

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 1, 2005

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP05-370-000

Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124-1000

Attention: Mary Kay Miller, Vice President
Regulatory and Government Affairs

Reference: New Provision Regarding the Negotiation of Gas Quality at Delivery Points

Ladies and Gentlemen:

1. On June 3, 2005, Northern Natural Gas Company (Northern) filed Second Revised Sheet No. 212 and Third Revised Sheet No. 309 of its FERC Gas Tariff, Fifth Revised Volume No. 1, to amend its merchantable gas tariff provision to allow the negotiation of gas quality at delivery points. We accept Northern's tariff sheets effective July 5, 2005, as conditioned below. This acceptance benefits the public by ensuring Northern's tariff provisions are consistent with Commission policy.

2. On May 27, 2005, the Commission issued an order in Docket No. RP05-297-000 and accepted, subject to conditions, certain non-conforming amendments to Rate Schedule TF and FDD service agreements between Northern and Metropolitan Utilities District (MUD).¹ Northern proposed in TF Amendment No. 35 paragraph 9 that Northern use "commercially reasonable efforts" to manage the quality of the gas delivered to MUD's distribution facility to meet MUD's and its customers' gas quality requirements and that Northern will continue to use "commercially reasonable efforts" to manage the nitrogen and carbon dioxide levels in the gas delivered to MUD. The May 27, 2005 Order found that this provision granted MUD a better quality of service than Northern's other customers. Accordingly, the May 27 Order directed Northern to either remove this provision from the amendment as unduly discriminatory, or file revised tariff language offering to negotiate with all its other customers similar commitments concerning the quality of gas delivered to that customer.

¹ *Northern Natural Gas Co.*, 111 FERC ¶ 61,287 (2005) (May 27 Order).

3. In the instant filing, Northern proposes to amend section 3 of its General Terms and Conditions (GT&C) to provide that, upon request, Northern will offer to negotiate with a Delivery Point Operator how Northern will manage the quality of gas delivered to the Delivery Point Operator. Specifically, section 3 of Northern's GT&C currently states that "Natural gas delivered by Northern to a Shipper shall be merchantable natural gas." Northern proposes to add language to this section to state that "Northern will offer to negotiate with a Delivery Point Operator, upon request, how Northern will manage the quality of gas delivered to the Delivery Point Operator." Northern also proposes to amend GT&C section 58 to cross reference the new language as a tariff-permitted provision that can be included in the Rate Schedule TF and FDD forms of service agreement.

4. The Commission noticed Northern's filing on June 10, 2005, permitting interventions, comments, and protests as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2004)). Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2004)), all timely filed motions to intervene and any 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. ONEOK Field Services Company, ONEOK Bushton Processing, Inc., and ONEOK Gas Processing, LLC. (ONEOK), and Northern Municipal Distributors Group and the Midwest Region Gas Task Force Association (NMDG/MRGTF) filed the protests addressed below. On June 23, 2005, Northern filed an answer. The Commission waives its regulations (18 C.F.R. § 385.213(b) (2004)) to accept Northern's answer offering assistance to the interested parties to develop a full understanding of its proposal.

5. NMDG/MRGTF asserts that the instant filing should not be used to justify the findings made by the Commission in its May 27, 2005 Order that accepted the amended MUD service agreements. Further, it argues that the instant filing should not be automatically approved on the basis of the Commission's statements approving the MUD service agreements in the May 27, 2005 Order. We agree with NMDG/MRGTF to the extent that the instant proposal is a separate Natural Gas Act (NGA) section 4 proposal and must be judged solely on its merits.²

6. Further, NMDG/MRGTF asserts that the language proposed by Northern states broadly that Northern will offer "to negotiate" upon request, "how Northern will manage the quality of gas delivered to the Delivery Point Operator." However, NMDG/MRGTF also points out that the MUD contract at issue more specifically stated that Northern will continue to use commercially reasonable efforts to manage Nitrogen and Carbon Dioxide levels in the gas delivered to MUD." NMDG/MRGTF argues that the tariff change proposed in the instant docket is vague and could be interpreted as permitting Northern to

² See, *Northern Natural Gas Co.*, 111 FERC ¶ 61,141, P 26 (2005).

negotiate terms and conditions of service concerning gas quality with different shippers. Therefore, NMDG/MRGTF asserts that the language should be modified to provide that Northern will use commercially reasonable efforts to manage the Nitrogen and Carbon Dioxide levels in the gas delivered to all shippers.

7. Here, Northern proposes that its shippers may request that Northern negotiate how it will manage the gas quality delivered to the shipper. NMDG/MRGTF asserts that Northern's proposal may be confused for an impermissible negotiation of a term or condition of service. However, the Commission has found that an impermissible term or conditions of service is a term or condition of service that results in a shipper receiving a different quality of service than that offered to other shippers under a pipeline's service tariff.³ In the instant filing, Northern proposes to place the right to negotiate the quality of delivered gas in its tariff so that the right to negotiate that matter is generally available to all customers. This action is consistent with Commission policy.⁴

8. ONEOK argues that the proposed revision is unjust, unreasonable, unduly discriminatory and unsupported. ONEOK contends that allowing Northern to negotiate gas quality standards at certain delivery points different from those set forth in the tariff would allow Northern the ability to unduly discriminate between shippers. ONEOK also argues that the provision runs afoul of fundamental rate making principles because it would allow a shipper to receive a higher quality of service without adjusting the rate to reflect the higher quality of service. ONEOK argues that it makes no sense to permit a shipper to receive a higher quality of gas without ensuring that the shipper puts a higher quality of gas into the system and that Northern has not explained how it would accomplish this service. ONEOK also expresses concern that Northern has not explained how it would deliver gas of a higher quality than the blended gas stream meeting the existing standards entering the system.

9. ONEOK contends that there is nothing in Northern's proposal which would protect system shippers from receiving a lower quality of gas because of this proposal or protecting them from the costs of facilities necessary to provide a higher quality of gas to certain shippers that have negotiated with Northern. ONEOK argues that Northern's proposal here is analogous to that rejected in *AES Ocean Express LLC v. Florida Gas Transmission Company*, 107 FERC ¶ 61,276 (2004) (*AES*), where the Commission found that it was not appropriate for the pipeline to negotiate gas quality standards individually in an interconnection agreement as it would run contrary to the general policy that shippers should be subject to just and reasonable and not unduly discriminatory terms and conditions of service that apply to open access service. ONEOK states that in *AES* the

³ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,003 (2001), *citing*, *Dominion Transmission, Inc.*, 93 FERC ¶ 61,177 (2000).

⁴ *Columbia Gas Transmission Corp.*, 97 FERC ¶ 61,221 at 62,000 (2001) (requiring a pipeline to place language related to a negotiation of minimum pressure obligation in its tariff).

Commission stated that it did not wish to see situations develop in the future where terms negotiated in an interconnection agreement conflict with general terms and conditions of a pipeline's open access tariff. The Commission also stated that to the extent that additional terms are necessary to deal with gas quality and interchangeability issues not addressed sufficiently in the tariff, corrective action should be taken in the tariff and should govern the operations of pipelines accordingly. ONEOK asserts that the same logic applies to, and supports the rejection of, Northern's proposal in the instant case.

10. Northern has provided sufficient information to support its filing. It is clear from Northern's current tariff that Northern is committed to deliver gas of a merchantable quality to its customers. Moreover, the quality of gas entering the system at receipt points is governed by section 44 of Northern's tariff. The instant filing does not propose a change to the tariff in regard to the quality of gas Northern receives. It only proposes to permit Northern to negotiate concerning the quality of gas it delivers to particular customers at their delivery points. Thus, Northern must continue to accept at its receipt points any gas that meets the conditions set forth in section 44 of its GT&C, regardless of any agreement it may negotiate concerning the quality of gas delivered at a particular delivery point. In addition, the Commission will require Northern to modify its proposed tariff language to ensure that Northern's tariff provision is implemented in a manner that is not unduly discriminatory. First, the Commission directs Northern to file, within 15 days of the issuance of this order, revised tariff sheets stating that Northern will negotiate gas quality at delivery points with all customers requesting such negotiations on a not unduly discriminatory basis. Northern must also modify the tariff provision to expressly state that the quality of gas provided to other shippers on the pipeline will not be degraded by the negotiation of gas quality at delivery points.

11. ONEOK argues that Northern's proposal does not provide any protection for other shippers against the shifting of costs necessary to deliver a higher quality of gas to certain customers. While this is an issue to be examined in a rate case, in general, shippers should not be assessed costs related to service for others and, therefore, any costs related to higher quality delivered gas cannot be shifted from the entity receiving the higher quality gas to other shippers on the pipeline but should be paid for by the shippers receiving the higher quality gas.

12. The Commission finds that ONEOK's reliance on *AES* to support its request that the instant filing be rejected is misplaced. In *AES*, the Commission was addressing a situation where the pipeline was negotiating with one shipper to establish an interconnection agreement concerning the quality of gas the pipeline would allow on the system. The Commission determined that to permit the pipeline to establish standards with one shipper in an interconnection agreement could lead to future conflicts between the agreement and the pipeline's open access tariff which also contained gas quality standards. The Commission determined that gas quality standards should be contained in the open access tariff. Here, Northern has placed the language allowing it to negotiate the quality of the gas it delivers with customers in its open access tariff as required in the *AES* proceeding, so that all shippers will have notice of the fact that Northern may

negotiate with customers concerning the quality of the gas it delivers and that such negotiation will not conflict with Northern's tariff. Accordingly, we find the provision acceptable.

By direction of the Commission.

Magalie R. Salas
Secretary

cc: All Parties