140 FERC ¶ 61,047
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 18, 2012

In Reply Refer To:
Northern Natural Gas Company
Docket No. RP12-808-000

Northern Natural Gas Company
1111 South 103rd Street
Omaha, NE 68124-1000

Attention: Mary Kay Miller
Vice President, Regulatory and Government Affairs

Reference: Revised Tariff Provisions

Dear Ms. Miller:

1. On June 18, 2012, Northern Natural Gas Company (Northern) filed revised tariff records[1] to provide shippers with more flexibility in contracting for firm storage service, to revise current tariff language in the capacity release and right of first refusal (ROFR) sections of its General Terms and Conditions, to remove the lottery provisions for awarding capacity, and to more clearly describe the currently effective provisions. Northern also proposes to revise provisions for posting of capacity awards and other miscellaneous corrections. The tariff records are accepted in part, effective July 19, 2012, subject to Northern filing revised tariff records, within 15 days of the date of this letter order, consistent with the discussion below.

2. Northern proposes to allow a Rate Schedule FDD (Firm Deferred Delivery Service)[2] shipper to split its FDD Agreement into multiple service agreements, while maintaining the rates, terms and conditions of the original agreement, including the

[1] *See* Appendix.

[2] Firm Deferred Delivery Service is Northern's name for Firm Storage Service.

right, for each FDD Agreement, to select among the types of withdrawal service,[3] provided the separation can be accommodated by Northern's contracting and billing systems. Northern states that this will provide FDD shippers more withdrawal flexibility, because currently, an FDD shipper may select only one option for each FDD Agreement.

3. Northern proposes to clarify its Right of First Refusal (ROFR) provisions to provide that in order for a shipper to retain its ROFR, any service agreement must extend at maximum rates for twelve or more consecutive months of service, or for a term of more than one year for service not available for twelve consecutive months.

4. Northern proposes to revise its Bidding Process for available capacity open seasons to clarify that the best offer from a bidding iteration will be posted on the website but the name of the shipper will not be provided, in order to be consistent with the Posting and Awarding of Capacity section of Northern's tariff. Additionally, Northern is revising its tariff so that when a bid is withdrawn, any new bids submitted by the bidder for the same capacity or path(s) must not only be at a higher rate, but also produce a higher net present value (NPV). Northern states that awarding of ROFR capacity is based on the highest NPV, and considering a higher rate, while disregarding term, does not always provide a higher NPV. Finally, Northern proposes to allow shippers to submit multiple bids if only one FDD capacity package is available as long as the total quantity does not exceed the capacity of the package. The current tariff language limits shippers to only one bid per package.

5. Northern proposes to remove the lottery process and the veto provision of the *pro rata* allocation of the Best Offer provision,[4] stating that the current process subjects the award of capacity to mere chance, and that no shipper has acquired capacity through the ROFR lottery process. Northern asserts that the Commission has approved similar requests to eliminate a lottery.[5] Northern proposes to award ROFR capacity to equal bidders on a pro rata basis. Northern states that it has made a similar lottery process deletion in its Capacity Release section.

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[3] Rate Schedule FDD provides shippers three withdrawal options: Gas-In-Place, 4-Step Withdrawal, or 3-Step Withdrawal.

[4] Northern Natural Gas Co., FERC NGA Gas Tariff, Sheet No. 299A, G T and C Right Of First Refusal, 1.0.0.

[5] *Williston Basin Interstate Pipeline Co.,* 96 FERC ¶ 61,018 (2001) (*Williston*).

6. Northern proposes revising its bid posting process in generally available capacity open seasons to post only the winning bid(s). Northern states that this would provide the non-winning bidders all the information necessary to see why their bids were not awarded capacity, because any additional information of below-market bids does not provide any meaningful value to shippers, may negatively distort the perception of price and value and therefore is not appropriate. Northern asserts that this change is consistent with Commission findings in *Tennessee Gas Pipeline Co.*, 82 FERC ¶ 61,008, at 61,030 (1998) (*Tennessee*), *Texas Gas Transmission, LLC*, 125 FERC ¶ 61,189 (2008) (*Texas Gas*), and *Southern Natural Gas Co.*, 100 FERC ¶ 61,089 (2002) (*Southern*), that a pipeline is required to post only the winning bid.

7. Public notice of the filing was issued on June 19, 2012. Interventions and protests were due on or before July 2, 2012, as provided by the notice. Pursuant to Rule 214, 18 C.F.R. § 385.214 (2012), all timely motions to intervene and any unopposed 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. Protests were filed by Northern States Power Company - Minnesota, Northern States Power Company – Wisconsin and Southwestern Public Service Company (jointly "Excel Companies"), CenterPoint Energy Resources Corp. (CenterPoint), Indicated Shippers,[6] and the Northern Municipal Distributors Group (NMDG)[7] and the Midwest Region Gas Task Force Association[8] (jointly "NMDG and MRGTF").

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[6] In this proceeding the Indicated Shippers are Chevron U.S.A. Inc., Occidental Energy Marketing, Inc. and Shell Energy North America (US), L.P.

[7] NMDG is composed of the following Iowa municipal-distributor customers of Northern Natural Gas Company: Alton; Cascade; Cedar Falls; Coon Rapids; Emmetsburg; Everly; Gilmore City; Graettinger; Guthrie Center; Harlan; Hartley; Hawarden; Lake Park; Manilla; Manning; Orange City; Osage; Preston; Remsen; Rock Rapids; Rolfe; Sabula; Sac City; Sanborn; Sioux Center; Tipton; Waukee; West Bend; Whittemore; and Woodbine.

[8] MRGTF is composed of 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, a division of MDU Resources Group Inc.; Hibbing; Hutchinson; New Ulm; Northwest Natural Gas Company; Owatonna; Round Lake; Sheehan's Gas Company, Inc.; Two Harbors; Virginia; and Westbrook, Minnesota; Midwest Natural Gas, Inc.; Superior Water Light & Power; St. Croix Valley Natural Gas, Wisconsin; and Watertown, South Dakota.

8. The Excel Companies oppose Northern's proposal to only post the winning bid without identifying the winning bidder. The Excel Companies note that the pipeline, in managing the process intended to compete with the pipeline's own capacity sales, is privy to all the bids submitted, not just the winning bid, and thus they learn the identities of entities interested in obtaining capacity, along with the economic terms that are acceptable to each bidder, including price and duration of service. The Excel Companies state that allowing a pipeline to use the capacity release process to gain market insights is fair only if the firm shippers that compete with the pipeline have equal access to the information the pipeline receives when selling its own capacity, such as auctions for uncommitted capacity or ROFR auctions. The Excel Companies urge the Commission to reject Northern's proposals to limit the information it posts for capacity auctions.

9. CenterPoint, the Excel Companies and NMDG/MRGTF also protest the proposed tariff changes that would permit Northern to eliminate its current obligation to post all bids for capacity and to post only the winning bid(s) for capacity, including the rate and the calculated Net Present Value (NPV) of such bid(s). CenterPoint and NMDG/MRGTF observe that Northern's current tariff requires Northern to post information for all bids. CenterPoint and the Excel Companies assert that Northern's proposal unreasonably limits the availability of market price information to the disadvantage of Northern's shippers. CenterPoint, the Excel Companies and NMDG/MRGTF state that the information currently available performs a valuable price discovery function for bidders and other market participants, and assert that its omission would provide an undue advantage to Northern. CenterPoint states that the information from all the bids promotes a transparent competitive market by providing valuable information to holders of capacity on Northern who may wish to release capacity in the future in competition with Northern

10. CenterPoint disagrees with Northern's argument that information on other than the winning bid "does not provide any meaningful value to shippers." CenterPoint and the Excel Companies assert that capacity holders on Northern interested in releasing capacity clearly benefit from market information disclosing what potential shippers are willing to pay for capacity. The Excel Companies state that, while it may be that the range of bids will include some below-market outliers, it is also true the winning bid may be an above-market outlier that, if posted to the exclusion of all other bids, would distort the perception of price and value to Northern's advantage. The Excel Companies state that posting all bids does not undermine Northern's ability to sell capacity to the highest bidder, but it does make it more difficult for a monopoly service provider to command above-market prices. Indicated Shippers and NMDG/MRGTF state that Northern's theory that providing information regarding "below-market bids" may "negatively distort the perception of price and value" on its system is neither explained nor supported, and Northern should not be permitted to withhold objective bid information and market signals based upon its subjective view of what may or may not

be “below market.” NMDG/MRGTF states that Northern has not met its burden of proof to show that the existing provision is unreasonable, and, therefore, should be rejected.

11. The Excel Companies further note that Northern has previously attempted to limit its posting obligations, and that the Commission ultimately rejected the proposal.[9] The Commission issued a suspension order in which it stated “Northern proposes to post only open season winning bid(s), not all the bids that were made in the open season, which would remain known only to Northern.”[10] The Commission convened a technical conference, then rejected Northern’s filing in its entirety, stating that the “proposed tariff sheets that modified Northern Natural’s ROFR procedures and the provisions of its tariff providing for the publishing of the full range of bids submitted in an auction…might be considered as totally separate matters in a separate section 4 filing. . . . ”[11]

12. The protestors indicate that Northern cites cases that require a pipeline to post only the winning bid.[12] The protestors argue that in those cases that aspect of the pipeline proposals was either unopposed or opposed only on the bid validation grounds, i.e. that more information was needed to determine whether the bid that the pipeline chose to characterize as the winning bid actually was the best bidder under the pipeline’s bidding procedure. The protestors state that Northern cites no cases where the Commission has previously ruled on the issue of whether all bids should be revealed for competitive concerns. CenterPoint notes that none of the three pipelines cited proposed to eliminate information that the pipeline had already agreed to provide under their tariffs, and urges the Commission not to allow Northern to step back from its current tariff obligations.

13. Indicated Shippers state that Northern cited *Tennessee* as support of its proposition that “a pipeline is required to post only the winning bid”[13] and Northern further states that the Commission came to similar conclusions in *Texas Gas* and

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[9] *Northern Natural Gas Co.*, 132 FERC ¶ 61,021 (2012).

[10] *Id.* P 8.

[11] *Northern Natural Gas Co.*, 133 FERC ¶ 61,210 (2010), *reh’g denied*, 135 FERC ¶ 61,085 (2011).

[12] *Tennessee*, 82 FERC ¶ 61,008; *Texas Gas*, 125 FERC ¶ 61,189; *Southern*, 100 FERC ¶ 61,089.

[13] June 18th Filing at 3.

Southern.[14] However, Indicated Shippers argue that in *Tennessee,* the Commission originally found that at the close of a capacity auction, the pipeline must post the winning bid and its associated NPV analysis. On rehearing, shippers argued that the pipeline had at times announced that there were no winning bids without disclosing whether it received any bids or exercised its right to reject bids at less than the maximum rate. The Commission clarified that "to ensure that a realistic check of the NPV process can be performed by the affected shippers . . . [t]he Commission will require [the pipeline] to declare, for all capacity posted for bidding, whether bids have been received and to show the full NPV analysis for the highest bid received regardless of whether that bid is accepted."[15] Indicated Shippers state that the Commission noted that these requirements enable shippers to ensure that the pipeline is not engaging in undue discrimination when awarding bids for capacity.[16]

14. Indicated Shippers note that under Northern's proposed revisions, Northern will only post the winning bid, if it declares a winning bid, and the NPV analysis for that bid, but it will eliminate the Commission's requirement in *Tennessee* that a pipeline should also post whether bids have been received, and the NPV analysis of the *highest* bid. Indicated Shippers assert that the Commission should deny Northern's proposal where it is inconsistent with *Tennessee,* and assert that the Commission did not conclude that a company conducting an auction for available capacity is only required to post winning bids in *Texas Gas* or *Southern,* as claimed by Northern. Indicated Shippers state that in *Texas Gas*, the Commission approved the pipeline's auction process for selling its storage capacity only after finding that its tariff contained customer protections that prohibited it from exercising market power or engaging in undue discrimination.[17] Indicated Shippers argue that in *Southern*, when approving tariff provisions relating to pre-arranged sales for capacity, the Commission required the pipeline to post the original asking price, the rate agreed upon in the pre-arranged deal, and the winning bid.

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[14] *Id.*

[15] 82 FERC ¶ 61,008 at 61,030.

[16] *Id.* (stating "the Commission will clarify Tennessee's posting requirements. This clarification should mitigate any concerns of Indicated Shippers that Tennessee could illicitly favor certain shippers").

[17] *Texas* Gas, 125 FERC ¶ 61,189 at 62,014 ("we also find that the proposed auction process will prevent Texas Gas from exercising market power by withholding capacity from the market . . . since an auction can be initiated by a customer as well as by Texas Gas [and] Texas Gas' proposed reserve prices are reasonable and will prevent economic withholding.").

15. Indicated Shippers argue that Northern's proposal violates the Commission's general policy of "require[ing] pipelines to sell all their available capacity to shippers willing to pay the pipeline's maximum recourse rate."[18] Indicated Shippers also assert that if Northern is not required to post information when determining that there is no winning bid, Northern's shippers will not know whether the pipeline is indeed selling its open season capacity when shippers are willing to pay the maximum recourse rates.

16. The Excel Companies contend that Northern has not provided a valid reason for withholding the names of the best bidders in each iteration of a ROFR auction. The Excel Companies note that the current ROFR provisions in Northern's tariff allow for an iterative bidding process if, following the initial round of bidding, the tendered bids are less than maximum recourse rate and Northern is willing to accept less than maximum rates. Currently, Northern must post the name of the best bidder in each bidding round. The Excel Companies note that Northern's sole justification for the proposed change is to "be consistent with the Posting and Awarding of Capacity" of the GT&C of its tariff. The Excel Companies assert consistency for consistency's sake is not a universal justification, and as no other reason has been given for withholding the names of the best bidders in each iteration of a ROFR auction, Northern's proposal should be rejected.

17. CenterPoint and the Excel Companies also protest Northern's proposal to bar a shipper that withdraws a bid from submitting a new bid unless such a bid is at both a higher rate and a higher NPV. The protestors note that Northern's current tariff only requires a resubmitted bid to be at a higher rate. The protestors state that circumstances change and a potential bidder may no longer be willing to pay for the rate or term originally bid and will withdraw that bid. The protestors assert that they are not challenging Northern's right to award capacity to the bid(s) producing the highest NPV. The Excel Companies state that Northern's reasoning undermines the requirement that a rebidding shipper offer a higher rate and runs afoul of the requirement that capacity be awarded to the shipper that values it most highly. The Excel Companies suggest that the Commission may want to take this opportunity to review the current "higher rate" requirement as unduly discriminating against a bidder whose assessment of its capacity needs may change during the course of an auction but that nevertheless desires to obtain capacity that reflects its updated assessment.

18. CenterPoint requests clarification that a bidder may submit non-economic revisions to a bid (not affecting the rate or term). CenterPoint also requests clarification that Northern will not consider the original bid as "withdrawn" under such circumstances.

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[18] *Promotion of a More Efficient Capacity Release Market, Notice of Proposed Rulemaking*, FERC Stats. & Regs. ¶ 32,625, at P 40 (2007).

19. NMDG/MRGTF oppose Northern's proposal to remove the existing veto and lottery provisions for capacity allocation. NMDG/MRGTF contend that currently, if there are equal bids for ROFR or capacity release capacity, Northern will allocate the capacity on a pro rata basis to each bidder, but if any one equal bidder rejects its pro rata allocation, the capacity will be awarded by way of lottery. If capacity remains after the winning bidder's requirements are met, that Northern makes that capacity available to the other bidders on a pro rata basis, which could again trigger the lottery process until all capacity is allocated. Northern's reason for removing this provision is that no shipper has acquired capacity through the lottery process. NMDG/MRGTF state that Northern neither claims hardship nor demonstrates shipper benefit. NMDG/MRGTF asserts that under the strict pro rata allocation proposed, shippers could receive essentially meaningless small allocations of capacity, because there is no alternative to the pro rata allocation.

20. Northern cites *Williston Basin*[19] as an example where the Commission "has approved a similar request to eliminate a lottery process."[20] NMDG/MRGTF observes that while Williston did propose to remove the lottery provision from its tariff, it did not propose to simply allocate the capacity to each bidder pro rata, but proposed to award capacity based upon the order the bids were posted, beginning with the first bid posted until all available capacity is awarded within a one-hour time frame, thus allowing one or more shippers the opportunity to obtain the full amount of their bids, even though a lottery process was not used. NMDG/MRGTF notes that other pipelines use a lottery system in a similar fashion, citing Kern River Gas Transmission Company, which uses a lottery to randomly assign a priority to each winning bidder.

21. CenterPoint and NMDG/MRGTF ask that Northern confirm and clarify that a FDD Shipper may combine or separate its FDD Agreement(s) no more often than annually. CenterPoint observes that a shipper's current ability to combine multiple FDD Agreements is evaluated annually by Northern. NMDG/MRGTF states that Northern does not appear to place any limitation on the number of times in a given year a shipper may exercise this option, nor does Northern explain if this means that a shipper could exercise this option several times during the withdrawal period or, if so, how exercising the option during the withdrawal period would be accomplished given that some withdrawals had already occurred under the withdrawal option included in the original FDD Agreement. NMDG/MRGTF states that Northern's tariff contains specific

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[19] *Williston*, 96 FERC ¶ 61,018.

[20] June 18th Filing at 3.

parameters that apply to each of the three withdrawal options,[21] but the filing contains no explanation how these parameters would be affected if a shipper changed its withdrawal option during the withdrawal period.

22. The Commission finds that Northern has not adequately supported its proposed change to post only the winning bid, and not to post the name of the bidder. Northern has provided only minimal justification that posting only the winning bid(s) provides the non-winning bidders all the information necessary to see why their bids failed. Providing additional information regarding below-market bids may well provide meaningful value to shippers and the absence of such information may distort the market's perception of price and value. The revision gives the pipeline greater control of the capacity auction process, and may hinder shippers competing with the pipeline in the secondary capacity market. Northern's one paragraph justification does not adequately support why it should be allowed to alter this provision, nor has it adequately justified why the reduction of information to the capacity market is just and reasonable. Multiple parties have intervened arguing that they find this information very helpful in providing market signals. If Northern alone can view all of the market information from all of the bids, it gains a competitive advantage over participants in the secondary capacity market, and the Commission requires greater justification than so far presented before it will allow Northern to reduce its current tariff obligation to post this complete bidding information. Accordingly, the Commission rejects Northern's attempt to truncate the bidding information it will post.

23. The Commission will allow Northern to revise its tariff to require that, once a bid is withdrawn, in order to resubmit a bid on the same capacity/path(s), a bid must have both a higher rate and produce a higher NPV. The Commission is unswayed by arguments that shippers should be able to withdraw and rebid without bidding both a higher rate and a higher NPV. If shippers were allowed to withdraw and rebid at any rate or NPV the pipeline could be exposed to a downward auction. If a shipper places a certain value on a portion of capacity, the shipper should bid what it thinks will win it that capacity. A shipper can always bid the maximum recourse rate for the maximum term to signal the ultimate value it places on the capacity.

24. The Commission finds that Northern has not justified its proposal to eliminate the lottery and veto provision when awarding auction capacity. While the Commission has allowed pipelines to remove a lottery provision from their tariffs, none of these pipelines have left shippers facing only pro rata allocation of capacity. Under Northern's proposal, if a shipper requires a certain amount of capacity, the proposed tariff revision

[21] Rate Schedule FDD provides shippers three withdrawal options: Gas-In-Place, 4-Step Withdrawal, or 3-Step Withdrawal.

would force them to take a pro rata share rather than the amount the shipper actually needed. Northern has not demonstrated that its proposed deletion of the veto and lottery provisions is just and reasonable. The Commission therefore rejects Northern's proposal to remove the veto and lottery provisions from its tariff. Northern may, if it wishes, consider revising it proposal consistent with those that have been approved for other pipelines.

25. The Commission finds that Northern's proposal not to post the name of the highest bidder under its ROFR Bidding Process[22] is not justified and therefore rejected.

26. The Commission directs Northern to file within 15 days of the date of this letter order, to implement the Commission's directives discussed above. In addition, Northern's compliance filing should either (1) clarify that a shipper may exercise its option to split its FDD Agreements no more than annually, or (2) clarify and justify any other arrangement as to how FDD Agreements may be split. The Commission encourages pipelines to provide additional flexibility; however, that flexibility must come with minimal detrimental side-effects to current firm customers. Accordingly, acceptance of Northern's proposal to allow customers to split their FDD Agreements into more agreements is conditioned upon Northern's filing to permit this splitting only once a year, or providing additional details as to how more than annual splitting would work, and showing how this will not unjustly and unreasonably affect existing FDD customers.

27. Finally, Northern's clarification on a shipper's retention of its ROFR, and the other housekeeping revisions are accepted, effective as proposed.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[22] Northern Natural Gas Co., FERC NGA Gas Tariff, Sheet No. 298, G T and C Right Of First Refusal, 1.0.0.

Appendix

Northern Natural Gas Company
FERC NGA Gas Tariff
Gas Tariffs

Tariff Records Accepted, Subject to Conditions, Effective July 19, 2012

Sheet No. 135, Rate Schedule FDD, 2.0.0
Sheet No. 135A, Rate Schedule FDD, 1.0.0
Sheet No. 135D, Rate Schedule FDD, 3.0.0
Sheet No. 142C, Rate Schedule PDD, 3.0.0
Sheet No. 144, Rate Schedule IDD, 4.0.0
Sheet No. 297, G T and C Right Of First Refusal, 1.0.0
Sheet No. 298, G T and C Right Of First Refusal, 1.0.0
Sheet No. 299A, G T and C Right Of First Refusal, 1.0.0

Tariff Records Rejected

Sheet No. 252, G T and C Requests For Service, 1.0.0
Sheet No. 287A, G T and C Capacity Release, 5.0.0
Sheet No. 299, G T and C Right Of First Refusal, 1.0.0