

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Northern Border Pipeline Company

Docket No. RP06-72-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS SUBJECT TO
REFUND AND ESTABLISHING HEARING PROCEDURES

(Issued December 1, 2005)

1. On November 1, 2005, Northern Border Pipeline Company (Northern Border) filed a general rate increase application under section 4 of the Natural Gas Act (NGA) and Part 154 of the Commission's regulations and the Stipulation and Agreement in Docket No. RP99-322-000.¹ Northern Border proposes a rate design that creates a new Supply Zone with base rates calculated on a uniform per dekatherm basis. Northern Border requests the proposed tariff sheets become effective on December 1, 2005, but states that it expects there will be a five month suspension until May 1, 2006. The Commission accepts and suspends for five months Northern Border's tariff sheets listed in the Appendices to become effective May 1, 2006. This acceptance is subject to refund and the outcome of the matters set for hearing by this order, as discussed below.

I. Details of Filing

2. Northern Border proposes an increase in annual revenues in excess of \$24 million. Northern Border includes four sets of tariff sheets (Primary, Alternate, *Pro Forma* and Alternate *Pro Forma*) to revise its FERC Gas Tariff, First Revised Volume No. 1. In its primary set of tariff sheets, Northern Border proposes to establish a compressor usage surcharge to recover certain costs incurred in operating its electric and gas operated compressors, together with a true-up mechanism. The Alternate tariff sheets do not include this proposal. The *Pro Forma* tariff sheets are consistent with the Primary tariff

¹ 93 FERC ¶ 61,261 (2000), Section B of Article VI provides Northern Border will file a new NGA Section 4 case on November 1, 2005.

sheets, but also include a proposed rate for short-term firm transportation service under Rate Schedule T-1 in addition to the standard rate for long-term firm transportation service under that rate schedule. The *Pro Forma* tariff sheets also include a mechanism for crediting certain short-term firm revenues. The Alternate *Pro Forma* tariff sheets are consistent with the Alternate tariff sheets, but include the same short-term firm rate proposal as in the *Pro Forma* tariff sheets

A. Primary Tariff Sheets.

3. In its Primary tariff sheets, Northern Border proposes increased maximum recourse transportation rates under Rate Schedules T-1 (firm transportation service), IT-1 (interruptible transportation service) and T-1B (firm backhaul service) and decreased maximum rates under Rate Schedule PAL (park and loan service). Northern Border does not propose to change the rates for its Rate Schedule TPB (third party balancing service). Northern Border states the overall increase in transportation rates results largely from increased costs of capital, uncontracted capacity, discounting, increased depreciation rates, and a reduction in throughput and billing determinants due to increased competition in its delivery markets.

4. Northern Border bases its rates on a proposed \$320.8 million cost of service, calculated using the twelve-month base period ending July 31, 2005, incorporating test period adjustments through April 30, 2006. The cost of service includes \$31 million in operation and maintenance expenses, \$86.9 million in depreciation and amortization for the gas plant in service, \$(0.7) million in the amortization of certain regulatory assets, \$50.8 million in income taxes, \$31.4 million for taxes other than income, and a \$121.4 million return on rate base. Northern Border designs the proposed rates using a straight-fixed variable (SFV) methodology.

5. Northern Border bases its \$121.4 million return on an overall cost of capital of 10.56 percent and requests a return on equity of 14.2 percent. Based on an average remaining life of 23.8 years, Northern Border proposes an increase in its transmission plant depreciation rate from 2.25 percent to 2.84 percent and institutes a negative salvage rate of 0.59 percent. Also, Northern Border proposes rolled-in rate treatment of its Chicago III expansion in this proceeding, which the Commission previously denied in a certificate proceeding,² without prejudice to Northern Border demonstrating such treatment would not result in subsidization of the expansion capacity by existing shippers in the instant section 4 filing. Northern Border expects the new electric-powered

² Order Granting Certificate, 112 FERC ¶ 61,196, Docket No. CP05-88-000 (2005).

compressor station located near Iowa City, Iowa, to increase capacity by 130 MMcf/d between Harper, Iowa and the Chicago market area, and anticipates an April 1, 2006, in service date.

6. Northern Border's current rates are mileage based, with rates for the entire system stated on a per 100 Dekatherm-mile basis. In this filing, Northern Border proposes to establish a separate Supply Zone that starts at the US/Canadian border and ends at Milepost 396 near Glen Ulin, North Dakota, downstream of a constraint point on Northern Border's system, and a Market Area that starts at Milepost 396 and ends at the pipeline's terminus at North Hayden, Indiana. The proposed Supply Zone is principally where natural gas is received into system with generally no market deliveries. The proposed Market Area contains numerous delivery points. Northern Border proposes that the Supply Zone rates be designed on a postage stamp basis. The Market Area rates would continue to be stated on a per 100 mile Dekatherm-mile basis.

7. In the calculation of its billing determinants, Northern Border states it employs an adjustment for discounts in accordance with Commission policy.³ Northern Border derives its billing determinants using a twelve-month base period ending July 31, 2005. Northern Border states the decrease in billing determinants from those underlying its existing rates reflect recently experienced uncontracted capacity, resulting in discounted transportation rates in order to meet competition. Northern Border will continue to design its Rate Schedule IT-1 maximum rate on a 100 percent load factor equivalent of the Rate Schedule T-1 firm transportation rate for its proposed new rate zones, Supply Zone and Market Area zone.

8. The proposed compressor usage surcharge included in Northern Border's Primary tariff sheets would recover electricity costs incurred in operating the electricity-driven compressors on its system, as well as use taxes on natural gas consumed at its gas-driven compressor stations. Northern Border's proposal includes a mechanism for truing up over- and underrecoveries of these costs.

9. In addition, Northern Border's Primary tariff sheets include: (1) revisions to Section 5 of its General Terms and Conditions (GT&C), including shortening of the notification periods related to the right-of-first-refusal (ROFR) and additional creditworthiness language in section 5.1; (2) a revision to Rate Schedule T-1B regarding the rate Northern Border will charge for the use of secondary points which alter the directional flow of a discounted rate; (3) a revised definition of the "Posted Btu Factor"

³ Policy for Selective Discounting by Natural Gas Pipelines, 111 FERC ¶ 61,309 (2005).

to reflect an annual recalculation that Northern Border will post annually by April 20, to become effective by May 1; (4) revisions to Subsection 26.2 of its GT&C regarding posting of available capacity to supercede compliance tariff sheets pending in Docket No. RP03-563; and (5) revisions to the bid evaluation methods in Section 27 of its GT&C to reflect its proposed addition of the Supply Zone. The Primary tariff sheets, proposed to become effective December 1, 2005, are listed in Appendix A.

B. Alternate Tariff Sheets

10. The Alternate tariff sheets reflect the deletion of any reference to the compressor usage surcharge contained in the Primary tariff sheets, and incorporate into Northern Border's base rates costs that otherwise would have been recovered under the surcharge. Listed in Appendix B of the instant filing, the Alternate tariff sheets would replace only those Appendix A tariff sheets designated by an asterisk in Appendix A. The balance of the Appendix A tariff sheets would be placed into effect along with the tariff sheets listed in Appendix B of Northern Border's instant filing.

C. Pro Forma Tariff Sheets

11. Northern Border's *Pro Forma* tariff sheets listed in Appendix C of the instant filing reflect changes proposed in the Primary tariff sheets, but include a proposal that would only become effective as a result of a settlement or hearing in the instant docket. Such revised tariff sheets reflect the provision for a short-term firm transportation rate in addition to the standard long-term rate in Rate Schedule T-1 and the establishment of a reservation charge crediting mechanism described in section 46 of its GT&C, which Northern Border states would benefit shippers because it would credit shippers any excess revenues arising from such short-term firm rates.

D. Alternate Pro Forma Tariff Sheets

12. The Alternate *Pro Forma* tariff sheets listed in Appendix D, like the Alternate tariff sheets, reflect the deletion of any reference to the compressor usage charge, but also reflect the proposal for a short-term firm rate in addition to the standard long-term rate in Rate Schedule T-1 and the establishment of the reservation charge crediting mechanism described in Section 46 of Northern Border's GT&C.

II. Notice of Filing, Interventions, and Protests

13. The Commission issued notice of Northern Border's filing on November 4, 2005. Interventions, comments, and protests were due as provided in section 154.210 of the Commission's regulations (18 C.F.R. § 154.210 (2005)). Pursuant to Rule 214 of the Commission's Rules and Practice and Procedure (18 C.F.R. § 385.214 (2005)), 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. Numerous parties filed protests,⁴ whose concerns are discussed below.

III. Discussion

A. Primary and Alternate Tariff Sheets

The Commission accepts and suspends for five months, subject to refund, Northern Border's Primary tariff sheets, including its proposed compressor usage surcharge. Because the Commission is accepting the Primary tariff sheets, the Commission rejects the Alternate tariff sheets.

14. The protesting parties raise numerous concerns with Northern Border's Primary tariff sheets, including: return on equity; capital structure; depreciation rates; negative salvage allowance; income tax allowance; operation and maintenance expenses; billing determinants; cost allocations; cost of debt; and the proxy group to be used in determining the cost of capital. The parties also question the proposed division of Northern Border's system into supply and market zones, the rolled-in rate proposal, and the accuracy of the 7.8 percent overall increase in revenues.

15. Fidelity & Prairielands claim that Northern Border's creation of a postage stamp rate in its proposed Supply Zone will make shippers in Montana and North Dakota pay for the entire Supply Zone even though do not use the entire zone. Further, Fidelity claims the proposed Supply Zone will have significant anticompetitive and unduly discriminatory effects on U.S. production, because its U.S. production must compete with production from Canada. Fidelity & Prairielands also state it is not clear from Northern Border's proposal what it intends to charge for deliveries in the Supply Zone. BP Canada states that this shift in rate design will impact certain shippers disproportionately and may

⁴ Protesters include BP Canada Energy Marketing Corp. (BP Canada); Canadian Association of Petroleum Producers (CAPP); CenterPoint Energy Resources Corp., dab CenterPoint Energy Minnesota Gas (CenterPoint); Husky Gas Marketing, Inc. (also filed a late supplemental protest) (Husky), Nicor Enerchange, LLC (Enerchange); Northern Plain Shippers (jointly filed protest by Amerada Hess Corporation, Basin Electric Power Cooperative, Dakota Gasification Company, and Tenaska Marketing Ventures); and a joint protest by Fidelity Exploration & Production Company and Prairielands Energy Marketing, Inc. (Fidelity & Prairielands).

not result in a fair allocation of costs among shippers.⁵ Northern Plains Shippers estimate that the overall cost impact of the change in rates in the instant filing would be approximately 40 percent or more, as compared with Northern Border's claimed 7.8 percent cost of service increase.

16. The protesting parties also object to Northern Border's proposal to change its Btu factor. Enerchange prefers the Btu factor not change, but states if Northern Border justifies why the Btu factor should change on an annual basis, then the change should occur April 1st to comport with the seasonal impact on transportation, storage and supply contracts. CenterPoint states that Northern Border did not propose sufficient tariff language to accomplish the annual adjustment to its Btu factor and the Commission should direct Northern Border to clarify its proposal.

17. Northern Plains Shippers request more time to study Northern Border's proposed compressor usage surcharge. BP Canada questions whether the costs Northern Border wishes to recover with the surcharge are just and reasonable and CenterPoint states Northern Border fails to justify why these costs require out of the ordinary ratemaking treatment and recovery via a usage surcharge.

18. BP Canada states that although the Commission allowed Northern Border to demonstrate in the instant section 4 filing that its proposed recovery on a rolled-in basis of its Chicago III expansion project would not result in subsidization of the expansion capacity by existing shippers, Northern Border fails to show that no such cross-subsidization would occur. Further, BP Canada states Northern Border fails to reconcile the rolling-in of these costs with its proposal for recovering compressor costs to ensure that there is no double recovery of such costs. CenterPoint adds that the presumed \$4 million dollar savings in future gas costs noted in Northern Border's analysis to show a net benefit to existing customers from its proposed roll-in needs to be examined closely.

19. Finally, Northern Border proposes in its Primary tariff sheets to include an acquisition adjustment of \$78 million in its cost of service as a result of purchasing Line 109 from Natural Gas Pipeline Company of America. BP Canada states Northern Border alleges a cost savings of between \$12 and \$22 million by purchasing these facilities, thus obviating the need for construction. BP Canada states, however, that Commission policy forbids the write-up of pipeline facilities unless the pipeline shows by clear and convincing evidence that there is a substantial benefit to ratepayers.⁶ Here, BP Canada

⁵ BP Canada cites *Cranberry Pipeline Corp.*, 112 FERC ¶ 61,268 (2005).

⁶ *Longhorn Partners Pipeline*, 73 FERC ¶ 61,355 (1995).

states, the cost savings claimed by Northern Border appear to be outweighed by the amount of the claimed acquisition adjustment, and therefore the Commission should deny this adjustment.

20. The Commission will establish a hearing to consider most of the issues raised by the protesters concerning the Primary tariff sheets. The Commission has permitted pipelines to implement surcharges for tracking electric and other costs incurred in operating compressors, so long as the tracker includes a true-up mechanism.⁷ Accordingly, the Commission finds as a general matter that Northern Border may institute a compressor usage surcharge, with a true-up mechanism. However, at the hearing, parties may raise issues concerning the details of Northern Border's proposal, including whether Northern Border has supported to level of the costs it includes in its initial surcharge.

21. The Commission will not set for hearing at this time certain non-rate matters contained in Northern Border's primary proposal, and will address these matters in a subsequent order after the Commission has had an additional opportunity to analyze the subject proposals. These include: Northern Border's proposed modifications to the right of first refusal provisions contained in revised section 5 of Rate Schedule T-1, the proposed changes to the credit provisions contained in revised section 5.1, the proposed revisions to secondary point rights contained in revised section 3.2 of Rates Schedule T-1B, and the language regarding posting of available capacity in revised Subsection 26.2 of Northern Border's General Terms and Conditions.

B. Pro Forma and Alternate Pro Forma Tariff Sheets

22. BP Canada notes Northern Border proposes in its *pro forma* sheets to differentiate between long-term (one year or more) and short-term (less than a year) service on its system by establishing a separate maximum rate for short-term firm transportation service. Northern Plains Shippers state the proposed maximum reservation rate for such short-term service is 2.5 times the maximum reservation rate for long-term service. Northern Plains Shippers claim Northern Border is trying to manipulate rate design to penalize shippers who elect not to contract on a long term basis and/or not at the maximum rate, which contradicts a recent Commission decision that a pipeline may not

⁷ *ANR Pipeline Co.*, 110 FERC ¶ 61,069, *reh'g denied*, 111 FERC ¶ 61,290 (2005).

employ artificial rate design to insulate it from market risk and its rate design must bear a demonstrable relationship to the actual costs of the services provided.⁸

23. CenterPoint likewise asserts that Northern Border requests this extremely high rate for short-term capacity so that when the prices for gas commodity create a higher basis difference, Northern Border can charge a rate equal to the market value of its capacity, which is in essence, a request to charge market-based rates. Enerchange also questions how Northern Border will handle nominations under this proposed service, including out-of-path secondary delivery points and under capacity release situations. Finally, Prairielands & Fidelity note that Northern Border proposes to retain half and only credit the other half of any excess revenues from this short-term rate to the long-term shippers without any cost justification. The Commission directs that the proposals in the *pro forma* sheets be explored further at the hearing established by this order.

24. The Commission grants Northern Border's request for a waiver of section 154.207 of the Commission's regulations, which as here relevant requires that pipelines file proposed tariff changes not less than 30 days before the proposed effective date. Here, Northern Border filed the instant tariff sheets on November 1, 2005, only 29 days before its proposed December 1, 2005 effective date. However, as Northern Border states, the Commission-approved settlement of Northern Border's last rate case required it to make the instant filing on November 1, 2005, with a proposed December 1, 2005 effective date.

C. Suspension

25. Based on a review of the filing, the Commission finds that the proposed tariff sheets and proposed rates have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. The Commission finds that the issues raised in the instant filing, along with other concerns raised by the parties, require further investigation.

26. The Commission's policy regarding rate suspensions is that rate filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards.⁹ It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the

⁸ *El Paso Natural Gas Co.*, 112 FERC ¶ 61,150 at pp. 61,830-2 (2005).

⁹ *See Great Lakes Gas Transmission Company*, 12 FERC ¶ 61,293 (1980) (five-month suspension).

maximum period may lead to harsh and inequitable results.¹⁰ Such circumstances do not exist here because of the extensive changes that are proposed in the sheets at issue. Accordingly, the Commission will exercise its discretion to suspend the tariff sheets listed in the Appendices for the maximum period of five months and permit the rates to take effect on May 1, 2006, subject to refund and the conditions set forth in the body of this order and the ordering paragraphs below.

The Commission orders:

(A) The tariff sheets listed in the Appendix A are accepted and suspended, to become effective May 1, 2006, subject to refund and the outcome of the hearing established by this order. The tariff sheets listed in Appendix B are rejected.

(B) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing is to be held in Docket No. RP06-72-000 concerning the lawfulness of Northern Border's proposed rates.

(C) A Presiding Administrative Law Judge (ALJ), to be designated by the Chief Administrative Law Judge, for the purpose pursuant to 18 C.F.R. § 375.302 (2005), shall convene a prehearing conference in this proceeding to be held within 20 days of the issuance this order in a hearing or conference room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. The prehearing conference shall be held to clarify the positions of the participants, and for the ALJ to establish any procedural dates for the hearing. The ALJ is authorized to conduct further proceedings pursuant to this order and the Commission's Rules of Practice and Procedure.

(D) Waiver of 18 C.F.R. § 154.207 is granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁰ See Valley Gas Transmission, Inc., 12 FERC ¶ 61,197 (1980) (one-day suspension).

Appendix A

Northern Border Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1

Tariff Sheets Accepted and Suspended Effective May 1, 2006

Sixth Revised Sheet No. 98	Original Sheet No. 212A
Original Sheet No. 98A	Eleventh Revised Sheet No. 213
Original Sheet No. 98B	Sixth Revised Sheet No. 214
Sixth Revised Sheet No. 99	Third Revised Sheet No. 216
Fifth Revised Sheet No. 101	Fifth Revised Sheet No. 217
Original Sheet No. 101.01	Sixth Revised Sheet No. 266
Fourth Revised Sheet No. 101A	Sixth Revised Sheet No. 270
Third Revised Sheet No. 102A	First Revised Sheet No. 270A
Fifth Revised Sheet No. 103	Original Sheet No. 270B
Fifth Revised Sheet No. 104	Original Sheet No. 270C
Seventh Revised Sheet No. 105	Sixth Revised Sheet No. 283
Fourth Revised Sheet No. 106	Fourth Revised Sheet No. 284
Third Revised Sheet No. 106A	Original Sheet No. 284A
Fifth Revised Sheet No. 134	Sixth Revised Sheet No. 287
Fourth Revised Sheet No. 135	Second Revised Sheet No. 300H.02
Twenty-Second Revised Sheet No. 156	First Revised Sheet No. 305
Nineteenth Revised Sheet No. 157	Original Sheet No. 306
First Revised Sheet No. 179A	Sheet Nos. 307 - 399
Fourth Revised Sheet No. 180	Fifth Revised Sheet No. 406
Original Sheet No. 180A	Fifth Revised Sheet No. 425
Sixth Revised Sheet No. 181	Fifth Revised Sheet No. 429B
Fifth Revised Sheet No. 202	Seventh Revised Sheet No. 431
Fourth Revised Sheet No. 207A	Fifth Revised Sheet No. 435
Eighth Revised Sheet No. 212	Fifth Revised Sheet No. 455

Appendix B

Northern Border Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1

These Tariff Sheets are Rejected.

Alternate Sixth Revised Sheet No. 98
Alternate Original Sheet No. 98A
Alternate Original Sheet No. 98B
Alternate Sixth Revised Sheet No. 99
Alternate Fifth Revised Sheet No. 101
Alternate Original Sheet No. 101.01
Alternate Fourth Revised Sheet No. 101A
Alternate Fifth Revised Sheet No. 134
Alternate Twenty-Second Revised Sheet No. 156
Alternate Nineteenth Revised Sheet No. 157
Alternate Original Sheet No. 180A
Alternate Sixth Revised Sheet No. 181

Appendix C

Northern Border Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1

Pro Forma Sheet No. 98
Pro Forma Sheet No. 98A
Pro Forma Sheet No. 101
Pro Forma Sheet No. 179
Pro Forma Sheet No. 202
Pro Forma Sheet No. 278A
Pro Forma Sheet No. 307
Pro Forma Sheet No. 308
Pro Forma Sheet Nos. 309 – 399

Appendix D

Northern Border Pipeline Company
FERC Gas Tariff, First Revised Volume No. 1

Alternate Pro Forma Sheet No. 98
Alternate Pro Forma Sheet No. 98A
Alternate Pro Forma Sheet No. 202
Alternate Pro Forma Sheet No. 306
Alternate Pro Forma Sheet Nos. 308 – 399