126 FERC 61,302
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Natural Gas Company   Docket No. RP09-318-000

ORDER ACCEPTING AND SUSPENDING TARIFF SHEETS, SUBJECT TO REFUND, AND ESTABLISHING TECHNICAL CONFERENCE

(Issued March 31, 2009)

1. On January 30, 2009, Northern Natural Gas Company (Northern) filed revised tariff sheets[1] and supporting working papers to reflect periodic adjustments for fuel and establish the unaccounted for percentage (UAF), as required by sections 53A and 53B of the General Terms and Conditions (GT&C) of its tariff, to be effective April 1, 2009. For the reasons discussed below, the Commission accepts and suspends the tariff sheets to be effective April 1, 2009, subject to refund, and to the outcome of a technical conference to address the issues raised in this proceeding.

I. Background

2. Section 53A of the GT&C requires Northern to establish the Field Area and Storage fuel percentages to be in effect for the April 1, 2009 through March 31, 2010 annual period, based on actual data for the twelve-month period January 1, 2008 through December 31, 2008, and the Market Area fuel percentage to be in effect for the Summer Season of April 1, 2009 through October 31, 2009, based on actual data for the seven-month period of April 1, 2008 through October 31, 2008. In addition, the instant filing establishes the UAF percentage to be in effect for both the Market Area and Field Area for the annual period April 1, 2009 through March 31, 2010, based on actual data for the twelve-month period January1, 2008 through December 31, 2008. Pursuant to section 53B, the filing establishes the Market Area Electric Compression charge to be in effect for the April 1, 2009 through March 31, 2010 annual period, based on actual data for the twelve-month period January 1, 2008 through December 31, 2008.

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[1] 81 Revised Sheet No. 53, 30 Revised Sheet No. 54, 24 Revised Sheet No. 61, and 25 Revised Sheet No. 62 to its FERC Gas Tariff, Fifth Revised Volume No. 1.

II. Details of Filing

3. Northern's filing revises the Market Area fuel percentage for the summer season, Storage fuel percentage, UAF retention percentages, and the Market Area Electric Compression charge. Northern's proposed periodic adjustments for fuel are as follows:

	April 1, 2008	April 1, 2009
Section 1 (Permian Area)	1.37%	1.01%
Section 2 (Mid-Continent Area)	1.07%	0.90%
Storage	1.07%	0.91%
UAF	0.33%	0.32%

	Summer 2008	Summer 2009
Section 3 (Market Area)	1.21%	2.68%

4. Northern states that the decrease in the Permian Area fuel percentage is comprised of a decrease of 0.10% in the base fuel rate and a decrease of 0.26% in the true-up percentage. Northern adds that the decrease in the base fuel percentage is related to a 47% increase in throughput, accompanied by a 34% increase in fuel use. In addition, Northern states that the 0.17% decrease in the Mid-Continent fuel percentage is comprised of a 0.35% decrease in base fuel rate and an increase of 0.18% in the true-up percentage. Northern avers that the decline in the fuel percentage resulted primarily from a decline in fuel use due to the abandonment of the Beaver mainline compression facilities. The increase in the Market Area 2009 Summer Season fuel percentage is comprised of an increase of 0.73% in the base fuel percentage and a 0.74% increase in the true-up percentage. Northern states that these increases are the direct result of Northern's customers' economic decision to access significantly less expensive supplies from the Demarc North group over the recent summer versus supply alternatives primarily related to Northern Border receipts.

5. Additionally, Northern states that the decrease in the Storage fuel percentage is comprised of a decrease of 0.03% in the base fuel percentage and a decrease of 0.13% in the true-up percentage. The 0.01% decrease in the UAF percentage is comprised of an increase of 0.06% in the base percentage and a decrease of 0.07% in the true-up percentage. Additionally, Northern states that the market Area Electric Compression commodity surcharge is unchanged at $0.0003.

III. Public Notice, Intervention and Protests

6. Public notice of the filing was issued on February 3, 2009. Interventions and protests were 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 motion 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. On February 11, 2009, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and CenterPoint Energy Resources Corp., dba CenterPoint Energy Minnesota Gas (collectively, Joint Movants) filed a protest and request for technical conference. Minnesota Energy Resources Corporation (MERC) and Integrys Energy Services, Inc. (Integrys Energy) also filed protests and requests for a technical conference. Anadarko Energy Services Company, BP Canada Energy Marketing Corporation, Occidental Energy Marketing, Inc., and Shell Energy North America (US), L.P. (collectively, Indicated Shippers) filed a conditional protest. On February 23, 2009, Indicated Shippers filed a motion for leave to answer and answer in opposition to Joint Movant's protest. On February 25, 2009, Northern filed an answer to the protests. On March 2, 2009, Integrys Energy filed a motion to answer and answer to Northern's answer. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits answers to protests unless otherwise ordered by the decisional authority. However, we will accept the answers as they provide additional information that assisted us in the decision-making process.

7. Joint Movants state that Northern's Market Area fuel percentage is calculated on an area-wide basis, with the same fuel percentage imposed on all Market Area shippers. The method was, Joint Movants contend, just and reasonable for shippers that rely on their primary receipt and delivery points for most of their volumes. However, Joint Movants argue that Northern's method is no longer just and reasonable with respect to the increase in fuel consumption caused by the use of alternate receipt points. Joint Movants assert that when Northern's current method for calculating Market Area fuel was developed, the pricing differentials among major receipt points in the Market Area were not nearly as significant nor as volatile as they are today. Joint Movants contend that they and other shippers that continue to rely almost exclusively on their mix of primary receipt and delivery points are now subsidizing the fuel costs incurred as a result of certain shippers largely abandoning their primary points and switching to the Demarc and the Rockies Express Pipeline (REX) receipt points on an alternate point basis.[2] Accordingly, Joint Movants recommend that Northern's current method for calculating the Market Area fuel retention percentage be modified to include a surcharge at the three

[2] Joint Movants state that the upstream points with currently attractive pricing are Demarc, the demarcation point between Northern's Market Area and Northern's Field Area facilities; Beatrice, where Northern interconnects with Trailblazer Pipeline Company; and the REX interconnect, where Northern interconnects with the Rockies Express Pipeline.

alternate receipt points on Northern's system that have caused the increase in fuel consumption, namely Demarc, Beatrice, and the REX interconnection. Joint Movants request that if the Commission is not prepared to make a final determination based on Joint Movants' protest, the Commission should establish a technical conference to consider the issues raised by the protest.

8. Integrys Energy is also concerned that the actions of a few shippers are having adverse effects on other customers resulting in increased fuel use percentages to them. As a result, Integrys Energy states that it too could be subsidizing a customer or customers engaging in the trading/transportation that cause the exponential increase in the need for compression. Integrys Energy requests that, in light of the significant increases in fuel rates for the Market Area and the lack of a clear articulation by Northern of the reasons for the increases, the Commission reject Northern's proposal until Northern provides accurate cost support and explanations for the changes in the use of its system that justifies the increase in fuel.

9. MERC is concerned about the effect of the large increase in fuel rates on it and its retail customers. MERC states that Northern has several firm negotiated rate service agreements under which Demarc is the receipt point or the delivery point or both. MERC contends, as shown in the Statement of Negotiated Rates in Northern's FERC Gas Tariff, that these contracts are for large quantities relative to many other negotiated rate agreements. Furthermore, MERC states that many of these agreements are recent and some fall within the period used to set the proposed 2009 summer Market Area fuel percentage. MERC believes that Northern has sold all of its firm take away capacity at Demarc. Accordingly, MERC contends that Northern is receiving revenue to cover its fixed costs for all the firm take away capacity whether gas flows or not, and the negotiated agreements produce incremental revenue when all firm shippers are not using the Demarc capacity. MERC avers that the spate of Demarc contracts has contributed greatly to the increased fuel cost that shippers under non-negotiated rate agreements must bear. MERC further states that it does not protest a pipeline's ability to earn incremental revenues, but contends that such incremental revenues should not be at the expense of other shippers in the form of much higher fuel requirements and allocation issues.

10. Indicated Shippers filed a conditional protest requesting Northern to provide explanations regarding several anomalies that appear in the working papers Northern included in its 2009 periodic rate adjustment filing. In addition to the anomalies, Indicated Shippers question several stations identified in Northern's working papers where Northern continued to calculate fuel use (and losses) through the end of 2008. Indicated Shippers contend that Northern states that the Section 2 fuel percentage declined due to the sale of the Beaver Facilities on October 9, 2008. However, Indicated Shippers identify numerous stations in Northern's working papers that include "Beaver" in the station name. Indicated Shippers request Northern explain whether the identified

stations are part of the Beaver Facilities, and whether the fuel listed in November and December 2008 should continue to be included in Northern's fuel percentages.

IV. Answers

11. Indicated Shippers argue in their answer to Joint Movants' protest that they oppose Joint Movant's fuel surcharge proposal on the grounds that it would (1) violate the Commission's flexible point rights policy, (2) unduly discriminate against those shippers that use Demarc, Beatrice, and/or REX interconnect as an alternate receipt point, and (3) be inconsistent with the postage-stamp fuel percentage Northern assesses in the Market Area. Accordingly, Indicated Shippers argue that the Joint Movants' protest should be rejected because it would require a modification to Northern's fuel recovery methodology and would make it difficult to challenge how Northern calculated its fuel percentages, or whether Northern complied with its tariff.

12. In its response, Northern defends its fuel calculations as being consistent with its prior periodic rate adjustment filings approved by the Commission and in accordance with its tariff, which permits Northern to recover actual fuel and UAF costs. Northern contends that its shippers dictate a vast majority of such actual fuel usage by the points of receipt and delivery they choose and that changes in shipper behavior from one annual periodic rate adjustment period to the next can also result in fuel use changes. Northern requests the Commission reject all protests and accept Northern's filing.

13. Northern contends that the increase in the proposed Market Area fuel rate is primarily the result of more gas flowing north into the Market Area from Demarc than in previous years. Northern states that shipper receipts of gas at Demarc totaled 322 Bcf during the summer of 2008 compared to 226 Bcf during the summer of 2007, representing a 96 Bcf (or 42%) increase. In addition, Northern states that receipts from the Northern Border interconnect (primarily at Ventura, Iowa) during the same period decreased by 53%.

14. Furthermore, Northern argues that the Integrys Energy, MERC, and Joint Movants claim that the increase in the Market Area fuel percentage was caused by actions of a few shippers using alternate receipt points, or that the choice of receipt points is based on negotiated rate transactions at Demarc is not correct. Northern states that of the 96 Bcf increase in volumes through Demarc, 79 Bcf (82%) was scheduled by shippers using their primary receipt points and only 2.5 Bcf of the 322 Bcf of gas was associated with negotiated rate transactions. Northern contends that nearly 40% of the increase was due to Northern's LDC Market Area customers increasing their use of Demarc. Northern states that the increase in fuel is simply a result of the significant increase in gas sourced through Demarc, which is primarily due to lower prices from Demarc than for Canadian gas from Northern Border. Accordingly, Northern argues the Commission should reject Joint Movants' proposal to impose a surcharge on the non-primary shippers.

15. Northern's response to Indicated Shippers' concerns of anomalies in its data is that individual fuel recorded at various meters reflected actual activity and as such are not anomalies. In addition, Northern states that it has furnished a detailed explanation for each fuel station cited by the Indicated Shippers in their pleading. Northern clarifies that Northern sold its Beaver "wet" facilities but retained other compression facilities and buildings in the Beaver district. Accordingly, Northern states that the stations cited by Indicated Shippers record fuel for facilities that Northern continues to own and operate and therefore should be included in Northern's fuel percentages.

V. Discussion

16. The Commission has reviewed Northern's filing as well as the protests and answers filed in this proceeding and finds that Northern's proposed periodic rate adjustments raise significant issues with regard to the increase in the Market Area 2009 Summer Season fuel percentage, which are best addressed at a technical conference.

17. It is not possible to determine, at this juncture, whether Northern's proposed periodic adjustments for fuel are just and reasonable. A technical conference will afford the Commission staff and the parties to the proceeding an opportunity to discuss all of the issues raised by Northern's proposal, including but not limited to the increase in Northern's increase in the Market Area 2009 Summer Season fuel percentage. At the technical conference, Northern should be prepared to fully explain its methodology for determining the periodic adjustments for fuel and provide a clear explanation as to the cause of the increase in the Market Area 2009 Summer Season fuel percentage. In addition, any party proposing alternatives to Northern's reimbursement adjustment and its methodology should also be prepared to similarly support its position.

VI. Suspension

18. Based upon a review of Northern's periodic adjustments for fuel filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets for filing and suspend their effectiveness for a minimal period to be effective April 1, 2009, subject to the conditions set forth in this order.

19. The Commission's policy regarding tariff filing suspensions is that such filings generally should be suspended for the maximum period permitted by statute where preliminary study leads the Commission to believe that the filing may be unjust, unreasonable, or that it may be inconsistent with other statutory standards. *See Great Lakes Gas Transmission Co.*, 12 FERC ¶ 61,293 (1980) (five-month suspension). It is recognized, however, that shorter suspensions may be warranted in circumstances

where suspension for the maximum period may lead to harsh and inequitable results. *See Valley Gas Transmission, Inc.*, 12 FERC ¶ 61,197 (1980) (minimum suspension). The Commission finds that circumstances exist here where Northern is filing an annual update pursuant to an approved tariff mechanism. Therefore, the Commission will accept and suspend the proposed tariff sheets to be effective April 1, 2009, subject to the outcome of the technical conference established herein and further orders of the Commission.

The Commission orders:

(A) Northern's 81 Revised Sheet No. 53, 30 Revised Sheet No. 54, 24 Revised Sheet No. 61, and 25 Revised Sheet No. 62 to its FERC Gas Tariff, Fifth Revised Volume No. 1 are accepted and suspended to be effective April 1, 2009, subject to refund and the outcome of the technical conference established by this order.

(B) The Commission's staff is directed to convene a technical conference to address the issues raised by Northern's filing and report the results of the conference to the Commission within 120 days of the date this order issues.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.