123 FERC ¶ 61,110
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. RP08-109-002

ORDER ON COMPLIANCE FILING

(Issued May 1, 2008)

1. On January 18, 2008, Northern Natural Gas Company (Northern) filed information required by the Commission's January 3, 2008 Order in this proceeding (January 3 Order).[1] The January 3 Order accepted and suspended Northern's proposed tariff sheets,[2] to be effective June 7, 2008, or some earlier date if subsequently ordered by the Commission, subject to Northern providing additional support for its proposal to remove a requirement that firm deferred delivery (FDD) shippers maintain a storage point as a primary receipt point on Northern's firm throughput service agreement (FDD Storage Point Requirement).[3] As discussed below, we find that Northern's filing complies with the January 3 Order. Therefore, we will allow Northern to place Seventh Revised Sheet No. 141 in effect five business days after the issuance date of this order.

I. Background

2. Northern provides firm storage service pursuant to Rate Schedule FDD (Firm Deferred Delivery) and firm transportation service pursuant to Rate Schedule FTS (Firm

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[1] *Northern Natural Gas Co.*, 122 FERC ¶ 61,003 (2008) (January 3 Order).

[2] In its initial filing in this proceeding, Northern proposed the following tariff sheets: Eighth Revised Sheet No. 138, Sixth Revised Sheet No. 139, and Seventh Revised Sheet No. 141 to its FERC Gas Tariff, Fifth Revised Vol. No. 1.

[3] Subsequently, on February 29, 2008, the Commission, on rehearing, clarified the January 3 Order to allow Eighth Revised Sheet No. 138 and Sixth Revised Sheet No. 139 of Northern's proposed tariff sheets not related to the FDD Storage Point Requirement to go into effect on March 7, 2008. *Northern Natural Gas Co.*, 122 FERC ¶ 61,192 (2008).

Throughput Service).[4] Northern's system is divided into two areas for rate, contracting and operational purposes—the Field Area and the Market Area.[5] Northern's Market Area encompasses the upper Midwest, north of the Field/Market Area demarcation line at Clifton, Kansas. It includes approximately 11,500 miles of pipeline configured in a grid system, with multiple gas input points and thousands of delivery points off numerous branchlines. Natural gas flows into Northern's Market Area facilities from geographically distinct supply basins via a number of third party interstate pipelines and Northern's own transmission facilities.[6]

3. In the January 3 Order, the Commission, responding to objections raised by Madison Gas and Electric Company (MGE), directed Northern to provide additional support for its FDD Storage Point Requirement in the following manner: (1) explain why the FDD Storage Point Requirement is no longer necessary; (2) explain how removing this requirement would not adversely affect FTS shippers who do not hold FDD capacity; (3) explain how its proposal would not lead to certain shippers having the ability to "double-reserve" capacity; and (4) reconcile its proposal in the instant filing with its proposal in Docket No. RP05-375-000, wherein Northern stated that the FDD Storage Point Requirement was needed to prevent FDD shippers from double-reserving receipt point capacity in the Market Area, to the detriment of non-FDD shippers.[7]

II. <u>Details of Filing</u>

4. In response to the Commission's first question, Northern explains that the proposed FDD Storage Point Requirement is no longer necessary because the benefits of retaining the requirement are outweighed by the benefits removing it will provide in terms of additional flexibility to firm shippers with FDD capacity. Northern states that due to constraints in the Market Area, shippers operating in that area have a natural incentive to align primary firm receipt quantities with the location of firm supplies, which includes withdrawal capability under FDD contracts. Northern states that nothing in its proposal will prohibit a shipper from continuing to request its primary receipt point capacity at the storage point. However, Northern argues that firm shippers with FDD capacity should be permitted the flexibility to effectively manage their transportation services.

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[4] FDD shippers on Northern's system are required to have Firm Throughput Service.

[5] *See* Northern, March 4, 2002 Filing, Docket No. RP00-404-002, at Exhibit 1.

[6] *See* Northern, March 4, 2002 Filing, Docket No. RP00-404-002, at Exhibit 4 (showing Northern's system network and gas flow patterns in the Market Area).

[7] Northern, June 14, 2005 Filing, Docket No. RP05-375-000, at 4 (2005 Filing).

5. Furthermore, Northern points to three specific situations that have caused the benefit of the FDD Storage Point Requirement to be outweighed by shippers' need for additional flexibility. First, Northern states that certain shippers own storage service for one purpose (e.g., seasonal price arbitrage) and transportation for another (e.g., capturing the price spread between points of receipt and delivery), arguing that such shippers should not be required to link their storage and transportation service through the FDD Storage Point Requirement.[8] Second, Northern explains that shippers with storage at the Demarc Deferred delivery point are currently required to align their transportation receipt point with Demarc Deferred, rather than using other points, such as the Demarc pool point. Northern argues that shippers should be allowed to retain a primary firm receipt point at Demarc and then select whether to take their supply from Demarc Deferred or the Demarc pool point as transactions between the two are provided at zero transportation cost.[9] Third, Northern states that shippers acquiring new FDD service (either through acquisition of incremental service, the annual right of first refusal process, or capacity release) that have primary firm delivery points north of the Ogden-north, Ventura-north or Farmington-north constraints, but that do not have receipt points upstream of these constraints, cannot comply with the FDD Storage Point Requirement. Northern argues that such shippers should not be required to either support a mainline expansion from an eligible deferred delivery point or forgo the purchase of new FDD service.

6. Northern next explains that removing the FDD Storage Point Requirement will provide FDD shippers with additional flexibility in utilizing their storage accounts without negatively impacting Northern's firm transportation service. Northern states that the requirement has inadvertently resulted in firm shippers without FDD capacity having an advantage over those with FDD capacity and that MGE's protest aims to retain that advantage. Northern argues that FDD shippers understand the risk of allocation involved in realigning primary capacity from primary storage points to different Market Area receipt points.

7. Northern next states that removing the FDD Storage Point Requirement will not lead to FDD shippers double reserving capacity, noting that only MGE (and no other non-FDD shippers) has expressed concern over this proposal. Northern explains that in response to increased capacity constraints in the Market Area in 2005, it added several new Market Area capacity allocation groups to identify the smallest affected area for

[8] Northern notes that this situation was identified and addressed in 2005 by requiring such shippers to provide an affidavit that states the services are not related. *Northern Natural Gas Co.*, 112 FERC ¶ 61,066 (2005). However, Northern states that shippers sometimes object to this requirement due to uncertainty over how their use of these services will change over time.

[9] Northern states that if it cannot remove the FDD Storage Point Requirement, it will need to request this exclusion from the requirement.

allocation purposes. Northern argues that the potential for group allocation has provided an additional incentive for Market Area shippers to align maximum daily quantities (MDQ) under transportation agreements with daily maximum injection/withdrawal quantities (FDQ) under storage agreements. Northern believes that its Market Area shippers, most of which are local distribution companies with an obligation to serve, are unlikely to take that risk of allocation.[10] Northern argues that double-reservation of capacity will likely not occur because just as Market Area shippers might realign away from storage points, others will likely realign to storage points. Further, Northern states that its firm transportation service agreement provides primary firm at only one point, so shippers would place themselves at risk if they were to rely on primary use at both points.

8. Finally, Northern states that its current filing is not inconsistent with its statements in the 2005 Filing, in which Northern stated that shippers would "likely not" assign primary receipt point MDQ to storage. Northern states that it has experienced more demand for primary receipt MDQ at storage points than is required by its tariff and it is aware that the requirement conflicts with FDD shippers' business needs. Therefore, Northern believes that the benefits of removing the FDD Storage Point Requirement outweigh the benefits of retaining it.

III. Public Notice and Comments

9. Notice of Northern's filing was issued on January 23, 2008. Protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2007). On January 30, 2008, MGE filed a protest, which is discussed below.

10. In its protest, MGE states that Northern has failed to adequately support its proposed removal of the FDD Storage Point Requirement. MGE asserts that the fundamental point of the requirement is that FDD shippers should have firm take-away capacity from storage to ensure that there is transportation where there is supply. MGE argues that the three specific situations cited by Northern in support of its proposal—to facilitate arbitrage for some FDD shippers; to avoid addressing one of Northern's tariff requirements; and to avoid administrative burdens for potential new shippers—fail to show how removal of the requirement will avoid harm to non-FDD shippers.

11. Additionally, MGE argues that Northern has not adequately responded to the Commission's question regarding whether removal of the FDD Storage Point Requirement will harm non-FDD shippers. MGE objects to Northern's assertion that MGE has failed to show specific harm, arguing that Northern, not MGE, carries the burden of establishing that its proposal is just and reasonable. In any event, MGE asserts that it did provide specific evidence of harm to non-FDD shippers by citing Northern's

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[10] Northern also notes that shippers have requested capacity at the Ogden deferred delivery receipt point beyond what is available as primary firm.

statement from the 2005 Filing noting the adverse impact of removing the requirement on non-FDD shippers. Further, MGE states that Northern's argument amounts to a claim that the only harm that will befall non-FDD shippers is the loss of an "inadvertent advantage" that non-FDD shippers have enjoyed as a result of the FDD Storage Point Requirement. MGE asserts that this argument implies that non-FDD shippers enjoy a level of service to which they are not entitled and, therefore, a degradation in such service should be acceptable to them. MGE states that this argument is without merit. MGE also states the FDD Storage Point Requirement is necessary to ensure that both FDD and non-FDD shippers have the same receipt point capacity rights. Furthermore, MGE argues that under Commission policy, the rights of some firm shippers should not be inferior to the rights of others simply because the latter also take another service from the pipeline.[11]

12. MGE next argues that Northern has failed to show that its proposal will not lead to FDD shippers double-reserving capacity. MGE states that Northern's suggestion that the risk of group allocation will prevent FDD shippers from realigning primary capacity away from storage receipt points cannot be reconciled with Northern's position in the 2005 Filing. MGE explains that in the 2005 Filing, Northern argued that the risk of Market Area allocation would not deter FDD shippers from realigning primary capacity away from storage receipt points to other Market Area receipt points because if a Market Area allocation occurred, Northern's most frequently used storage point is a paper point near Ogden, Iowa, that is unlikely to be allocated. MGE argues that because Northern's most frequently used storage point is this paper point, FDD shippers would be free to realign their primary capacity away from the storage receipt points to other Market Area receipt points if not for the FDD Storage Point Requirement. MGE further argues that unlike non-FDD shippers, FDD shippers who realign capacity to other Market Area receipt points would be immune from the risk of allocation because if an allocation were to occur in the Market Area, FDD shippers would be free to fall back on a paper point.

13. Additionally, MGE argues that Northern's proposal is not justified even if there is a risk of allocation at the Ogden paper point. MGE states that there is no basis for Northern's suggestion that this risk of allocation will prevent FDD shippers from realigning their primary capacity away from storage receipt points to the detriment of non-FDD shipper. MGE interprets Northern's argument to suggest that if FDD shippers are willing to take their chances, then they can realign their primary capacity away from storage points to other Market Area receipt points at the expense of existing non-FDD firm transportation shippers. According to MGE, this rationale by Northern does not take into account that service for existing non-FDD firm transportation shippers will be degraded. Further, MGE states that it is precisely because FDD shippers are immune from the risk of Market Area allocation that Northern concluded in the 2005 Filing that without the FDD Storage Point Requirement, FDD shippers would be "able to essentially

[11] MGE, January 30, 2008 Protest at 6 (citing 18 C.F.R. § 284.7(a)(3) (2007)).

double-reserve receipt point capacity in the Market Area, to the detriment of non-FDD shippers."[12]

14. Finally, MGE argues that Northern has failed to reconcile its proposal with its statements in the 2005 Filing that the FDD Storage Point Requirement is necessary to protect the rights of non-FDD firm transportation shippers. MGE contends that other than stating that it has been experiencing more demand for primary receipt MDQ at deferred delivery points than is required by the tariff or that is available at the points, Northern offers no reconciliation of the two filings.

15. On February 6, 2008, Northern filed an answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Northern's answer because it has provided information that assisted us in our decision-making process.

16. In its answer, Northern states that MGE's protest boils down to the issue of whether Northern's proposal will result in detriment to non-FDD shippers. Northern argues that MGE's protest is premised on the notion that non-FDD shippers should be able to retain their current advantage over FDD shippers. Northern asserts that the sole support for this proposition is the statement made by Northern in the 2005 Filing, which Northern no longer believes to be the case on account of changed circumstances. Finally, Northern states that not a single non-FDD shipper, including MGE, has claimed that the change will result in detriment to them. Northern concludes by stating that its proposal is just and reasonable because it removes an unnecessary requirement currently placed on FDD shippers.

IV. <u>Discussion</u>

17. We find that Northern has adequately supported its proposal to remove the FDD Storage Point Requirement, and that Northern has fully complied with the requirements of the January 3 Order. We also find that removing the FDD Storage Point Requirement will provide FDD shippers with additional flexibility to effectively manage their storage accounts. Furthermore, removing the FDD Storage Point Requirement should not degrade service to other non-FDD shippers, as alleged by MGE. Accordingly, we find Northern's proposal to be just and reasonable and will therefore allow Northern to place Seventh Revised Sheet No. 141 in effect five business days after the issuance date of this order.

18. The core of MGE's objection to Northern's proposal is that firm service to non-FDD shippers will be degraded if Northern lifts the requirement that FDD shippers

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[12] 2005 Filing, at 4.

maintain a storage point as a primary receipt point on their FTS agreements. As evidence of this harm, MGE repeatedly cites Northern's statement from the 2005 Filing, in which Northern stated that removing the FDD Storage Point Requirement would allow FDD shippers "to essentially double-reserve receipt point capacity in the Market Area, to the detriment of non-FDD shippers."[13] Despite these allegations, MGE has not shown how non-FDD shippers' firm service will be degraded if Northern is permitted to remove the FDD Storage Point Requirement. Nor has MGE specified how this alleged double reserving of capacity would be accomplished under the operational conditions at the time of this filing. Rather, MGE argues that Northern should be strictly held to its above-quoted statement from the 2005 Filing. We disagree. Northern has explained that circumstances have changed since that time. Specifically, Northern notes that its system is constrained in many portions of the Market Area and that shippers who choose to realign away from the storage point run the risk of allocation, thus providing an incentive to FDD shippers to properly align receipt point capacity with storage capacity. Thus, we find that Northern's statement in the 2005 Filing does not show that, under current conditions, removal of the FDD Storage Point Requirement will lead to the double reserving of capacity by non-FDD shippers.

19. In the Commission's view, MGE's concerns about double-reserving of capacity appear to focus on the availability of capacity that may have been available at certain secondary receipt points but may no longer be available if FDD shippers are not required to allocate a portion of their firm capacity to the storage point. Although Northern's proposal may have some effect on the availability of capacity at certain secondary receipt points, it should have no impact on any non-FDD shippers' firm capacity between a primary receipt point and a primary delivery point. Capacity at secondary receipt points, which appears to drive MGE's concerns, would, as always, remain subject to availability.[14] Thus, as provided in Northern's tariff, non-FDD shippers and FDD shippers alike will continue to receive firm service at secondary points of receipt only to the extent that Northern first provides firm service at primary points of receipt. Because any incidental constraints at certain points due to FDD shippers realigning away from the storage point will not affect firm service at primary points of receipt, we find that removal of the FDD Storage Point Requirement will not result in a degradation of firm service.

20. In accepting Northern's proposal to, among other things, relax the terms of the FDD Storage Point Requirement in the 2005 Filing, the Commission found that such

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[13] Northern, June 14, 2005 Filing, Docket No. RP05-375-000, at 4.

[14] *See* Northern, FERC Gas Tariff, Fifth Revised Vol. No. 1, Fourth Revised Sheet No. 260A ("Firm Throughput Services at Primary Points shall be scheduled first and shall be given the highest priority. Firm Throughput Service at Alternate Points shall be scheduled next, before interruptible volumes.").

proposals would provide FDD shippers with additional flexibility.[15] With respect to Northern's instant filing, which removes the requirement altogether, we find Northern's proposal will again provide FDD shippers with additional flexibility to effectively utilize their storage accounts. Furthermore, as discussed above, Northern's proposal should not degrade the firm service of any other class of shipper. Therefore, we accept Northern's proposal to remove the FDD Storage Point Requirement, as proposed.

The Commission orders:

Northern may place its proposed Seventh Revised Sheet No. 141 into effect, five business days from the issuance date of this order, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[15] *Northern*, 112 FERC ¶ 61,066, at P 23 (2005).