

125 FERC ¶ 61,351  
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. RP96-272-085

ORDER ACCEPTING NEGOTIATED RATE AGREEMENT

(Issued December 22, 2008)

1. On November 26, 2008, Northern Natural Gas Company (Northern) filed revised tariff sheets<sup>1</sup> reflecting the implementation of a negotiated rate agreement with Tenaska Marketing Ventures (Tenaska). Northern requests a December 1, 2008 effective date. In this order, we grant waiver of the 30-day notice period and accept Northern's revised tariff sheets effective December 1, 2008, as proposed, as discussed below.

**I. Background**

2. On June 7, 1996 in Docket No. RP96-272-000, Northern filed tariff sheets to give it the ability to negotiate rates in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, issued

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<sup>1</sup> Third Revised Original Sheet No. 66B.01a and Original Sheet No. 66B.13a to its FERC Gas Tariff, Fifth Revised Volume No. 1.

January 31, 1996 in Docket No. RM95-6-000 (Negotiated Rate Policy Statement).<sup>2</sup> The Commission accepted the tariff sheets in an order issued July 5, 1996.<sup>3</sup>

## **II. Details of Filing**

3. Under the proposed negotiated rate agreement (Agreement), Tenaska receives 100,000 Dth/day of firm service under Rate Schedule TFX at its primary receipt point at NNG Demarcation (Demarc). The firm contract, effective December 1, 2008, continues month-to-month through March 31, 2009, unless Tenaska provides notice to terminate the contract. Northern's proposed tariff sheets provide information concerning the Agreement, including the exact legal name of the shipper, the applicable rate schedule, primary receipt and delivery points, term, volume, applicable rates and surcharges, and a statement affirming that the negotiated rate agreement does not deviate in any material aspect from Northern's *pro forma* service agreement.<sup>4</sup>

## **III. Notice of Filings and Responsive Pleadings**

4. Public notice of Northern's filing issued December 1, 2008, with interventions and protests due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2008). 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 the proceeding or place additional burdens on existing parties. The Northern Municipal Distributors Group (NMGD) and each of its individual members,<sup>5</sup>

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<sup>2</sup> *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, *order granting clarification*, 74 FERC ¶ 61,194, *order denying reh'g and clarification*, 75 FERC ¶ 61,024 (1996), *reh'g denied*, 75 FERC ¶ 61,066 (1996), *pet. for review denied*, *Burlington Resources Oil & Gas Co. v. FERC*, Nos. 96-1160, *et al.*, U.S. App. LEXIS 20697 (D.C. Cir. July 20, 1998).

<sup>3</sup> *Northern Natural Gas Co.*, 76 FERC ¶ 61,026 (1996).

<sup>4</sup> Currently, Sheet No. 66B.01a has pending changes proposed in two separate dockets: RP96-272-084 proposed to be effective November 1, 2008; and RP09-64-000 proposed to be effective December 13, 2008. Northern states it will submit a filing to properly adjust Sheet No. 66B.01a as necessary, following Commission orders in the respective dockets.

<sup>5</sup> NMDG comprises the following Iowa municipal-distributor customers of Northern Natural Gas Company: Cascade; Cedar Falls; Coon Rapids; Emmetsburg;

(continued...)

and the Midwest Region Gas Task Force Association (MRGTF) and each of its individual members (collectively Joint Protesters),<sup>6</sup> jointly and severally filed a protest. Northern filed an answer to the protest.<sup>7</sup>

5. Joint Protesters base their protest on the following four points: (1) the Agreement is unduly discriminatory and provides an undue preference to Tenaska with respect to access to primary firm receipt point capacity at Demarc; (2) the Agreement may result in the degradation of service for shippers with existing primary firm receipt point capacity at Demarc; (3) the Agreement provides Tenaska with an allocation priority it would not be entitled to if Demarc was not its primary firm receipt point; and (4) the Agreement contains an impermissible negotiated term or condition of service.

6. Joint Protesters point out that the price of gas at Demarc was significantly lower than the price at the Ventura Receipt Point in the period leading up to Northern's filing. However, Joint Protesters state that when shippers attempted to either obtain primary firm receipt point capacity from Demarc or realign some of their primary firm receipt point capacity from other points to Demarc, Northern informed them that primary firm receipt point capacity at Demarc was fully subscribed for the winter. Therefore, the issue, according to Joint Protesters, is whether Demarc was fully subscribed for the winter and if so, how Northern proposes to provide the additional primary firm receipt point capacity at Demarc necessary to serve Tenaska's requirements. Joint Protesters argue that allowing Tenaska to obtain primary firm receipt point capacity at Demarc grants Tenaska preferential access to the less expensive gas supplies available for receipt

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Gilmore City; Graettinger; Guthrie Center; Harlan; Hartley; Hawarden; Lake Park; Manilla; Manning; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine.

<sup>6</sup> MRGTF comprises the following municipal-distributor and local distribution customers of Northern Natural Gas Company: Austin; Centennial Utilities; Community Utility Company; City of Duluth, Minnesota – Duluth Public Utilities; Great Plains Natural Gas Company; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehan's Gas Company, Inc.; Two Harbors; Virginia; Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin, d/b/a St. Croix Gas, Wisconsin; and Watertown, South Dakota.

<sup>7</sup> 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.

at Demarc. Joint Protesters contend this is unduly discriminatory toward shippers who have tried and failed either to contract for such capacity at Demarc or to realign some of their existing capacity, and provides an undue preference to Tenaska with respect to access to primary firm receipt point capacity at Demarc.

7. Joint Protesters state that providing Tenaska with primary firm receipt point capacity at Demarc, may also degrade service to other shippers. Joint Protesters further state that if Demarc is fully subscribed and Northern tries to add another 100,000 Dth/day of primary receipt point capacity, there may be a greater chance that Northern would need to allocate primary receipt to primary delivery capacity. Joint Protesters also note that allowing Tenaska to use Demarc as a primary firm receipt point provides it with an allocation priority that it would not be entitled to if Demarc was not its primary firm receipt point.

8. Finally, Joint Protesters claim that providing Tenaska with primary receipt point capacity at a point that is fully subscribed constitutes an impermissible negotiated term or condition of service, which the Commission has routinely rejected. Commission precedent holds that negotiated terms and conditions of service that relate to operational conditions of transportation service will not be approved when they result in a customer receiving a different quality of service than that provided to other customers. Joint Protesters argue that providing Tenaska with primary receipt point capacity at Demarc, when other shippers have been denied such capacity, constitutes an example of such disparate treatment, and as such, should be rejected.

9. In its answer, Northern contends that the issues raised by the Joint Protesters are misguided because they are based on incorrect assumptions. Northern states the Agreement involves the sale of generally available capacity between Demarc and Northern's bi-directional interconnect with Natural Gas Pipeline Company of America LLC near Glenwood, Iowa. The capacity became available in October and November 2008 when a market area local distribution company realigned primary receipt point capacity from Demarc to Glenwood, which resulted in 100,000 Dth/day becoming available from December 1, 2008, through March 31, 2009. Northern states it posted the capacity on its website in November and subsequently awarded Tenaska the 100,000 Dth/day from Demarc to Glenwood. Northern continues that due to the location of the realignment, it did not result in available capacity that would have been available to Joint Protester members either on a short-term or long-term basis. Northern further states the Agreement does not give Tenaska any primary scheduling priority and therefore does not result in Tenaska receiving any preference to capacity that may have been sought by Joint Protester members. Northern argues that the sale of available Demarc receipt point capacity did not diminish the primary receipt point rights of any other shipper holding Demarc as a primary receipt point. Northern contends that based on the above, the Commission should reject the protest of the Joint Protesters and accept its filing.

#### IV. Discussion

10. We find that the Agreement between Northern and Tenaska does not deviate in any material way from Northern's *pro forma* service agreement, and accordingly, we find it is just and reasonable and not unduly discriminatory.

11. Joint Protesters' objections to the Agreement all stem from the central premise that Northern is providing Tenaska with capacity that it did not post or otherwise withheld from the market. Joint Protesters, however, provide no support for this argument. Northern, to the contrary, explains that the capacity at issue became available after the realignment of capacity by one of its existing customers in October and November of 2008. Northern further notes that it posted the capacity in November, and ultimately contracted with Tenaska. Therefore, we reject Joint Protesters' allegations, and accept the negotiated rate agreement between Northern and Tenaska, effective December 1, 2008, as proposed.<sup>8</sup>

#### The Commission orders:

The revised tariff sheets listed in footnote 1 are accepted, effective December 1, 2008, as discussed above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>8</sup> For good cause shown, we grant waiver of the 30-day notice requirement, consistent with the Commission's Negotiated Rate Policy Statement and subsequent practice. *NorAm Gas Transmission Co.*, 77 FERC ¶ 61,011, at 61,034-35 (1996).