

135 FERC ¶ 61,024
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. RP10-1394-001

ORDER DENYING REHEARING

(Issued April 12, 2011)

1. On November 26, 2010, Northern Municipal Distributors Group¹ and the Midwest Region Gas Task Force Association² (NMDG/MRGTF) filed a request for rehearing or, in the alternative, motion for reconsideration, of the Commission's October 29, 2010 order accepting a proposal from Northern Natural Gas Company (Northern) to revise sections of its tariff that address shippers' rights to reduce contract demands in certain instances.³ For the reasons discussed below, NMDG/MRGTF's request for rehearing or, in the alternative, motion for reconsideration, is denied.

¹ NMDG is composed of the following Iowa municipal-distributor customers of Northern: Alton; Cascade; Cedar Falls; Coon Rapids; Emmetsburg; Everly; Gilmore City; Graettinger; Guthrie Center; Harlan; Hartley; Hawarden; Lake Park; Manilla; Manning; Orange City; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine.

² MRGTF is composed of the following municipal-distributor and local distribution customers of Northern: Austin; Centennial Utilities; Community Utility Company, city of Duluth, Minnesota – Duluth Public Utilities; Great Plains Natural Gas Company, a Division of MDU Resources Group Inc.; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehan's Gas Company, Inc.; Two Harbors; Virginia; Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin, d/b/a St. Croix Gas, Wisconsin; and Watertown, South Dakota.

³ *Northern Natural Gas Co.*, 133 FERC ¶ 61,103 (2010) (October 29 Order).

I. Background

2. Prior to the Commission's acceptance of Northern's September 30, 2010 filing in this proceeding, Northern's tariff contained provisions addressing shippers' contract reduction rights in two places. First, Rate Schedule TF, Rate Schedule TFX, and Rate Schedule FDD (hereinafter Firm Rate Schedules) of Northern's tariff contained provisions giving local distribution companies (LDC) certain reduction rights related to state unbundling programs in the event a firm customer chooses another supplier and that supplier does not take assignment of the LDC's firm capacity on Northern. These contract reduction rights were added to the Firm Rate Schedules in 1998 (for Rate Schedules TF and TFX) and 1999 (Rate Schedule FDD).⁴

3. Second, section 42 of Northern's General Terms and Conditions (GT&C) contained hardship reduction provisions allowing shippers to reduce firm entitlements in three situations: (1) in the event a firm industrial customer ceases receiving transportation service from the shipper and begins receiving gas directly from Northern or indirectly from Northern through another shipper (i.e., an LDC bypass); (2) in the event a shipper serves a firm industrial customer that permanently discontinues operations; and (3) in the event a firm industrial customer taking direct firm service from Northern permanently discontinues operations. This hardship reduction provision was added to the GT&C as part of a settlement approved by the Commission on June 26, 1992.⁵

4. In its September 30 filing, Northern proposed the following revisions to its tariff: (1) move the LDC bypass provision in section 42 of the GT&C to the corresponding sections in the Firm Rate Schedules that address contract reductions related to state unbundling programs; (2) clarify that the concept of revenue neutrality in the Firm Rate Schedules for bypass situations and state unbundling programs includes situations where Northern has constructed facilities for the shipper and the shipper has agreed to reimburse Northern for the cost of those facilities; and (3) eliminate section 42 of the GT&C (which would eliminate the hardship reduction provisions set forth in that section). Northern argued that its proposed tariff changes would eliminate outdated provisions that are inconsistent with open access and place all shippers on a more level playing field.

5. NMDG/MRGTF protested the filing. NMDG/MRGTF objected to the removal of the hardship reduction provisions, arguing that while today's environment is different from the early 1990s, the hardship reduction provisions related to industrial plant shut downs remain critical to LDC shippers. NMDG/MRGTF argued that the hardship

⁴ Northern September 30, 2010 Transmittal Letter at 2.

⁵ *Id.* (citing *Northern Natural Gas Co.*, 59 FERC ¶ 61,379 (1992)).

reduction provisions provide a valuable right to shippers, which their members have relied on in establishing their firm entitlements, and that Northern should not be allowed to change them. Moreover, NMDG/MRGTF asserted that Northern had not provided any evidence that the hardship reduction provisions have been abused. NMDG/MRGTF also contended that Northern's proposal to move the LDC bypass provisions from the GT&C to the Firm Rate Schedules was unnecessary, confusing, and should be rejected. Northern raised a number of objections to specific language Northern proposed to include in the Firm Rate Schedules,⁶ as well as to existing language in those schedules, which Northern did not propose to change in its filing.⁷

6. The Process Gas Consumers Group and Ag Processing Inc a cooperative (Industrials) also filed a protest, arguing: (1) that the proposal to move the LDC bypass provision from Northern's GT&C to the Firm Rate Schedules restricts the applicability of this provision for existing or future rate schedules; (2) that Northern's proposal to require revenue neutrality when Northern constructs facilities that the shippers agree to pay for makes it more cumbersome and onerous for shippers to utilize this provision; and (3) that the proposal to eliminate hardship reduction rights in the case of an industrial plant shutdown is unwarranted.

II. October 29 Order

7. In the October 29 Order, the Commission acknowledged the objections raised by NMDG/MRGTF and other protestors,⁸ but nonetheless accepted Northern's proposal.⁹ The Commission explained that pipelines need not offer such hardship reduction rights in the first instance.¹⁰ Because Northern's proposal extended reduction rights to all Firm Rate Schedule shippers on a not unduly discriminatory basis, the Commission found

⁶ October 29 Order, 133 FERC ¶ 61,103 at P 13-15.

⁷ *Id.* P 12.

⁸ *Id.* P 9-15.

⁹ *Id.* P 17.

¹⁰ *Id.* (citing *Columbia Gulf Transmission Co.*, 105 FERC ¶ 61,351, at P 11 (2003) (*Columbia Gulf*) (“[T]he Commission does not require pipelines to permit customers to terminate or reduce their contractual obligations to pay for reserved capacity before the end of their contract terms. Rather pipelines may offer such a right on a voluntary basis, so long as there is no undue discrimination among shippers.”)).

Northern's proposal was consistent with Commission policy and protestors' objections were without merit.¹¹

8. The Commission found that because Commission policy does not require pipelines to allow shippers to reduce their firm entitlements due to an industrial customer permanently discontinuing operations, Northern was within its rights to eliminate that provision for all shippers.¹² The Commission rejected NMDG/MRGTF's argument that its shippers relied on the provision being eliminated and that Northern should therefore be required to show that the provision being eliminated had been abused or that elimination was necessary, as such a showing was not relevant to whether Northern's proposal was just, reasonable, and not unduly discriminatory.¹³

9. Additionally, the Commission accepted Northern's proposal to move its LDC bypass provision from its GT&C to the Firm Rate Schedules. The Commission found that moving this provision would not result in those rights being offered on an unduly discriminatory basis, nor would it limit the applicability of those rights beyond the limitations in the existing GT&C, i.e., to shippers taking service under the Firm Rate Schedules.¹⁴ The Commission further found that existing language in Northern's Firm Rate Schedules allowing it to negotiate reduction rights did not pose a risk of undue discrimination.¹⁵ The Commission determined that Northern's existing tariff language put all customers on notice that they may negotiate reduction rights at the outset, and what rights would apply absent a successful negotiation.¹⁶ The Commission explained that any such negotiations must be undertaken by the pipeline in a good faith, non-discriminatory manner, and any special terms that are negotiated must be posted pursuant to Commission regulations.¹⁷

10. The Commission rejected protestors' arguments that the proposed changes in the Firm Rate Schedules' LDC bypass provision would limit their reduction rights.¹⁸ The

¹¹ *Id.*

¹² *Id.* P 18.

¹³ *Id.*

¹⁴ *Id.* P 19.

¹⁵ *Id.* P 20.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* P 21.

Commission found that because Northern need not retain the LDC bypass provisions at all, the issue was whether the reduction rights that are retained would operate in a not unduly discriminatory manner.¹⁹ The Commission found that they would and that protested conditions, such as the revenue neutrality provision, were reasonably designed to limit Northern's obligation to reduce a customer's firm entitlement to those instances where Northern will remain revenue neutral.²⁰

III. Request for Rehearing

11. In its request for rehearing, NMDG/MRGTF state that while they accept that existing Commission policy does not require pipelines to offer hardship reduction rights to customers in the first instance,²¹ this policy is not applicable here because hardship reduction rights were already included in Northern's tariff. Accordingly, NMDG/MRGTF frame the issue presented in this case as "whether Northern's proposal to unilaterally and arbitrarily remove existing, longstanding hardship reduction rights from its tariff is supported by the facts, the law, and sound reasoning."²²

12. NMDG/MRGTF argue that the October 29 Order failed to satisfy the just and reasonable standard of section 4 of the Natural Gas Act (NGA)²³ as well as the substantial evidence standard²⁴ because it relied on the fact that pipelines need not offer hardship reduction rights in the first instance without any further analysis as to customer reliance on these provisions. NMDG/MRGTF essentially contends that certain of their members relied on the hardship reduction tariff clause in establishing firm entitlements

¹⁹ *Id.*

²⁰ *Id.* P 21.

²¹ NMDG/MRGTF, November 26, 2010 Rehearing Request at 12 (citing *Columbia Gulf*, 105 FERC ¶ 61,351 at P 11).

²² *Id.*

²³ *Id.* at 14 (citing 15 U.S.C. § 717c (2006); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1016 (D.C. Cir. 1987); *ANR Pipeline Co. v. FERC*, 771 F.2d 507, 516 (D.C. Cir. 1985); *Electricity Consumers Resource Council v. FERC*, 747 F.2d 1511, 1513 (D.C. Cir. 1984)).

²⁴ *Id.* (citing 15 U.S.C. § 717r(b) (2006); *American Public Gas Ass'n v. FPC*, 567 F.2d 1016, 1029 (D.C. Cir. 1977); *Williams Natural Gas Co. v. FERC*, 943 F.2d 1320, 1328 (D.C. Cir. 1991); *City of Charlottesville v. FERC*, 661 F.2d 945, 950 (D.C. Cir. 1981); *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970)).

and in managing their capacity.²⁵ Accordingly, NMDG/MRGTF asserts that the Commission must consider such things as customer reliance before accepting Northern's proposal to revise these provisions.²⁶

13. In support of this contention, NMDG/MRGTF invoke principles of promissory estoppel and detrimental reliance, arguing that the Commission has recognized such principles in the past,²⁷ and should do so here. NMDG/MRGTF contend that the elements of estoppel and detrimental reliance are present here. First, NMDG/MRGTF assert that a promise was made by the existence of the hardship reduction rights in section 42 of Northern's GT&C. Second, NMDG/MRGTF argue that "it is patently obvious" that the promisor (Northern) reasonably expected to induce action or forbearance of a definite and substantial character because the hardship reduction rights were contained in a Commission-approved tariff, were implemented as part of a settlement, and have remained in place for almost eighteen years. Third, NMDG/MRGTF argue that the shippers actually and reasonably relied on the tariff provisions in establishing firm entitlement levels. NMDG/MRGTF contend that because Northern did not mention the possibility that it would eliminate the hardship reduction provisions, in addition to the fact that the such provisions were in Northern's tariff for a number of years, reliance by NMDG/MRGTF members must have been reasonable. Fourth, NMDG/MRGTF argue that certain of its members' reliance on the hardship reduction provisions has been detrimental insofar as the elimination of these provisions would leave the customers without valuable protections from loss of an industrial load. NMDG/MRGTF argue that only by continuing the effectiveness of these provisions, at least through the expiration date of any current contract, can this harm be prevented.

²⁵ *Id.* at 16-17 (providing the following examples of member LDCs in which a single industrial customer represents a large portion of their load: (1) a member that has a single industrial customer that accounts for more than 50 percent of its total load in the summer and 30 percent in the winter; (2) a member that has a single industrial customer that accounts for approximately 36 percent of its throughput; (3) a member that has a single industrial customer that accounts for approximately 83 percent of its throughput on an annual basis; (4) a member that has a single industrial customer that accounts for 66 percent of its annual load; and (5) a member that has a single industrial customer that accounts for 22-25 percent of its winter load, 85-90 percent of its summer load, and approximately 50 percent of its annual load).

²⁶ *Id.* at 13.

²⁷ *Id.* at 18 (citing *USH-Braendly Hydro Assoc.*, 47 FFERC ¶ 61,448 (1989); *Transcontinental Gas Pipe Line Corp.*, 35 FERC ¶ 61,340, at 61,782, n.9 (1986) (*Transco*)).

14. NMDG/MRGTF next contend that given its members' reliance on these provisions, Northern should have coordinated the proposed termination with the expiration of existing firm contracts, and not simply changed its tariff on less than 45 days' notice. NMDG/MRGTF argue that basic fairness suggests that elimination of the long-standing hardship reduction provision should occur at the end of a contract term, when firm entitlements can be reduced, or should include the right to reduce firm contract entitlement levels in current contracts.²⁸

15. NMDG/MRGTF also asserts that recent inquiries to Northern by shippers concerning the possible use of these rights renders the timing of Northern's filing suspect. NMDG/MRGTF again point to similar provisions contained in another pipeline's tariff as supporting its position.²⁹ NMDG/MRGTF argue that Northern has not shown that customers will fully recover the costs of their contracts with Northern in the event of a bypass or industrial customer shutdown. NMDG/MRGTF further argues that such a showing is essential and rejects Northern's contention that the above-mentioned options like capacity release reduce the need for such hardship reduction provisions.³⁰

16. NMDG/MRGTF dispute Northern's contention that it is not reasonable for Northern and its other customers to bear the risk of a firm industrial customer discontinuing its operations.³¹ NMDG/MRGTF argue that in the case of an LDC bypass, where Northern continues to provide service, Northern will benefit from the absence of the hardship reduction rights because it will allow Northern to collect revenues from the LDC shipper as well as the bypassing customer.³² In the case of an industrial customer shutdown, NMDG/MRGTF argue that while Northern may bear some risk between rate cases, other shippers will not bear any risk between rate cases. NMDG/MRGTF also contend that Northern will have an opportunity to sell the capacity that the shipper no longer can use as interruptible capacity, and that Northern is permitted to keep the gain from reselling capacity that is "freed up" as a result of an exercise of hardship reduction provisions. NMDG/MRGTF contend that it is unfair to base an argument for elimination

²⁸ *Id.* at 23.

²⁹ *Id.* at 25 (citing ANR Pipeline Company, FERC Gas Tariff, Second Revised Volume 1, Third Revised Volume No. 192, Second Revised Sheet Nos. 192A, 192B, 192C, and 192 D).

³⁰ *Id.* at 27.

³¹ *Id.* at 28.

³² *Id.*

of the hardship reduction provisions on some alleged loss without taking into account any of the offsetting gains.³³

17. NMDG/MRGTF also dispute Northern's argument that removal of the hardship reduction provisions results in a more level playing field. Were the hardship reduction provision to remain available on a non-discriminatory basis to all of Northern's shippers, NMDG/MRGTF find it difficult to see how one shipper would have an advantage over another.

18. Finally, NMDG/MRGTF assert that if the Commission does not reverse the October 29 Order and reinstate section 42 of the GT&C, the Commission at a minimum should schedule a technical conference and if necessary a formal evidentiary hearing at which Northern would have the burden of proof to justify its proposal.³⁴

IV. Discussion

19. For the reasons discussed below, we deny NMDG/MRGTF's request for rehearing or, in the alternative, motion for reconsideration, and affirm the October 29 Order's acceptance of Northern's proposal to revise its hardship reduction tariff provisions. As explained in the October 29 Order, pipelines need not offer such hardship reduction tariff provisions.³⁵ The Commission has explained that "[it] does not require pipelines to permit customers to terminate or reduce their contractual obligations to pay for reserved capacity before the end of their contract terms. Rather pipelines may offer such a right on a voluntary basis, so long as there is no undue discrimination among shippers."³⁶ NMDG/MRGTF does not dispute the established policy regarding the voluntary nature of an individual pipeline's hardship reduction tariff provisions.³⁷

20. In this case, Northern proposes to eliminate from its tariff certain hardship reduction language that has existed for a number of years, rather than proposing to include hardship reduction language in the first instance. NMDG/MRGTF assert that their members have relied on these hardship reduction provisions, and that in light of this

³³ *Id.* at 30.

³⁴ *Id.* at 35.

³⁵ October 29 Order at P 17.

³⁶ *Columbia Gulf*, 105 FERC ¶ 61,351 at P 11 (citing *Florida Gas Transmission Co.*, 101 FERC ¶ 61,401, at P 10 (2002); *ANR Pipeline Co.*, 99 FERC ¶ 61,310, at 62,321, *reh'g*, 101 FERC ¶ 61,246 (2002)).

³⁷ NMDG/MRGTF, November 26, 2010 Rehearing Request at 12.

reliance, the Commission should hold Northern to a non-voluntary standard simply because it has previously offered such rights and has done so for a number of years.

21. We disagree with NMDG/MRGTF's position that the Commission must make hardship reduction provisions obligatory once offered, or that once offered Northern's burden under section 4 of the NGA to remove such tariff language becomes an NGA section 5 burden (or its functional equivalent).³⁸ As the above-cited cases indicate, the Commission allows pipelines to decide whether and how they will include hardship reduction provisions in their tariffs, with the only requirement being that if such provisions are offered, they must be offered on a not unduly discriminatory basis.³⁹ This voluntary discretion is not somehow curtailed by virtue of a pipeline having included hardship reduction provisions in the first instance. Customers that have operated for a time under such a tariff do not thereby bar the pipeline from rescinding such a provision under usual NGA section 4 procedures. Nor do reliance theories of contract law bar a pipeline from filing to remove such a voluntary tariff clause.

22. Under section 4 of the NGA, a pipeline must show that proposed tariff changes are just and reasonable and not unduly discriminatory or preferential.⁴⁰ Both the courts and the Commission have recognized that if a pipeline meets this burden, the Commission will approve the tariff change regardless of whether there may be other rates or tariff provisions that would also be just and reasonable.⁴¹ While the hardship reduction language previously included in Northern's tariff may have been just and reasonable, the mere fact of its existence does not change the Commission's analysis as to whether the revised hardship reduction provisions proposed here may also be just and reasonable. For this reason, we find that the October 29 Order appropriately relied on *Columbia Gulf* and other cases explaining the voluntary nature of a hardship reduction tariff clause, and we reject NMDG/MRGTF's argument that the voluntary tariff clause loses its discretionary nature once offered.

23. Furthermore, we reject NMDG/MRGTF's assertion that an analysis as to whether customers relied on Northern's hardship reduction tariff language is on point here. NMDG/MRGTF argue that the Commission has recognized principles of promissory

³⁸ 15 U.S.C. § 717c, 717d (2006).

³⁹ *Columbia Gulf*, 105 FERC ¶ 61,351 at P 11.

⁴⁰ 15 U.S.C. § 717c.

⁴¹ See *Exxon Corp. v. FERC*, 206 F.3d 47, at 51 (2000) (citing *Western Resources, Inc. v. FERC*, 9 F.3d 1568, 1578 (D.C. Cir. 1993); *Public Serv. Comm'n v. FERC*, 866 F.2d 487, 488 (D.C. Cir. 1989)).

estoppel and detrimental reliance in the past,⁴² and should do so as well here. However, neither of the cases cited by NMDG/MRGTF involved a claim of detrimental reliance based on the mere pre-existence of a tariff provision.⁴³

24. Even if some of NMDG/MRGTF's members assumed that the tariff language at issue would not be subject to change, such reliance was unreasonable. Northern always has a right to propose an amendment to its tariff pursuant to section 4 of the NGA. In *Columbia Gas*, the Commission evaluated a pipeline's proposal to remove the requirement that a shipper holding capacity subject to a right of first refusal need only match a competing bid of up to five years in order to retain that capacity.⁴⁴ Similar to NMDG/MRGTF's claims of reliance here, protestors in *Columbia Gas* argued that they had relied on the five-year term matching cap and that the Commission should either reject the change or grandfather existing agreements.⁴⁵ Finding the reliance argument unpersuasive, the Commission explained that a clause in the pipeline's *pro forma* service agreements put shippers on notice that the tariff is subject to change and that such changes will be incorporated into existing service agreements.⁴⁶ Moreover, the Commission stated that its policy permitting removal of the five-year term matching cap (without grandfathering existing contracts) had been in place at the time when the protester entered into the contracts it had alleged reliance on, and that shippers should have anticipated a similar outcome if the pipeline in this case decided to remove that term.⁴⁷ The Commission also explained that the protester did not state what it would

⁴² NMDG/MRGTF, November 26, 2010 Request for Rehearing at 18 (citing *USH-Braendly Hydro Assoc.*, 47 FERC ¶ 61,448 (1989); *Transco*, 35 FERC ¶ at 61,782, n.9).

⁴³ *USH-Braendly Hydro Assoc.* involved a licensee's objection to the Commission's termination of a license to construct a dam under section 13 of the Federal Power Act. The licensee in that case claimed that it detrimentally relied on Commission staff representations that it had satisfied the terms of the license and that the Commission should be estopped from finding otherwise. *USH-Braendly Hydro Assoc.*, 47 FERC at 62,394-97. *Transco* involved a recognition by the Commission that damages for breach of contract (or other contract-based causes of action such as promissory estoppel and detrimental reliance) arising from a curtailment would be prevented by a pipeline's adherence to an approved curtailment plan. *Transco.*, 35 FERC at 61,782.

⁴⁴ *Columbia Gas Transmission Corp.*, 120 FERC ¶ 61,289 (2007), *order denying reh'g*, 125 FERC ¶ 61,043 (2008) (*Columbia Gas*).

⁴⁵ *Columbia Gas*, 125 FERC ¶ 61,043 at P 4-5.

⁴⁶ *Id.* P 9.

⁴⁷ *Id.*

have done differently had it known the five-year term matching cap may be removed.⁴⁸ The Commission concluded that it is not enough that the customer may have been harmed by the pipeline's tariff change; its reliance must be reasonable.⁴⁹

25. Similarly in this case, Northern's *pro forma* service agreements contain a clause (common throughout the pipeline industry) alerting customers that the agreement is subject to change to incorporate tariff changes made pursuant to the pipeline's section 4 rights.⁵⁰ Furthermore, the Commission has never required pipelines to maintain such provisions in perpetuity and has consistently explained that pipelines are allowed to offer such provisions on a voluntary basis.⁵¹ Accordingly, we find that even if there was misguided reliance on the permanence of the hardship reduction tariff clause, NMDG/MRGTF's rehearing request must still be denied because such reliance was not reasonable and, thus, NMDG/MRGTF has not supported its claims based upon principles of detrimental reliance and promissory estoppel.

26. NMDG/MRGTF also contend that some connection should be made between the tariff revision and the termination of shippers' currently effective firm contracts. We disagree. Section 4(d) of the NGA requires public filing of a new schedule reflecting any changes to the rates, charge, classifications or services established under section 4(c) at least 30 days before the effective date of the changes.⁵² Northern's tariff change was

⁴⁸ *Id.*

⁴⁹ *Id.* P 10

⁵⁰ *See, e.g.*, Sheet No. 400A, Firm Throughput Service Agreement, 0.0.0., to Northern's Gas Tariffs, FERC NGA Gas Tariff. ("This Agreement shall incorporate and in all respects shall be subject to the GENERAL TERMS AND CONDITIONS and the applicable Rate Schedule(s) set forth in Northern's FERC Gas Tariff, as may be revised from time to time. Northern may file and seek Commission approval under Section 4 of the Natural Gas Act (NGA) at any time and from time to time to change any rates, charges or other provisions set forth in the applicable Rate Schedule(s) and the GENERAL TERMS AND CONDITIONS in Northern's FERC Gas Tariff, and Northern shall have the right to place such changes in effect in accordance with the NGA, and this Throughput Service Agreement shall be deemed to include such changes and any changes which become effective by operation of law and Commission Order, without prejudice to Shipper's right to protest the same.").

⁵¹ *Columbia Gulf*, 105 FERC ¶ 61,351 at P 11 (citing *Florida Gas Transmission Co.*, 101 FERC ¶ 61,401, at P 10 (2002); *ANR Pipeline Co.*, 99 FERC ¶ 61,310, at 62,321, *reh'g*, 101 FERC ¶ 61,246 (2002)).

⁵² 15 U.S.C. § 717c(d).

filed with the 30 days advance notice required by the NGA, and we decline to require any additional notice based on the reliance theory rejected above.

27. NMDG/MRGTF object to the sufficiency of the facts and reasons supporting the October 29 Order's acceptance of Northern's proposal, arguing that the filing must stand or fall based on a consideration of the detrimental reliance principles and the proffered justifications for eliminating the hardship reduction rights.⁵³ As demonstrated above, the Commission considered and rejected NMDG/MRGTF's detrimental reliance argument. Moreover, we affirm the determinations in the October 29 Order "[w]here the Commission has not required these rights to be offered in the first instance, Northern's proposal to eliminate them for all shippers is just, reasonable, and not unduly discriminatory," and that further showings—that the existing hardship reduction provisions have been abused or that their elimination is necessary—are not needed.⁵⁴ There is no requirement that Northern show its existing provisions have been somehow abused before it can file to revise its hardship reduction provisions.⁵⁵

28. Instead, Northern is required to provide facts and reasons sufficient to show its proposed tariff revision to be just, reasonable, and not unduly discriminatory. In this case, where Northern is not under any obligation to offer the hardship reduction provisions at issue, the Commission determined that Northern had met this burden by showing that its proposal did not limit the applicability of these rights or provide them in a manner that would be unduly discriminatory. The October 29 Order's finding was based on the fact that Northern's proposal was adequate under NGA section 4 and consistent with the voluntary nature of a hardship reduction tariff clause. Therefore, the Commission did not specifically address Northern's contention that the hardship reduction provisions were no longer needed in an open access environment.

29. Nonetheless, as a matter of clarification, we accept Northern's contention that other alternatives, such as the option to release capacity, provide shippers with greater alternatives to recover costs of stranded capacity. While such options may not result in the shipper being in the same position, dollar for dollar, as if it were able to invoke the pre-existing hardship reduction provisions, it is not Northern's burden to show this to be

⁵³ NMDG/MRGTF, Rehearing Request at 23.

⁵⁴ October 29 Order, 133 FERC 61,103 at P 18.

⁵⁵ *Columbia Gas Transmission Corp.*, 124 FERC ¶ 61,123, at P 24 (2008) ("When a pipeline makes a section 4 filing under the NGA, its only burden is to show that its proposed change is just and reasonable.").

the case before it can amend its tariff. In sum, Northern was only required to show that its proposed tariff provisions were consistent with the requirements of section 4 of the NGA and Commission policy. As explained in the October 29 Order, Northern made that showing.⁵⁶ Accordingly, NMDG/MRGTF's request for rehearing or, in the alternative, motion for reconsideration, is denied.

The Commission orders:

NMDG/MRGTF's request for rehearing or, in the alternative, motion for reconsideration, is denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁵⁶ Although NMDG/MRGTF asserts that numerous issues of fact remain unresolved—e.g., whether these rights were abused by shippers, whether shippers detrimentally relied on these rights, and whether the revised hardship reduction tariff language would promote an even playing field—such facts are not material to whether Northern has met its burden under section 4 of the NGA. Accordingly, no additional procedures are necessary to resolve this matter. *See, e.g., Consumers Power Co.*, 58 FERC ¶ 61,323, at 62,045 (1992) (“The Commission is only required to provide a trial-type hearing if the material facts in dispute cannot be resolved on the basis of written submissions in the record.”).