

135 FERC ¶ 61,207
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. RP11-2067-000

ORDER ACCEPTING TARIFF RECORDS AND DENYING IN PART REQUEST
FOR WAIVERS

(Issued May 31, 2011)

1. On April 29, 2011, Northern Natural Gas Company (Northern) filed tariff records proposing to expand the list of generally available contract provisions that it may offer without rendering certain agreements non-conforming and thus requiring filing for Commission approval.¹ However, for service agreements such as Northern's, which contain Memphis clauses, the Northern Municipal Distributors Group (NMDG)² and the Midwest Region Gas Task Force Association (MRGTF)³ (jointly NMDG/MRGTF)

¹ See Appendix.

² 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.

³ 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, and Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin, dba St. Croix Gas, Wisconsin; and Watertown, South Dakota.

intervened and filed comments asking the Commission to reject Northern's proposal or, at a minimum, to require Northern to clarify its proposal.

2. As discussed below, the Commission accepts Northern's filing to be effective June 1, 2011, and grants in part, and denies in part, requested waivers.

Background

3. Northern states that it recently conducted a review of its contracts, based on guidance provided by the Commission in its orders stemming from *Southern Star Central Pipeline, Inc.*⁴ and by the Commission's staff (Staff) to determine if there are material deviations in its transportation service agreements (TSA) or in other types of agreements (non-TSA). Northern observes that the Commission has stated that a material deviation is any provision in a service agreement that (1) goes beyond filling in the blank spaces with the appropriate information allowed by the tariff, and (2) affects the substantive rights of the parties.⁵ According to Northern, based on guidance from the Staff, it has determined that it has entered into agreements that may be non-conforming but have not been filed for Commission approval (Pre-existing Agreements).

4. Northern states that, on February 12, 2003, in Docket No. RP03-235-000, the Commission issued an order approving section 58 of the General Terms and Conditions (GT&C) of Northern's tariff, allowing it to include certain agreed-upon provisions in its service agreements.⁶ Northern explains that the inclusion of such provisions allows the agreements to be considered as conforming. Through the review of its agreements and tariff, continues Northern, it has determined that it has the authority in the tariff to agree to additional provisions that currently are not included in GT&C section 58. According to Northern, these provisions are primarily related to billing, construction of facilities, and credit, and the company has determined that, by expanding section 58, most of its Pre-existing Agreements will be conforming. Northern maintains that the revision of GT&C section 58 will allow it to enter into TSAs with its shippers in an efficient and timely manner without creating non-conforming agreements that would require filing with the Commission. Accordingly, Northern proposes to (1) add new provisions to its tariff that clarify its ability to enter into agreements with its shippers, consistent with its tariff and Commission policy, (2) expand GT&C section 58 to include these additional

⁴ 125 FERC ¶ 61,056 (2008) (*Southern Star*).

⁵ Northern cites *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221, at 62,010 (2001).

⁶ *Northern Natural Gas Co.*, 102 FERC ¶ 61,171 (2003).

provisions, as well as provisions currently authorized by Northern's tariff, and (3) post on its website any non-TSAs containing such provisions.

5. Northern explains that it has reviewed its tariff and determined that it provides for Northern and a shipper to agree to certain provisions, but that the pipeline's *pro forma* service agreements do not include a place to document such provisions. Northern further explains that these additional provisions were not included initially in section 58 because negotiations with respect to those provisions generally took place before or after execution of the service agreement or when the need for such provisions was not anticipated at the time that the service agreement was executed. Therefore, continues Northern, in some instances, the agreements reflecting those provisions are contained in separate non-TSAs. For example, adds Northern, in the case of expansion projects, it historically has executed precedent agreements which may or may not have been filed with the Commission, depending on the authority for the project (case-specific Natural Gas Act (NGA) section 7(c) or blanket certificate authority). According to Northern, in accordance with Commission policy, these precedent agreements contain some provisions that survive after the effective date of the TSAs, such as credit requirements for mainline expansion costs.⁷

6. Northern states that it currently has a *pro forma* amendment in its tariff that includes an "Other" paragraph in which the Commission has allowed Northern to include certain types of provisions agreed to by Northern and the shipper. Northern points out that the allowable provisions are specifically identified in GT&C section 58. Northern adds that these provisions are included in its transactional report postings.

Description of the Filing

7. Northern states that its tariff provides for non-telemetered operational zones and that the provision for these zones includes a load forecast formula. Northern proposes to include a provision on Sheet No. 259 that would allow it to agree with a shipper to certain specifics for implementation of the non-telemetered operational zone. For example, continues Northern, this could include a method for notification of the nomination volume related to the specific formula. Northern states that the agreed specifics would be determined on a not unduly discriminatory basis and would not be inconsistent with Northern's tariff.

⁷ Northern asserts that the Commission has stated that security requirements for mainline expansion costs should be included in the precedent agreement and not the tariff. *Creditworthiness Standards for Interstate Natural Gas Pipelines, policy statement on creditworthiness*, FERC Stats and Regs. ¶ 31,191, at P 18 (2005).

8. Northern proposes to add a provision to Sheet No. 275 to clarify that it is not responsible for ensuring that sufficient capacity exists on the upstream or downstream facilities to allow a shipper's gas to flow. Northern asserts that this is consistent with the nomination and confirmation process. Northern also states that it typically has included this provision in precedent agreements, and it is now adding such a provision to the tariff to avoid the necessity of filing the precedent agreements if they are considered to impact the transportation transaction and thus constitute a material deviation. Northern emphasizes that it will post on its website all Pre-existing Agreements containing similar provisions.

9. Northern also has added a provision on Sheet No. 285B specifically stating that it may enter into credit agreements with shippers to implement the provisions of section 46 of the tariff and/or related to construction of facilities. Northern adds that a TSA and such a credit agreement will be treated as one unitary and unseverable document, which ensures that a default under one of the agreements would be considered a default under the other. Northern states that this would be handled under the terms of the tariff. Northern also states that Pre-existing Agreements containing similar provisions will be posted on its website.

10. Finally, Northern has revised Sheet No. 296 to include a section entitled "Miscellaneous Provisions in Service Agreements or Other Documents." Northern points out that this section contains a provision that allows it to agree to provide market support to a local distribution company. While Northern acknowledges that this provision does not impact transportation directly, Northern explains that it has received guidance from Staff that such a provision may be a material deviation that must be filed. Northern points out that the Commission has ruled that market support dollars are not prohibited.⁸

A. Additions to Section 58

11. Northern explains that section 58 allows it to enter into separate agreements with its shippers containing the provisions listed in that tariff section or to include the provisions in the TSAs. Northern proposes to add the provisions discussed above, as well as other provisions currently allowed by its tariff, to section 58 of the GT&C (Sheet Nos. 308-312). The currently allowed provisions that Northern has included in section 58 are as follows:

⁸ *Northern Natural Gas Co.*, 110 FERC ¶ 61,321, at 62,249, *order on reh'g*, 111 FERC ¶ 61,379 (2005) (finding that Northern's agreement to provide payment to a shipper to use in promoting load growth served by Northern was not prohibited by Commission policy).

- Sheet No. 137 provides that, unless otherwise agreed, under a Firm Deferred Delivery Agreement that has been consolidated, if the agent fails to pay an invoice, all costs shall be distributed to the shippers on a *pro rata* basis.
- Sheet Nos. 209-211 provide for various agreements regarding measurement and measurement facilities, such as the calculation of heating value, the ownership of chromatographs, spot sampling frequency, and the responsibility for meters.
- Sheet Nos. 213-227 allow for reimbursement for facility costs. To the extent a non-TSA contains transportation provisions related to the reimbursement for facility costs not included in the TSA, the non-TSA will be posted.
- Sheet No. 216 provides for agreements concerning billing disputes.
- Sheet No. 233 provides for agreements for alternative dispute resolution.
- Sheet Nos. 264-265A provide for agreements regarding billing, such as the default order of contracts or predetermined allocations for billing throughput quantity.
- Sheet No. 288 allows Northern to charge a marketing fee for capacity release transactions.
- Sheet No. 292A allows Northern to waive Daily Delivery Variance Charges.

B. Posting of Non-TSAs

12. Northern proposes that it be allowed to include the provisions listed in section 58, not only in the “Other” paragraph of the TSA, but also in non-TSAs, which it would post on its website no later than the first business day following execution of the agreement or the first nomination under the transaction.⁹ Northern points out that the Commission has stated that posting ensures public disclosure of all significant information that the parties to the conforming agreement have included in the blanks in the *pro forma* service agreement.¹⁰ Specifically, Northern observes that the Commission has stated that this permits the Commission and interested parties to monitor individual conforming transactions for undue discrimination without the need for any filing with the

⁹ Northern states that its posting would be consistent with the reporting requirements outlined in the Commission’s regulations at 18 C.F.R. § 284.13 (2011), i.e., downloadable and accessible for 90 days. Provisions included in the “Other” paragraph of the TSA will be posted in the Transaction Report.

¹⁰ *Monroe Gas Storage Co., LLC*, 128 FERC ¶ 61,033, at P 15 (2009).

Commission.¹¹ For example, Northern states that it would post on its website precedent agreements containing credit provisions that are in compliance with the tariff rather than filing the TSAs that are in and of themselves conforming. Consistent with the requirements for transactional reporting, Northern states that the agreements will be posted for 90 days.

13. Northern asserts that there is significant benefit to itself and its shippers in posting these agreements for 90 days rather than filing them 30 days in advance, as is required for a non-conforming agreement. Northern also contends that the 30-day filing requirement is not necessary because these types of provisions already will have been approved by the Commission. Moreover, states Northern, the 30-day requirement can cause detrimental impacts on Northern and its shippers with respect to timely completion of a project or transaction.

C. Miscellaneous Changes

14. Northern also proposes to include a provision in section 58 stating that service agreements that conform with the *pro forma* service agreement in effect at the time the service agreement is entered into will continue to be conforming even if subsequent changes to the *pro forma* service agreement have been filed and accepted. Additionally, Northern states that the information on Sheet No. 308 related to Sheet Nos. 125A, 135, 138, 141, 142C, 147, and 142A was moved in its entirety to Sheet No. 309. Finally, Northern states that information on Sheet No. 309 related to Sheet Nos. 212, 226, 264, 275, 288, and 297 has been moved to Sheet Nos. 310 and 311.

D. Waivers

15. Northern states that its proposed tariff changes with respect to posting non-TSAs require that the agreements be posted no later than one business day after the execution of the agreement or prior to the first nomination under the transaction. However, Northern explains that this would require Pre-existing Agreements to be posted, but because they are in effect already, it would not be possible to comply with the proposed posting requirements. Accordingly, Northern requests waiver of the proposed tariff changes to allow it to post its Pre-existing Agreements that, upon approval of this filing, will be deemed to be conforming agreements.

16. Northern states that it has not included in section 58 the provision related to credit agreements and TSAs being unitary and unseverable or the provision relating to the shipper's obligation to ensure the existence of upstream/downstream capacity. Northern points out that many of its Pre-existing Agreements contain these provisions, and even

¹¹ *Id.*

after approval of this filing, such agreements will not be conforming. Therefore, Northern requests a waiver of the Commission's requirement to file these agreements, as provided in 18 C.F.R. §§ 134.1(d) and 154.112(b) (2011), and requests that it be allowed instead to post the agreements in lieu of filing.

Notice and Interventions

17. Public notice of Northern's filing was issued on May 3, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.¹² Pursuant to Rule 214,¹³ all timely-filed motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties. On May 11, 2011, NMDG/MRGTF filed a motion to intervene and comments asking the Commission to reject Northern's proposal, or at a minimum, require Northern to clarify its proposal.

18. On May 18, 2011, Northern filed an answer to NMDG/MRGTF's comments. While Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁴ prohibits such an answer, the Commission will accept Northern's answer because it has provided information that has assisted the Commission in its decision-making process.

NMDG/MRGTF's Comments

19. NMDG/MRGTF contend that it is impossible to determine at this time what changes to Northern's *pro forma* agreements might be filed and accepted or how any such changes might affect existing service agreements. Moreover, they recognize that the Commission subsequently may require changes on its own motion. NMDG/MRGTF argue that these problems could be exacerbated if the terms of the existing service agreements have a number of years remaining. NMDG/MRGTF point out that the Commission has recognized that it must be able to ensure that provisions in agreements are just and reasonable and not unduly discriminatory or preferential.¹⁵

20. NMDG/MRGTF argue that, because any subsequent changes to Northern's *pro forma* service agreements will have been determined by the Commission to be just,

¹² 18 C.F.R. § 154.210 (2011).

¹³ 18 C.F.R. § 385.214 (2011).

¹⁴ 18 C.F.R. § 385.213(a)(2) (2011).

¹⁵ *Southern Star Central Gas Pipeline, Inc.*, 125 FERC ¶ 61,082, at P 6-7 (2008) (citations omitted).

reasonable, non-discriminatory, and non-preferential, they should be reflected in all then-existing *pro forma* service agreements. MNDG/MRGTF maintain that this is particularly true in cases where any previously-approved provisions deviate from, or are at odds with, newly-approved provisions in the *pro forma* service agreements.

21. NMDG/MRGTF also state that Northern has proposed certain changes to section 40 of its GT&C concerning delivery and receipt points,¹⁶ which it claims are intended to clarify that the pipeline is not responsible for ensuring that necessary capacity exists on the upstream or downstream facilities to allow a shipper's gas to flow. However, NMDG/MRGTF claim that the proposed changes to section 40 go further because Northern also proposes to delete current tariff language requiring that (1) delivery points be specified on Appendix A of the service agreements and (2) the transportation service agreement or Attachment specifically references "Primary Receipt Point(s)" or "Alternate Receipt Points."

22. NMDG/MRGTF contend that firm capacity is tight in Northern's market area and that allocations under section 29 of its GT&C are dependent on whether receipt points are designated as primary or secondary. While NMDG/MRGTF acknowledge that the *pro forma* Firm Throughput Service Agreement does provide that "[t]he contract maximum daily quantities and primary receipt and delivery points are set forth on Appendix A, and if necessary, Appendix B," NMDG/MRGTF submit that the *pro forma* Firm Throughput Service Agreement should be designed to incorporate the various tariff provisions and not to set forth additional tariff rights, obligations, or conditions of service.

23. NMDG/MRGTF state that Northern's tariff includes specific language pertaining to receipt and delivery points, which is incorporated by reference to the "Throughput Rate Schedule" in the current language in section 40 of the tariff. NMDG/MRGTF also state that section 2 of Rate Schedule TF provides that a firm transportation shipper may use any alternate delivery point consistent with its service area (Market Area, Field Area, or both). Further, state NMDG/MRGTF, with respect to alternate receipt points, section 2 provides as follows: "All receipt points on the system will be available for use as alternate firm receipt points within the area provided by the contract and subject to operational considerations."¹⁷ NMDG/MRGTF submit that the language pertaining to receipt and delivery points in the current section 40 should be retained. They do not object to the additions proposed by Northern that address the shipper's responsibilities with respect to upstream and downstream capacity.

¹⁶ See First Revised Sheet No. 275, superseding Original Sheet No. 275.

¹⁷ See Fourth Revised Sheet No. 102.

24. Further, state NMDG/MRGTF, Northern is proposing to include the provisions listed in section 58 not only in TSAs, but also in non-TSAs, which Northern proposes to post on its website. NMDG/MRGTF state that there does not appear to be a clear definition of non-TSAs, nor is there any listing of the specific types of agreements that would be subject to posting. They therefore ask that Northern be required to specify precisely what types of non-TSAs are included in this proposal.

25. Finally, state NMDG/MRGTF, Northern proposes that it and a shipper may agree to specific requirements for implementation of the non-telemetered Operational Zone.¹⁸ NMDG/MRGTF seek clarification as to how shippers will be able to determine whether such requirements are unduly discriminatory or inconsistent with the tariff and whether Northern plans to post the requirements under the procedures set forth in proposed sections 58.A and 58.B.

Northern's Answer

26. Northern states that NMDG/MRGTF appear to misunderstand the intent of the proposed provision stating that a service agreement that conformed with the *pro forma* service agreement at the time it was entered into does not become non-conforming as the result of subsequent changes to the *pro forma* service agreement. Northern argues that the substantial administrative burden of amending or filing all existing agreements whenever changes are made to the *pro forma* service agreements is unreasonable and unnecessary. Northern emphasizes that its *pro forma* service agreements are short form agreements. In fact, Northern points out that, in 1995, it amended its *pro forma* service agreements to condense and simplify them because the substantive provisions were in the rate schedules or the GT&C and did not need to be repeated in the service agreements.¹⁹

27. Northern next responds to NMDG/MRGTF's objection to the changes made on First Revised Sheet No. 275 regarding receipt and delivery points, characterizing it as deleting receipt or delivery points from the tariff. To the contrary, Northern states, it proposes those changes because the current language is incorrect. Specifically, contends Northern, the current language states that the receipt and delivery points "shall be at a mutually agreeable interconnect between Northern's facilities and the facilities of Shipper or Shipper's designee." Northern notes that most service agreements list more than one interconnect, and some interconnects may be between Northern and a third party unrelated to the shipper(s). Northern also observes that the current language provides that the interconnection "shall be referred to as Primary Receipt Point(s) or Alternate Receipt Point(s)" although its service agreements do not list alternate receipt points.

¹⁸ Second Revised Sheet No. 259, superseding First Revised Sheet No. 259.

¹⁹ *Northern Natural Gas Co.*, 73 FERC ¶ 61,230 (1995).

Northern contends that the language in this tariff section has not been updated, although the Commission's policies and Northern's firm service rate schedules have been modified over the years. Northern emphasizes that the rate schedules and GT&C of its tariff address the use of alternate receipt points under firm service agreements, and Northern's proposed changes do not diminish shipper rights associated with receipt and delivery points, but rather eliminate obsolete tariff language that should be updated.

28. Northern responds that NMDG/MRGTF's request that it should be required to specify which types of non-TSAs are included in the proposal is unnecessary. Northern emphasizes that it proposes that any agreement other than a service agreement that includes transportation provisions that survive the execution of the service agreement will be posted. Thus, Northern states that there is no need to specify in the tariff the various types of agreements that will be posted. According to Northern, the requested clarification could lead to confusion regarding the types of agreements that are included, despite Northern's intent to include all types of non-TSAs.

29. Finally, Northern addresses NMDG/MRGTF's concern as to how shippers will be able to determine whether the requirements agreed to by Northern and a shipper concerning implementation of non-telemetered operational zones are unduly discriminatory or inconsistent with Northern's tariff. Northern states that it has referenced in section 58 the provision that allows negotiation of requirements for non-telemetered operational zones. Therefore, explains Northern, any such agreed-to requirement will be included in Northern's transactional report (if in a service agreement) or posted on the pipeline's website (if in a non-TSA agreement other than a service agreement). Northern asserts that this will permit interested parties to review the requirements to determine whether they are unduly discriminatory or inconsistent with the tariff.

Commission Analysis

30. Northern's currently-effective tariff is structured so that it includes, in section 58 of the GT&C, a list of certain provisions that Northern and a shipper may agree upon, on a not-unduly-discriminatory basis. The inclusion of such provisions in a TSA would not be considered to be material deviations from the *pro forma* service agreement. Northern here proposes to expand the section 58 list to include other provisions, which primarily relate to billing, construction of facilities, and credit. Northern also proposes to include new provisions that clarify the ability of Northern and its shippers to enter into agreements consistent with Northern's tariff and Commission policy. Finally, Northern proposes to post any non-TSAs that include provisions listed in section 58 on its Internet website.

31. Northern's proposal makes clear what provisions may be negotiated by Northern and a shipper and provides transparency to all shippers as to the provisions that have been

negotiated in service agreements and non-TSA agreements. The Commission therefore will accept Northern's proposal, as discussed below.

A. Incorporating Changes to *Pro Forma* Service Agreement

32. Northern proposes that, if a service agreement conforms to the *pro forma* service agreement in effect at the time the transaction is entered into, it will continue to be deemed to be conforming if subsequent changes to the *pro forma* service agreement have been accepted by the Commission. NMDG/MRGTF argue that this proposal should be rejected or clarified because any subsequent changes should be reflected in all existing service agreements.

33. The Commission agrees that existing service agreements should conform to the currently-effective *pro forma* service agreement or be filed as a non-conforming agreement. However, for service agreements with *Memphis* clauses,²⁰ the Commission has found that existing agreements that conformed to the *pro forma* agreement when they were executed should automatically incorporate subsequent changes to the terms and conditions in the tariff, including corresponding changes implemented through a revision to the *pro forma* agreement.²¹ Therefore, any subsequent changes to the *pro forma* service agreement apply to the existing agreements without the need to amend the agreements to incorporate the changes or to file the agreements for Commission approval. It is therefore unnecessary to provide additional clarification as requested by NMDG/MRGTF.

B. Changes to GT&C Section 40 -- Delivery and Receipt Points

34. Northern proposes to modify section 40 to clarify that it is not responsible for ensuring that the necessary capacity exists on the upstream or downstream facilities for a shipper's gas to flow. Northern's proposed tariff modifications to section 40 include the deletion of certain language relating to delivery and receipt points. NMDG/MRGTF contend that Northern's tariff should retain certain of the language proposed to be deleted, which states that Appendices A and B to the *pro forma* service agreement will specify the Premium and Alternate receipt points. NMDG/MRGTF argues that the *pro forma* service agreement should incorporate the various tariff provisions and should not set forth additional tariff rights, obligations, or conditions of service.

²⁰ *United Gas Pipe Line Co. v. Memphis Light, Gas and Water Division*, 358 U.S. 103 (1958).

²¹ *See Texas Gas Transmission, LLC*, 130 FERC ¶ 61,114, at P 15-16 (2010).

35. Northern responds that the language it proposes to delete is incorrect, for it has not been updated as the Commission's policies and Northern's rate schedules have been modified over the years. Northern contends that the rate schedules and GT&C address the use of alternate receipt points under firm service agreements, and that Northern's proposed changes do not diminish any shipper rights associated with receipt and delivery points. Based on Northern's explanation, the Commission will accept Northern's proposal to delete obsolete tariff language.

C. Filing non-TSAs

36. NMDG/MRGTF request that Northern be required to specify the types of non-TSAs that are included in its proposal. The Commission does not agree. As Northern explains in its Answer, there is no need to specify in the tariff the types of agreements that may be posted, because *any* agreement other than a service agreement that includes transportation provisions that survive the execution of the service agreement will be posted. Such a list would be administratively burdensome as well as unnecessary. The Commission will not require Northern to so modify its tariff.

37. In addition to filing non-conforming service agreements, Commission policy also requires pipelines to file all documents or communications that include terms and conditions which deviate from the *pro forma* service agreement and affect the substantive rights of the parties under the tariff or service agreement. In the instant proceeding, Northern has proposed to post such documents on its website. However, Northern's proposal is limited to agreements containing negotiated terms and conditions of service which the Commission already has found to be permissible. Northern's proposal is acceptable because it will provide transparency through the posting of non-TSAs that include negotiated provisions included in GT&C section 58.

D. Non-Telemetered Operational Zones

38. NMDG/MRGTF seek clarification as to how shippers will be able to determine whether the requirements agreed to between Northern and a shipper regarding the implementation of non-telemetered operational zones are unduly discriminatory or inconsistent with Northern's tariff.

39. Northern answers that interested shippers will have the opportunity to review any non-telemetered requirements because any such agreed-to requirements will either be included in the transactional report (if they are in service agreements) or posted on Northern's website (if the requirements are in non-TSAs). This addresses NMDG/MRGTF's concern and no further clarification is needed.

E. Request for Waivers

40. Northern seeks waiver of the proposed tariff changes to allow Northern to post its Pre-existing Agreements that, upon approval of this filing, will be conforming. Because the Commission is accepting Northern's proposed tariff modifications, the now-conforming Pre-existing Agreements need not be filed, and the waiver is granted.

41. Northern further seeks waiver of the Commission's requirement to file the agreements containing provisions related to (1) credit agreements and TSAs being unitary and unseverable or (2) the shipper's obligation to ensure the existence of upstream/downstream capacity. Northern has proposed in the instant filing to add these provisions to its tariff, but not to section 58. Northern states that many of its Pre-existing Agreements contain these provisions and that, even after approval of this filing, these Pre-existing Agreements will not be conforming. Therefore, Northern requests that it be allowed to post the agreements on its website in lieu of filing. The Commission will deny the requested waiver. As Northern's tariff is structured, provisions in service agreements that deviate from the *pro forma* service agreement and that are not contained in GT&C section 58 are considered to be non-conforming and must be filed with the Commission. Similarly, with the Commission's acceptance of the instant filing, Northern will be authorized to post non-TSAs that contain section 58 provisions on its web site in lieu of filing. All other non-TSA agreements that contain transportation provisions that are not contained in GT&C section 58 must be filed for Commission review to determine whether the provisions are unduly discriminatory or affect the substantive rights of the parties. Northern's waiver request would permit certain non-TSAs to circumvent such Commission review. For these reasons, Northern's request for waiver is denied.

The Commission orders:

(A) Northern's proposed tariff records are accepted, effective June 1, 2011, as discussed above.

(B) Northern's requests for waiver are granted in part and denied in part, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix

Northern Natural Gas Company
FERC NGA Gas Tariff
Gas Tariffs
Accepted Effective June 1, 2011

Sheet No. 201B, G T and C Table of Contents, 1.0.0
Sheet No. 259, G T and C Nominations, 2.0.0
Sheet No. 275, G T and C Pressure, 1.0.0
Sheet No. 285B, G T and C Credit Worthiness, 1.0.0
Sheet No. 296, G T & C Miscellaneous Provisions in Service Agreements, 1.0.0
Sheet No. 308, G T and C Cross-Reference, 1.0.0
Sheet No. 309, G T and C Cross-Reference, 1.0.0
Sheet No. 310, G T and C Cross-Reference, 1.0.0
Sheet No. 311, G T and C Cross-Reference, 0.0.0
Sheet No. 312, Reserved for Future Use, 0.0.0