

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

Northern Natural Gas Company

Docket No. RP03-398-009

ORDER ON COMPLIANCE

(Issued September 22, 2004)

1. On June 23, 2004, Northern Natural Gas Company (Northern), filed revised tariff sheets, listed in the Appendix, to comply with the Commission's Order on Rehearing, Clarification and Compliance, issued on June 2, 2004.<sup>1</sup> Northern's revised tariff sheets contain changes to its tariff provisions concerning hourly takes, LFT (Limited Firm Transportation) service, and PDD (Preferred Deferred Delivery) rollover charge. In this order, the Commission accepts Northern's proposed tariff sheets, subject to modification. This decision benefits customers by ensuring Northern's tariff provisions are consistent with Commission policy.

**Background**

2. On May 1, 2003, Northern filed a general rate increase application, pursuant to section 4 of the Natural Gas Act. On May 30, 2003, the Commission accepted and suspended Northern's tariff sheets to become effective November 1, 2003, and, *inter alia*, directed staff to convene a technical conference concerning nine proposals by Northern to change its terms and conditions of service.<sup>2</sup> Following the technical conference, the Commission issued an order on October 31, 2003,<sup>3</sup> requiring changes in some of the provisions and rejecting others. On November 21, 2003, Northern filed revised tariff

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<sup>1</sup> Northern Natural Gas Co., 107 FERC ¶ 61,252 (2004) (June 2, 2004 Order).

<sup>2</sup> Northern Natural Gas Co., 103 FERC ¶ 61,266 (2003) (May 30, 2003 Order).

<sup>3</sup> Northern Natural Gas Co., 105 FERC ¶ 61,172 (2003) (October 31, 2003 Order).

sheets to comply with the Commission's October 31, 2003 Order. This was followed by the June 2, 2004 Order which accepted Northern's tariff sheets as complying with the October 31, 2003 Order, subject to changes in the provisions concerning hourly takes, LFT service, and the PDD rollover fee. Northern's instant compliance filing addresses the conditions discussed by the Commission in the June 2, 2004 Order.

### **Public Notice and Interventions**

3. Public notice of Northern's compliance filing was issued on June 25, 2004 with protests due as provided in section 154.210 of the Commission's regulations.<sup>4</sup> NMDG/MRGTF filed a protest, which is discussed below. On July 24, 2004, Northern filed an answer to NMDG/MRGTF's protest. While the Commission's regulations do not provide for answers to protests, the Commission will accept Northern's answer since it aids our consideration of the issues raised by the protest.

### **Discussion**

#### **I. Hourly Takes**

4. Prior to this case, Northern's tariff language permitted it to restrict hourly takes of gas to 6.3 percent (16 hour gas day) of a shipper's firm entitlement to protect system operational integrity. In this proceeding, Northern proposed to revise the tariff to permit Northern and a shipper to agree to an hourly take requirement of less than 6.3 percent when a shipper is able to accommodate a more uniform hourly take limitation. Northern argued that permitting it to agree with a shipper to a lower hourly take would result in additional capacity which other shippers could use and reduce any need to construct additional capacity. In the October 31, 2003 Order, the Commission accepted Northern's proposal, stating that it would provide more service options resulting from the system's enhanced operational flexibility. However, the Commission directed Northern to explain how it would handle the more restrictive hourly limitations, when a shipper subject to those limitations released its capacity to another shipper. In its compliance filing following the October 31, 2003 Order, to reconcile its revised hourly take provisions with its capacity release provisions, Northern added the following provision to section 19(A)(5) of its General Terms and Conditions (GT&C): "The hourly take rate will be applicable to the primary points(s) on the Shipper's Service Agreement. If the Shipper nominates an alternate point (including capacity release) the MDQ on the Shipper's

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<sup>4</sup> 18 C.F.R. § 154.210 (2004).

contract will be limited such that the hourly flow on the contract is not increased and the MDQ will be adjusted to equal to a 6.3 percent hourly take rate.”

5. However, in the June 2, 2004 Order, the Commission held that Northern’s proposal contravened Commission policy and was inconsistent with existing provisions in its tariff. We noted that Northern proposed that whenever a shipper desires to move to a secondary point, and that shipper has agreed to more restrictive hourly flow limitations in its contract, then that shipper will not be able to transfer that hourly flow provision to its alternate point. The Commission found that this could result in the shipper losing capacity should it require service at that point, since its hourly flow would be the same, but flowed over fewer hours. We also noted that if capacity is available, the shipper should be able to move to the alternate point pursuant to section 26 of Northern’s GT&C. Accordingly, we directed Northern to revise its proposal to clarify that, if a shipper nominates to a secondary point, that shipper has the option of retaining a more restrictive contractual hourly flow limitation if capacity is available at that point. Alternatively, we stated that Northern and the shipper may mutually agree to a different hourly flow limitation at that point.

6. In addition, intervenors recommended certain posting requirements for contracts involving modified hourly flow limitations, arguing that Northern’s tariff should require shippers releasing capacity to include in their posting a specific notice that the capacity being released is subject to an hourly take restriction and to provide details of that restriction. The Commission agreed, and required Northern to post on its website information pertaining to any contract containing a modified hourly flow provision.

7. In its June 23, 2004 compliance filing, Northern modifies section 19(A)(5) of its GT&C to provide that if a shipper nominates to a secondary point, that shipper has the option of retaining the more restrictive contractual hourly flow limitation if capacity is available at that point. Alternatively, Northern and the shipper may mutually agree to a different hourly flow limitation at that point. Also, Northern revises section 47(B) of its GT&C to require shippers releasing capacity to include in their posting a specific notice that the released capacity is subject to an hourly take restriction and to provide details of that restriction. No protests were filed with respect to these aspects of Northern’s compliance filing. We find that Northern has adequately complied with the June 2, 2004 Order, and accept its proposed revisions.

## **II. LFT Service**

8. In its May 1, 2003 filing, Northern proposed to expand Rate Schedule LFT service to its Market Area in winter months. Under Rate Schedule LFT, Northern has the right to

not schedule a shipper's service on any day, but not more than a maximum of 10 days per month. In response to comments on its proposal, Northern agreed to make certain changes and submitted *pro forma* tariff sheets showing those changes. The October 31, 2003 Order accepted Northern's proposal, as modified, and directed Northern to file actual tariff sheets to implement the agreed-upon changes. Northern's filing to comply with the October 31, 2003 Order included a provision in section 2 of Rate Schedule LFT that the order for determining a limited day among similarly situated LFT shippers would be based on "(1) lowest price first; (2) the LFT Shipper(s) with the greater number of remaining Limited Days first; (3) *pro rata*." Northern also stated it would post the LFT shippers affected by the limited day on its website. Northern's filing also included, in section 19 of the GT&C, a provision concerning the order of curtailment for LFT service similar to the Rate Schedule LFT provision concerning the determination of limited days.

9. In the June 2, 2004 Order, the Commission agreed with protesters that the provisions concerning the order of determining limited days and curtailment were confusing, primarily because they appeared to state that Northern would consider first both the lowest price and greater number of Limited Days. The Commission also required Northern to post additional information concerning the shippers subject to a limited day.

10. In its June 23, 2004 compliance filing, Northern clarifies how it will determine the order of limiting and curtailing service to LFT shippers by providing that it will use price first and then each shipper's number of remaining limited days. Northern also proposes that, in the event of a Limited Day, Northern will post on its website a notice to LFT shippers listing other "similarly situated" LFT shippers, the LFT shippers who were affected, and the reasons for the limitation. No protests were filed against the proposal. We find that Northern's filing complies with the June 2, 2004 Order, and accept its revised LTF provisions.

### **III. PDD Rollover Fee**

11. Northern provides storage service under three separate rate schedules. It provides firm storage service under Rate Schedule FDD (Firm Deferred Delivery Service), interruptible storage service under Rate Schedule IDD (Interruptible Deferred Delivery Service), and a "Preferred Deferred Delivery Service" under Rate Schedule PDD. PDD service is an interruptible storage service that has a lower priority than Rate Schedule FDD service, but a higher priority than Rate Schedule IDD service. Northern proposed in this case to add a \$0.385 per MMBtu annual rollover fee that would apply to any balance held in a shipper's PDD account as of March 31 of each year, similar to the rollover fees already applicable to FDD and IDD service. The purpose of the fee was to encourage

shippers to eliminate their storage balance by the March 31 end of the withdrawal season to prepare for injections during the summer injection season. The October 31, 2003 Order accepted the proposed fee, but found that it was a penalty and therefore Northern must credit the revenues to its customers pursuant to its penalty revenue crediting mechanism. The June 2, 2004 Order denied Northern's request for rehearing of the requirement that it treat the PDD rollover fee as a penalty.

12. Accordingly, Northern adds tariff language providing that it will include any revenues collected from the PDD rollover fee as revenues subject to the penalty crediting mechanism in section 57 of the GT&C. In addition, Northern revises section 4(e) of Rate Schedule PDD to provide that the annual rollover charge, *may*, rather than *shall*, apply to the balance held in the shipper's PDD account as of March 31.

13. In its protest, NMDG/MRGTF argues that the Commission did not require Northern, in the June 2, 2004 Order, to change the rollover fee from a mandatory fee to a fee that Northern "may" charge and therefore, the Commission should reject this proposed change.

14. NMDG/MRGTF argues that this change, if accepted, would completely change the nature of PDD service in general and the rollover charge in particular. NMDG/MRGTF state that the rollover charge is necessary to properly cycle and operate storage volumes to meet all shippers' needs. NMDG/MRGTF contends that this penalty is necessary to system operations and therefore the Commission should not permit Northern to waive it, in any respect. NMDG/MRGTF also states that Northern demonstrates the transparent nature of its attempt to change the fundamental premise of the rollover fee by the fact that Northern's other two storage rate schedules, Rate Schedule FDD and Rate Schedule IDD, each contain the mandatory language.

15. NMDG/MRGTF argues that there is no justification for Northern's attempt to change from the mandatory to the permissive, and the change is not consistent with the other, similar tariff provisions pertaining to storage services. NMDG/MRGTF states that Northern offered no explanation for this change. Accordingly, NMDG/MRGTF contends that the Commission should reject this tariff language and direct Northern to reinstate the word "shall".

16. In its answer, Northern contends that the reason for the substitution of the term "may" for "shall" was to address situations where a PDD shipper's retaining gas in storage on March 31, 2004 will not cause operational problems and therefore charging a PDD rollover fee would be inappropriate. As Northern explained in its May 1, 2003 filing proposing the PDD rollover fee, PDD transactions are structured storage

transactions based on both parties having a reasonable expectation of shippers injecting and withdrawing the stored quantities at certain defined periods. Northern explains that if a shipper and Northern agree up front that the shipper will inject gas into Northern's system in February and withdraw gas in June without affecting system operations, Northern will enter the PDD transaction according to such specific terms. In agreeing to this transaction, Northern acknowledges that it can accommodate PDD storage gas *past* the March 31 deadline *without causing an operational concern*. Therefore, Northern claims that it would be inappropriate to charge the PDD rollover fee under this circumstance where the parties expressly agree that the storage gas could remain on Northern's system *past* March 31. Northern states that this situation is in stark contrast to a PDD transaction whereby the parties agree that the shipper would inject gas in February and withdraw the gas in March. If the shipper fails to withdraw all storage quantities by March 31, Northern will appropriately subject such shipper to the PDD rollover fee.

17. Northern's other storage services under Rate Schedules FDD and IDD provide that the rollover charges "shall" apply to the account balances as of the end of the withdrawal period for FDD service and as of March 31, for IDD service. Northern states that the term "shall" is appropriate under both of these rate schedules given the unique nature of each storage service as compared to PDD service. Northern states that under FDD service, which is a firm storage service, unlike PDD service, all FDD shippers have the same rights to inject and withdraw their gas during certain times of the year and must withdraw their gas as of April 1. Northern also states that IDD service, unlike PDD service, does not involve a specific agreement providing for withdrawals of gas after March 31. Thus, the term "shall" appropriately applies to FDD service and IDD service, but does not apply to PDD service, which provides for known and expressly agreed-upon injection and withdrawal periods when the parties execute the PDD contract.

18. As NMDG/MRGTF states, Northern's proposal to change the word "shall" to "may" goes beyond the requirements of the June 2, 2004 Order. However, Northern adequately explains why it would be inappropriate to charge the PDD rollover fee to a PDD customer with gas in storage on March 31, 2004, if Northern has agreed that the customer may have gas in storage as of that date. Accordingly, we agree that Northern should treat the PDD rollover fee differently from the FDD and IDD rollover fees, since PDD service is structured to permit Northern to agree with a customer that it may retain gas in storage on March 31, but the other two services do not provide for such an agreement. However, we find that Northern's revised proposal gives Northern too much discretion as to whether to waive the PDD rollover fee, since there is nothing in Northern's proposed tariff language that ties the waiver of the PDD rollover fee to a contractual agreement with the customer to permit it to retain gas in storage on March 31.

Therefore, the Commission directs Northern to revise the definition for the annual rollover charge of the PDD schedule to read as follows:

The annual rollover charge per MMBtu is set forth on Sheet No. 55 of this Tariff. Such charge *shall* apply to the balance held in Shipper's PDD Account as of March 2331<sup>st</sup> *unless otherwise contractually authorized*.

The Commission orders:

(A) Northern is hereby directed to file, within 15 days of the date this order issues, revised tariff sheet reinstating the word "shall", for the reasons given in the body of this order.

(B) Northern's revised tariff sheets, as listed in the Appendix, are accepted, subject to modification set forth in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

APPENDIX

**Northern Natural Gas Company  
FERC Gas Tariff, Fifth Revised Volume No. 1**

*Tariff Sheets Accepted Effective November 1, 2003:*

2 Substitute Third Revised Sheet No. 125A  
2 Substitute Seventh Revised Sheet No. 226  
Substitute Fourth Revised Sheet No. 227  
Substitute Third Revised Sheet No. 228  
Substitute Original Sheet No. 228A

*Tariff Sheets Accepted Effective January 1, 2004*

Substitute First Revised Sheet No. 142B

*Tariff Sheets Accepted Effective June 2, 2004*

Ninth Revised Sheet No. 286  
Second Revised Sheet No. 306