

135 FERC ¶ 61, 250  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

Northern Natural Gas Company

Docket No. RP11-2061-000

ORDER ACCEPTING PERIODIC FUEL RATE ADJUSTMENT  
AND DIRECTING ADDITIONAL TARIFF REVISIONS

(Issued June 16, 2011)

1. On April 29, 2011, Northern Natural Gas Company (Northern) filed revised tariff records<sup>1</sup> to revise the Market Area fuel percentage to be in effect for the winter season of November 1, 2011 through March 31, 2012. Northern requests the Commission grant any waivers necessary to allow the revised tariff records to become effective November 1, 2011. Northern also requests the Commission issue an order accepting the revised tariff records by June 16, 2011, in order that its shippers making supply arrangements for the entire winter season will know the fuel retention percentage as far in advance of November 1, 2011 as possible, which will assist them in their planning and contracting processes. Waiver of the 60-day notice limitation is granted and the revised tariff records are accepted, effective November 1, 2011. Pursuant to section 5 of the Natural Gas Act (NGA), the Commission also requires Northern either to modify certain provisions in its tariff concerning reservation charge credits or show cause why it should not be required to do so.

2. Northern states the revised tariff records are being filed in accordance with section 53A of its General Terms and Conditions (GT&C). The filing establishes the winter season Market Area fuel percentage for the November 1, 2011 through March 31, 2012 period, based on actual data from the winter season of November 1, 2010 through March 31, 2011. The new Market Area winter season fuel percentage is increased from 0.68 percent to 1.12 percent.<sup>2</sup>

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<sup>1</sup> Sheet No. 54, Effective Rates TF TFX LFT GS-T TI and FDD, 3.0.0 and Sheet No. 62, MIDS, 3.0.0, to Gas Tariffs, FERC NGA Gas Tariff.

<sup>2</sup> The total Market Area winter season fuel percentage of 1.12 percent is a result of

(continued...)

3. Public notice of Northern's filing was issued on May 5, 2010. Interventions and protests were due as provided in section 154.210 of the Commission's regulations. 18 C.F.R. § 154.210 (2011). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2011)), all timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. No party filed comments to Northern's Market Area fuel proposal. However, the Indicated Shippers<sup>3</sup> filed comments requesting the Commission require Northern to revise its tariff to be consistent with the Commission's policy on reservation charge crediting.

### **Indicated Shippers' Comments**

4. The Indicated Shippers state that Northern's existing tariff is contrary to the Commission's policy on reservation charge crediting. The Indicated Shippers refer to GT&C section 7 of Northern's tariff which provides that Northern "shall offer to credit reservation charges to the Shipper" when the "failure to deliver or receive gas is caused by negligence on the part of Northern..."<sup>4</sup> The Indicated Shippers assert that this provision does not comply with Commission policy and precedent. That policy they point out requires a pipeline to provide a full reservation charge credit for curtailments within the control of the pipeline, and to provide a partial reservation charge credit for curtailments arising from a *force majeure* event.

5. The Indicated Shippers cite to the Commission's Order on Petition<sup>5</sup> issued April 21, 2011. Indicated Shippers note that in that order the Commission stated that pipelines must maintain tariffs that conform to the Commission's reservation charge crediting policy and urged pipelines to review their tariffs to determine whether their tariff is in compliance with that policy. The Commission stated further that "any shippers who believe a pipeline's tariff is not in compliance could file a complaint under section 5 or raise the issue in any section 4 filing made by the pipeline."<sup>6</sup> Consistent with the

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adding a Base fuel percentage of 0.99 percent and a True-up fuel percentage of 0.13 percent.

<sup>3</sup> The Indicated Shippers consist of Apache Corporation, BP America Production Company, BP Canada Energy Marketing Corp., Matagorda Island Gas Operations, LLC, Medco Energi US LLC, Chevron U.S.A. Inc., ConocoPhillips Company, Occidental Energy Marketing, Inc., Shell Energy North America (US), L.P.

<sup>4</sup> Citing Original Sheet No. 215.

<sup>5</sup> *Natural Gas Supply Association, et al.*, 135 FERC ¶ 61,055 (2011) (NGSA).

<sup>6</sup> *Id.* P 28.

Commission's findings in that order, the Indicated Shippers request that the Commission direct Northern to revise its reservation charge adjustment provision so that it is consistent with Commission policy.

### **Northern's Answer**

6. On May 27, 2011, Northern filed an Answer to Indicated Shippers' comments, requesting waiver of Rule 213, 18 C.F.R. § 154.213 (2011) under which an answer is permitted if "ordered by the decisional authority." The Commission will accept the answer since it clarifies issues raised in the comments and assists the Commission in its decision making process.

7. Northern asserts that the tariff provision that Indicated Shippers object to, Original Sheet No. 215, was negotiated by Northern and its customers in Northern's Global Settlement in Docket No. RS92-8, *et al.*, and was accepted by the Commission on July 16, 1993.<sup>7</sup> Northern asserts that Article III.F.9 of the Global Settlement at p. 108 provided "The parties agree Northern will credit reservation charges if failure to deliver or receive gas is caused by Northern's negligence." Northern argues that this provision was an essential element of the Global Settlement and constitutes part of the bargain struck in the settlement of Northern's rates and should not be changed except in a section 4 rate proceeding wherein all aspects of Northern's rates and terms and conditions of service can be reviewed. Northern asserts this is consistent with *NGSA* where the Commission stated that "Where the pipeline and its shippers have entered into currently effective agreements that include provisions that differ from the Commission's reservation charge crediting policy, and which the Commission has accepted, these agreements need not be changed."<sup>8</sup>

8. Northern asserts that Indicated Shippers' contention that Northern had ample opportunity to bring this provision into compliance with Commission policy but has failed to do so and therefore the Commission should act here reveals the fatal flaw in Indicated Shippers' position. Northern states that this provision has continuously been part of Northern's tariff in Northern's subsequent rate cases, and Indicated Shippers had the opportunity to raise the reservation charge crediting issue in Northern's general rate cases since 1993 but failed to do so. Accordingly, Northern argues that the Commission should not entertain this matter in this proceeding but defer addressing this issue until Northern's next general rate case.

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<sup>7</sup> *Northern Natural Gas Co.*, 64 FERC ¶ 61,073 (1993).

<sup>8</sup> 135 FERC ¶ 61,055 at P 12 n.12.

9. Northern also asserts that in *NGSA* the Commission recognized that when the pipeline does not utilize the SFV rate design, but allocates some fixed costs to the usage charge, the pipeline need not offer a reservation charge credit in the *force majeure* situation because the pipeline automatically is sharing the risk because it is not collecting the costs that should be recovered in the usage charge.<sup>9</sup> Northern asserts it has been utilizing a non-SFV rate design methodology since its rate case settlement in Docket No. RP98-203-000 in 1999.

10. Under this non-SFV rate design, Northern states it has included fixed costs in its Market Area commodity rates, as well as in its Field Area commodity rates. Northern states that this rate design methodology has been used in each of Northern's subsequent rate cases, including Northern's most recent proceeding in Docket No. RP04-155-000, wherein approximately \$16 million of fixed costs were included in Northern's commodity rates. Thus, Northern argues, it is already sharing the risk of fixed cost recovery under its current rate structure for *force majeure* service interruptions, and there is no need for any partial reservation charge crediting in that situation.

### **Discussion**

11. Northern's tariff provides for crediting of reservation charges only when the failure to deliver gas is caused by Northern's negligence. In this proceeding the Indicated Shippers invoke the Commission's determination in *NGSA* that shippers may raise the issue concerning reservation charge crediting "in any section 4 filing by the pipeline."

12. Northern asserts that its current reservation charge crediting process was negotiated by Northern and its customers as part of a global settlement which the Commission accepted. That provision has not been changed and included as part of Northern's tariff in all subsequent settlements. Northern argues that in *NGSA* the Commission stated it would not change "currently effective agreements that include provisions that differ from the Commission's reservation charge crediting policy."<sup>10</sup>

13. We reject Northern's argument based on its 1993 Global Settlement. A similar argument was raised by the pipeline in the *Southern Natural Gas Co.* case,<sup>11</sup> which

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<sup>9</sup> *NGSA*, 135 FERC ¶ 61,055 at P 17 n.6 referencing Opinion No. 406-A, *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070 (1977) where the pipeline was not required to give partial credits in *force majeure* circumstances because it was no longer utilizing the SFV rate design.

<sup>10</sup> *NGSA*, 135 FERC ¶ 61,055 at P 12 n.2.

<sup>11</sup> 135 FERC ¶ 61,056 (2011).

argued that its existing reservation charge credits provisions were the result of an uncontested settlement which the Commission accepted as fair, reasonable and in the public interest and therefore should not be changed in a section 4 filing by it. The Commission rejected the argument noting that there was nothing in the settlement relied on by the pipeline that stated its provisions would extend beyond its termination date, and barred parties from taking a different position with respect to any provision. Moreover, Northern's last section 4 rate settlement had a rate moratorium which terminated on November 1, 2007.<sup>12</sup>

14. Northern has not shown that the provision in the Global Settlement, a 1993 settlement, and particularly the reservation charge crediting provision, is immune from challenge at this point in time. Thus, we will consider whether Northern's reservation charge crediting provision is consistent with Commission policy.

15. Commission policy requires pipelines to credit shippers for undelivered gas beyond the limited situation described in Northern's tariff. As the Commission restated in *NGSA*, this policy requires pipelines to provide firm shippers with full reservation charge credits for interruptions in service in non-*force majeure* situations, including scheduled maintenance.<sup>13</sup> The Commission requires partial reservation charges in *force majeure* situations.<sup>14</sup> *Force majeure* outages are no-fault occurrences because they are unexpected and uncontrollable events. Since no blame can be ascribed to either party, the Commission's policy is that both the pipeline and its customer should share the risk equitably. To implement that policy, the Commission has permitted pipelines to use two different methods to determine the partial credit, the No-Profit method and the Safe Harbor method, and permits the pipeline to choose which one to adopt. Moreover, the Commission has stated that it is open to any other method provided it results in the same type of risk-sharing as the two approved methods do.

16. Northern's GT&C section 7 does not provide for full credits in non-*force majeure* situations when curtailment is within Northern's control. As such, we find that section 7 of Northern's GT&C does not meet the criteria for reservation credits established by Commission precedent, and is therefore unjust and unreasonable. In similar circumstances, the Commission has required other pipelines to revise their tariffs consistent with Commission policy.<sup>15</sup> Accordingly, we require Northern to revise section

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<sup>12</sup> *Northern Natural Gas Co.*, 111 FERC ¶ 61,444 (2009).

<sup>13</sup> *NGSA*, 135FERC ¶ 61,055 at P 19-27.

<sup>14</sup> *NGSA*, 135FERC ¶ 61,055 at P 16-18.

<sup>15</sup> *See e.g., Tuscarora Pipeline Co.*, 120 FERC ¶ 61,022 (2007), where the

7 of its GT&C to be consistent with the Commission's policy concerning reservation charge credits during non-*force majeure* outages, as set forth in *NGSA*, 135FERC ¶ 61,055 at P 19-27.

17. Section 7 of Northern's tariff also does not provide for partial credits in *force majeure* situations. However, Northern asserts that this is consistent with Commission policy because its rate design is not SFV. Thus, it contends, since it allocates some fixed costs to the usage charge, in fact sixteen million dollars in its current rates, it is sharing the risk in the *force majeure* situation as it loses the usage charge revenue during periods of curtailment. We agree. In a similar situation in Opinion No. 406-A,<sup>16</sup> the Commission held that a pipeline's use of a non-SFV rate design accomplished the Commission's goal of ensuring that the risk of *force majeure* service interruptions be shared, because the pipeline would share the risk by not collecting the costs recovered in the usage charge while the shippers would continue to pay the reservation charge. Under these circumstances (a non-SFV rate design), Northern is not required to have a tariff provision granting partial reservation charge credits when there is a *force majeure* situation.

18. Accordingly, pursuant to section 5 of the Natural Gas Act, the Commission directs Northern to submit a compliance filing within thirty (30) days of this order revising section 7 of the GT&C of its tariff so that it is consistent with Commission policy with respect to non-*force majeure* situations, unless it can show why it should not be required to do so.

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pipeline's tariff similarly provided for reservation charge credits only in the event of the pipeline's negligence.

<sup>16</sup> *Tennessee Gas Pipeline Co.*, 80 FERC ¶ 61,070, at 61,200 (1997) (Opinion No. 406-A).

The Commission orders:

(A) The revised tariff records are accepted effective November 1, 2011.

(B) Northern is directed to submit a compliance filing within thirty (30) days of this order revising section 7 of the GT&C of its tariff so that it is fully consistent with the Commission's reservation charge crediting policy unless it can show why it should not be required to do so.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.