

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket Nos. RP05-370-001
RP05-370-002

ORDER ON REHEARING AND COMPLIANCE

(Issued December 8, 2005)

1. On August 1, 2005 ONEOK Field Services, ONEOK Bushton Processing, Inc. and ONEOK Gas Processing, LLC (ONEOK) filed a request for rehearing of the Commission's July 1, 2005 Order in the captioned docket.¹ On July 15, 2005, Northern Natural Gas Company (Northern) filed tariff sheets to comply with the directives of the Commission's July 1, 2005 Order.² As discussed below the Commission denies rehearing of its July 1, 2005 Order and accepts the proposed tariff sheets as in compliance with the directives of that order.

Background

2. On May 27, 2005, the Commission accepted, subject to conditions, certain non-conforming amendments to service agreements between Northern and Metropolitan Utilities District (MUD) for service under Rate Schedules TF and FDD.³ Of interest here, the Commission addressed a provision in TF Amendment No. 35 paragraph 9, requiring Northern to 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. That provision also required Northern to continue to use "commercially reasonable efforts" to manage the nitrogen and carbon dioxide levels in the gas delivered to MUD. The Commission found that this provision granted MUD a higher quality of service than Northern provided to its other customers. Accordingly, the

¹ *Northern Natural Gas Co.*, 112 FERC ¶ 61,008 (2005) (July 1, 2005 Order).

² Substitute Second Revised Sheet No. 212 and Substitute Third Revised Sheet No. 309 to its FERC Gas Tariff, Fifth Revised Volume No. 1.

³ *Northern Natural Gas Co.*, 111 FERC ¶ 61,287 (2005), *order on reh'g*, 113 FERC ¶ 61,119 (2005).

Commission directed Northern to either remove this provision or to file revised tariff language offering to negotiate with all its other customers similar commitments concerning the quality of gas delivered to that customer.

3. Subsequently, on June 3, 2005, Northern filed revised tariff sheets to add a provision to its General Terms and Conditions (GT&C) stating that, upon request, Northern will negotiate with a delivery point operator regarding how Northern will manage the quality of gas to the delivery point operator.⁴ ONEOK protested Northern's proposal as unsupported and argued that to allow Northern to negotiate gas quality standards at certain delivery points would allow Northern to unduly discriminate between shippers. ONEOK also argued that Northern had not explained how it would deliver gas of a higher quality than the blended gas stream accepted into the system under the gas quality standards at Northern's receipt points.

4. Further, ONEOK argued that Northern's proposal is analogous to a proposal rejected in *AES Ocean Express LLC v. Florida Gas Transmission Company*, 107 FERC ¶ 61,276 (2004) (*AES*). Northern asserted that in *AES*, the Commission found that it was not appropriate for the pipeline to negotiate gas quality standards individually in an interconnection agreement because such a negotiation 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.

⁴ Specifically, prior to the instant proceeding, section 3 of Northern's GT&C stated that "[n]atural gas delivered by Northern to a Shipper shall be merchantable natural gas." The July 1 Order accepted, subject to conditions, revised language that stated, "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." To comply with the directives of the Commission's July 1, 2005 Order, Northern proposes to further revise section 3 of its GT&C to state:

Natural gas delivered by Northern to a Shipper shall be merchantable natural gas. Upon request, Northern will offer to negotiate with a Delivery Point Operator, on a not unduly discriminatory basis, how Northern will manage the quality of gas delivered to the Delivery Point Operator. The quality of gas delivered to other Shippers on the pipeline will not be degraded by the negotiation of gas quality management at delivery points.

5. On July 1, 2005, the Commission found that Northern provided sufficient information to support its filing and that Northern's tariff clearly provided that Northern must deliver gas of a merchantable quality to its customers. The Commission pointed out that section 44 of Northern's tariff governs the quality of gas entering Northern's system at receipt points and that Northern did not propose a change to the tariff in regard to the quality of gas Northern receives. Therefore, the Commission reasoned that 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 Northern may negotiate concerning the quality of gas it delivers at a particular delivery point.

6. The Commission also pointed out that in *AES*, it addressed a situation where a 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. In its July 1, 2005 Order, the Commission stated that, because Northern placed language allowing it to negotiate with customers concerning the quality of the gas it delivers in its open access tariff as required in the *AES* proceeding, 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.

7. Moreover, to ensure that Northern did not implement its proposal in an unduly discriminatory manner, the Commission required Northern to file 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 and that such negotiation will not degrade the quality of gas provided to other shippers.

Request for Rehearing

8. On rehearing, ONEOK argues that the Commission erred in failing to find that Northern's proposal would constitute an inappropriate negotiated term and condition of service and erred in permitting Northern to negotiate gas quality provisions without ensuring that Northern has the technical ability to protect against the degradation of the quality of gas received by others.

9. Specifically, ONEOK reiterates that the Commission's acceptance of Northern's proposal is inconsistent with *AES*. ONEOK argues that contrary to the requirement in *AES*, that a pipeline should place its gas quality standards in its open access tariff, Northern's negotiated gas quality terms will not be in the tariff and the tariff will only contain a notice that negotiations concerning gas quality standards may occur.

10. ONEOK argues that prior to the instant proceeding, Northern's tariff provided that gas delivered by Northern shall be of merchantable quality. ONEOK asserts that because shippers may now negotiate with Northern concerning how Northern will manage the quality of gas it delivers, some shippers will receive merchantable gas while others will receive an additional service – Northern's management of the quality of gas it delivers. ONEOK asserts that this difference in service creates a potential for discrimination because there is no requirement for shippers receiving the service to pay an additional charge. Further, ONEOK argues that the July 1, 2005 Order does not explain how permitting Northern to negotiate gas quality at delivery points is consistent with the general policy that shippers should be subject to just and reasonable and not unduly discriminatory terms and conditions of service that generally apply to all open access transportation service. ONEOK states that it may be that the initial negotiated agreement with MUD that resulted in the instant tariff provision may not result in other shipper's gas being degraded; however, nothing in Northern's tariff or in the physical realities of the blended gas stream from which Northern serves its shippers provides any assurance that future gas quality negotiations will not degrade service to other shippers.

11. ONEOK argues that the July 1, 2005 Order erred by requiring Northern to state that the quality of gas to other shippers will not be degraded under the instant proposal without requiring Northern to demonstrate that it has the physical ability to manage the quality of delivered gas to one customer without degrading the quality of gas to others. ONEOK points out that currently, Northern delivers gas on its system from a blended stream of gas. ONEOK argues that if certain parties may obtain guaranteed delivery of higher quality gas other shippers will be left with the lower quality portion of the blended gas stream even if they have rights to certain non-BTU (British Thermal Unit) elements of that stream. ONEOK argues that under Northern's balancing methodology based on BTUs there is no means to determine whether shippers are receiving the full value of their gas, including the value of the liquids.

12. ONEOK also argues that the July 1, 2005 Order failed to address the ONEOK argument that Northern's filing was deficient because it did not contain the required explanation of the impact of the proposed revisions on other shippers and their ability to use their capacity and receive the full value of the gas they have purchased. ONEOK argues that the Commission's regulations require that any change in rate schedules, forms of service agreements, or the general terms and conditions of a tariff must contain an explanation of the impact of the proposed revision on firm and interruptible customers.⁵

⁵ ONEOK rehearing request at 6, *citing*, 18 CFR § 154.204(d) (2005).

Discussion

13. The Commission denies ONEOK's request for rehearing. Northern proposed a generally applicable tariff provision permitting it to negotiate with individual shippers how it would manage the gas Northern would deliver. The Commission accepted this language. However, to ensure that Northern did not implement its proposal in a discriminatory manner, the Commission required Northern to revise the proposed language to state that Northern will negotiate gas quality at delivery points with all customers requesting such negotiations on a not unduly discriminatory basis and to further 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.

14. ONEOK argues that this action was inconsistent with the Commission's action in *AES*. We disagree. In *AES*, the Commission addressed a situation where Florida Gas Transmission Company (Florida Gas) was negotiating an interconnection agreement with a new interstate pipeline, AES Ocean Express LLC (AES Ocean Express). AES Ocean Express would transport regasified liquid natural gas (LNG) to the Florida Gas system on an open access basis pursuant to Part 284 of the Commission's regulations. Florida Gas would receive the regasified LNG at a receipt point in its market area. At the same time, the sponsors of three other interstate pipeline projects were seeking to negotiate similar agreements with Florida Gas to deliver regasified LNG into the Florida Gas market area. Among the issues addressed in the interconnection agreement were gas quality standards that the regasified LNG would have to meet in order to gain access to the Florida Gas system.

15. In *AES*, the Commission held that Florida Gas must file a generally applicable tariff provision concerning the quality of the regasified LNG that Florida Gas would accept at its receipt point with AES Ocean Express, rather than setting forth such a standard in a separate agreement between the two pipelines. The Commission stated that this would: (1) permit all interested parties, including present and potential shippers on the Florida Gas system, to protest any proposed change that could affect service on the Florida Gas system; and, (2) allay concerns that Florida Gas might discriminate between the several pipeline projects vying to deliver regasified LNG onto the Florida Gas system. The Commission also stated that this would avoid subjecting future shippers to hidden rules set forth only on the pipeline's interconnection agreement, to the extent such shippers elect to nominate service from AES Ocean Express. The Commission stated that it:

[did] not wish to see situations develop in the future where terms negotiated between pipelines in interconnection agreements conflict with the general terms and conditions of a pipeline's open access tariff. To the extent terms are necessary, as they clearly are here 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 the pipelines appropriately.⁶

16. Northern's instant proposal has a much more limited impact than the gas quality provisions at issue in *AES*. The gas quality provisions in *AES* applied to all gas received at an interconnection with another interstate pipeline, and thus would apply to all shippers on the upstream pipeline seeking to deliver gas to the Florida Gas system. Moreover, the provisions in the *AES* proceeding would inevitably affect the quality of the gas that Florida Gas delivers to all shippers at downstream delivery points. In the instant case, the quality of gas entering Northern's system at receipt points is governed by section 44 of Northern's GT&C which Northern did not propose to change. Rather, Northern proposes to place a provision in its tariff which would permit it to negotiate with an individual shipper concerning how it would manage gas quality at a delivery point where the gas leaves Northern's system.

17. Thus, the gas quality provisions that Northern negotiates pursuant to the subject tariff provision should only affect the particular shipper with which it negotiates the provision and not numerous other shippers who are not parties to the agreement. Therefore, the Commission's concerns articulated in *AES* regarding its open access rules and conflicts with open access tariff are not present in the instant case, because the provision at issue here concerns the quality of gas shippers receive gas from the system rather than a provision which would control the quality of gas entering the system.

18. Further, ONEOK asserts that because shippers may now negotiate with Northern concerning how Northern will manage the quality of gas it delivers, some shippers will receive merchantable gas while others could negotiate with Northern to manage of the quality of gas it delivers and because this difference in service does not have any rate consequences it creates a potential for discrimination. All shippers on Northern's system are guaranteed, by section 3 of Northern's GT&C, to receive gas of merchantable quality. All customers may request to negotiate with Northern concerning the manner in which Northern will manage the quality of gas that it delivers. ONEOK's argument that this creates a potential for undue discrimination is, at best speculative, and any concern regarding the allocation of costs may properly be examined in Northern's next general case.

⁶ *AES*, 107 FERC at P31.

19. ONEOK argues that Northern's filing is deficient because it did not contain a required explanation of the impact of the proposed revisions on other shippers and their ability to use their capacity and receive the full value of the gas they have purchased as required by the Commission's regulations. As stated above, Northern's tariff provides that all shippers will receive gas of a merchantable quality. In order to ensure that Northern does not implement its proposal in an unduly discriminatory fashion the Commission required that, under Northern's proposal, the quality of gas delivered to other shippers on the pipeline will not be degraded by the negotiation of gas quality management at delivery points. Northern stated in its compliance filing and placed language in its tariff reflecting that the quality of gas delivered to other shippers on the pipeline will not be degraded by the negotiation of gas quality management at delivery points. Therefore, all shippers on Northern's system will receive gas of merchantable quality, exactly as Northern's tariff requires. Moreover, if a shipper believes that it no longer receives gas of merchantable quality because of the instant proposal, or that Northern acted in an unduly discriminatory fashion, that shipper may avail itself of the Commission's complaint procedures.

20. However, consistent with the Commission's findings in *Columbia Gas Transmission Corporation*, 97 FERC ¶ 61,221 (2001), any agreement with individual shippers to use commercially reasonable efforts to manage nitrogen and carbon dioxide levels in the gas delivered by Northern would represent a "special detail" as defined by section 284.13(b)(viii)(2005) of the Commission's regulations. Consistent with that regulation, Northern must post information regarding the special detail on its Internet web site for at least 90 days. This posting will provide the transparency necessary to enable shippers and the Commission to ascertain whether Northern is implementing its this tariff provision in a non-discriminatory manner.

Compliance Filing

21. On July 15, 2005, Northern filed tariff sheets to comply with the directives of the Commission's July 1, 2005 Order. Northern proposed to revise section 3 of its GT&C to provide that, upon request, Northern will offer to negotiate with all delivery point operators, on a not unduly discriminatory basis, how Northern will manage the quality of gas delivered to the delivery point operator. In addition, Northern adds tariff language which specifies that the quality of gas delivered to other shippers on the pipeline will not be degraded by the negotiation of gas quality management at delivery points.⁷ Northern also proposes to revise its GT&C section 58 to cross reference the new language as a tariff-permitted provision in service agreements.

⁷ See *supra* n.4.

Public Notice

22. Public notice of this filing was issued on July 21, 2005. Notices of intervention and unopposed timely filed motions to intervene are granted pursuant to the operation of Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2005)). Any opposed or untimely filed motion to intervene is governed by the provisions of Rule 214. No adverse comments or protests were filed.

Discussion

23. The July 1, 2005 Order accepted tariff sheets filed by Northern 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. However, in order to ensure that Northern did not implement its proposal in an unduly discriminatory manner the Commission directed Northern to file 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 and to modify its proposed 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.

24. The Commission finds that the revised tariff sheets in Northern's July 15, 2005 filing comply with the directives of the July 1, 2005 Order. Accordingly, the Commission accepts the subject tariff sheets as proposed.

The Commission orders:

(A) Rehearing of the July 1, 2005 Order in the captioned docket is denied, as discussed in the body of this order.

(B) The tariff sheets listed in footnote number 2 are accepted as in compliance with the July 1, 2005 Order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.