

125 FERC ¶ 61,363
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. RP08-360-001

ORDER ACCEPTING COMPLIANCE FILING

(Issued December 23, 2008)

1. On June 11, 2008, Northern Natural Gas Company (Northern) filed supplemental information to comply with the Commission's May 29, 2008 order in this proceeding.¹ In that order, the Commission conditionally accepted Northern's proposal to apply section 1 mainline fuel and unaccounted-for (UAF) charges only once to certain firm deferred delivery (FDD) account transfers, subject to Northern filing either additional information or revised tariff sheets setting forth its proposal in a manner that is not unduly discriminatory. For the reasons discussed below, we accept the supplemental information as in compliance with the May 29, 2008 Order.

I. Background

2. Northern's system has two Field Area mainline fuel recovery sections² with fuel recovery percentages based on postage stamp fuel rates. In a May 1, 2008 filing, Northern stated that certain tariff provisions concerning firm and interruptible storage services permit shippers to transfer account balances without additional injection and withdrawal fees and no shipper charges if the transfers occur at the same storage point. In its May 1, 2008 filing Northern also stated that, in response to a customer request, it was proposing to apply only once section 1 mainline fuel and UAF charges for FDD account transfers between its MWP/Hockley and the Pinnacle Lea storage points. According to Northern, the shipper requesting the exemption has electric generation

¹ *Northern Natural Gas Co.*, 123 FERC ¶ 61,215 (2008) (May 29, 2008 Order).

² Section 1 consists of mileage indicator districts (MIDs) 1 through 7 and section 2 consists of MIDs 8 through 16B.

facilities behind the MWP/Hockley and the Pinnacle Lea storage points and expects to experience regular daily swings between these two points. Northern stated that the proposed tariff revision would allow generating plants to cover their swings using storage account balances without Northern assessing additional fuel and UAF charges. Northern also stated that it would still assess all other applicable transportation fees for such transfers. In addition, Northern stated that its proposal limits the exemption to the MWP/Hockley and the Pinnacle Lea storage points because it established these points specifically for use by generating plants and the ultimate end-use of the stored volumes (i.e., electric generation) is known. According to Northern, because it cannot determine the ultimate end-use for stored volumes at other Field Area storage points, it cannot monitor or control storage account balances between those points for purposes of determining if the postage stamp fuel application is appropriate.

3. Indicated Shippers³ and Nexen Marketing U.S.A., Inc. (Nexen) protested Northern's May 1, 2008 filing arguing that Northern's proposal is unduly discriminatory because it allows only one FDD customer⁴ to avoid multiple fuel and UAF charges and it is limited to only two identified storage points. In addition, Indicated Shippers rejected Northern's argument that Northern cannot implement a similar proposal for other storage points because it would not know the ultimate end-use market for the storage volumes. Indicated Shippers and Nexen argued that the ultimate end-use market for FDD account balance transfers is irrelevant to determining whether to assess fuel and/or UAF charges. Additionally, Indicated Shippers argued that Northern failed to explain the effect of its proposal on the overall section 1 mainline fuel and UAF charges.

4. In the May 29, 2008 Order, the Commission conditionally accepted Northern's proposal subject to Northern filing either: 1) additional information explaining why its proposal does not discriminate against certain shippers and why account transfers between Northern's MWP/Hockley storage point and its Pinnacle Lea storage point should be assessed section 1 mainline fuel and UAF charges only once for FDD account transfers; or 2) revising its tariff sheets setting forth its proposal in a manner that is not unduly discriminatory.

³ The Indicated Shippers are Chevron Natural Gas, A Division of Chevron U.S.A. Inc., Coral Energy Resources, LP and Occidental Energy Marketing, Inc. This same group of shippers filed a protest to Northern's June 11, 2008 filing, as discussed below.

⁴ Indicated Shippers identify this customer as Southwestern Public Service Company (Southwestern).

II. Northern's Supplemental Filing

5. In its June 11, 2008 filing, Northern provides the additional information explaining why its proposal is non-discriminatory and why FDD account transfers between Northern's MWP/Hockley storage point and the Pinnacle Lea storage point should be assessed section 1 mainline fuel and UAF charges only once. Northern states that no revisions to its tariff sheets are necessary.

6. Northern states that Indicated Shippers' claim of undue discrimination is based on two mischaracterizations of Northern's filing. First, according to Northern, its proposal will apply to all FDD shippers who transfer account balances between the MWP/Hockley and the Pinnacle Lea storage points, not just to Southwestern as Indicated Shippers argue. Second, Northern states that contrary to Indicated Shippers' claim Northern did not state that other storage points could never be the subject of a similar proposal. Rather, Northern states, it agrees that the ultimate end-use is irrelevant to whether one customer versus another should be allowed an exemption from fuel and UAF charges and it will evaluate any request for storage point exemptions based on the specific circumstances of a future request made by a similarly situated shipper.

7. Northern adds that the fact that the MWP/Hockley and Pinnacle Lea storage points are end-use points for generation facilities is not the basis for its proposal. Northern states that because deliveries to the MWP/Hockley and Pinnacle Lea storage points involve end-use markets, gas must first be transported, and the applicable fuel/UAF percentage collected on Northern's system, before a storage transfer between these deferred delivery points can occur. Northern maintains that the physical location of the delivery points is critical to the reasonableness of its proposal because Northern will initially collect the fuel/UAF percentage for the transportation to the markets. The applicable fuel/UAF percentage is known because both delivery points are located in the same fuel zone and the same fuel/UAF percentage applies regardless of whether the gas is delivered to one point or the other.

8. Further, Northern argues, to avoid undue discrimination against other shippers, it is imperative that it not allow a shipper to avoid payment of the fuel/UAF charge as would occur if a blanket exemption for storage account balance transfers is granted. Northern states that if it allowed an unlimited exemption, regardless of the circumstances, a shipper could transfer its account balance from one deferred delivery point to another resulting in no application of a fuel/UAF charge to that shipper. By way of example, Northern notes that a shipper receiving gas at the CIG Dumas point in MID 10 may inject that gas into the CIG Dumas Deferred Delivery point (storage) without incurring any

transportation charges, including fuel/UAF.⁵ According to Northern, if it allowed an unlimited exemption for storage account balance transfers, the shipper could then transfer its account balance to the ANR Greensburg Deferred Delivery point in MID 13 with no fuel/UAF charge and subsequently transport the gas to the associated bi-directional delivery point at ANR Greensburg and off Northern's system, all without transportation or fuel/UAF charges.

9. Northern states that if it receives any requests from other shippers like the one that caused it to submit its proposal in the instant proceeding it will evaluate those requests and file such requests with the Commission for approval. Northern states this form of evaluation is consistent with its previous fuel exemptions it proposed as provided in its tariff under the list of receipt and delivery points that are exempted from fuel/UAF charges. In addition, Northern states it is its understanding that in fuel exemption situations, the Commission's policy requires individual evaluation of the proposed exemptions, rather than approval of blanket exemptions. Northern believes its proposal is consistent with that policy.

III. Public Notice, Intervention and Comments

10. Notice of Northern's filing issued on June 16, 2008. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210. On June 23, 2008, Indicated Shippers filed a protest. 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.

11. In their protest, the Indicated Shippers argue that Northern's June 11, 2008 filing neither provides any new information on why Northern's proposal is not unduly discriminatory nor revises the proposed tariff sheets setting forth the proposal in a manner that is not unduly discriminatory. Indicated Shippers argue that the information Northern provided in its June 11, 2008 filing is nearly identical to an answer it filed in this proceeding on May 23, 2008. Indicated Shippers argue that because Northern's answer was before the Commission prior to the issuance of the May 29, 2008 Order, the Commission cannot consider the June 11, 2008 filing as providing additional information. Indicated Shippers also argue that it is unclear why the shipper in the example Northern provided (i.e., shipper receiving gas as CIG Dumas) would not be assessed a transportation charge because under Northern's tariff, Northern is supposed to assess applicable transportation fees but not injection and withdrawal fees to account

⁵ Northern June 11 Filing at 3 (citing Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Rate Schedule FDD, Revised Sheet No. 141).

balance transfers.⁶ Indicated Shippers argue that if Northern applies its proposal to all FDD account balance transfers, it would assess a fuel and UAF charge only once to the transaction in the example. Thus, Indicated Shippers state, the shipper would not avoid fuel and UAF charges but would incur a fuel and UAF charge only once if there are multiple account balance transfers.

12. Finally, Indicated Shippers assert that Northern acknowledges its proposal will not provide other FDD customers that are transferring account balances between other storage points the same exemption rights as it will provide to Southwestern. Indicated Shippers also argue that Northern will evaluate requests for other storage point exemptions on a case-by-case basis but there is no guarantee that Northern will agree to such an exemption. Indicated Shippers conclude that Northern's statement demonstrates other storage customers are not currently exempt from fuel and UAF charges on account balance transfers, that Northern has not provided any reason for this difference, and that this is *de facto* discrimination. Indicated Shippers request that the Commission deny Northern's proposal or require Northern to exempt all FDD account balance transfers from multiple fuel and UAF charges.

IV. Discussion

13. For the reasons discussed below, the Commission accepts Northern's supplemental information as in compliance with Commission's directive in the May 29, 2008 Order that Northern provide additional information explaining why its proposal does not discriminate against certain shippers and why account transfers between its MWP/Hockley storage point and its Pinnacle Lea storage point should be assessed section 1 mainline fuel and UAF charges only once for FDD account transfers. As a preliminary matter, we find without merit Indicated Shippers' argument that Northern's June 11, 2008 filing cannot be considered additional information because Northern made similar arguments in a May 23, 2008 answer filed in this proceeding. 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. No such authority was granted, thus Northern's answer was not properly before the Commission prior to the issuance of the May 29, 2008 Order.

14. We find Northern's explanation of why its proposal does not discriminate against certain shippers to be reasonable. Northern states that the proposed exemption will be available to all FDD shippers who transfer account balances between the MWP/Hockley and the Pinnacle Lea storage points, not just Southwestern as Indicated Shippers argue. Northern's tariff sheets do not limit this exemption to any one shipper. Further, Northern

⁶ Indicated Shippers Protest at 4 (*citing* Northern's FERC Gas Tariff, Rate Schedule FDD, Section 2.F, Ninth Revised Sheet No. 136).

states that its proposal, which addresses account transfers between the MWP/Hockley and Pinnacle Lea storage points only, was based on a specific customer request; however, if in the future another shipper requests a similar storage point exemption it will consider such request and file it with the Commission for approval.

15. Furthermore, the Commission finds reasonable Northern's explanation as to why account transfers between the MWP/Hockley and Pinnacle Lea storage points should be assessed section 1 mainline fuel and UAF charges only once for FDD account transfers. Northern explains that because deliveries to the MWP/Hockley and Pinnacle Lea storage points involve end-use markets, before a storage transfer can occur, it must first transport gas and the applicable fuel/UAF percentage collected. The applicable fuel/UAF percentage is known because both delivery points are located in the same fuel zone. The Commission's general policy is that pipelines may not discount charges through which they recover the cost of fuel used in connection with transportation services.⁷ Here, however, it is not unreasonable for Northern to exempt the transactions at issue from being assessed multiple fuel/UAF charges, because Northern is able to affirmatively verify that prior to the storage portion of the transactions in question, it will initially assess the shipper a fuel/UAF charge when the gas is first transported to the end-use markets.

16. Indicated Shippers argue that it is unclear why the shipper in the example Northern provided to explain why a blanket exemption would be unduly discriminatory, would not be assessed a transportation charge. Indicated Shippers misapprehends the example. Northern's example, describes a volume transfer, between a transportation point and its associated storage point, which is not assessed a transportation fee.⁸ Further, any subsequent transfers of account balances between storage points, either on one account or among multiple accounts, are not charged injection or withdrawal fees.⁹ In contrast, under Northern's proposal, deliveries to the MWP/Hockley and Pinnacle Lea storage points first involve physical transfers of gas to end-use markets and the applicable fuel/UAF charges prior to any storage transfers between these deferred delivery points. A blanket exemption, which would include account balance transfers as well as physical transfers, would enable shippers to transfer in and out of a delivery point with no transportation or fuel/UAF charge. Accordingly, we accept Northern's filing as in compliance with the May 29, 2008 Order.

⁷ *Mississippi River Transmission Corp.*, 98 FERC ¶ 61,119, at 61,352 (2002).

⁸ See Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Ninth Revised Sheet No. 141.

⁹ See Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 136.

The Commission orders:

Northern's additional information is accepted as in compliance with the May 29, 2008 Order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.