

124 FERC ¶ 61,104
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company

Docket No. RP08-262-001

ORDER ACCEPTING COMPLIANCE FILING, SUBJECT TO CONDITIONS

(Issued July 29, 2008)

1. On May 1, 2008, Northern Natural Gas Company (Northern) filed revised tariff sheets,¹ in compliance with the Commission's April 4, 2008 order (April 4 Order) in this proceeding.² In this order, we accept Northern's revised tariff sheets, effective June 1, 2008, as proposed, subject to the conditions discussed below.

I. Background

2. Section 28 of Northern's General Terms and Conditions (GT&C) provides that Northern and its shippers must deliver scheduled volumes on a uniform daily and hourly basis to points of receipt and delivery. In Northern's Field Area, the tariff requires shippers to tender and Northern to deliver gas at an hourly flow rate of 1/24th or 4.16 percent of the daily scheduled volumes. In its Market Area, Northern's tariff provides shippers with additional flexibility, allowing delivery to Market Area shippers at an hourly flow rate of 1/16th or 6.3 percent of a shipper's firm entitlement.

3. In the April 4 Order, the Commission conditionally accepted a non-conforming service agreement (Agreement) under Rate Schedule TFX between Northern and Southwestern Public Service Company (SPS). The Agreement provided SPS with an hourly flow rate of 4.16 percent of its contract entitlement, rather than its confirmed scheduled volumes, at its primary delivery point in Northern's Field Area. The Commission accepted the Agreement subject to Northern offering this hourly flow right

¹ Eighth Revised Sheet No. 226 and Fifth Revised Sheet No. 227 to Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

² *Northern Natural Gas Co.*, 123 FERC ¶ 61,014 (2008).

to all similarly situated shippers. The Commission directed Northern to either file the Agreement or explain why the Commission should not require it to do so. Finally, the Commission also directed Northern to either file any SMS service agreements relevant to pricing under the Agreement or explain why it should not file it.

II. Details of Filing

4. To comply with the Commission's April 4 Order, Northern proposed tariff sheets that would allow it and a Field Area shipper to mutually agree to hourly takes of 4.16 percent of the incremental entitlement at the delivery point. Northern states such an agreement would be subject to construction of facilities, capacity availability, and the operational feasibility of Northern delivering gas at the hourly flow rate. Northern continues that under such an agreement, the shipper must provide reimbursement of all construction costs it incurs to provide this service.

5. In addition, Northern filed the Agreement to provide a complete picture of its terms. Northern believes the Agreement illustrates the unique facility arrangement agreed to by Northern and SPS. Northern explains this arrangement consists of electric generation facilities located behind each of the physical delivery points with the hourly flow rate applicable only at the primary delivery points listed on the Agreement. Northern further explains that certain provisions were necessary to accommodate hourly swings that are atypical at these Field Area delivery points.

6. Finally, in response to the Commission's directive that Northern file any SMS service agreements relevant to pricing under the subject Agreement or explain why it should not file them, Northern advises it has not yet executed an associated SMS agreement with SPS. Northern states that when it does execute such an agreement, it will execute the standard, *pro forma* SMS agreement, as shown on Sheet Nos. 452-457 of its tariff.

III. Public Notice, Intervention and Comments

7. Notice of Northern's filing issued on May 6, 2008. 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 (2008), 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 this proceeding or place additional burdens on existing parties. Golden Spread Electric Cooperative, Inc. and GS Electric Generating Cooperative, Inc. (collectively, Golden Spread) filed a comment.

8. In its comment, Golden Spread states Northern's compliance filing implements the directives in the Commission's April 4 Order for the most part except for a couple ambiguities in the proposed tariff language. Golden Spread requests the Commission

require Northern to clarify the term “incremental entitlement” found in section 19.A.5 of the GT&C to clearly establish the entitlement Northern will use to calculate the 4.16 percent hourly flow right and to confirm that Northern will determine the hourly flow rights for all Field Area shippers in the same manner as in the Agreement.

9. Golden Spread also requests clarification of the reimbursement obligation identified in section 19.A.5 of the GT&C to specify how shippers will pay the costs of any new facilities. Golden Spread urges Northern to revise its tariff to allow reimbursement either by payment for transportation service or by direct reimbursement. Further, Golden Spread requests that Northern not limit the reimbursement obligation to an up-front payment by the shipper.

10. Finally, Golden Spread requests the addition of a cross reference in section 58 of the GT&C to clarify that a mutually agreed-upon hourly flow right for a Field Area shipper will not constitute a material deviation from Northern’s *pro forma* service agreement.

11. On June 5, 2008, Northern filed an answer to Golden Spread’s comment. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Northern’s answer because it provided information that assisted us in our decision-making process.

12. In response to Golden Spread’s request for clarification regarding the term “incremental entitlement,” Northern states that it is willing to revise the proposed language to say “new or extended entitlement” rather than “incremental entitlement.” Also, to satisfy Golden Spread’s request to clarify how shippers will reimburse Northern for the construction of new facilities, Northern states that it will include in the provision that the method for reimbursement for any new facilities will be as mutually agreed to by Northern and the shipper. Finally, Northern states that it will add a cross reference in section 58 of the GT&C stating that an hourly flow right in a service agreement will not constitute a non-conforming provision.

IV. Discussion

13. We conditionally accept Northern’s proposed tariff sheets, effective June 1, 2008, and subject to Northern filing revised tariff sheets consistent with the discussion below.

14. In the April 4 Order, the Commission accepted the Agreement between Northern and SPS, subject to Northern offering the non-conforming hourly flow rights included in the Agreement to all similarly situated shippers. Northern’s proposed tariff provision states: “In the Field Area, Northern and Shipper may mutually agree to hourly takes of 4.16 [percent] of the incremental entitlement at the delivery point . . .” and “Northern will

evaluate any such requests on a not unduly discriminatory basis.”³ Golden Spread requests the Commission direct Northern to clarify the term “incremental entitlement” in this provision to clearly establish what entitlement Northern will use to calculate the 4.16 percent hourly flow right. In response, Northern offered to replace the phrase “incremental entitlement” with “new or extended entitlement.” We find that the proposed language, as clarified by Northern, will afford similarly situated shippers the same level of service provided to SPS under the Agreement,⁴ namely a 4.16 percent hourly flow right applied to a shipper’s full daily entitlement at the delivery point plus any scheduled overrun quantities at the delivery point. We understand the phrase “new or extended entitlement” to comprise both the base entitlement and any incremental extension, i.e., the full daily entitlement at the delivery point plus any scheduled overrun quantities at that point.

15. Golden Spread makes two additional requests—that Northern clarify the method of payment for the cost of new facilities can be mutually agreed upon by the parties and that Northern cross-reference section 19.A.5 in section 58 of the GT&C as a provision that may be mutually agreed upon. In its answer, Northern agrees to file revised tariff sheets clarifying these provisions in accordance with Golden Spread’s requests. We accept the clarifying language Northern agrees to file with respect to these two issues, as well as the “new or extended entitlement” revision discussed above, and direct Northern to revise its tariff to reflect these changes.

The Commission orders:

Northern’s revised tariff sheets referenced in Footnote No. 1 are accepted, effective June 1, 2008, subject to Northern’s filing further revised tariff sheets within thirty (30) days of the date this order issues, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³ See Eighth Revised Sheet No. 226 and Fifth Revised Sheet No. 227.

⁴ Paragraph 7 of the Agreement between Northern and SPS states: “Shipper shall have an hourly flow rate of 4.16 [percent] of the Entitlement at the primary delivery points, plus any overrun volumes scheduled.”