

137 FERC ¶ 61,087
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 28, 2011

In Reply Refer To:
Northern Border Pipeline
Company
Docket No. RP11-2639-001

Northern Border Pipeline Company
717 Texas Street, Suite 2400
Houston, TX 77002-2761

Attention: John A. Roscher
Director, Rates & Tariffs

Reference: Non-Conforming Negotiated Rate Agreement

Ladies and Gentlemen:

1. On September 30, 2011, as amended on October 11, 2011, Northern Border Pipeline Company (Northern Border) filed for review, pursuant to section 154.1(d) of the Commission's regulations,¹ tariff records² to incorporate into its tariff a non-conforming negotiated rate service agreement that materially deviates from its Form of Service Agreements. Northern Borders' revised tariff records are accepted effective the later of November 1, 2011, or the date on which the Princeton Lateral Project (Princeton Lateral) facilities are placed into service, subject to the conditions described below. When Northern Border files in compliance with section 157.20(c)(2) it should also make this informational filing with the Commission through the eTariff portal using a Type of Filing Code 620. In addition, Northern Border is advised to include as part of the eFiling

¹ 18 C.F.R. § 154.1(d) (2011).

² PART 1, TABLE OF CONTENTS, 4.1.0; 4.8 - Statement of Rates, Statement of Negotiated Rates, 2.1.0; 6.42 - GT&C, Non-Conforming Agreements, 3.1.0; 8.4- Non-Conforming Agmts, Ameren Illinois Company FTL-1 Agmt (#PL001F), 0.1.0 to Northern Border Tariffs, FERC NGA Gas Tariff.

description, a reference to Docket No. CP10-468-000, and the actual in-service date for Princeton Lateral.³

2. Northern Border notes that on July 2, 2010, it submitted an application for a certificate of public convenience and necessity proposing to construct, own, and operate the Princeton Lateral. Northern Border states that the Princeton Lateral was requested by Ameren Illinois Company d/b/a Ameren Illinois (Ameren) to provide direct transportation service into Ameren's service territory and that Ameren entered into a precedent agreement under which it agreed to contract for the entire capacity of the project. On November 22, 2010, the Commission's Order Issuing Certificate approved Northern Border's application.⁴ Northern Border states that it anticipates placing the Princeton Lateral into service on or about November 1, 2011.

3. In the instant filing, Northern Border submitted a new Rate Schedule FTL-1 negotiated rate service agreement with Ameren, which contains terms that deviate from Northern Border's FTL-1 Form of Service Agreement. The service agreement contains non-conforming provisions related to creditworthiness and termination conditions. Northern Border notes that Ameren is the sole holder of firm capacity on the Princeton Lateral. Northern Border states that such provisions are required to provide Northern Border with the ability to recover the cost of constructing the project in the event Ameren fails to maintain creditworthiness.

4. Public notice of Northern Border's filing was issued on October 3, 2011. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁵ Pursuant to Rule 214,⁶ 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. No party filed a protest or adverse comments.

5. The Service Agreement contains a non-conforming provision in section 10.2(a) that allows Northern Border to terminate the service agreement upon written notice to the shipper if: (i) "Shipper or any Guarantor of its obligations fails to provide a Credit Alternative or replacement Credit Alternative within ten days of notice by Company to Shipper;" or (ii) "a petition is filed, under any Chapter of the United States Bankruptcy

³ *Electronic Tariff Filings*, 130 FERC ¶ 61,047, at P 17 (2010).

⁴ *Northern Border Pipeline Company*, 133 FERC ¶ 62,159 (2010).

⁵ 18 C.F.R. § 154.210 (2011).

⁶ 18 C.F.R. § 385.214 (2011).

Code, by or against Shipper, any affiliate of Shipper or any Guarantor of shipper's obligations hereunder;" or (iii) "Shipper fails to pay when due any sum for which it is obligated under this Service Agreement." The Service Agreement further provides in section 10.2(c) that "Any termination pursuant to section 10.2... shall be effective upon Shipper's receipt of Company's termination notice."

6. Under the Natural Gas Act, the termination of a shipper's contract is an abandonment of service.⁷ The Commission's regulations and policy⁸ require the pipeline to provide the Commission with at least 30 days notice of termination to ensure that the shipper has the opportunity to request Commission review before abandonment occurs, and provides the Commission sufficient time to undertake that review to ensure that the termination is in the public convenience and necessity. Northern Border's non-conforming service agreement in section 10.2(c) providing that the termination is effective upon the customer's receipt of the termination notice is inconsistent with the Commission's regulations and policy since it does not provide 30 days notice to the Commission to afford it the opportunity to review the service abandonment. In *Bison Pipeline, LLC*,⁹ the Commission recently found that a nearly identical non-conforming termination provision was inconsistent with the Commission's regulations and directed the pipeline to modify its non-conforming agreement. While parties may agree to immediately suspend further service as a consequence of some triggering event, the termination and abandonment of the service cannot occur absent the 30-day notice to the Commission.

7. Therefore, Northern Border is directed to modify the service agreement within 60 days of the date of this order to comply with the Commission's regulations requiring the Commission be notified at least 30 days prior to the effective date of the termination of the agreements.

By direction of the Commission. Commissioner Spitzer is not participating.

Kimberly D. Bose,
Secretary.

⁷ 15 U.S.C. § 717f (2006).

⁸ 18 C.F.R. § 154.602; *see Northern Natural Gas Co.*, 103 FERC ¶ 61,276, at P 51-56 (2003).

⁹ 133 FERC ¶ 61,256, at P 5 (2010), *reh'g pending*.