121 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Natural Gas Company Docket No. RP07-454-001

ORDER ON COMPLIANCE FILING

(Issued November 5, 2007)

1. On July 2, 2007, Northern Natural Gas Company (Northern) filed revised tariff sheets[1] and additional information to comply with the Commission's June 15, 2007 letter order in this proceeding.[2] In that order, the Commission conditionally accepted Northern's proposal to exempt fuel charges on transactions in which deliveries are nominated to physical receipt points in Northern's Market Area, subject to Northern either showing that its proposal does not discriminate against certain shippers or revising its proposal in a manner that is not unduly discriminatory. In the instant filing, Northern explains why it does not believe its proposal is discriminatory and files revised tariff sheets modifying its proposal in a manner that it states is non-discriminatory. Northern requests a June 18, 2007 effective date for its tariff sheets.

2. Based on our review of Northern's additional information and revised tariff sheets, and for the reasons set forth below, we reject Northern's proposal, as amended, as inconsistent with the Commission's policy and regulations concerning the discounting of fuel and as unduly discriminatory against certain shippers.

Background

3. On May 18, 2007, Northern filed First Revised Sheet No. 54B proposing to exempt fuel charges on transactions in which deliveries are nominated to physical receipt

[1] Substitute 1 Revised Sheet No. 54B and Sixth Revised Sheet No. 308 to Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

[2] *Northern Natural Gas Co.*, 119 FERC ¶ 61,278 (2007) (June 15, 2007 Order).

points in Northern's Market Area.[3] Northern compared these physical receipt points to its other receipt points, which also serve as delivery points where gas can flow out of its system. Northern proposed to eliminate fuel charges on transactions in which deliveries are nominated to specified receipt points in its Market Area because, in those transactions, no physical delivery is taking place and those delivery transactions are offset by other physical receipts entering Northern's system at the physical receipt points (i.e., the gas received at the physical receipt point is being transported to another delivery point in the Market Area and Northern is collecting fuel on that transaction). Northern stated that its proposal will avoid the potential for double-collection of fuel on deliveries to physical receipt points and increase efficient use of its system. Northern also stated that its proposal is similar to how it handles fuel charges on Market Area transactions through pooling points. Further, Northern stated that its proposal would not have any material impact on other Market Area shippers because fuel retained on deliveries to the proposed physical receipt points in its Market Area amounts to only 14,698 Dth annually, which represents only 0.13 percent of its total fuel used.

4. Protesters of Northern's original proposal argued that: (1) Northern had not shown its proposal to be just and reasonable; (2) Northern failed to show that the transactions it proposes to exempt from fuel charges do not actually consume fuel; (3) the proposal grants undue preference to marketers; (4) Northern's list of physical receipt points provided with the proposal is not complete; and, (5) even if the Commission approves the proposal, those shippers exempt from paying fuel charges should still be assessed lost-and-unaccounted-for fuel charges.

5. In the June 15, 2007 Order, the Commission found that Northern's proposal may impermissibly discriminate in favor of shippers who nominate to physical receipt points. Accordingly, the Commission conditionally accepted Northern's filing and required Northern to file either: (1) additional information explaining why its proposal does not discriminate against certain shippers and why certain shippers should be exempt from having to pay fuel charges even though their transactions with Northern result in fuel being consumed; or (2) revised tariff sheets setting forth its proposal in a manner that is not unduly discriminatory.

[3] Northern defines "physical receipt points" as points where gas physically enters its system but does not leave its system. The physical receipt points that Northern proposes for fuel exemption are NBPL/NNG Ventura, NBPL/NNG Aberdeen, NBPL/NNG Marshall, GRLKS/NNG Carlton, TBPL/NNG Beatrice, NBPL/NNG Welcome, NBPL/NNG Grundy Center, and Viking/NNG Polk ITE.

Details of Northern's July 2, 2007 Filing

6. In its July 2, 2007 filing, Northern states that its proposal is not intended to discriminate in favor of certain shippers, but rather to avoid double-collecting fuel. Northern also states that the proposed fuel exemption is consistent with its overall approach of recovering fuel only once. It adds that its proposed requirement that the selected receipt points must be physical receipt points at all times is the means by which it is able to verify that the volume will be redelivered to the Market Area.

7. Northern also restates that its proposal is similar to how it assesses fuel charges for its pooling customers. It states that under its Mileage Indication District Pooling Service (MPS) Pooling Rate Schedule, shippers are allowed to nominate to the pool without paying a fuel charge and shippers are assessed fuel only on the delivery away from the pool to the ultimate physical consumption point. It adds that it charges fuel only to the end user because other shippers in the chain of title are not making a delivery to a physical delivery point. Northern states that there are no concerns about undue discrimination associated with this practice.

8. In addition to filing explanatory information, Northern modified its original proposal. Under its original proposal, the shipper delivering gas to the physical receipt point would be exempt from fuel charges. Instead, Northern now proposes that the shipper delivering gas to the physical receipt point would be exempt from fuel charges unless the parties otherwise agree by providing Northern with certain information[4] and scheduling the gas on stand-alone contracts. Northern states that it will provide a form on its website that must be completed and returned to Northern prior to the transaction taking place. Northern states that by adding the ability of the parties to agree on who will receive the fuel exemption it will be indifferent as to which shipper pays the fuel charge and, if shippers do not agree, the shipper making delivery to the physical receipt point will receive the fuel exemption. Northern also states that this tariff modification will make its proposal consistent with its fuel exemption provisions for pooling or processing plant transactions. Northern adds that it has revised Sheet No. 308 to include the Market Area fuel exemption on its list of terms that may be included in service agreements.

Public Notice, Intervention and Comments

9. Notice of Northern's July 2, 2007 filing was issued on July 10, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2007), all timely-filed motions to intervene and any motions to intervene out-of-time before the

---

[4] Northern states that the requisite information will include the shippers' names, contract numbers, physical receipt point, and the term of the agreement.

issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively, the NSP Companies) filed a protest. Northern Border Pipeline Company (Northern Border) filed a motion to intervene and comments.

10. Both parties assert that the Commission should reject Northern's proposal as unjust and unreasonable. Northern Border contends that Northern has still failed to explain why certain shippers should be exempt from paying fuel charges even though their transactions with Northern result in fuel being consumed. Northern Border states that the Commission generally has not granted pipelines the discretion to eliminate fuel charges for transportation services, because pipelines are not allowed to discount variable costs. Northern Border maintains that even though Northern modified its proposal, it still does not prevent undue discrimination against certain shippers.

11. Northern Border also questions Northern's contention that gas delivered to Northern's physical receipt points will be redelivered in the Market Area. While Northern Border agrees this may often be the case, it asserts that Northern overlooks deliveries of gas by displacement (i.e., gas leaving Northern's system at physical receipt points). It states that Northern's failure to address deliveries of gas by displacement allows a shipper whose gas is delivered by displacement onto an interconnected pipeline at any of the selected physical receipt points to avoid paying an in-kind fuel charge. Consequently, Northern Border contends that the in-kind fuel used to transport displaced gas must be collected from other shippers who are physically delivering gas in Northern's Market Area, which results in undue discrimination against other Market Area shippers.

12. Northern Border adds that it currently has 775 MMcf per day of contracted firm capacity with Ventura as its primary receipt point, and that Northern shippers who hold such primary capacity rights have two source supplies: (1) gas physically transported on Northern Border to Ventura; and (2) gas received from Northern at Ventura by displacement. Northern Border believes that the amount of gas available to displace at Ventura is significant. It argues that if no in-kind fuel is charged by Northern to its shippers whose deliveries displace gas onto Northern Border at Ventura, such shippers have an economic advantage over upstream Northern Border shippers who are required to provide in-kind fuel on Northern Border's system to transport their gas to this market center. It states that, therefore, Northern's proposal is unduly discriminatory against upstream shippers. Northern Border requests that, if the Commission approves Northern's proposal, to avoid the potential for undue discrimination, it should require Northern to revise its tariff to clarify that the proposal would apply only to physical receipt point deliveries that involve delivery to another Northern contract transaction.

13. The NSP Companies also maintain that Northern's proposal, even as modified, impermissibly exempts certain shippers that use fuel from paying fuel charges. In

addition, they state that under the original proposal, any shipper delivering gas to a physical receipt point on Northern's system (Shipper B) would be exempt from paying fuel charges, because the shipper receiving gas at the physical receipt point and delivering it to another delivery point in Northern's Market Area (Shipper A) would always pay the fuel charge. According to the NSP Companies, under the revised proposal Shipper B will still receive the exemption unless the two shippers agreed otherwise. However, they argue, Shipper A is unlikely to know about or have information regarding Shipper B's transportation into the physical receipt point because Shipper B is not obligated to notify Shipper A of its transaction. Therefore, they contend, Shipper A will have no opportunity to refuse to subsidize Shipper B for the fuel charges. The NSP Companies also argue that Shipper A would never agree to pay, via a higher fuel charge, for the transportation service that Northern is providing Shipper B, because Shipper A derives no benefit from the transportation transaction into the physical receipt point.

14. The NSP Companies also challenge Northern's comparison of its proposal to its pooling fuel arrangements. They argue that in the pooling situation, the gas on the upstream side of the pool is not only destined for ultimate redelivery in the Market Area, but that the purpose of the overall transaction is to move gas from various physical receipt points to Market Area delivery points. Thus, downstream shippers benefit from transportation upstream of the pool (i.e., the upstream transportation is necessary in order for the downstream shipper to receive the gas it wants to buy). The NSP Companies state that for that benefit, the downstream shippers have sufficient reason to contribute, via payment of the fuel charge, to move into the pool the gas they elect to buy out of the pool. In contrast, they argue, the transportation services addressed in Northern's proposal are unrelated transactions; therefore, the collection of fuel on both transactions does not involve a double-collection of fuel, but rather the collection of fuel on two discrete transactions.

15. Finally, the NSP Companies assert that Northern's filing increases the amount of fuel used to effectuate Market Area deliveries without increasing the amount of gas delivered to Market Area customers. They contend that certain displacement volumes will have fuel-exempt transportation from Demarc to the Ventura point resulting in other Market Area shippers paying higher Market Area fuel rates.

Discussion

16. As discussed below, the Commission finds that Northern's proposal is inconsistent with the Commission's policy on the discounting of fuel charges, does not comply with certain Commission regulations, and even as modified, has the potential to unduly discriminate against certain shippers. Accordingly, we reject Northern's revised tariff sheets.

17. Under the Commission's policy for the discounting of fuel charges, pipelines are not permitted to discount the charges through which they recover the cost of fuel used in connection with transportation services, because fuel is a variable cost and the Commission's regulations do not permit discounts below variable costs.[5] This policy is codified in section 284.10 of the Commission's regulations,[6] which provides that the minimum rate "must be based on the average variable costs which are properly allocated to the service to which the rate applies."[7] However, the Commission has allowed interstate pipelines to exempt certain transactions from fuel use charges if the pipeline can demonstrate that no fuel is actually being consumed in connection with the specific transaction.[8] Under Northern's proposal, shippers delivering gas to a physical receipt point will be exempt from paying fuel, unless other payment arrangements are made. However, under Commission policy, fuel charges may only be eliminated in cases where the pipeline can show that no fuel is actually being consumed in connection with the corresponding transportation service. Northern has not made such a showing and it appears that the transactions Northern proposes to exempt from fuel charges will result in the consumption of fuel. Accordingly, we find Northern's proposal impermissibly exempts certain transactions from fuel charges contrary to Commission policy and regulations on the discounting of fuel charges.

18. Further, the Commission finds that Northern has failed to show that it can implement its proposal in a manner that is not unduly discriminatory. As we held in the June 15, 2007 Order, Northern's proposal appears to discriminate in favor of shippers who nominate gas to the physical receipt points, because they are exempt from having to pay fuel charges while shippers to Northern's other receipt points are not exempt. Although Northern revised its proposal to allow shippers to agree on who will receive the fuel exemption, it does not eliminate the possibility of undue discrimination. As the NSP Companies explained in their protest, downstream shippers are unlikely to know about or have any information on upstream transactions before such transactions occur. Accordingly, downstream shippers will not have the opportunity to negotiate with upstream shippers on who will receive the fuel exemption. Even if shippers had the opportunity to negotiate, it is unlikely that downstream shippers will agree to pay for the fuel consumed in the upstream transaction when they did not receive any direct benefit from that transaction. Accordingly, the Commission finds that even as modified

---

[5] *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119 at 61,352 (2002).

[6] 18 C.F.R. §284.10 (2007).

[7] *Id.* §284.10(c)(4).

[8] *See Gulf South Pipeline Co.*, 109 FERC ¶ 61,283, at P 7 (2004); *NorAm Gas Transmission Co.*, 70 FERC ¶ 61,269, at 61,810 (1995).

Northern’s proposal discriminates in favor of shippers delivering gas to one of Northern’s physical receipt points, and we therefore reject Northern’s proposal.

The Commission orders:

(A) Northern’s Substitute 1 Revised Sheet No. 54B and Sixth Revised Sheet No. 308 filed in Docket No. RP07-454-001 are rejected as discussed above.

(B) Northern’s First Revised Sheet No. 54B filed in Docket No. RP07-454-000, is rejected as moot.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.