provide imbalance services such as “park and loan” and it has not proposed to offer such services at this time. Nornew’s tariff provides for netting and trading imbalances and Nornew will provide flexibility, where practicable, to its sole customer. In connection with netting and trading imbalances, Nornew notes that it will permit system-wide netting and trading and that it has not established, due to its size and configuration, separate Operational Impact Areas for purposes of netting and trading. In addition, upstream pipelines, marketers, and storage companies can provide effective imbalance management services to the JBPU (or other future Nornew customers). Nornew has encouraged the JBPU to purchase (or have its suppliers purchase) imbalance services from others.

19. Nornew states that it has revised the monthly cash out balancing provisions in section 9.7 of the GT&C to incorporate the use of an index applicable to deliveries of natural gas in Nornew’s market area (the Gas Daily Niagara – Tennessee, NFG posting generally used by Tennessee in its OBAs governing Zone 5 deliveries), and to provide more reasonable cash out steps, with 0-5% imbalances cashed out at index. With respect to the scheduling and OFO penalties in particular, the shipper(s) will know their daily scheduled quantities and their daily usage due to electronic measurement at delivery points.

20. Nornew has entered into an Operational Balancing Agreement (OBA) with Tennessee and will consider entering into a similar OBA with Norse. If the JBPU (or future delivery point operators) are interested in entering into a delivery point OBA, Nornew will enter into such OBAs on a non-discriminatory basis.

21. Nornew states that it has added new section 4.9 of Rate Schedule FT to incorporate the Commission’s policy, established in individual Order No. 637 compliance orders to allow a firm discount rate shipper to request that a discount applicable at primary point of receipt or delivery apply at a secondary point. Nornew states that the Commission policy establishes a rebuttable presumption that the shipper will retain its discount when using the secondary point if the transporter grants discounts to similarly situated shippers utilizing the point.

22. In addition to the above revisions to Nornew's *pro forma* tariff required by the Commission in the January 16, 2002 Order, Nornew states that it has made other changes to its tariff. Most, if not all, of these additional changes have been made to accommodate the conversion of Nornew's lease agreement with the JBPU to a firm transportation agreement, as required by the January 16, 2002 Order. Nornew states that it has incorporated into its tariff, for all shippers on a not unduly discriminatory basis, several of the terms of the lease agreement. The additional revisions are described below.

23. Nornew states that it has revised section 2.2 of Rate Schedule FT and section 2.3 of Rate Schedule IT to provide that additional facilities that Nornew agrees to install, operate, or maintain to provide transportation service may be listed in the exhibit to the transportation agreement to reflect transporter's obligations with respect to such facilities.

24. Nornew states that, at the request of the JBPU, it has provided in section 10.3 of the GT&C, for payment within 20 days of receipt of invoice, rather than the 10 days provided in the *pro forma* tariff. The JBPU meets to approve invoices only once each month, and its schedule would not accommodate the shorter payment period. This provision will apply to all shippers.

25. Nornew further states that, at the request of the JBPU, it has added a new subsection (b) to section 15.2 of the GT&C. The new provision, which was an integral component of the lease agreement between Nornew and the JBPU, provides for certain liquidated damages to shippers who are electric power generators. Nornew submits that the Commission intended in the January 16, 2002 Order that the terms and conditions of the lease agreement would continue to apply to the extent that they are incorporated into Nornew's tariff. Nornew asserts that this provision will be applied to all similarly situated shippers. Nornew contends that the provision is necessary to protect electric generators-shippers, such as the JBPU, which have made significant investment in plant and which rely on Nornew for their gas supply to generate electricity. Nornew argues that the general liabilities provision of section 15.2(a) is insufficient to protect such an electric generator-shipper.

26. Nornew states that it has added provisions governing non-conforming negotiated rate agreements to section 27 of the GT&C. Nornew asserts that these provisions are based on similar effective provisions in the tariffs of other interstate pipelines and comply with Commission policy.

27. Nornew states that it has amended the form of service agreement for FT service to provide that, where the parties agree, Nornew will provide the shipper with a ROFR. This change is consistent with section 7.1 of Nornew's GT&C. Nornew also has revised the form to provide a place for insertion of a negotiated rate. Further, Nornew has added blanks for receipt and delivery point pressure. This latter change is required to

accommodate the delivery point pressure required by the JBPU and the blank will be filled in on all FT agreements.

28. Nornew states that it has made other minor revisions to its *pro forma* tariff, which are illustrated by the red-lined version of the tariff included in the instant filing.

29. Nornew states that it is making arrangements to establish, prior to the effective date of its tariff, an Internet web site. The address is www.NornewEnergySupply.com.⁸

Notice, Interventions, Protests and Coments

30. Notice of Nornew's compliance filings in Docket No. CP01-94-001 and CP01-94-003 was issued on March 7, 2002, providing for the filing of protests by March 15, 2002, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. 18 C.F.R. § 385.211 (2006). On March 4, 2002, National Fuel protested Nornew's compliance filing. For reasons discussed more fully below, the Commission finds merit, in part, in National Fuel's protest, and rejects it in part. On March 15, 2002, JBPU filed a Motion to Intervene and Comments. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to Rule 214 of the Commission's rules of Practice and Procedure (18 C.F.R. § 385.214 (2006)).

31. In its protest, National Fuel states that it will focus on the following aspects of the filing: the clause concerning liquidated damages, provisions governing negotiated rates, allocation and curtailment rights and discounts.

32. National Fuel asserts that proposed GT&C section 15.2 is unduly discriminatory because it limits liquidated damages to a single class of customers. National Fuel cites *Tuscarora Gas Transmission Company*, 95 FERC ¶ 61,239 at 61,821 (2001) (*Tuscarora*), finding that "the proposed revision to be unduly discriminatory because it attempts to single out one type of customer, new electric generation, to which flow restrictions would apply." National Fuel also observes that the Commission has viewed liquidated damages skeptically, citing *Northern Natural Gas Co.*, 76 FERC ¶ 61,171 (1996) (*Northern*). National Fuel also cites *Columbia Gas Transmission Corp.*, 64 FERC ¶ 61,365 (1993) (*Columbia*) in which the Commission stated "[G]enerally, a liquidated damages penalty

⁸ On September 24, 2004, in Docket No. TS04-258-000, Nornew filed a request for waiver of the Standards of Conduct requirements in Order No. 2004 to allow it to combine its tariff filing to comply with Order No. 2004 with any further tariff filing in Docket Nos. CP01-94-001 and CP01-94-003. The Commission is granting the waiver. Nornew shall file any necessary tariff revisions to comply with Order No. 2004 within 30 days of the date of this order.

of the type Columbia proposes has not been approved.”

33. National Fuel protests that Original Sheet No. 4A, which sets forth the details of the negotiated rate agreement between Nornew and JBPU, is incomplete. National Fuel maintains that Nornew’s tariff should state the firm transportation rights of the JBPU on a maximum daily basis. National Fuel notes that in its certificate application, Nornew stated that the maximum use of its system by JBPU would be 15,000 Dth per day. National Fuel argues that Nornew needs to make this limitation explicit and binding.

34. National Fuel protests that Nornew’s provisions for curtailment at Original Sheet No. 37, section 9.4 do not appear to recognize that firm shippers may have different daily firm rights.

35. Finally, National Fuel encourages the Commission to closely review the discount adjustment provision for negotiated rates, and require Nornew to clarify the discount status of the JBPU contract.

36. In its comments, JBPU asserts that it and Nornew have had a number of discussions in an effort to resolve JBPU’s concerns regarding Nornew’s compliance filing. As a result of those discussions, JBPU understands that Nornew has agreed to make a number of changes to its tariff concerning scheduling, penalties and a revision to section 12 concerning Nornew’s obligations for any injury or damage caused while Nornew is in exclusive possession and control of the gas.

37. In particular, JBPU believes that it is essential to revise the various penalty provisions of the tariff so that penalties will be assessed only if Shipper’s action threatens the operational integrity of Transporter’s system or the reliability of service and are not assessed in a cumulative manner. JBPU states that such revisions are necessary to comply with Order Nos. 637, *et seq.*

38. In response to National Fuel’s protest, JBPU asserts that non-penalty liquidated damages provisions, as proposed in section 15.2(b), are not uncommon, particularly in

the event a pipeline is unable to perform.⁹ Specifically, JBPU points out that the Commission has approved such provisions when they provide an incentive to self-help on the part of customers, are not punitive, provide certainty about relief, and are not too difficult to administer. JBPU asserts that the liquidated damages provision in section 15.2(b) meets that standard and should be accepted by the Commission.

39. JBPU notes that in the January 16, 2002 Order, the Commission indicated that JBPU should retain the “benefits of the bargain” contained in its lease with Nornew (which resulted from a public bidding process). JBPU contends that, since the liquidated damages provision was included in the lease, is generally available to similarly situated shippers and is consistent with Commission policy, there is no reason to deny JBPU the benefit of its bargain by rejecting Nornew’s liquidated damages proposal.

40. JBPU submits that *Tuscarora* does not stand for as broad a principle as National Fuel implies and that the holding in that case does not and should not be broadened to support rejection of the liquidated damages provision in section 15.2(a) of the Nornew tariff. The policy of applying flow restrictions uniformly across customer classes set out in *Tuscarora* does not support rejection of Nornew’s liquidated damages proposal.

41. JBPU observes that National Fuel relies on *Northern*, noting that the Commission rejected the liquidated damages provision in that proceeding due to its concern that it would violate the Commission’s unbundling rules and would be difficult, if not impossible to oversee. JBPU asserts that the tariff provision at issue in *Northern* was a complex mechanism for covering financial hedge losses, and thus would have resulted in the pipeline dealing in gas as a commodity, in addition to providing transportation services. JBPU contends that the Nornew proposal does not suffer from that flaw and therefore does not violate the Commission’s unbundling rules. Accordingly, JBPU concludes, the finding in *Northern* is plainly distinguishable from the case here.

42. JBPU also points out that *Columbia*, cited by National Fuel, is similarly distinguishable. JBPU asserts that, in *Columbia*, the Commission rejected a liquidated damages penalty that would have been imposed on bidders for capacity who failed to go forward with a contract. The Nornew liquidated damages provision provides damages to shippers in the event of Nornew’s failure to perform. Nornew’s proposal contains no

⁹ JBPU cites, *e.g.*, *Transcontinental Gas Pipe Line Corp.*, 72 FERC ¶ 61,037 (1995), *order denying reh’g and granting clarification*, 73 FERC ¶ 61,357 (1995) (*Transcontinental*); *Florida Gas Transmission Co.*, 70 FERC ¶ 61,017 (1995) (*Florida Gas*).

penalty on shippers like those proposed in *Columbia*. Accordingly, JBPU concludes, *Columbia* does not support rejection of section 15.2(b) of the Nornew tariff.

Discussion

43. We find that Nornew has generally complied with the January 16, 2002 Order in the subject filings, including its proposal and revisions pertaining to capacity release and imbalances. Upon review of Nornew's actual tariff sheets filed in Docket No. CP01-94-003, the Commission finds that on Original Sheet No. 4, Nornew has complied with specific directives regarding the adjustment of Nornew's recourse rates. Further, the Commission accepts Nornew's explanation that segmentation is not feasible on its system at this time.

44. However, the Commission finds that some of National Fuel's protests have merit and directs Nornew to make certain revisions to its proposed tariff. Commission policy for negotiated rates, as set forth in the Alternative Rate Policy Statement,¹⁰ and the Commission's decision in *NorAm Gas Transmission Company*,¹¹ provide that when a pipeline enters into a negotiated rate agreement with a shipper, it must file either numbered tariff sheets setting forth the details of the negotiated rate agreement, or the negotiated rate contracts. National Fuel is correct in its observation that Original Sheet No. 4A does not adequately set forth the details of the negotiated rate agreement between Nornew and JBPU. Nornew is directed to file a revised Sheet No. 4A, setting forth the necessary details of the negotiated rate agreement.

45. With regard to the discount adjustment provision for negotiated rates, Nornew is directed to demonstrate how that provision complies with Commission policies relative to discounts, as set forth in *Natural Gas Pipeline Company of America*¹² and *Columbia Gas*

¹⁰ *Alternative to Traditional Cost-Of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); *petition for review denied, Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, 335 U.S. App. D.C. 317; 172 F.3d 918; 1998 LEXIS 38334 (D.C. Cir. July 20, 1998).

¹¹ *NorAm Gas Transmission Company*, 77 FERC ¶ 61,011 (1996) (*NorAm*).

¹² *Natural Gas Pipeline Company of America*, 69 FERC ¶ 61,029 at 61,117 (1994).

Transmission Corporation.¹³ Further, since the issuance of the January 16, 2002 Order, the Commission's policies on negotiated and discount rates have evolved. For example, a rebuttable presumption that a firm discount shipper will retain its discount when using a secondary point where similarly situated shippers are granted discounts is no longer required, but that presumption is proposed in Nornew's section 4.9 of Rate Schedule FT.¹⁴ Nornew may file to modify section 4.9 of Rate Schedule FT to delete the rebuttable presumption.

46. With regard to the proposed tariff language in section 7.1 of the GT&C, whereby a ROFR is provided to long-term, firm, maximum recourse rate shippers and to long-term, firm negotiated rate shippers paying negotiated rates in excess of the maximum firm recourse rate, the Commission notes that its current policy provides that any shipper paying the maximum FT recourse rate for a period of at least twelve months is guaranteed a right of first refusal.¹⁵ Pipelines may offer ROFR rights that exceed the regulatory minimum, but cannot limit the ROFR that the Commission's policies provide. Nornew's tariff extends ROFR to shippers paying negotiated rates in excess of the maximum firm recourse rate. The Commission accepts Nornew's proposal, noting that it exceeds the regulatory minimum requirement.

47. With regard to National Fuel's protest that Nornew's provisions for curtailment at Original Sheet No. 37, section 9.4 do not appear to recognize that firm shippers may have different daily firm rights, the Commission disagrees. Section 9.4(a)(1) states "If, on any day, Transporter determines that the capacity of its system . . . is insufficient to serve all Shippers that are scheduled to receive service on such day, capacity that requires allocation shall be allocated in a manner that results in curtailment of capacity, to zero if necessary." The Commission finds that section 9.4 contemplates that firm shippers have different daily firm rights. Nornew's proposed tariff language provides that firm transportation will be curtailed "on any day," on a *pro rata* basis, and based on scheduled quantities, not contract demand.

48. However, upon further review of the tariff language Nornew has proposed in section 9.4, the Commission finds that Nornew proposes to curtail firm transportation volumes scheduled at secondary receipt or delivery points before it would curtail those scheduled at primary receipt or delivery points. This is not consistent with Commission

¹³ *Columbia Gas Transmission Corporation*, 109 FERC ¶ 61,355 at P 27 (2004).

¹⁴ *Williston Basin Interstate Pipeline Co.*, 110 FERC ¶ 61,210, *reh'g*, 112 FERC ¶ 61,038 (2005).

¹⁵ 18 C.F.R. § 284.221(d) (2006).

policy. In Order No. 636-B, the Commission held that once secondary firm capacity is scheduled, primary firm capacity does not have a higher priority for purposes of bumping or curtailing firm service.¹⁶ Thus, “once primary and secondary points have been scheduled, curtailment would treat such points on an equal pro rata basis.”¹⁷ The firm shipper with secondary points pays the same firm reservation rates as a shipper with scheduled primary capacity, and will rely on the scheduled firm service to meet its market deliveries. Accordingly, Nornew is directed to revise its tariff to provide that all scheduled firm service will be curtailed on a *pro rata* basis without regard to whether the receipt and delivery points are primary or secondary.

49. Nornew states that if the JBPU (or future delivery point operators) are interested in entering into a delivery point OBA, Nornew will enter into such OBAs on a non-discriminatory basis. Nornew is directed to include language to this effect in its tariff.

50. In the January 16, 2002 Order, the Commission found that Nornew and the JBPU would have time to negotiate a service agreement consistent with Nornew’s open access tariff, and that Nornew would file such negotiated rate agreement. In the instant compliance filing, Nornew states that it has made changes to its tariff outside the scope of the directives in the January 16, 2002 Order, so as to accommodate the conversion of Nornew’s lease agreement with the JBPU to a firm transportation agreement. Although section 154.203(b) of the Commission’s regulations¹⁸ provide that filings to comply with Commission orders must include only those changes required to comply with the order, in this case, the Commission finds that Nornew has made extra proposals in an effort to memorialize the terms of its lease agreement with the JBPU in Nornew’s Part 284 open access tariff. Accordingly, although these proposals exceed the provisions needed to comply with the January 16 Order, 2002, the Commission will consider them as in compliance with that order.

¹⁶ Order No. 636-B, 61 FERC ¶ 61,272 at 62,013 (1992). See also, *Northwest Pipeline Corporation*, 63 FERC ¶ 61,124 at 61,812-13 (1993); and *Algonquin Gas Transmission Co.*, 62 FERC ¶ 61,132 at 61,896 (1993).

¹⁷ *Williston Basin Interstate Pipeline Co.*, 62 FERC ¶ 61,144 at 62,052 (1993). See also, *Algonquin Gas Transmission Company*, 104 FERC ¶ 61, 118 (2003) at P 34.

¹⁸ 18 C.F.R. § 154.203(b) (2006).

51. All of these proposals will apply to all shippers on a not unduly discriminatory basis. The Commission will accept many of these new, unprotested proposals without comment. They are:

(a) Nornew's revision to section 2.2 of Rate Schedule FT and to section 2.3 of Rate Schedule IT to provide that additional facilities that Nornew agrees to install, operate, or maintain in order to provide transportation service may be listed in the exhibit to the transportation agreement to reflect transporter's obligations with respect to such facilities;

(b) Nornew's revision to section 10.3 of the GT&C to require payment within 20 days of receipt of invoice, rather than the previously proposed 10 days;

(c) Nornew's revision to the form of service agreement for FT service to provide that, where the parties agree, Nornew will provide the shipper with a ROFR, in addition to ROFR rights already required by the Commission's regulations;

(d) Nornew's revision to the form of service agreement to provide a place for insertion of a negotiated rate;

(e) Nornew's revision to the form of service agreement to provide blanks for receipt and delivery point pressure.

52. Nornew has made other proposals, about which the Commission will comment. With regard to Nornew's proposed subsection (b) to section 15.2 of the GT&C, which provides for certain liquidated damages to shippers who are electric power generators, the Commission rejects National Fuel's protest on this matter and finds that the proposed new tariff section is not unduly discriminatory. Nornew expressly states that this provision will be applied to all similarly situated shippers. The Commission further rejects National Fuel's protest that the Commission has looked skeptically on provisions for liquidated damages. As noted by the JBPU in its comments, the Commission has accepted such provisions in *Transcontinental* and in *Florida Gas*.

53. Nornew has proposed a new section 27.4 in the GT&C that provides for the incorporation of negotiated rate services in the discount adjustment calculation of base rates in future section 4 rate cases. The Commission rejects this proposal. Nornew's base rates are stated rates, and do not change as cost factors or other variables change. Nornew has not supported why it is necessary for the Commission to prejudge or

preauthorize specific billing determinate methodologies to be used in future rate cases at this time.

54. Specifically, Nornew's proposed section 27.4(a) of its GT&C states in part:

Transporter may seek to include non-conforming negotiated rates in such recourse rate adjustment whenever the rate for service is below the posted maximum rate for service under the applicable rate schedule for all or part of the 12-month base period and/or the nine month adjustment period for such rate change proceeding. However, if the non-conforming negotiated rate agreement(s) was/were not in effect during the base period, such discount may still be requested in the recourse rate adjustment when the rate for service under the non-conforming negotiated rate agreement is projected to be in effect with rates below the otherwise applicable maximum recourse rate as of the end of the 9-month adjustment period applicable to such rate proceeding.

55. Section 154.303(a)(4) of the Commission's regulations provide that rate case applicants may adjust the base period rate factors used to determine the proposed rates. There is no need for a pipeline's tariff to restate what the Commission's regulations provide.

56. Nornew's proposed section 27.4(a) also attempts to characterize and memorialize the Commission's policy for reflecting negotiated rates¹⁹ in the discounting adjustment mechanism.²⁰ Negotiated rate discount adjustments are not considered by the Commission as an automatic right.

¹⁹ The Commission's negotiated rate policy has been developed in *Alternative to Traditional Cost-Of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, Alternative Rate Policy Statement*, 74 FERC ¶ 61,076 (1996), *reh'g and clarification denied*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996); See also *Natural Gas Pipeline Negotiated Rates Policies and Practices*, 104 FERC ¶ 61,134 (2003); *order on reh'g and clarification*, 114 FERC ¶ 61,042 (2006).

²⁰ The Commission's discounting policy has been developed in *Interstate Natural Gas Pipeline Rate Design*, 47 FERC ¶ 61,295, *reh'g granted*, 48 FERC ¶ 61,122 (1989); *Regulations of Natural Gas Pipelines After Partial Wellhead Decontrol*, FERC Stats. & Regs., Regulations Preambles (1982-1985) ¶ 30,665 (1985); *Policy for Selective Discounting By Natural Gas Pipelines*, 111 FERC ¶ 61,309; *order denying reh'g*, 113 FERC ¶ 61,173 (2005).

57. In *NorAm*, the Commission established procedures for implementing its negotiated rate discount policy.²¹ In *NorAm*, the Commission stated that it would not permit discount-type adjustments to recourse rates at the time a pipeline files for a general rate case. This policy ensures that costs associated with negotiated rate shippers would not be shifted to recourse rate shippers. The Commission issued an order in *Northwest Pipeline Corp.* approving a provision allowing Northwest to seek a discount-type adjustment for a negotiated rate agreement *only* if the agreement had been converted from a pre-existing discounted Part 284 agreement.²² In *Enbridge*,²³ the Commission also stated that it generally does not permit pipelines to make discount-type adjustments for negotiated rate design volumes in section 4 rate cases. The Commission stated further that it has permitted pipelines to include tariff language permitting such adjustments in the *limited* situation where the pipeline agrees to a discounted rate with a shipper and then converts it to a negotiated rate. As a result, the Commission required Enbridge to adhere to this policy.

58. The Commission finds that Nornew's section 27.4 is overly broad, except for section 27.4(c). Nornew proposes that it may seek to include negotiated rates in such recourse rate adjustments *whenever* the rate for service is below the posted maximum rate for service under the applicable rate schedule for all or part of the twelve-month base period and/or the nine-month adjustment period for such rate change proceeding. As a result, the Commission directs Nornew to file revised tariff sheets consistent with the limitations for permitting discount-type adjustments as set forth in *Enbridge*.²⁴

59. Proposed 27.4(c) provides that Nornew will distinguish between negotiated rate shippers and recourse rate or discounted rate shippers at the time Nornew and its shipper enter into a discount or negotiated rate transaction. The language Nornew has proposed in section 27.4(c) expressly complies with the Commission's January 16, 2002 Order, and accordingly, is accepted.

60. In its proposed new section 4.8 to Rate Schedule FT, Nornew's tariff would provide for the crediting of IT revenues to FT shippers, but also for the retention of IT revenues by Nornew if it has no FT maximum rate shippers. The Commission finds that the crediting of IT revenue to FT shippers complies with the Commission's directive in

²¹ *NorAm*, 77 FERC ¶ 61,011 (1996).

²² *Northwest Pipeline Corp.*, 84 FERC ¶ 61,109, at 61,606 (1998).

²³ *Enbridge Pipelines (KPC)*, 103 FERC ¶ 61,305 (2003).

²⁴ *Id.* See also *El Paso Natural Gas Co.*, 114 FERC ¶ 61,305 (2006) (*El Paso*).

the January 16, 2002 Order. But the provision of section 4.8 that would allow Nornew to retain IT revenues if it does not have any FT recourse rate shippers is outside the scope of this compliance proceeding. Accordingly, Nornew is directed to file revised tariff sheets deleting this provision of section 4.8 to Rate Schedule FT.

61. Nornew's proposed new section 9.8 to its GT&C provides for 100 per cent crediting of penalty revenues to shippers that are not assessed any penalties, but also provides for the retention of penalty revenues by Nornew if there are no shippers that are not assessed any penalties. The Commission understands that at this time, Nornew has only one shipper, and that penalties assessed against this shipper for unauthorized deliveries would be meaningless if the penalties were simply returned to the shipper. Accordingly, the Commission will accept this proposed tariff language, subject to Nornew proposing revised language at such time that it acquires any additional shipper. Such revised language should not provide for the retention of penalty revenues by Nornew if all of its shippers are assessed penalties, but rather provide a *pro rata* distribution, in direct opposite proportion to the penalties assessed. That is, the shipper that transgresses the least should receive the largest portion of penalties revenue.

62. With regard to the tariff revisions that JBPU asserts that Nornew has agreed to include to comply with the January 16, 2002 Order (see P 36 above), the Commission notes that Nornew has not made any filing to effect these revisions. Accordingly, the Commission will not comment on them until such time as Nornew makes a separate section 4 filing to incorporate these revisions into its tariff.

63. The Commission notes that Nornew has incorporated into its tariff either verbatim or by reference the NAESB Standards and Definitions, Version 1.4. Pursuant to Order No. 587-S, the currently applicable NAESB Standards and Definitions are Version 1.7.²⁵ Nornew is directed to update its tariff to incorporate into its tariff either verbatim or by reference Version 1.7 of the NAESB Standards and Definitions.

The Commission Orders:

(A) The tariff sheets submitted in Docket No. CP01-94-001 are rejected as moot.

²⁵ *Standards for Business Practices of Interstate Natural Gas Pipelines*, 111 FERC ¶ 61,203 (2005).

(B) The tariff sheets submitted in Docket No. CP01-94-003 are accepted, in part, in compliance with the January 16, 2002 Order, effective March 17, 2002 as requested, subject to conditions discussed in the body of this order.

(C) Nornew is directed to comply with the conditions set forth above within 30 days of the date of this order.

(D) The waiver Nornew requested in Docket No. TS04-258-000 is granted, and Nornew is directed to file, within 30 days of the date of this order, any tariff changes necessary to implement the Order No. 2004 Standards of Conduct

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

APPENDIX

**Nornew Energy Supply, Inc
FERC Gas Tariff, Original Volume No. 1**

Docket No. CP01-94-003

Accepted Subject to Conditions, effective March 17, 2002:

Original Sheet No. 0	Original Sheet No. 28	Original Sheet No. 54
Original Sheet No. 1	Original Sheet No. 29	Original Sheet No. 55
Original Sheet No. 2	Original Sheet No. 30	Original Sheet No. 56
Original Sheet No. 3	Original Sheet No. 31	Original Sheet No. 57
Original Sheet No. 4	Original Sheet No. 32	Original Sheet No. 58
Original Sheet No. 4A	Original Sheet No. 33	Original Sheet No. 59
Original Sheet No. 5	Original Sheet No. 34	Original Sheet No. 60
Original Sheet No. 8	Original Sheet No. 35	Original Sheet No. 61
Original Sheet No. 9	Original Sheet No. 36	Original Sheet No. 62
Original Sheet No. 10	Original Sheet No. 37	Original Sheet No. 63
Original Sheet No. 11	Original Sheet No. 38	Original Sheet No. 64
Original Sheet No. 12	Original Sheet No. 39	Original Sheet No. 65
Original Sheet No. 13	Original Sheet No. 40	Original Sheet No. 66
Original Sheet No. 14	Original Sheet No. 41	Original Sheet No. 67
Original Sheet No. 15	Original Sheet No. 42	Original Sheet No. 68
Original Sheet No. 16	Original Sheet No. 43	Original Sheet No. 69
Original Sheet No. 17	Original Sheet No. 44	Original Sheet No. 70
Original Sheet No. 18	Original Sheet No. 45	Original Sheet No. 71
Original Sheet No. 19	Original Sheet No. 46	Original Sheet No. 72
Original Sheet No. 20	Original Sheet No. 47	Original Sheet No. 73
Original Sheet No. 22	Original Sheet No. 48	Original Sheet No. 74
Original Sheet No. 23	Original Sheet No. 49	Original Sheet No. 75
Original Sheet No. 24	Original Sheet No. 50	Original Sheet No. 76
Original Sheet No. 25	Original Sheet No. 51	Original Sheet No. 77
Original Sheet No. 26	Original Sheet No. 52	Original Sheet No. 78
Original Sheet No. 27	Original Sheet No. 53	