

134 FERC ¶ 61,218
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Northern Natural Gas Company

Docket No. RP11-1781-000

ORDER ACCEPTING AND SUSPENDING TARIFF RECORDS
AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued March 17, 2011)

1. On February 15, 2011, Northern Natural Gas Company (Northern) filed tariff records¹ pursuant to section 4 of the Natural Gas Act (NGA) to recoup from its customers that received them the Kansas *ad valorem* tax refunds that Northern received from Burlington Resources Oil & Gas Company (Burlington) and which Northern had flowed through to those customers. Northern proposes a March 18, 2011 effective date for the proposed tariff records. For the reasons discussed below, the Commission accepts the proposed tariff records and suspends them to be effective August 18, 2011, subject to refund and the outcome of hearing and settlement judge procedures established herein.

Background

2. We will not restate the voluminous background of the *ad valorem* proceedings which is fully set forth in the prior orders in this proceeding. Suffice it to state that in March 1993 the Commission accepted Northern's contention that producers' collection of the Kansas *ad valorem* tax reimbursement as an add-on to the maximum lawful price (MLP) for first sales of natural gas was impermissible under section 110 of the Natural Gas Policy Act of 1978 (NGPA) and ordered producers to make refunds back to 1988.² In 1996 the District of Columbia Circuit Court of Appeals (D.C. Circuit) affirmed the

¹ See Appendix.

² *Colorado Interstate Gas Co.*, 65 FERC ¶ 61,292 (1993).

determination of illegality but required that refunds be made back to 1983, when Northern had first raised the illegality issue at the Commission.³

3. Pursuant to the Commission's order, Northern sent Statements of Refunds to 790 producers, including Burlington, that had collected the Kansas *ad valorem* tax reimbursement as an add-on to the MLP. On March 12, 1999, Burlington filed a Request for Resolution in Docket No. GP99-15-000 seeking to be relieved of its Kansas *ad valorem* refund obligation by virtue of a take-or-pay settlement agreement (Burlington Settlement) between Burlington's predecessor (Southland Royalty Company) and Northern. Burlington asserted that settlement included a release and indemnity clause which relieved it of any obligation to make *ad valorem* tax refunds to Northern.

4. The settlement relied on by Burlington was entered into on February 28, 1989, and settled claims and controversies between Northern and Burlington involving over 30 separate gas purchase contracts covering properties in three different states, one of which was Kansas. Among other things, the agreement provided for Northern to make a one-time non-recoupable payment of \$2,750,000 to resolve Burlington's take-or-pay claims of \$25,762,343, and provided for a reduction of Northern's future take-or-pay obligations. In addition, the settlement reduced the prices to be paid for gas purchased under the contracts for the period February 1, 1989 through April 30, 1992. Paragraph 5 of the settlement stated that it "resolves all disputes between the parties under any and all contracts" under the settlement, and "releases and discharges the other . . . from any and all liabilities [and] claims arising out of . . . or relating to said Contracts."

5. On March 31, 1989, Northern filed in Docket No. RP89-136-000 to recover from its shippers 75 percent of the costs it had incurred under numerous take-or-pay settlements, including its one-time payment under the Burlington Settlement. On December 29, 1989, the Commission approved a settlement of both the Docket No. RP89-136-000 proceeding and Northern's general section 4 rate case in Docket No. RP88-259-000 (December 1989 Northern-Customer Take-or-Pay Settlement).⁴ The settlement provided that Northern could recover 100 percent of the principal amounts of its take-or-pay settlement costs through a volumetric surcharge, but would not recover any interest. The settlement also provided that Northern could later file to recover take-or-pay settlement costs incurred under contracts with producers that were in litigation on March 31, 1989.

³ *Colorado Interstate Gas Co., v. FERC*, 850 F.2d 769 (D.C.Cir. 1996) (*CIG*).

⁴ *Northern Natural Gas Co.*, 49 FERC ¶ 61,437 (1989).

6. In 1993, the Commission approved a Global Settlement in Northern's Order No. 636 restructuring proceeding in Docket No. RS92-8-001, *et. al.* (1993 Global Settlement).⁵ That settlement provided that Northern could make limited section 4 filings under Order No. 528⁶ to recover any past liability related to the period before November 1, 1993 for contract activity under certain take-or-pay contracts included in Appendix D of that settlement (pre-November 1, 1993 transition costs). The settlement generally precluded Northern from filing to recover pre-November 1, 1993 transition costs after November 1, 1998. The settlement also stated that any liability with respect to contract activity under the Appendix D contracts incurred by Northern after November 1, 1993 and before November 1, 1998, would be eligible for recovery under Northern's Order No. 636 Gas Supply Realignment (GSR) cost recovery mechanism subject to a \$78 million cap on GSR costs. The Commission subsequently approved several Order No. 528 filings Northern made to recover pre-November 1, 1993 transition costs.⁷

7. Many producers contested Northern's effort to recover *ad valorem* tax refunds for the period 1983 to 1988 pursuant to the court's 1996 *CIG* decision. In an effort to resolve these disputes, the Commission's Dispute Resolution Service facilitated settlement discussions among the various interests, including the producers, the pipelines, their customers, and state public service commissions. These discussions led to the filing of a settlement in the Northern proceeding. That settlement, known as the "Omnibus Settlement," granted producers complete relief from their refund obligations up to a stated amount, and above that amount the producer was obligated to pay the refund under a formula provided in the settlement. The settlement permitted producers or other affected parties to opt out of the settlement. The Commission approved the Omnibus Settlement for those who consented to it, including Northern, its customers, and state public service commissions.⁸ While Northern and its customers agreed to waive some producer refunds under the settlement, the producer parties to the settlement paid *ad valorem* tax refunds of approximately \$45 million.

⁵ *Northern Natural Gas Co.*, 64 FERC ¶ 61,073, *reh'g*, 65 FERC ¶ 61,011 (1993).

⁶ *Mechanisms for Passthrough of Pipeline Take-or-Pay Buyout and Buydown Costs*, 53 FERC ¶ 61,163 (1990), *reh'g*, 54 FERC ¶ 61,095 (1991), *reh'g denied*, 55 FERC ¶ 61,372 (1991).

⁷ *Northern Natural Gas Co.*, 78 FERC ¶ 61,201 (1997), *order on deferred issues*, 80 FERC ¶ 61,393 (1997).

⁸ *Northern Natural Gas Co.*, 93 FERC ¶ 61,311 (2000).

8. However, Burlington exercised its right under the settlement to opt out. Burlington contended that it was not liable for any *ad valorem* tax refund, contending that the release and discharge clause in its February 28, 1989 settlement with Northern covered Northern's *ad valorem* tax refund claim. Burlington asserted that although the amount of the *ad valorem* refund claims against it were correct, the indemnity clause relieved it of any *ad valorem* refund liability, and the indemnity clause required Northern, not Burlington, to pay the refund to its customers.

9. In 2003, the Commission rejected Burlington's claim that it was not liable for *ad valorem* tax refunds, declaring that Burlington's retention of the Kansas *ad valorem* tax reimbursements paid by Northern would result in Burlington collecting revenues in excess of the MLP and required Burlington to make refunds.⁹ On May 1, 2003, Burlington refunded \$950,767.74 to Northern, which Northern flowed through to its customers on May 30, 2003.

10. On appeal, the D.C. Circuit granted Burlington's petition for review and remanded the case to the Commission for a more reasoned explanation why Burlington's settlement differed from the Omnibus Settlements that the Commission had enforced.¹⁰ In its first remand orders, the Commission reaffirmed its conclusion that Burlington was required to make the refunds.¹¹ On appeal, the D.C. Circuit held that Burlington was relieved of its Kansas *ad valorem* refund obligation and vacated the Commission's orders.¹² The court recognized that the NGPA "in a general sense invalidated any private agreement to pay more than the maximum lawful price."¹³ However, the court held that this did not necessarily prohibit good faith settlements at arm's length over past gas sales, like the Burlington Settlements where consideration was furnished in exchange for permitting the party to retain such excess, and "with no apparent detriments to third parties."¹⁴

⁹ *Burlington Resources Oil & Gas Co.*, 103 FERC ¶ 61,005 (2003).

¹⁰ *Burlington Resources Oil & Gas Co., v. FERC*, 396 F.3d 405 (D.C. Cir. 2005) (*Burlington I*).

¹¹ *Burlington Resources Oil & Gas Co.*, 112 FERC ¶ 61,053 (2005), *reh'g denied*, 113 FERC ¶ 61,257 (2005).

¹² *Burlington Resources Inc. v. FERC*, 513 F.3d 242 (D.C. Cir. 2008) (*Burlington II*).

¹³ *Id.* at 248.

¹⁴ *Id.* at 250 (emphasis supplied).

11. In its second remand orders, consistent with *Burlington II*, the Commission directed Northern to return to Burlington the amounts, with interest, that Burlington had refunded to Northern in 2003,¹⁵ and Northern refunded \$1,292,805.06 to Burlington. The Commission also held that, based on its interpretation of *Burlington II*, Northern could not seek to recoup the refunds from its customers. Northern appealed the Commission's orders and on December 17, 2010, in an unpublished Memorandum, the D.C. Circuit vacated the Commission's second remand orders. The court stated that its prior opinion in *Burlington II* did not address, "because [it] did not have before [it] - the issue whether the pipelines themselves were liable for the refund, or whether they could pass to their customers the cost of the refund."¹⁶ The court added "we express no view as to what FERC can or should do in the event the pipelines, in a section 4 proceeding seek to recoup the refunds from their customers."¹⁷

Details of the Filing

12. Northern made the instant section 4 filing "to recoup such Kansas *ad valorem* tax refunds from the customers that received them." The tariff records set forth the amount of the refund each customer received in 2003, the interest accrued on that amount through March 31, 2011, and the total amount that Northern seeks from that customer.

13. Northern sets forth in detail the background of the *ad valorem* tax proceedings before the Commission, and the background of the take-or-pay issue which was simultaneously occurring before the Commission. Northern states that, when Burlington filed its request for resolution in 1999, the Kansas *ad valorem* refund proceedings were underway and no omnibus settlements had been achieved. Northern contends that if the Commission had acted lawfully at that time, the Commission would have relieved Burlington of its *ad valorem* refund obligation based on the release and indemnity provision in the Burlington Settlement. Since virtually all take-or-pay settlements contained a release and indemnity provision, Northern asserts, the Commission would have been required to find that all producers were relieved of their *ad valorem* refund liability. Thus, the refund obligations of most producers would have been extinguished.

14. Northern asserts that it is inconceivable that the Commission would then have imposed the *ad valorem* refund burden on Northern and the other interstate pipelines that

¹⁵ *Burlington Resources Oil & Gas Co.*, 123 FERC ¶ 61,151 (2008), *reh'g denied*, 128 FERC ¶ 61,151 (2009).

¹⁶ Slip op at 3.

¹⁷ *Id.* at 4.

purchased gas in Kansas. These pipelines had already absorbed substantial costs relating to their take-or-pay settlements in furtherance of the Commission's policy promoting the negotiated resolution of the take-or-pay problem. Northern argues that it would have been unreasonable and inequitable for the Commission to impose additional, significant refund obligations on Northern and the other pipelines.

15. Northern concludes that in light of the following factors, the Commission should authorize Northern to recoup the Burlington refund from its customers: (1) Northern followed the Commission's policy of encouraging take-or-pay settlements and absorbed in excess of \$100 million of take-or-pay costs; (2) Northern's customers were the beneficiaries of Northern's take-or-pay settlements, which resulted in more than \$1.8 billion of total take-or-pay relief; (3) the Burlington Settlement provided for Northern's payment of \$2.75 million in resolution of over \$25 million of take-or-pay claims, a reduction in future take obligations and a reduction in the price of the gas; (4) the benefits to Northern's customers under the Burlington Settlement far exceed the refunds sought to be recouped; (5) the indemnity provision in the Burlington Settlement was not unusual or improper, but entirely consistent with similar provisions in virtually all other take-or-pay settlements and was part of a settlement package that provided substantial benefits at a cost far less than the industry average; (6) Northern successfully negotiated the Omnibus Settlement which produced \$45 million of refunds to Northern's customers; (7) Northern expended significant resources to initiate and pursue the Kansas *ad valorem* issue since 1983, which resulted not only in the \$45 million of refunds under the Omnibus Settlement but also substantial refunds to consumers under the other omnibus settlements; and (8) the Commission had assured pipelines that they were "mere conduits" of Kansas *ad valorem* tax reimbursements and not "guarantors of refunds," and, as with the Omnibus Settlement, Northern should not be treated as a guarantor of *ad valorem* refunds.

Notice, Interventions and Protests

16. Public notice of the filing was issued on February 17, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹⁸ Pursuant to Rule 214,¹⁹ all timely filed motions to intervene and any unopposed motions to intervene out-of-time before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Protests were filed by Black Hills Utility Holdings, Inc., d/b/a Black Hills Energy, Northern Municipal Distributors Group and

¹⁸ 18 C.F.R. § 154.210 (2010).

¹⁹ 18 C.F.R. § 385.214 (2010).

Midwest Region Gas Task Force Association (NMDG/MRGTF), Kansas Corporation Commission, Minnesota Energy Resources Corp., and the Iowa Utilities Board (IUB). Joint Commenters filed comments.²⁰

17. The protestors and Joint Commenters contend that Northern has failed to show that the recoupment does not violate the applicable NGPA MLP. They contend that Northern did not submit its filing as a request for partial recovery of take-or-pay payments pursuant to Order No. 500. Instead, Northern advances an equitable argument premised on the Commission having characterized pipelines as “mere conduits” with respect to the treatment of certain Kansas *ad valorem* taxes. They argue in general that before the Commission considers Northern’s equitable claim to the \$1.4 million, the Commission must address whether Northern’s request would result in an unlawful passthrough by Northern to its customers of amounts in excess of the MLP and, if the Commission determines Northern’s request is in violation of the requirements of the NGPA, Northern’s request should be rejected with prejudice. The protestors also contend that Northern has failed to show that its recovery of these costs is permitted by the settlements between Northern and its customers concerning Northern’s recovery of its take-or-pay settlement costs.

18. NMDG/MRGTF request that the Commission determine that Northern’s filing violates the NGPA’s MLP and reject it with prejudice. It argues that while Northern’s resales of this gas to its customers were not first sales directly subject to MLP ceiling prices, nevertheless, NGPA section 601 does not permit pipelines to flow through to their customers amounts in excess of the MLP. Thus, in *Williams Natural Gas Company v. FERC*, 3 F.3d 1544 (D.C. Cir. 1993), the court stated:

[S]ection 601(c) provides for the “guaranteed passthrough” of “any amount paid” with respect to a first sale of natural gas. 15 U.S.C. § 3431(c). The only restrictions are that the price passed through may not exceed the statutory maximum, and that a passthrough may be disallowed “to the extent the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds.” *Id.* §3431(c)(2); *see*

²⁰ Joint Commenters are Alliant Energy, Black Hills Utility Holdings, Inc., CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas, Metropolitan Utilities District of Omaha, MidAmerican Energy Company, Nicor Gas, Northern Municipal Distributors Group, Northern States Power Company, Minnesota, Northern States Power Company, Wisconsin and Midwest Region Gas Task Force Association. Each of the Joint Commenters filed a separate motion for leave to intervene in this proceeding.

Office of the Consumers' Council v. FERC, 286 U.S. App. D.C. 234, 914 F.2d 290, 292 (D.C. Cir. 1990).

If the Commission does not summarily reject the filing, NMDG/MRGTF request the Commission to establish procedures to investigate issues raised by the filing.

19. Black Hill Utility Holdings, Inc., dba, Black Hills Energy states in its protest that Northern improperly allocated a portion of the Burlington Kansas *ad valorem* tax refund for the states of Minnesota, Michigan, and South Dakota to Black Hills, but neither Black Hills nor its customers ever received such refund. Thus, it contends that the amount Northern claims is owing from Black Hills is overstated.

20. Kansas Corporation Commission requests the Commission reject Northern's filing. It argues that while *Burlington II* does not compel rejection of Northern's request, rejection would be consistent with the result in *Burlington II* and is supported by ample other considerations.

21. IUB requests that the Commission reject Northern's filing or, in the alternative, suspend the revised tariff record and establish a procedural schedule to allow parties to more fully address the issues. It contends that Northern has not shown the basis for the relief on equity grounds since it entered into the Burlington Settlement on its own behalf and bargained away the right to *ad valorem* tax refunds without the customers' consent. In addition, it states that Northern claims it was a "mere conduit" for the Kansas *ad valorem* tax refunds and since it had to repay Burlington's refund, customers should be required to repay Northern. IUB argues that the Commission's statement that interstate pipelines would not be required to be guarantors of the refunds was based upon the expectation that the interstate pipelines would only receive the refunds and flow them through to customers, and the Commission's statement does not apply in the instant situation where Northern bargained away the right to these refunds as part of the Burlington Settlement.

22. Joint Commenters assert that neither the Burlington Settlement nor the Omnibus Settlement permit Northern to flow through to its customers amounts in excess of the MLPs. They argue that Northern's customers did not bargain away their NGPA section 601(c) right not to be charged more than the MLP. Joint Commenters submit that before the Commission considers Northern's equitable claim to the \$1.4 million, the Commission must address whether Northern's requested relief would result in an unlawful passthrough by Northern to its customers of amounts in excess of the MLP.

23. On March 11, 2011, Northern filed an answer²¹ asserting that there is no merit to the protests and therefore the Commission should approve Northern's recoupment proposal. However, Northern states that it is agreeable to the suggestion that the Commission provide for further procedures to address the various issues, and Northern is not opposed to suspension of the February 15 filing to allow for such procedures to take place. On March 14, 2011, Joint Commenters filed a limited reply to Northern's assertion in its answer that NGPA section 601(c) does not preclude the Commission from allowing Northern to charge more for natural gas than the MLPs established by Congress. They assert that Northern's position is without merit because Northern's application does not seek refunds. Rather, Northern is requesting that the Commission effectively permit Northern to charge additional amounts for gas that it sold to customers years ago, and this additional charge would take the sales price above the applicable MLPs.

Discussion

24. The request for recoupment of the Kansas *ad valorem* tax refund proposed by Northern's instant filing has not been shown to be just and reasonable. While the Commission disagrees with the contention that Northern's filing violates the MLPs in the NGPA, the Commission finds that the filing raises issues that need to be investigated further.

25. The MLPs set forth in the NGPA only applied to first sales of natural gas, as defined in NGPA section 2(21). Burlington's sales to Northern during the relevant 1983-1988 period were such first sales. Northern's resales of the gas purchased from Burlington to its customers were not first sales subject to NGPA MLPs. As the Commission has previously held, it regulates those sales under the Natural Gas Act, and therefore the NGPA MLPs are not applicable to a pipeline's flow through of costs it incurs in a first sale.²² NGPA section 601(b)(1)(A) and (c)(2) deems amounts paid by pipelines in first sales to be just and reasonable and provides that the Commission may not deny pipelines passthrough of such amounts, unless the Commission determines the amount paid was excessive due to fraud or abuse. However, nothing in that section requires the Commission to deny passthrough of amounts paid in excess of the MLP in the unique factual situation presented in this proceeding, where a court has held that the Commission must approve and enforce a settlement under which a pipeline waived its right to refunds of amounts it paid that were in excess of the MLP.

²¹ We will accept Northern's answer and Joint Commenters' Limited Reply since they assist the Commission in its decision-making process.

²² *Burlington Resources Oil and Gas Co.*, 103 FERC ¶ 61,005 at P 30, *reh'g denied*, 104 FERC ¶ 61,317, at P 29 (2003).

26. However, the protesters have raised issues which require further investigation. Among these issues is that, while the court decisions in *Burlington I* and *Burlington II* require finding that Burlington's obligation to make the *ad valorem* refunds is released by the Burlington Settlement's release and discharge clause, the court did not decide the issue of whether that clause should be interpreted as requiring Northern to make those refunds on Burlington's behalf. During the proceedings concerning whether Burlington must pay the *ad valorem* tax refunds to Northern, it was Burlington's position that while *ad valorem* refunds were owing to Northern's customers, under the release and discharge clause Northern assumed the responsibility to pay the refund to its customers. In its May 12, 1999 Request for Resolution of this proceeding, Burlington stated that it did not dispute the amount of the *ad valorem* tax refund Northern claimed Burlington owed. Rather, it stated that as a result of the Burlington settlement, Northern was responsible to pay that refund to Northern's customers. Burlington stated:

Northern has, by contract, agreed to release Burlington from any responsibility regarding additional monies owed with respect to the Kansas Contracts, and Northern is contractually bound to indemnify Burlington, as the successor to Southland, with respect to any claims, including the *ad valorem* tax claims, pertaining to the Kansas Contracts.²³

27. Specifically, Burlington made clear that this included any *ad valorem* tax refunds:

As part of that exchange of value, Northern agreed to release Burlington from, and otherwise assume, all liability for payments that otherwise would be owed by Burlington with respect to the contracts. Accordingly, Northern is contractually obligated to pay any and all costs, expenses, and or claims with respect to any *ad valorem* tax issues pursuant to the Settlement.²⁴

28. Thus, Northern's filing raises the issue of whether Northern agreed in its settlement with Burlington to make the *ad valorem* tax refunds on Burlington's behalf, and, if so, whether the instant filing violates that agreement. That issue should be addressed at the hearing.

²³ Request for Resolution, p.5 (Docket No. SA99-1-000).

²⁴ *Id.* at 6.

29. In addition, protesters contend that Northern's settlements with its customers concerning its recovery of costs incurred under its take-or-pay settlements with producers prohibit Northern from recovering any costs incurred under its settlement with Burlington other than the costs Northern has already recovered pursuant to the settlements with its customers. Therefore, the parties may address at hearing the issue whether Northern's instant filing is inconsistent with the December 1989 Northern-Customer Take-or-Pay Settlement, the 1993 Global Settlement, or any other settlement agreement between Northern and its customers.

30. While Northern contends that customers received substantial benefits from the Burlington Settlement, those very customers take a differing view as to these "alleged" benefits, and question whether Northern can legitimately claim it was responsible for these alleged benefits. Also, while Northern stresses the take-or-pay aspects of the Burlington Settlement, the Commission's Order No. 500/528 policy concerning pipeline recovery of take-or-pay settlement costs required pipelines to absorb a portion of those costs. Here Northern is seeking the entire amount plus interest from its customers. Accordingly, the Commission will establish a hearing to determine whether Northern's proposed recoupment of Kansas *ad valorem* refunds and interests is just and reasonable.

31. While the Commission is setting these matters for a trial-type evidentiary hearing, we encourage the parties to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, consistent with the parties' position that any hearing be deferred to permit settlement procedures, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure. If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission, within 30 days of the date of the settlement judge's appointment, concerning the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

Suspension

32. Based upon review of the filing, the Commission finds that the proposed tariff records have not been shown to be just and reasonable, and may be unjust, unreasonable and unduly discriminatory or otherwise unlawful. Accordingly, the Commission will accept and suspend the effectiveness of the proposed tariff records for the period set forth below, subject to the conditions set forth in this order.

33. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or

inconsistent with other statutory standards.²⁵ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.²⁶ Such circumstances do not exist here. Therefore, the Commission shall exercise its discretion to suspend the proposed tariff records listed in the Appendix, to be effective August 18, 2011, subject to refund and the outcome of the hearing established herein.²⁷

The Commission orders:

(A) The tariff records listed in the Appendix are accepted and suspended, to be effective August 18, 2011, upon motion by Northern, subject to refund and the outcome of the hearing established herein.

(B) Requests to summarily reject the filing are denied; all issues raised by the filing may be considered at hearing.

(C) Pursuant to the Commission's authority under the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP11-1781-000 concerning Northern's filing. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in the Ordering Paragraphs below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2010), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the

²⁵ See *Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

²⁶ See *Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (one-day suspension).

parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Appendix

Northern Natural Gas Company
Gas Tariffs, FERC NGA

Tariff Records Accepted and Suspended
to be Effective August 8, 2011, Subject to Refund

Sheet No. 56, Recoupment of Kansas Ad Valorem Tax Refunds, 1.0.0

Sheet No. 57, Recoupment of Kansas Ad Valorem Tax Refunds, 1.0.0

Sheet No. 58, Reserved for Future Use, 0.0.0